



Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
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28 November 2018

Dear Mick

I am writing in response to your letter of 13 November 2018 regarding composite and joint statutory instruments which are laid before the National Assembly for Wales and the Houses of Parliament but are not laid in both English and Welsh. As requested, I set out our position and some observations below.

There is an important distinction to make between two types of legislation:

1. Legislation which consists of two distinct texts in English and Welsh, where both texts have equal status in law.
2. Legislation that consists of a single English text, but within which provisions contain amendments to texts of legislation in the first category above; i.e. to an instrument, Act or Measure which has both English and Welsh versions, and thus contains some Welsh language text.

Both categories have been described by some as “bilingual” however, the Welsh Government considers only the first category to be bilingual. I believe the National Assembly shares this view, as your committee reports on joint and composite statutory instruments not being made bilingually, as required by the Assembly’s Standing Orders.

The Welsh Government acknowledges that in the UK Parliament the use of Welsh text where necessary, in otherwise monolingual English language primary and secondary law, is very well established. Your letter, and that of Mr Charles Walker, provide just a few examples of such cases.

However, we have always understood it was not possible to lay a statutory instrument before Parliament when the **primary** language was not English – i.e. it would not be

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

possible to lay the Welsh version of a bilingual statutory instrument. Thus, if a joint or composite statutory instrument was drafted bilingually, the Welsh text could not be laid and would not then be scrutinised.

It is this understanding which led to the statement in my letter of November 2011 and is the basis of the Welsh Government's usual response to your committee's reports about monolingual joint and composite statutory instruments.

I note that in a discussion about this matter on 9 March 2015, your predecessor committee heard it had been advised by the Clerk of the House of Commons that the translation of a statutory instrument could be laid, potentially as a Command Paper, but it would not technically be part of the legislation. This appeared to confirm our understanding.

Mr Walker's letter refers to the possibility of laying bilingual legislation in the Houses of Commons, however it is not clear what definition of "bilingual" is being applied or the status that would be accorded to the document.

Whilst it may be initially attractive to consider laying the Welsh text of a statutory instrument as a Command Paper, this would accord it similar status to an explanatory memorandum or impact assessment rather than the equal status accorded to it by the Government of Wales Act. I am advised this could call into question the legal status of the Welsh text of the instrument, should the Houses of Parliament approve or annul only the English-language text of the statutory instrument.

The Welsh Government considers joint and composite instruments to be the correct approach in certain circumstances, for example where we are required by law to make an instrument in this manner, we do not have the vires to make full provision because of the way powers have been devolved or we wish to ensure consistency in approach and timing where there are significant cross-border operational overlaps. However, we recognise that in taking this approach we are striking a difficult balance between the accessibility of the law in terms of the Welsh language with the accessibility of the law in terms of having all the relevant provisions across territorial boundaries in a single instrument. Therefore, in many cases a number of provisions of a joint and composite statutory instrument only apply in England, or indeed Scotland or Northern Ireland. If such instruments were to be bilingual, the drafting department would be required to translate legislation into a language which is not relevant to the territory in which it applies.

I hope these observations assist with your consideration of this issue. I am copying this letter to the Counsel General.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES