

## Agenda Supplement – Legislation, Justice and Constitution Committee

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Meeting Venue:

Committee Room 4, Tŷ Hywel

Meeting date: 6 March 2023

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

### On-site – Supplementary Pack

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Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

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#### 5 Papers to note

(13.45 – 13.50)

##### 5.7 Correspondence from the Counsel General and Minister for the Constitution to the Llywydd: Supplementary Legislative Consent Memorandum on the Retained EU Law (Revocation and Reform) Bill

(Pages 1 – 2)

Attached Documents:

LJC(6)-08-23 – Paper 20 – Letter from the Counsel General and Minister for the Constitution to the Llywydd, 3 March 2023

##### 5.8 SL(6)325 – The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

(Pages 3 – 11)

Attached Documents:

LJC(6)-08-23 – Paper 21 – Letter from the Minister for Climate Change, 1 March 2023

LJC(6)-08-23 – Paper 22 – Letter from the Counsel General and Minister for the Constitution, 15 February 2023

LJC(6)-08-23 – Paper 23 – Letter from the Minister for Climate Change, 14



February 2023

LJC(6)-08-23 – Paper 24 – Letter from the Counsel General and Minister for  
the Constitution, 18 January 2023

Ein cyf/Our ref: CG/PO/71/2023

Rt Hon. Elin Jones MS  
Llywydd and Chair of the Business Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN

[SeneddBusiness@senedd.wales](mailto:SeneddBusiness@senedd.wales)

03 March 2023

Dear Elin,

The Retained EU Law (Revocation and Reform) Bill (“the Bill”) was introduced in the UK Parliament, the House of Commons, on 22 September and I laid a Legislative Consent Memorandum (LCM) on it on 3 November, followed by a Supplementary LCM (SLCM) on 21 December and again on 6 February.

Committee Stage was held on 16 February. The UK Government tabled amendments and we are analysing the details to see whether these initiate the requirement to undertake a further SLCM. The UK Government shared some policy content on proposed amendment but did not share the full details of tabled amendments. In addition, relevant non-government amendments could be tabled in the subsequent committee days planned for the 23 February, 28 February and 2 March which may result in further amendments being agreed for inclusion in the Bill.

We will prepare a single SLCM dealing with all the relevant amendments tabled for Committee Stage. I acknowledge this will mean this SLCM will be laid more than two weeks after the tabling of the first batch of amendments, but I believe this will ensure it accurately reflects the development of the Bill and will enable effective Senedd scrutiny.

We currently envisage tabling a legislative consent motion for debate on 14 March. However, my officials are continuing to monitor the timetabling of the Bill in the House of Lords and we will keep you informed of any relevant developments as regards the timetable for the legislative consent process.

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[Correspondence.Mick.Antoniw@gov.Wales](mailto:Correspondence.Mick.Antoniw@gov.Wales)

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.

I am copying this letter to the Minister for Economy, the Minister for Rural Affairs and North Wales, and Trefnydd, the Minister for Climate Change and the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal blue line.

**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution

Julie James AS/MS  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

Ein cyf/Our ref MA/JJ/2983/22

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
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[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

1 March 2023

Dear Huw,

I am writing ahead of your Committee's consideration to inform you that following the re-laying of the draft Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 in the Senedd on 14 February 2023, four minor cross-referencing errors have subsequently been identified in the following places in Schedule 2 to the Regulations:

- Paragraph 2(2)(a) – cross-refers to regulation 11(3)(a) but should instead cross-refer to regulation 11(4)(a).
- Paragraph 2(2)(b) – cross-refers to regulation 11(3)(b) but should instead cross-refer to regulation 11(4)(b).
- Paragraph 5 – cross-refers to regulation 11(3)(b) but should instead cross-refer to regulation 11(4)(b).
- Paragraph 7(1) – cross-refers to regulation 11(3)(b) but should instead cross-refer to regulation 11(4)(b).

The errors are very minor and I will therefore ensure that these Regulations are corrected to deal with these points prior to making.

In addition to notifying the Committee of my intentions I will also draw this to the attention of Senedd members in the plenary debate on the Regulations scheduled to take place on 14 March. This is in accordance with the steps that the Counsel General set out in his correspondence with you on 18 January and 15 February 2023.

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I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive style with a large initial 'J'.

**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Huw Irranca-Davies, Chair  
Legislation, Justice & Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
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15 February 2023

Dear Huw,

## **CORRECTING WELSH STATUTORY INSTRUMENTS**

Thank you for your further letter on this matter of 6 February 2023. You have asked me to clarify some points in my letter of 18 January, and to comment on correspondence sent by the Minister for Rural Affairs and North Wales, and Trefnydd and the Deputy Minister for Mental Health and Wellbeing on 26 January 2023.

### ***Letter of 18 January (from Counsel General)***

1. The circumstances in which correction slips may be used are extremely limited, as I set out in my original letter. They are also well established. The existence and use of correction slips applies not only to Welsh Statutory Instruments but also UK Statutory Instruments, Scottish Statutory Instruments and in relation to Statutory Rules of Northern Ireland. They can also be used in relation to Acts of the Senedd, UK Parliament, Scottish Parliament and Measures of the Northern Ireland Assembly (in each case by the legislatures themselves). Recent examples of correction slips being used for Acts of the Senedd include one last month for the Renting Homes (Wales) Act 2016 and one in November for the Tertiary Education and Research Act (Wales) Act 2022.
2. Given their very limited nature and the constraints on their use, I was very surprised by your suggestion that they amount to a “potential democratic deficit”. I am very clear that they are not. Their purpose is to help to ensure that readers of legislation are not troubled by very minor technical errors.
3. The purpose of the references in my letter to *Statutory Instrument Practice* and the Special Report of the Joint Committee on Statutory Instruments was to make clear our understanding of the very minor nature of the errors that can be dealt with by correction

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slip. The particular nature of bilingual legislation is not addressed by SIP, which as I have explained does not provide guidance on Welsh SIs. It is a matter highly relevant to our own considerations and one which I am satisfied the SI Registrar also fully understands.

4. The SI Registrar is very aware that the Welsh and English texts of Welsh legislation have equal status, and understands the importance of ensuring that errors relating to either text are corrected appropriately. The registration team in The National Archives work closely with the Welsh Government to ensure not only that corrections in both languages are appropriate, but that correction slips accurately express the rectification in both languages.
5. We will seek to ensure the specific term “correction prior to making” or “correction prior to publication” are used in Government responses where appropriate.
6. The reference in my letter to a Minister bringing matters to the attention of Members, either in Committee or during the debate, was to make clear that matters could be brought to the attention of Members in the debate – even if they had not already been raised in Committee correspondence.

***Letter of 26 January (from Minister and Deputy Minister)***

7. In relation to the points raised in paragraphs 5 and 6 of your letter, legislation prepared by the Welsh Government undergoes robust quality assurance. This includes the application of approved and tested approaches and checks. As noted in the response to question 4 of your letter of 26 January 2023, the volume and complexity of legislation required in relation to the UK’s withdrawal from the EU has been unprecedented.
8. The Welsh Government does not knowingly lay defective legislation before the Senedd. It is important to draw a clear distinction between legislation that contains minor errors, where the policy intention is clear and the effect of the legislation is not threatened, and legislation that is defective as a whole and does not operate as intended. Errors can occur when complex legislation is being produced in high numbers and under significant time pressures – and it is very unfortunate when these are only identified after an instrument is laid. In circumstances like this, the Welsh Government considers the options available to rectify the errors. The approach taken will depend on how minor or serious the errors are, and the impact the errors have on the instrument as a whole.
9. You then raise a more general point regarding the transparency and accessibility of correcting on registration, which I believe I have addressed in my correspondence of 18 January and is dealt with in *Statutory Instrument Practice*. I am satisfied that the accessibility of the legislation, and ensuring it is correct for the end user, is the most important factor here.
10. Correction slips can be made at any time, even well after an instrument has been made, either because the error is spotted some time later or because the capacity and resources of the SI Registrar mean they (rightly) have to prioritise the registration and publication of new legislation. Correcting prior to publication where it can be achieved avoids any delay and ensures, as the Minister and Deputy Minister explained in their letter, that the published version of an instrument is corrected prior to it coming into force. And in the case of draft affirmative instruments, a reader is able to compare the version approved by the Senedd with the King’s Printer version that is available to download on [legislation.gov.uk](https://legislation.gov.uk) or to purchase.



I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, and to the Deputy Minister for Mental Health and Wellbeing.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal blue line.

**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution

Julie James AS/MS  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA/JJ/2983/22

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14 February 2023

Dear Huw,

I am writing to inform you that The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 which will shortly be laid before the Senedd fall under the scope of the Resources and Waste Common Framework.

Yours sincerely,

**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

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Ein cyf/Our ref: PO/18/2023

Huw Irranca-Davies, Chair  
Legislation, Justice & Constitution Committee  
Senedd Cymru  
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18 January 2023

Dear Huw

## **CORRECTIONS TO WELSH SUBORDINATE LEGISLATION**

Thank you for your letter of 21 December 2022. You have raised a number of matters relating to correction slips, which I should make clear apply to Statutory Instruments (SIs) only rather than all subordinate legislation made by the Welsh Ministers.

Before turning to your substantive questions, I believe it may help the Committee if I set out a few general points:

1. We are very clear that substantive errors in an SI, no matter how small, can only be corrected by amending legislation. But equally it is important, for the accessibility of our legislation, that where errors are not substantive, but ought to be corrected, that is done wherever possible.
2. When considering how to correct a mistake in a Welsh SI we are informed primarily by [Statutory Instruments Practice](#)<sup>1</sup> (SIP). Although SIP does not provide guidance on Welsh SIs, the procedures and principles outlined in Parts 3 and 4 are followed in practice by the Welsh Government in preparing, registering and publishing legislation.
3. SIP outlines a range of approaches to achieving corrections for non-substantive errors, depending on the error and the point is it at in the process of making, registering and publishing an SI.

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<sup>1</sup> The National Archives (November 2017) *Statutory Instrument Practice, 5<sup>th</sup> edition*

## **Criteria for considering whether to seek a correction slip**

4. A correction slip is used when the SI has been registered and published, and was a process designed very much with the printed SI in mind. Correction slips are issued with every new sale of a printed SI that is purchased (and also sent to known purchasers of the SI); they are also published alongside the digital versions of the (corrected) SI on [legislation.gov.uk](http://legislation.gov.uk)
5. When considering whether a correction slip may be sought, our first consideration is paragraph 4.7.4 of SIP. We also consider the Special Report of the Joint Committee on Statutory Instruments, *Transparency and Accountability in Subordinate Legislation*, where the Committee is clear that errors in subordinate legislation should not be corrected by correction slip where they amount (or could possibly amount) to a change of substance. In addition, in the report the Committee shows the criteria in determining the suitability of the issue of a correction slip:
  - the errors are small scale (for example, a typographical error that does not affect the substantive meaning);
  - the errors are obvious;
  - the text and location of the corrections are equally obvious; and
  - the corrections are small scale.

## **Correction on making, registering and publication – process, criteria and role of SI Registrar**

6. Your correspondence refers to ‘correction on making’ and ‘correction on publication’, both of which are terms of convenience used by the Government and therefore also the Committee, but not entirely accurate descriptions of the point at which corrections are made. I cover this in more detail below, but the net result of both is the same – the mistake is remedied before publication and ensures that the corrected SI is available in printed form, without an additional correction slip, and the digital version on [legislation.gov.uk](http://legislation.gov.uk) reflects the final form of the SI.
7. ‘Correction on making’ happens before the SI has been made by the relevant Minister. If the correction is considered to be of the type which could be dealt with by a correction slip (usually a matter which is discussed with the SI Registrar subject to their availability) or is a matter which the Minister has committed to remedy before making the SI – for example in the Senedd’s consideration of a draft affirmative SI – then the draft SI is corrected before it is submitted for making. The “as made” version is then registered in the usual way.
8. Correction on publication is a term we often use, but in practice refers to correction as part of the registration process. In such cases we follow the guidance at paragraph 4.7.13 of SIP which notes:

*If it is in the nature of something that could be covered by a correction slip... this can be remedied.*
9. There is very limited time available to do this – generally only a few hours – and is dealt with in discussion with the SI Registrar once the SI has been submitted for registration but before registration has been completed.
10. SIP makes clear that if an SI has been registered but not yet published, the mistakes will need to be remedied after publication (by the appropriate means depending on the nature of the error).

### ***Errors in draft affirmative instruments***

11. In general terms, if the error is one which could be remedied by correction slip then we would prefer to deal with that as a correction on (i.e. prior to) making. If it is a very minor matter, but not one which would necessarily be suitable for a correction slip, then it still may be the case that we would seek to deal with this as a matter on (i.e. prior to) making. The Minister can bring these matters to the attention of Members either in correspondence with the Committee or during the debate on the instrument.
12. For more substantive matters, then we will either seek to withdraw and re-lay the instrument or, if time does not permit for that, then we may commit to bring forward an amending instrument.
13. Clearly the approach we need to seek to take depends on the error that has been identified, the urgency with which the instrument needs to be made, and the time available to resolve the matter. It will always be the case that our preferred approach in these cases is to correct the draft instrument and re-lay it before the Senedd, and I am grateful to the Committee for those occasions when they have agreed to expedite their consideration of the revised Statutory Instrument.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, and to the Deputy Minister for Mental Health and Wellbeing.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution