

Dr Andrew Goodall CBE  
Permanent Secretary, Welsh Government

19 December 2022

Dear Andrew

## Welsh language explanatory memoranda to Welsh subordinate legislation

You will aware that, as part of our role under Standing Orders 21.2 and 21.3, we consider whether subordinate legislation laid before Senedd raise issues of political or legal importance or give rise to issues of public policy likely to be of interest to the Senedd. An issue which we have reported to the Senedd on three occasions recently is the fact that the Welsh Government has not laid explanatory memoranda in Welsh. These instances are set out below.

### SL(6)190 – The Agricultural Wages (Wales) Order 2022

The Welsh Government's response to our report on the Order explained that:

*"Standing order 15.4 of the Senedd requires all documents to be laid bilingually so far as is appropriate in the circumstances and reasonably practicable, and Standard 47 of the Welsh Language Standards (the statutory duties imposed on the Welsh Government by the Welsh Language Commissioner) requires us to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Under guidance provided by the Commissioner's office (in their Code of Practice on the Welsh Language Standards (No. 1) Regulations 2015), in prioritising these documents for translation at this time we considered issues such as whether the Regulations related to issues affecting the Welsh language directly, whether the Regulations were of great interest to Welsh speaking groups in particular, and whether a high proportion of the documents' audience would be Welsh speaking. As the Order is of a technical nature and will affect only an extremely small percentage of the population, the Explanatory Memorandum has not been deemed a priority for translation at this time."*



We subsequently wrote to the Minister for Rural Affairs and North Wales, and Trefnydd for further explanation for why the Explanatory Memorandum had not been deemed a priority for translation. In response, the Minister confirmed her commitment to making future explanatory memoranda to Agricultural Wages Orders bilingually. Following this commitment, we acknowledge that the Explanatory Memorandum to the Agricultural Wages (No. 2) (Wales) Order 2022 was produced in Welsh and English.

#### SL(6)290 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 4) (Wales) Regulations 2022

The Welsh Government's response to our report on the Regulations noted that:

*"Explanatory Memoranda for subordinate legislation are prioritised for publication in Welsh (in line with Standard 47 of the Welsh Language Standards). A Welsh language version is published if the subject matter of the Explanatory Memorandum suggests that one should be available in Welsh, or the anticipated audience will expect to see a Welsh language version. In this instance, the Welsh Government deemed that a Welsh Language version of the Explanatory Memorandum was unnecessary due to the narrow and specific nature of the Regulations and the small target audience (ie. Welsh Local Health Boards)."*

We wrote to the Minister for Health and Social Services on 9 December 2022 to seek further clarity as to why the Welsh Government considers the local health boards in Wales to be a "small target audience". We await a response from the Minister.

#### SL(6)295 – The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2022

Our report on these Regulations noted that Standing Order 15.4 had been relied upon to justify the laying of an Explanatory Memorandum for the Regulations in English only. We noted that, since the Regulations will be in force until 31 March 2025 and seek to address a complex issue, a Welsh version of the Explanatory Memorandum would be helpful to Welsh speakers interested in their background, purpose and effect.

The Welsh Government's response noted that "in the circumstances, including in particular the urgency with which the Regulations needed to be made it was not reasonably practicable for a Welsh language Explanatory Memorandum to be laid alongside the Regulations."

#### Our view

When considering the importance of people being able to understand legislation, we believe that regardless of their subject matter, and the anticipated audience of such legislation and their expectations, explanatory memoranda accompanying any legislation should always be made available

in Welsh. We believe this would follow the spirit of the Welsh Language Standards (No. 1) Regulations 2015, which require the Welsh Ministers to produce similar explanatory documents such as policies, strategies, annual reports and corporate plans, guidelines and codes of practice in Welsh.

We are aware that Standing Order 15.4 provides that the Welsh Government must lay documents in both English and Welsh so far as is “appropriate in the circumstances” and “reasonably practicable”. We also note that it does not provide for scenarios where it may be “unnecessary” to lay documents in both English and Welsh, as suggested in the response to our report on SL(6)290 as quoted above.

We are not persuaded that Standing Order 15.4 should be used as a means to not produce Welsh language explanatory memoranda, particularly in light of the Welsh Government’s commitment to the accessibility of Welsh law.

Since it appears that the Welsh Government has deemed it not reasonably practicable (or even “unnecessary”) to produce explanatory memoranda in Welsh in the above instances, we are concerned that there may be issues of resourcing which mean that they are not routinely produced. We would therefore be grateful to receive your assessment of whether the Welsh Government has sufficient capacity to produce all explanatory memoranda to subordinate legislation in Welsh, and if not, an outline of the steps that you are taking to ensure it has sufficient capacity. In addition, since the Welsh Language Commissioner’s Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015 has been cited, we would be grateful to receive an indication of whether the Commissioner, or the Commissioner’s office, has provided specific assurance to the Welsh Government that the Standards do not require it to routinely produce explanatory memoranda to legislation in Welsh.

I would be grateful to receive your response by 19 January 2023.

I am copying this letter to the First Minister, the Minister for Rural Affairs and North Wales, and Trefnydd, the Minister for Health and Social Services, the Minister for Finance and Local Government, and the Counsel General and Minister for the Constitution.

Yours sincerely,

A handwritten signature in dark ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies  
Chair