

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Our ref: MA/L/JJ/029918

Mick Antoniw, AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
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24 May 2018

Dear Mick

Thank you for your letter of 8 May 2018 enquiring about the Welsh Government's approach to laying subordinate legislation that is not in the form of a statutory instrument, and the provision of Explanatory Memoranda.

As with statutory instruments, our approach towards whether to lay an item of subordinate legislation not in the form of a statutory instrument is guided by the procedure set out in its parent Act or Measure. If the item of subordinate legislation is required to be laid, we follow the requirements of the National Assembly for Wales' Standing Orders, in accordance with its definition of subordinate legislation.

In particular, we consider whether Standing Order 27.14 is relevant. This applies the provisions of Standing Order 27 to a report, guidance, code of practice or other document required to be laid before the Assembly **and** which is also subject to any form of Assembly procedure that is equivalent to an affirmative or negative type procedure. Where the provisions of Standing Order 27 do apply to such items, these include the requirement in Standing Order 27.1 to lay an explanatory memorandum alongside the subordinate legislation (in the same way as an explanatory memorandum is provided for a statutory instrument subject to an affirmative or negative type procedure).

Where subordinate legislation not in the form of a statutory instrument has an Assembly procedure attached it is laid under Standing Order 27. If it does not, it is laid under Standing Order 15.1(i). We have a long standing arrangement with your committee whereby we notify you as a courtesy when statutory instruments are laid under Standing Order 27. We also notify you as a courtesy when certain statutory instruments which do not have to be laid are made, in particular commencement orders, and when certain items of subordinate legislation not in the form of a statutory instrument are laid, particularly if that item is laid under Standing Order 27.

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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.

In your letter you mentioned four items in particular, all of which relate to the water industry. Both the *Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991* and *Charging Guidance to Ofwat Relating to Developer Charges, Bulk Supply Charges and Access Charges* had a negative type procedure attached. In these instances Standing Order 27.14 applied and they should have been accompanied by an explanatory memorandum when laid. We should also have brought these to your attention as a courtesy. In terms of the two directions, as they did not have an Assembly procedure attached Standing Order 27.14 did not apply and so an explanatory memorandum was not required.

As your letter notes, determining whether an item meets the definition of subordinate legislation set out in Standing Orders is not always easy to determine. In the cases of the two items you identified where Standing Order 27.14 should have applied, these were incorrectly determined to not meet the definition of subordinate legislation. This was due to an administrative oversight on our part for which I apologise. I am of course happy to look again at our internal procedures to avoid such oversights in future.

I hope this information helps to clarify matters.

I am copying this letter to the Chair of the Climate Change, Environment and Rural Affairs Committee and to the Counsel General..

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AC/AM
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