

**Y Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol**

**Constitutional and Legislative Affairs
Committee**

Theodore Huckle QC
Counsel General
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

16 February 2012

Dear Counsel General

Choice of Affirmative or Negative Procedure in Subordinate Legislation

Thank you for your letter of 24 January 2012 enclosing the Welsh Government's "*Guidelines on Choice of Affirmative or Negative Procedure in Subordinate Legislation*". The Constitutional and Legislative Affairs Committee considered the guidelines at its last meeting and asked me to write to you setting out the Committee's views.

The Committee welcomed the new guidelines as a useful document that will help increase transparency and understanding of the Government's choice of affirmative or negative procedure for subordinate legislation. The Committee was pleased that a number of the factors set out in the document reflect recommendations and observations made by the Committee and its predecessors.

Although it is a welcome step forward, the Committee noted a number of areas where further information might usefully have been included, such as:

- when a super-affirmative procedure might be considered;
- when statutory instruments (or other forms of subordinate legislation) should not be subject to any procedural control in the Assembly;
- when the affirmative procedure might be appropriate for the first Orders or regulations under an Act, with the negative procedure being used for subsequent ones;
- where an Act might provide the Assembly with a choice of procedure that should be used (such as the Public Bodies Act 2011).

I hope you will agree that it is important for the guidelines to be kept up to date with developing practice. Therefore, it would be helpful if the document could be reviewed and updated regularly to ensure that it reflects legislative experience in the Assembly. I would be grateful for your views on this and, if you agree, whether guidance on the areas I have outlined above might usefully be included in any future version?

I am copying this to the Presiding Officer, who I am sure will agree that the guidelines help provide greater transparency and will enhance the scrutiny of Government legislation by Assembly Committees.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair
Constitutional and Legislative Affairs Committee