

**Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS**  
**Prif Weinidog Cymru/First Minister of Wales**



Llywodraeth Cymru  
Welsh Government

Rt Hon Robert Buckland QC MP  
Lord Chancellor and Secretary of State for Justice  
Ministry of Justice

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Rt Hon Suella Braverman QC MP  
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02 March 2021

Dear Lord Chancellor and Attorney General

I am writing in response to your letter on 8 February about the use of the Single Justice Procedure in Wales in respect of the prosecution of coronavirus regulations offences.

It is essential the most efficient and effective use of court time and space is maintained at this time, when great care has to be taken to ensure optimum capacity without compromising safety.

The ability of the court system to hear new cases whilst also clearing the backlog of cases has long been of concern. I understand that in the magistrates' courts alone in Wales, the pre-pandemic backlog was of the order of 16,530 cases. Against the background of significantly falling levels of general crime over the last year, the fragility of the judicial system is now clear to all, given its inability to hear just 706 coronavirus-related cases without having to resort to use of the single justice procedure.

This, I believe, is not due to the pandemic, but is because of long-standing under-investment and cost-saving measures, which have compromised the efficiency and effectiveness of the justice system in England and Wales. In future, increased resilience must become a feature of the courts and judicial systems. I would be interested to know your thoughts as to how that can be achieved and what resilience specifically means to the court estate and how that resilience will now become embedded within it.

The Welsh Government was only made aware of the proposal to redeploy the single justice procedure when your government's expectation was that the Order would be made within a

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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.

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couple of days, yet your letter advised that these proposals were under consideration since August.

It is now two weeks since the Order came into force yet we still await receipt of specific further information, including statistical data relating to Wales, which we requested in order to be able to consider the impact of this proposal throughout Wales. My officials also sought to understand more about why police forces in England rescind such a higher proportion of fixed penalty notices before prosecution than is the case in Wales, and wanted to know, amongst other things, whether any police forces in Wales have embedded the “third supervisory review at all stages of the process”, which you mention in your letter is to identify and rectify errors.

This illustrates the entrenched difficulties – indeed frustrations – which we experience as a result of a devolution settlement, which fails to recognise the fundamental needs of any law-making government.

Our responsibilities to protect public health have required the Welsh Government and the Senedd to make laws establishing criminal offences and providing for how those offences are enforced. That means devolved institutions are required to legislate as to which authorities can prosecute those offences and we are required to keep that legislation under review.

We cannot sensibly be expected to take these decisions and monitor their impact without access to the necessary wide range of accurate and timely enforcement information. It is one of the basic principles underlying all other law-making governments in the world, yet denied to the Welsh Government.

I am also concerned that defendants in receipt of a single justice notice, which states, “the defendant has breached a restriction without reasonable excuse” may not realise that the opportunity to put forward the fact that they had a reasonable excuse is still open to them. In the absence of any affordable legal advice, a defendant may also not know if the fixed penalty notice was issued correctly under the version of the regulations in force on the date in question.

There is still no practical option available to contest the issue of a coronavirus-related fixed penalty notice without risk of acquiring a criminal conviction. Individual citizens in Wales must have confidence that the justice system has the time, capacity and willingness to ensure that their own, highly-individual circumstances, are properly taken into account. I firmly believe that the coronavirus regulations are “novel” in the sense that they seek to criminalise behaviour that would, in normal times, be regarded as normal. They are also subject to frequent amendment as the circumstances of the pandemic change and their enforcement requires an element of judgement as to the existence or not of a reasonable excuse. Imposing fixed penalties in situations where that element of judgement is required is extremely unusual. Fixed penalties would commonly be issued as an alternative to prosecution, where the commission of the offence is a matter of plain fact.

For all of these reasons it is all the more important that access to due process is not constrained because of the compromised effectiveness of the justice system.

In light of all this, I would be grateful if you could advise me, what evaluations are being proposed to investigate whether the high level of rescindment before prosecution of fixed penalty notices issued by police forces is demonstrative of a high level of incorrectly issued fixed penalty notices, which have nevertheless been paid. In particular, given that rescindment levels appear to be different in Wales to England and police have been

operating under different laws, I would like some assurance that specific evaluations are being carried out for Wales.

More generally, I would also like your assurance that, for as long as the current flawed devolution settlement remains in place, the UK Government understands that it has responsibility for monitoring and evaluating the effectiveness of the enforcement of all criminal offences created by Wales' devolved institutions (unless they are also prosecuted by devolved agencies such as local government).

As such, I would appreciate a commitment to undertake such Wales-specific evaluations as necessary, and that as a matter of policy, the Welsh Government will be included at the commissioning stage of all reviews and evaluations of all matters related to the enforcement of all criminal offences created by Wales' devolved institutions, so I can be assured that the views of the Welsh Government and Senedd Members are properly taken into account.

I am copying this letter to the Counsel General and the Deputy Minister and Chief Whip.

Yours sincerely

Name Redacted

**MARK DRAKEFORD**

