

Mick Antoniw AM  
Counsel General  
Welsh Government

16 June 2017

Dear Mick

## **THE WELSH PROSECUTION CODE**

At our meeting on 12 June, we considered The Welsh Government Prosecution Code, which you recently issued for consultation.

As you may be aware, we have recently reported to the Assembly on some statutory guidance relating to the historic environment and a code of practice related to species control.

We expressed concern that both pieces of subordinate legislation could have been drafted in a clearer way to help public bodies understand what they may do, what they should do and what they must do, and the consequences of not doing any of those things.

In looking at the prosecution code we have noted that there are lots of examples of "must" and "should", with some surprising uses of "should". For example, the code says that "*Prosecutors should consider whether or not all of the evidence is likely to be admissible*". Surely, this "should" must be a "must"?

Also, there is no explanation as to what "must" means and what "should" means and no explanation as to the consequences of not doing things that "must" be done and things that "should" be done.



We hope therefore that in advance of our formal scrutiny of this piece of subordinate legislation under Standing Order 21, the code is reviewed to address our concerns.

Yours sincerely

*Huw Irranca-Davies*

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Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.  
We welcome correspondence in Welsh or English.

