

Elin Jones MS
Y Llywydd and Chair of the Business Committee

22 October 2020

Dear Elin

Scrutiny of Covid-19 regulations

Thank you for your letter of 8 October 2020, which we considered at our meetings on 12 and 19 October 2020.

Your letter sought to ascertain whether it would be appropriate for “the Welsh Government to flag new Regulations where the underlying principle had already been scrutinised, to enable a decision to be taken by the Business Committee about the level of further scrutiny which might be required before the debate.” As a consequence, you asked for our views on whether there was a possibility of enabling certain Covid-related Regulations to be prioritised for debate in such circumstances.

We do not believe the option suggested by the Business Committee to be appropriate for several reasons. In our view, approval for any form of legislation should not be on an ‘in principle’ basis. We do not therefore see ourselves having a role in endorsing (or rejecting) any assessment by the Welsh Government that a particular set of regulations were in principle the same as a previous set. Moreover, the value of such an assessment would in our view be questionable, given that while a new set of regulations may follow a similar policy objective, they could still be subject to reporting points under Standing Orders 21.2 or 21.3.

We believe our scrutiny of all Covid-19 regulations has been efficient and timely. We have reported on most regulations subject to the made affirmative procedure within 14 days of the instrument having been laid. In the majority of cases, this has enabled the Senedd to vote on whether the regulations should remain in force well before the 28 days permitted by the *Public Health (Control of Disease) Act 1984* and the 40 days permitted by the *Coronavirus Act 2020* (which the Senedd consented to in March this year). We

would also wish to highlight that the majority of made affirmative regulations have been laid on a Friday; this coupled with our Monday morning meeting slot means that there has inevitably been a week's gap between laying and committee scrutiny, irrespective of the work needed to prepare reports for committee consideration. We also draw attention to the comments of the Minister for Health and Social Services, Vaughan Gething MS, in Plenary on [6 October 2020](#), which we welcome:

“I also welcome the fact that the committee has, from time to time, helped us with consistency in legislative provisions. That's part of the point of the scrutiny. We're making these regulations in a rapid manner because of the fast-changing picture with coronavirus, and I think there's value in having the committee undertaking its scrutiny function before the legislature is then able to exercise its function in determining whether these regulations can continue or not.”

Nevertheless, we have considered a range of options to facilitate an even quicker scrutiny process. We discussed whether meeting more than once a week would facilitate the scrutiny of regulations laid by the Welsh Government at different points during the previous working week. Given the Welsh Government's practice of laying the majority of made affirmative regulations on a Friday, we also considered whether it would be feasible to move our Committee's regular meeting slot to a Wednesday morning, in order to consider regulations made on the previous Friday and to lay a report in time for a debate that afternoon. We also discussed whether we could give a formal commitment to report on made affirmative regulations within a 14-day deadline.

However, we concluded that such approaches are very likely to give rise to significant timetabling issues for the Welsh Government and Senedd Members. Furthermore, given the complexity of this legislation, any formalisation of our existing arrangements for the scrutiny of Covid-related legislation needs to be considered alongside the backdrop of an increasing volume of legislation to deal with the UK's exit from the EU, not least because such formalisation could potentially require additional resource or different working patterns. This latter point is particularly relevant given that our remit means that our work programme is currently heavily constrained by the necessary and important scrutiny of subordinate legislation related to EU exit and legislative consent memoranda for UK EU exit related Bills, including the constitutionally significant UK Internal Market Bill.

We recognise that matters related to the pandemic have been prioritised in government time during plenary sessions. We also considered whether the Welsh Government could consider using the draft affirmative procedure if at all possible when making Covid-related legislation under section 45C of the 1984 Act. Although we appreciate that this may not be feasible, we would encourage the Welsh Government to consider whether opportunities do exist for its use.

We will continue to do whatever we can to ensure the scrutiny of Covid-related regulations is conducted in a timely manner. However, we do not believe that our scrutiny function should be compromised in any circumstances.

I am copying this letter to the Chairs of all committees.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw AM
Chair

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