

Rt Hon Mark Drakeford MS  
First Minister of Wales

23 October 2020

Dear Mark

**Statutory Instrument Consent Memorandum – The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020**

At our meeting on 19 October 2020 we considered the Welsh Government's **Statutory Instrument Consent Memorandum for The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020** (the Regulations), that was laid before the Senedd on 5 October by Vaughan Gething MS, the Minister for Health and Social Services (the Minister).

We are disappointed to see that the Minister has indicated that he will not be tabling a motion under Standing Order 30A.10 so that the Senedd may give its consent to the inclusion of the relevant provision in the Regulations.<sup>1 2</sup> You will be familiar with our view that this is a wholly unsatisfactory position for any Welsh Minister to adopt.

We have **previously raised concerns** with you that the Statutory Instrument Consent process is being used as a means for the Welsh Ministers to provide consent by default, thus bypassing the Senedd, and that the consent process has taken on the features of the negative procedure process for the consideration of statutory instruments where consent is deemed to have been given unless a Senedd Member intervenes. We again repeat that this is neither appropriate nor within the spirit of Standing Order 30A.

Furthermore, we said in February 2019 that if by not tabling motions under Standing Order 30A.10 the Welsh Government has established the principle with the UK



---

<sup>1</sup> Letter from the Minister for Health and Social Services – 2 October 2020



<sup>2</sup> While not yet considered by the Committee, the Minister for Health and Social Services has also said that he will not be tabling a motion under Standing Order 30A.10 in respect of the **Statutory Instrument Consent Memorandum for The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020**.



**Senedd Cymru**  
Bae Caerdydd, Caerdydd, CF99 1SN

 [SeneddDCC@senedd.cymru](mailto:SeneddDCC@senedd.cymru)  
 0300 200 6565

**Welsh Parliament**  
Cardiff Bay, Cardiff, CF99 1SN

 [SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)  
 0300 200 6565

Government that the consent of the Senedd is not generally required, then it is not clear what effect a decision of the Senedd to vote down a consent motion (ie to refuse consent) would have. Given the current state of intergovernmental relations and broad concerns about infringements on the devolution settlements, we do not understand the Welsh Government's current rationale on these matters.

You will recall the many exchanges of correspondence between us, yourself and other Welsh Ministers on this matter over the past two years.<sup>3</sup> You will also be aware that the Llywydd has expressed the following view:

---

"...the tabling and passing of such a motion is the only way that the [Senedd]'s consent to such provisions can be sought and given. If no such motion has been considered – let alone passed - by the [Senedd] in relation to a relevant provision in a UK Bill or Statutory Instrument, the [Senedd] cannot be said to have given its consent to that provision."<sup>4</sup>

---

Even in the current difficult circumstances, we do not consider that debates on statutory instrument consent motions are an inappropriate use of the time and resources of either the Welsh Government or the Senedd. Further, we do not see that there is a difference in principle between the provision of consent for relevant provisions in UK Bills, as provided for in Standing Order 29, and the provision of consent for relevant provisions in statutory instruments made by UK Ministers, as provided for in Standing Order 30A.

While we acknowledge there are practical considerations to be made in terms of co-ordinating the Senedd's vote on a consent motion within the timescales set by the UK Parliament's consideration of the relevant statutory instrument, this is possible and has been shown to work in recent months when the Deputy Minister for Housing and Local Government did table a motion to seek the Senedd's consent for the UK Ministers to make **The Waste (Circular Economy) (Amendment) Regulations 2020**. Further, while not yet considered by the Committee, we are aware that the Welsh Government is **seeking a consent debate** on the **Statutory Instrument Consent Memorandum on The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020**, which suggests that problems regarding competing inter-Parliamentary timescales are not insurmountable.

I would also like to remind you of the background to the changes made to the Standing Orders in 2013 which the Llywydd helpfully set out in her letter in May 2019:

---

"...the provision for a Member other than a member of the government to table a consent motion was introduced in 2013 alongside removing the requirement for the government to table a motion in relation to each and every memorandum laid. The procedure was designed to be used in circumstances where the government's memorandum indicated that the government does not consider it appropriate for consent to be given, and enables other Members then to make the opposite case and to table a consent motion to that effect. It was

---

<sup>3</sup> Letters to the First Minister – 11 July 2019, 30 July 2019; Letter from the First Minister – 23 August 2019; Letter from Minister for Economy and Transport – 17 December 2019

<sup>4</sup> Letter to the Llywydd – 25 March 2019; Letter from the Llywydd – 7 May 2019



not anticipated it would be needed in situations where the government supports the proposed UK legislation, as in those circumstances the expectation is that government would table their own motion seeking the Assembly's consent for the legislation to proceed."

---

We remain of the view that it is the responsibility of the Welsh Government to bring forward the necessary consent motions when a Welsh Minister lays a Statutory Instrument Consent Memorandum.

This letter is copied to the Minister for Health and Social Services, the Counsel General, and to the Llywydd, Elin Jones MS.

Your sincerely,



**Mick Antoniw AM**  
Chair

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

