

Elin Jones

Llywydd

20 November 2020

Dear Llywydd

Statutory Instrument Consent Motions

At our meeting on 9 November 2020, we considered a response from the First Minister dated **4 November 2020** to our letter to him of **23 October 2020** about the Welsh Government's approach to statutory instrument consent motions under Standing Order 30A.

This has been a long-standing issue for the Committee. Our letter of 23 October 2020 set out much of the background and includes reference to our exchange of correspondence on **25 March 2019** and **7 May 2019**.

We remain concerned by the approach of the Welsh Government and its interpretation of Standing Order 30A, given its impact on scrutiny by the Senedd.

Our position on these matters is clear: we do not believe it is appropriate for the Welsh Government, as the executive, to choose which motions it tables for the Senedd to consent to the UK Government making subordinate legislation that amends primary legislation in devolved areas.

We consider 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, so they are debated in government time and the Senedd can make its decision whether or not to grant consent.

If the Welsh Government brought forward its own subordinate legislation in these areas then it would be subject to the relevant scrutiny procedures set out in Standing Orders 21 and 27, which could involve plenary debates to either approve or annul statutory instruments. It cannot be correct that the Welsh Government, by using Standing Order 30A, could potentially be taking a decision as the executive to bypass the Senedd as the



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legislature from exercising any scrutiny function. The *quid pro quo* is that in making use of Standing Order 30A (meaning that the UK Government is legislating in devolved areas), the Welsh Government tables a motion to seek the Senedd's endorsement for this approach. In our view, we cannot see how there would be any circumstances or any good reason why the Welsh Government should not table a motion. We recognise that consenting to the UK Government legislating in devolved areas can, at times, be appropriate; but tabling a motion for debate is a crucial part of the consent process and provides that the final decision is a matter for the Senedd. Without a motion being tabled, the process becomes one of executive consent by default, rather than parliamentary consent.

The First Minister's letter repeats the view that Members of the Senedd may table the relevant motion. The onus should not be on a backbench Member of the Senedd to table such a motion when it is the Welsh Government, as the executive, that has instigated and taken the decision on how to legislate. The Welsh Government's decision not to legislate itself in a devolved area should be subject to scrutiny in government time, not time allocated for non-government business.

Furthermore, we consider the Welsh Government's arguments on this point to be flawed, given the view expressed in your letter of 25 May 2019 regarding the intention of Standing Order 30A, which we repeated in our letter to the First Minister of 23 October 2020,

We also disagree with the First Minister when he says in his letter:

It has become clear there is very little appetite for detailed debate in the chamber for what are usually technical measures. Consequently, and not least because plenary time is at a premium, we propose no longer routinely to table such motions for debate.

It is not for the executive to determine the appetite for scrutiny, the extent to which legislation is technical or to suggest that the legislature does not have the capacity to legitimately scrutinise the executive's actions (a view that is influenced by the executive's own interpretation of Standing Order 30A).

We accept that there are many important issues to be debated in plenary but we do not accept the argument that debates on statutory instrument consent motions are an inappropriate use of the Senedd's time. They replace the scrutiny of regulations that would otherwise be undertaken by the Senedd and the length of debate they attract is a matter for Standing Orders and Members of the Senedd to determine.

The approach being adopted by the Welsh Government is particularly concerning when such subordinate legislation made by UK Ministers confers functions on reserved authorities, the effect of which represents a restriction on the Senedd's legislative competence.

To illustrate our frustration with the approach being adopted, at our meeting on 9 November 2020, we considered a letter from the Welsh Government dated 6 November 2020 in relation to The Public Procurement (Amendment etc.) (EU Exit) Regulations



2020. The letter indicated that the Welsh Government intended to table a statutory instrument consent motion for the debate on these Regulations, which we had already considered at our meeting on 2 November 2020 (we would normally expect to receive the letter at the same time as statutory instrument consent memorandum is laid before the Senedd). A subsequent letter dated 12 November 2020, stated that the Welsh Government had decided not to schedule a debate, citing the First Minister's letter of 4 November 2020 as part of its reasoning for doing so.

We therefore ask for further clarification on the interpretation of Standing Order 30A and, if necessary, suggest that it be subject to formal review with the intention of clarifying its purpose.

This letter is copied to the First Minister, the Deputy Minister and Chief Whip, and the Minister for Finance and Trefnydd.

Your sincerely,



Mick Antoniw AM
Chair

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

