

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Ein cyf/Our ref: MA-L/JJ/0533/1

13 September 2018

Dear Mick

I am writing to notify you of the Welsh Government's formal response to the Committee's recent report on *Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: operational matters*. I attach a table which sets out our response to each recommendation.

I am grateful to the Committee for its work on this matter.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AC/AM
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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.

The Welsh Government response to the report of the Constitutional and Legislative Affairs Committee – Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: operational matters

Recommendation	Response
<p>Recommendation 1. We recommend that the National Assembly’s Standing Orders should be amended to provide that the function of making a recommendation as to the appropriate procedure to apply to regulations subject to the sifting process under the 2018 Act is assigned to a committee.</p>	<p>ACCEPT: The Government agrees with the committee’s recommendation.</p>
<p>Recommendation 2. We recommend that as the Committee assigned the function of sifting regulations under the 2018 Act, we should be required by the National Assembly’s Standing Orders to publish the criteria that we will apply to regulations subject to the sifting process.</p>	<p>REJECT: The Leader of the House set out the Government’s position in her letter to the Committee Chair on 28 August 2018. The Government is of the view that the criteria to be applied by the sifting committee should be set out in the Assembly’s Standing Orders. This is in recognition that we now have certainty about the provisions of the European Union (Withdrawal) Act 2018, including which correcting regulations must be subject to the affirmative procedure and the sifting process for those regulations that are proposed to be subject to the negative procedure, This would also be consistent with Standing Orders 21.2 and 21.3, which set out the grounds on which a responsible committee may report when considering all statutory instruments and draft statutory instruments laid before the Assembly.</p>
<p>Recommendation 3. If the National Assembly is content for our recommendations as the sifting committee not to be binding, we recommend its Standing Orders should be amended to place a requirement on the Welsh Ministers to explain why they do not agree with our recommendations (as applies to UK Ministers in paragraph 3(7) of Schedule 7 to the 2018 Act).</p>	<p>ACCEPT: The Government considers the recommendation of the sifting committee should not be binding as this is consistent with the provisions of the European Union (Withdrawal) Act 2018. Although the Government anticipates that in the vast majority of cases it would accept the recommendation of the sifting committee, in circumstances when we do not agree with the recommendation of the sifting committee we accept that it would be appropriate for the Welsh Ministers to provide an explanation as to why they do not agree. This is consistent with</p>

	<p>what is required of UK Ministers by the Act, and we agree the National Assembly's Standing Orders should be amended accordingly.</p>
<p>Recommendation 4. We recommend that the Leader of the House writes to us before the end of July 2018, providing an update on the number of regulations that will be required to correct deficiencies in retained EU law as a result of the UK's withdrawal from the EU, as well as an update on the number of any other regulations that will need to be made under the 2018 Act.</p>	<p>ACCEPT: The Leader of the House provided an update when she wrote to the Committee on 20 July 2018.</p>
<p>Recommendation 5. We recommend that in deciding future committee timetables, consideration is given to the potential need for this Committee, in our role as the sifting committee, to sit longer, and / or on a different day, and / or sit more than once a week in order to scrutinise regulations that will be made under the 2018 Act.</p>	<p>This is a matter for the National Assembly's Business Committee.</p>
<p>Recommendation 6. We recommend that the Welsh Government enters into an agreement with us as the sifting committee to cover:</p> <ul style="list-style-type: none"> • an early warning system to assist with managing the scrutiny of all subordinate legislation until the end of this Assembly (in 2021); • the optimum day of laying of proposed negative regulations under the 2018 Act; and • any other matter that will aid the effective and efficient scrutiny of regulations made under the 2018 Act, especially regulations correcting deficiencies in retained EU law. 	<p>ACCEPT IN PART: The Government wishes to ensure that, as far as possible, the subordinate legislation flowing from the European Union (Withdrawal) Act 2018 is delivered in an orderly manner, and believes that entering into such an agreement with the sifting committee, and/or the National Assembly as a whole, would aid its management of the scrutiny process. Due to the exceptional circumstances within which this activity will be taken forward, any information provided through an early warning system will, by necessity, have appropriate caveats attached. Work is already underway between Government officials and the Committee clerks to establish a protocol.</p> <p>The purpose of the early warning system is to assist with managing the scrutiny of the anticipated high volume of subordinate legislation associated with the UK's exit from the EU. Therefore, the Government is not</p>

	<p>persuaded at this time that an early warning system is needed through to the end of this Assembly in 2021. The Government considers that the early warning system should be in place until exit day on 29 March 2019, at which point its continuation can be considered in light of the circumstances at that time.</p>
<p>Recommendation 7. We recommend that the National Assembly’s Standing Orders require that, where UK Ministers acting alone in devolved areas lay before the UK Parliament regulations in areas within the legislative competence of the National Assembly or the executive competence of the Welsh Ministers, and where the Welsh Ministers are required to give their consent to the making of those regulations:</p> <ul style="list-style-type: none"> • the Welsh Ministers notify the National Assembly within one working day of the regulations being laid; and • such notification is accompanied by an explanatory memorandum summarising the purpose and impact of the regulations and explaining why the Welsh Ministers have given their consent. 	<p>ACCEPT IN PRINCIPLE: The Welsh Government agrees that the National Assembly’s Standing Orders should require the Welsh Ministers to notify the National Assembly of regulations laid before the UK Parliament by UK Ministers that intersect with devolved areas and to which the Welsh Ministers have given their consent. The Welsh Government also agrees that the notification should be accompanied by an explanation of the purpose and impact of the regulations, and reasons why the Welsh Ministers have given their consent. For reasons of practicality the Welsh Government does not agree that such notification should be within one working day of the regulations being laid before Parliament but instead proposes it should be provided normally within three working days. The one working day timescale does not allow sufficient time to confirm which regulations have been laid before the UK Parliament on any one day, collate the correct explanatory information bilingually, and obtain appropriate Ministerial clearances before issuing the notification. This will be compounded by the potential volume of regulations involved.</p>
<p>Recommendation 8. We recommend that the National Assembly’s Standing Orders require that, where UK Ministers acting alone lay before the UK Parliament regulations in areas within the legislative competence of the National Assembly or the executive competence of the Welsh Ministers, and where the Welsh Ministers are not</p>	<p>ACCEPT IN PRINCIPLE: The Welsh Government accepts that such notification should be provided and accompanied by an explanation of the purpose and impact of the regulations. For the same reasons set out in response to recommendation 7 the Welsh Government proposes that such notification should be provided normally</p>

<p>required to give their consent to the making of those regulations:</p> <ul style="list-style-type: none"> • the Welsh Ministers notify the National Assembly within one working day of the regulations being laid; and • such notification is accompanied by an explanatory memorandum summarising the purpose and impact of the regulations. 	<p>within three working days of the regulations being laid before the UK Parliament rather than one working day.</p>
<p>Recommendation 9. We recommend that the National Assembly's Standing Orders should be amended to provide a procedure in respect of the provisions contained in section 109A of the <i>Government of Wales Act 2006</i>, in particular:</p> <ul style="list-style-type: none"> • to require an explanatory memorandum that: <ul style="list-style-type: none"> ○ summarises the effect of regulations that UK Ministers propose to lay under section 109A(3) of the 2006 Act; ○ makes a recommendation as whether the relevant draft regulations should be subsequently made by UK Ministers; ○ explains the reasons for the recommendation made; • to require that the Business Committee refers that explanatory memorandum to a committee or committees; • requires the Welsh Ministers to lay before the National Assembly any written statement provided to UK Ministers (i.e. the statement mentioned in new section 157ZA(2)(b)(ii) of the 2006 Act), no later than one working day after the statement is provided by the Welsh Ministers. 	<p>ACCEPT: The Welsh Government agrees with the Committee's recommendation, but acknowledges that Committee scrutiny of the explanatory memorandum is a matter for Business Committee. The first part of the recommendation is silent on who should be required to lay the explanatory memorandum. The Welsh Government believes that the requirement to lay an explanatory memorandum in relation to regulations that UK Ministers propose to lay under section 109A(3) of the <i>Government of Wales Act 2006</i> should be placed on the Welsh Ministers. The Welsh Government also agrees to lay before the National Assembly any written statement provided by the Welsh Ministers under section 157ZA(2)(b)(ii) of the 2006 Act no later than one working day after the statement is provided to UK Ministers.</p>
<p>Recommendation 10. We recommend that the detail of recommendation 10 applies equally in respect of the provisions contained in section 80 of the <i>Government of Wales Act 2006</i>.</p>	<p>ACCEPT: The Welsh Government agrees with the Committee's recommendation on the understanding that it relates to the detail of recommendation 9. As with recommendation 9, the Welsh Government believes that the</p>

	<p>requirement to lay an explanatory memorandum in relation to regulations that UK Ministers propose to lay under section 80A(8) of the Government of Wales Act 2006 should be placed on the Welsh Ministers. The Welsh Government also agrees to lay before the National Assembly any written statement provided by the Welsh Ministers under section 157ZA(2)(b)(ii) of the 2006 Act no later than one working day after the statement is provided to UK Ministers.</p>
<p>Recommendation 11. We recommend that the Welsh Ministers are required by the National Assembly's Standing Orders to lay any report, provided to them in accordance with paragraph 4(4) of Part 2 of Schedule 3 to the 2018 Act, within one working day of its receipt.</p>	<p>ACCEPT: The Welsh Government agrees with the Committee's recommendation. It should be noted that because the Welsh Ministers will be laying a UK Government report it will be laid before the National Assembly in English only.</p>
<p>Recommendation 12. When the UK Government repeal or revoke retained EU law restrictions (in respect of legislative and executive competence), we recommend that the Welsh Ministers are required by the National Assembly's Standing Orders to make a written statement:</p> <ul style="list-style-type: none"> • that EU law restrictions have been lifted, no later than 7 calendar days after the relevant regulations have been laid; • that explains the impact of the removal of the restrictions on the competence of the National Assembly or the Welsh Ministers. 	<p>ACCEPT IN PRINCIPLE: The Welsh Government agrees with the Committee's recommendation that the National Assembly's Standing Orders should place a requirement on the Welsh Ministers to make a written statement to notify the National Assembly when restrictions on competence in relation to retained EU law have been repealed or revoked by the UK Government, and to provide an explanation of the impact on competence.</p> <p>The Welsh Government agrees with the proposed timescale for the written statement being made but notes that the recommendation connects the Welsh Ministers' written statement and the lifting of EU law restrictions with the laying of the relevant regulations. However, the restrictions would not be lifted until the relevant provisions of the regulations are in force, which would likely occur at a time after they have been laid. Should the restrictions be revoked or repealed by UK Ministers using the relevant powers in the European Union (Withdrawal) Act 2018 they would be subject to the affirmative</p>

	<p>procedure in the Houses of Parliament, and would therefore be laid in draft before both Houses and must be approved by both Houses before being made.</p>
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