

Julie James AM  
Leader of the House and Chief Whip  
Welsh Government

01 October 2018

Dear Julie

### **Debate on Standing Order changes – 3 October 2018**

Following our recent informal discussion about our report, we have now seen the report from the Business Committee about its decisions on amending Standing Orders to take account of the scrutiny of government regulations arising from the UK's exit from the EU.

As a consequence, there is one issue, which we touched on briefly at our meeting, which I wanted to raise with you in advance of the debate on Standing Order changes on 3 October.

In your response to our report you accepted our recommendation 3. This recommendation sought to mirror paragraph 3(7) of Schedule 7 to the *European Union (Withdrawal) Act 2018*. This provision, which applies to UK Ministers only, could not be replicated for the Welsh Ministers because there was not time for the UK Government to obtain the National Assembly's consent for it (as well as some other related provisions). Paragraph 3(7) of Schedule 7 requires that before the instrument is made, the Minister must make a statement explaining why the Minister does not agree with the recommendation of the Committee.

In our view, the alternative approach you suggested to the Business Committee may not meet the intention behind our original recommendation. This is because it in effect requires a statement to be laid *before* the regulations are made. Laying a statement as part of the Explanatory Memorandum is unlikely to meet this requirement because an Explanatory Memorandum is laid *after* the regulations are made.



We are of the view that this is an issue that needs to be clarified and I would be grateful if you would provide a formal explanation as to why you accepted our recommendation in your letter to us of 13 September 2018 but then adopted a different approach in the Business Committee discussions.

You will appreciate that this issue involves an important point of principle. If the Committee were to recommend to the uplift of a set of regulations from negative to affirmative procedure, then under the proposed Standing Order, we (and other Assembly Members) would only be made aware whether the Welsh Government had rejected the recommendation after the regulations had been signed in to law.

The sifting mechanism was included in the 2018 Act as a means of preventing an excessive transfer of power from legislature to executive. In our view, the Welsh Government's approach potentially nullifies the purpose of the sifting mechanism.

We are aware of the argument that there would be little point laying a statement on the same day as regulations are subsequently made and laid with an Explanatory Memorandum.

However, the Welsh Government has not clarified how long it will take to make the regulations after sifting. Providing a statement (at the time originally requested by the Committee) would ensure the Committee and National Assembly were not left in the dark if there were delays in bringing forward regulations after they had been sifted.

In addition, it does not seem particularly onerous to us to produce a short statement replicating what the Welsh Government now intends to include in its Explanatory Memorandum.

In our view, practical process advantages should not be at the expense of constitutional propriety and good practice.

As I'm sure you will appreciate, the parliamentary process, and trust in that process, is a vital part of our democracy and it is for that reason that we are raising these issues.

The approach we intend to adopt is to keep a watching brief on the amended Standing Orders (subject to the changes being agreed in plenary) and may, if we consider appropriate, suggest changes in the future.



I am copying this letter to the Llywydd and Business Mangers.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw AM**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

