

Mark Drakeford AM  
First Minister  
Welsh Government

6 February 2019

Dear Mark

### **Scrutiny of Brexit-related legislation**

I attach a copy of our report, *Scrutiny of regulations under the European Union (Withdrawal) Act 2018: Progress report*, which we laid before the National Assembly today.

Our report requests urgent clarification on the approach the Welsh Government is currently taking to consenting to regulations being made in devolved areas by the UK Government and the apparent contradiction with the position set out in the *Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks*.

We would also like to see a significant improvement in the quality of written statements being prepared under Standing Order 30C and would welcome your comments on our conclusion that all Brexit-related Statutory Instrument Consent Memorandums should be subject to a consent motion tabled by the Welsh Government.

More generally, as part of our review, we considered your letter of 11 January 2019 to the Llywydd. We have a number of concerns with this letter.

We accept that Brexit is resulting in the need for difficult decisions to be taken but we believe that the Welsh Government has become over-reliant on the UK Government to legislate on its behalf. While we accept that the intention is not to



limit or frustrate the Assembly's role as a legislature, that is unfortunately becoming the reality. As our report and other correspondence highlights, one of the unintended consequences of this approach has been the Welsh Ministers consenting to a reduction in the National Assembly's legislative competence.

In your letter you draw attention to the Welsh Government's legislative programme. As we highlight in our report, *The Welsh Government's Legislative Consent Memorandum on the Agriculture Bill*, the Welsh Government indicated in July 2018 that it needed to be flexible and adapt its legislative programme because of Brexit, stating that the five Bills put forward:

“allow us some slack in order for us to be able to free up resource to deal with any Bills, or any other legislation, that will be needed as a result of Brexit.”

For reasons that are unclear there seems to have been a departure from this sensible and pragmatic approach: where time was originally built into the process to deal with the legislative implications of Brexit within a devolved framework, that time has ceased to be available.

Our concern has been heightened by the comment in your letter that it would only be possible to pass the necessary Brexit Bills in time by following a fast track procedure which would limit their scrutiny by the National Assembly. Yet the approach adopted by the Welsh Government in allowing the UK Government to make primary legislate on its behalf, actually offers the National Assembly *less* scrutiny than the fast track procedure. This procedure would at the very least have allowed a debate on the general principles of Bills and subsequent amending stages, which are not available through the legislative consent process under Standing Order 29.

Moreover, it is a matter for the National Assembly as the legislature to decide how it uses plenary time to scrutinise the Welsh Government as the executive, rather than the Welsh Government itself.

As you letter says, these are extraordinary circumstances but it is unfortunate that the role of the National Assembly in shaping the legislative implications of these circumstances has been marginalised as a result of decisions taken by the Welsh Government.

I am copying this letter to the Llywydd, the Counsel General, the Minister for Finance and Trefnydd and the Chair of the External Affairs and Additional Legislation Committee.



I look forward to receiving a response as soon as possible,

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**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

