

Elin Jones AM
Llywydd

25 March 2019

Annwyl Lywydd

Standing Order 30A – Consent in Relation to Statutory Instruments made by UK Ministers

I am writing in relation to Standing Order 30A. This Standing Order requires a member of the Welsh Government to lay a statutory instrument consent memorandum (a memorandum) before the National Assembly in relation to any relevant statutory instrument that is laid before the UK Parliament by UK Minister which amends primary legislation within the legislative competence of the Assembly.

As detailed in our recent report *Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: progress report* (progress report), the Welsh Government has not tabled any motions seeking the consent of the National Assembly to the regulations that are the subject of statutory instrument consent memoranda.

The Welsh Government has provided a range of explanations for this approach in correspondence with us:

- not believing a debate on the relevant memoranda would be a productive use of “valuable plenary time”;
- the relevant Regulations are restricted to making corrections to deficiencies in law that will arise as a result of the UK leaving the European Union;
- the provisions of the relevant Regulations are technical in nature, and there is no divergence in policy between the Welsh and UK governments.



In our progress report we noted our concerns that the Welsh Government is not using the Standing Order 30A process as we consider it should be. We also stated that we have not, to date, commented on whether memoranda should be subject to a consent motion because we do not believe that it should become a matter for routine decision by us. We said:

We believe that all Brexit-related Statutory Instrument Consent Memorandums should be subject to a consent motion tabled by the Welsh Government. As matters currently stand, the Statutory Instrument Consent Memorandum process is being used as a means for the Welsh Ministers to provide consent by default. To use a relatively familiar analogy, the consent process has taken on the features of the negative procedure process for the consideration of statutory instruments; consent is deemed to have been given unless an Assembly Member intervenes. That is neither appropriate nor within the spirit of Standing Order 30A.

We also concluded that, if the Welsh Government has established the principle with the UK Government that the consent of the National Assembly is not generally required, then it is not clear what effect a decision of the National Assembly to vote down a consent motion would have.

In his 11 March 2019 letter to us, responding to our progress report, the First Minister said:

I have noted that the Committee would prefer the Welsh Ministers to lay motions for all Statutory Instrument Consent Memorandums.

Standing Orders make it clear that it is the choice of Ministers or Members to lay a motion. That Suzy Davies AM was able to lay a motion to debate the Marine Environment SICM indicates that the Standing Orders are operating as intended. As I indicated above, as your report states that the Assembly would, if necessary, have been able “to manage any increase in workload” arising from Brexit, I am encouraged that Assembly Members would have the resources at their disposal to draft a memorandum and lay a motion in the Assembly if they felt that this was essential.

As a Committee, we now feel it is appropriate to seek your views and your interpretation of Standing Order 30A.



I would also like to take the opportunity to respectively suggest that the First Minister's response (as set out above) to our concerns about the Welsh Government's approach to the Standing Order 30A process does not accurately reflect our comments on the way in which business of the Assembly is conducted.

As a result of the Welsh Government's approach to the Standing Order 30A process, Suzy Davies AM did table a motion in respect of one statutory instrument consent memorandum. On this occasion, the Member did not disagree with the Welsh Government's own memorandum, only the Government's refusal not to bring forward the associated motion under Standing Order 30A.10. However, the Standing Orders as currently drafted still required her to table her own memorandum (Standing Order 30A.3). In our view, it would seem unnecessary for an Assembly member to be required to table their own memorandum in these circumstances, where they are in agreement with the Welsh Government.

In light of the above, I would welcome your views on how Standing Order 30A is being used and interpreted.

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.

