



Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
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23 August 2019

Dear Mick

I am writing in response to your letters of 11 and 30 July regarding statutory instrument consent memorandums (SICMs) and the Committee's position on when statutory instrument consent motions (Motions) should be tabled. Thank you for also sharing with me your correspondence with the Llywydd on this matter.

Firstly, I want to reassure the Committee that although Standing Orders place no obligation on Ministers to table a Motion in respect of a SICM, we have not changed our overall approach: in normal circumstances, it remains our intention to table Motions for SICMs. However, in respect of Brexit-related SIs, there are practical issues of timing to consider.

As the Committee knows, the context for the approach we have taken over the last 9-12 months is the programme of corrections to the statute book, to make sure it continues to work after we leave the EU. This has been an unprecedented undertaking: the volume of correcting SIs coming our way, and the limiting timescales surrounding them, meant that our normal practice regarding the handling of SICMs was simply not a practical proposition. We developed the current compromise to ensure that Brexit related SICMs would be dealt with in a timely manner, whilst also ensuring that they would be brought to the Assembly's attention. In deciding not to ourselves table SICMs in respect of these pieces of secondary legislation, we were very conscious that where any Member believed that a SICM should be debated by the Assembly, it would be open to them to table a Motion.

However, the programme to correct the statute book has been substantially completed, and we do not envisage that it will give rise to many further SICMs (if indeed there are any at all). Therefore I agree that it is the right time to examine this issue again, and I welcome the fact that your recently announced inquiry will do so.

As part of its work, I believe the Committee could usefully consider the practical timing issues which constrain the Assembly's ability to scrutinise UK SIs which amend primary legislation within devolved competence. This is primarily an issue where SIs are made under negative procedures, given that they are made before they are laid, and that the 21 day rule for coming into force is not a strict requirement. It would be helpful to have the

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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.

Committee's view on this issue. It would also be useful for the Committee to consider how – in a scenario where the Assembly debated and refused to give its consent to a UK SI made using negative procedures – it would expect Parliament to respond.

I understand that the Counsel General and Brexit Minister will be attending your Committee on 16 September, to give evidence in respect of your inquiry; this will be an opportunity to explore these issues in more detail. And I can assure you that we will give very careful consideration to any recommendations the Committee makes on this matter.

I am copying this letter to the Counsel General and Brexit Minister, to the Finance Minister and Trefnydd, and to the Llywydd.

Yours sincerely

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

**MARK DRAKEFORD**