

Rt Hon Mark Drakeford MS
First Minister of Wales

23 July 2020

Dear Mark

Scrutiny of regulations arising from the UK's exit from the European Union - Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

I am writing to you with regards to the **Protocol** that was agreed in October 2018 with our Committee and the Welsh Government. You will know that the Protocol was agreed within the context of the United Kingdom's exit from the European Union and the Welsh Ministers' powers to make regulations under the *European Union (Withdrawal) Act 2018* (the 2018 Act).

We recognise that under the terms of the Protocol it ceased to exist on 31 January 2020. However, in light of the transition period and in expectation of further EU exit related legislation, we believe there is merit in resurrecting the Protocol so that it continues to apply to regulations made under the 2018 Act while at the same time expanding its terms as set out below.

The Protocol set out an understanding between our Committee and the Welsh Government of the administrative arrangements for the scrutiny of regulations that are to be made by the Welsh Ministers under the powers conferred by Part 1 of Schedule 2 to the 2018 Act. At the time the Protocol was drafted and agreed, there was recognition that there would be a need to keep the Protocol under review, particularly as regards its application to the scrutiny of regulations made or to be made under other relevant EU exit related Acts (paragraph 18).

At our meeting on 6 July 2020, we discussed our forward work plans for the autumn term. We are mindful of the comments made to date, by both yourself and the Counsel General, about the potential for a significant volume of EU exit related subordinate legislation to be made before the end of this calendar year. This will, inevitably, have implications for our Committee's workload during the autumn term, and I am writing



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separately to the Trefnydd and Counsel General to request an update on the likely volume of such subordinate legislation.

While that update will be beneficial to our work planning, we appreciate that the programme of EU exit legislation will be subject to change, as was the case with the initial tranche of subordinate legislation that was made to ensure the continued effectiveness of retained EU law after exit day. As such, we would now like to ask that a resurrected Protocol be expanded to apply to relevant regulations made under the *European Union (Withdrawal Agreement) Act 2020* (the 2020 Act). Further, we ask that you give consideration as to whether a resurrected Protocol should also apply in the future to relevant regulations made under other key EU exit related primary legislation, particularly the Agriculture, Fisheries, Environment and Trade Bills once enacted.

In addition to the matter of extending the application of a resurrected Protocol to other EU exit related legislation, we would also like to raise with you the operation of the Standing Order 30C process.

As you are aware Standing Order 30C applies only to regulations made under the 2018 Act. During our scrutiny of legislative consent memoranda for each subsequent EU exit related Bill, where appropriate we have considered and made recommendations regarding how the Senedd should be notified when relevant regulations are made by UK Ministers in devolved areas with the consent of the Welsh Ministers.

To date we have received inconsistent responses from the Welsh Ministers in relation to our recommendations. For example, with regards to relevant regulations that may be made under the Fisheries [Act], the Minister for Environment, Energy and Rural Affairs said that she would not follow the principle of the Standing Order 30C process but would write to our Committee. However, with regards to relevant regulations that may be made under the Environment [Act], the Minister told us that she would formally notify the Senedd as per the Standing Order 30C process.

We are, as ever, mindful of the pressures placed on the Welsh Government, and none more so than at a time of a global health emergency. However, the issue of the Welsh Ministers consenting to another government to act on its behalf in a devolved area is a significant constitutional matter, and one which all Senedd Members should be made aware of in timely fashion. It is for this reason we have in our reports recommended the extension of the Standing Order 30C process where it has been appropriate to do so.

We would like to suggest that the Protocol be used as a vehicle for the Welsh Government to commit to abide by the principle of Standing Order 30C when making relevant regulations under the 2020 Act, and the Agriculture, Fisheries, Environment and Trade Bills once enacted. This could be kept under review, and any further amendments to the Protocol could be discussed and agreed when necessary.

This approach would avoid the need to amend the Senedd's Standing Orders in the short term, while also providing an opportunity for further reflection on the suitability of Standing Order 30C in the long term.



We suggest that a resurrected and expanded Protocol should have effect until the end of the Fifth Senedd. It would then be a matter for our successor Committee to discuss with the next Welsh Government in the Sixth Senedd.

I look forward to receiving your response at the earliest opportunity, and preferably before the start of the Senedd's autumn term.

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 MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

