

Rt Hon Elin Jones MS
Llywydd
Chair, Business Committee

23 November 2022

Annwyl Lywydd

Standing Order 30A – consent in relation to statutory instruments made by UK Ministers

At our meeting on 14 November 2022, we considered the first statutory instrument consent memorandum (SICM) laid in the sixth Senedd, in respect of the Climate Change (Targeted Greenhouse Gases) Order 2022. We also noted that, in a letter dated 21 October 2022 to my Committee and the Climate Change, Environment and Infrastructure Committee in respect of the SICM, the Minister for Climate Change states that Standing Order 30A “provides that any Member of the Senedd may table a motion for a debate on this Statutory Instrument”. However, the Minister states that she would not be seeking to initiate such a debate.

The Minister for Climate Change does not explain her rationale for not seeking a debate on this particular SICM. However, we are aware of the following statement made by the First Minister in correspondence with our predecessor Committee, dated 4 November 2020:

“It has become clear there is very little appetite for detailed debate in the chamber for what are usually technical measures. Consequently, and not least because plenary time is at a premium, we propose no longer routinely to table such motions [on SICMs] for debate.

We will continue to comply with Standing Orders and lay SICMs when required. We will also give consideration to tabling a government motion where appropriate (eg where the issues are substantive or novel and potentially contentious). We will work closely with the Legislation, Justice and Constitution Committee in making such decisions. It will of course remain open for any member of the Senedd to table a motion seeking the Senedd's agreement to the inclusion of a relevant provision in a relevant statutory instrument.”

We note that our predecessor Committee wrote to you on 25 March 2019 and 20 November 2020 to raise concerns with the Welsh Government's approach to SICMs and its interpretation of Standing Order 30A, given its impact on scrutiny by the Senedd. It described this as a “long-standing issue for the Committee.”

We note your response of 9 May 2019 to our first letter of 25 March 2019 set out your interpretation of Standing Order 30A as follows:

*"While neither Standing Order 29 nor 30A require a member of the government, nor anyone else, to table a consent motion in relation to relevant provisions in any UK Bill or Statutory Instrument, **the tabling and passing of such a motion is the only way that the Assembly's consent to such provisions can be sought and given.** If no such motion has been considered – let alone passed – by the Assembly in relation to a relevant provision in a UK Bill or Statutory Instrument, the Assembly cannot be said to have given its consent to that provision [emphasis added]. I would be concerned if the UK Parliament were proceeding to legislate in those circumstances, as it would seem to me to breach the convention of only legislating with the Assembly's express consent.*

*... the provision for a Member other than a member of the government to table a consent motion was introduced in 2013 ... The procedure was designed to be used in circumstances where the government's memorandum indicated that the government does not consider it appropriate for consent to be given, and enables other Members then to make the opposite case and to table a consent motion to that effect. **It was not anticipated it would be needed in situations where the government supports the proposed UK legislation, as in those circumstances the expectation is that government would table their own motion seeking the Assembly's consent for the legislation to proceed [emphasis added]."***

We share our predecessor Committee's concerns with the Welsh Government's approach. In light of your interpretation of Standing Orders, it is concerning that the Welsh Government is continuing to restrict the Senedd's ability to provide a view on whether subordinate legislation made by the UK Parliament should amend primary legislation within the legislative competence of the Senedd.

We concur with our predecessor Committee that the onus should not be on individual Members of the Senedd to table motions for debate on SICMs – it is the responsibility of the Welsh Government to seek the Senedd's consent to its decisions to allow legislation for Wales to be made in this way.

As the Welsh Government routinely tables motions for debate on legislative consent memoranda laid under Standing Order 29, it is inexplicable to us that it refrains from doing so for SICMs laid under Standing Order 30A. While the Welsh Government may argue that there is "very little appetite" for debate on "what are usually technical measures", we agree with our predecessor Committee's response to this argument:

"It is not for the executive to determine the appetite for scrutiny, the extent to which legislation is technical or to suggest that the legislature does not have the capacity to legitimately scrutinise the executive's actions".

As this issue is evidently long-standing, I would be grateful if we could meet as soon as possible to discuss options around how Standing Order 30A may be clarified.

I am copying this letter to the Minister for Climate Change, the Minister for Rural Affairs, North Wales and Trefnydd, and the First Minister.

Yours sincerely,



Huw Irranca-Davies
Chair



Senedd Cymru
Welsh Parliament