

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - L/JJ/0825/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

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10 December 2018

Dear Mick,

Thank you for your letter dated 15 November 2018 in relation to the scrutiny of regulations arising from the European Union (Withdrawal) Act 2018. As you can appreciate, the UK's withdrawal from the European Union has created an unprecedented legislative programme across all the Governments in the UK and we are all working to ensure that we will be ready for exit day on 29 March 2019.

I am currently expecting 140-150 UK Government EU Exit SIs to legislate in areas devolved to Wales ahead of exit day, though this number is subject to change as SIs are merged or disaggregated and new ones emerge. Almost all of these will require the consent of the Welsh Ministers through the process set out in the Intergovernmental Agreement.

The Welsh Ministers have given formal consent to 71 SIs and have notified the National Assembly under Standing Order 30C of 51 SIs (the outstanding 20 are yet to be laid in Parliament). Of the 71, six have required a Statutory Instrument Consent Memorandum under Standing Order 30A.2. Our current estimate is that around 20 will be subject to SO30A, though this figure is subject to change as officials consider the detail of the outstanding draft SIs which the UK Government will be sharing with us during the coming weeks.

The Welsh Ministers are expecting to lay around 50 Welsh EU Exit SIs in the National Assembly. There has been a delay in the Welsh SI programme, with several causes. In many cases, the Welsh SIs must follow the UK SIs and the UK SI programme has itself been delayed. Often the Welsh SIs must follow the UK SIs because the UK SIs are amending legislation to which the Welsh SIs are then making subsequent amendments. In some cases, the Welsh SIs will form part of a UK wide agreed approach to delivery that requires our SIs to co-ordinate with the SIs laid in Parliament.

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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.

More generally, the Welsh Government has also had to prioritise work on the UK SI programme given the high volume of SIs that are being brought forward which are making provision on the Welsh Ministers' behalf. As I have explained above, the Welsh Ministers have already consented to 71 separate UK Government SIs. In order to reach a position where the Welsh Ministers have been able to consent to the final versions of these SIs, there have been extensive discussions with relevant UK Government departments on the proposed solutions and drafting approaches in order to ensure that each SI properly protects our devolved interests. The agreements that are being reached on UK SIs which make amendments to directly applicable EU law and provisions in UK legislation which are within the Assembly's competence to amend are vitally important to ensure that there is a properly functioning statute book on exit day.

As a result of the agreements that have been reached on UK SIs to date, we anticipate that our SI programme will be confined to SIs which amend Welsh domestic regulations and Welsh primary legislation. None of these Welsh SIs amend directly applicable EU law. We are anticipating that 77 UK EU Exit SIs will amend directly applicable EU law in areas devolved to Wales. These SIs are included in the figure of 140-150 UK EU Exit SIs which we estimate will legislate in devolved areas.

We anticipate that the UK SI programme will continue at the current pace until March. Providing there is no further slippage in the UK SI programme, we expect that the Welsh SIs will be laid from December to March. We are anticipating three SIs to be laid before the Christmas recess, all proposed negative procedure SIs for sifting. We are expecting the remaining SIs to be laid from the recess to March, of which around 5% are currently anticipated to be subject to the affirmative procedure. I fully expect that January will be particularly busy as the Welsh EU Exit SI programme will be operating in earnest and the UK SI programme will be continuing.

The bases on which the Welsh Ministers are consenting to the UK SIs are that there is no divergence on policy between Wales and the UK, and that the SIs are not politically sensitive. These SIs are for the purpose of making the corrections so that the statute book will be operable and are being made by the UK Government, with the consent of the Welsh Ministers, for reasons of administrative efficiency.

Officials in all four administrations are working closely together on the drafting of the SIs and the accompanying material for inclusion in the explanatory memorandums. Decisions on who should exercise powers currently conferred on EU entities after exit are being considered in the context of each SI, depending on the nature of the power in question, and whether factors exist that mean that it is not desirable for an administration to exercise that power without the involvement of another administration. Our default position is that where there is a function within an area devolved to Wales, the relevant function should be conferred on the Welsh Ministers or on an appropriate public body in Wales. However, there are a number of circumstances where the default position may not be appropriate or practical. These are likely to arise in the following cases:

- Where the cross-border nature of service provision requires close co-operation across both nations, for the benefit of citizens or to avoid placing unnecessary burdens on organisations. This could be due to the way people or goods travel across the border, or the particular geographical features of the border.
- Where the devolved and non-devolved aspects of policy delivery are so intertwined, that it is not workable for the devolved elements to be delivered without reference to the non-devolved elements, or vice versa.
- Where the operational delivery of the policy is constrained by international agreements that will apply beyond Brexit so there is limited flexibility in policy decisions.

In these cases, there are a range of options for how functions can be exercised, and Ministers are reaching a decision on each individual UK Government SI following a full consideration of all of the relevant issues.

In circumstances where consent is given to a UK Government SI, our position is that consent is provided for the entire SI, rather than consenting to specific parts of the SI. Where provision is made in relation to devolved and reserved matters in a single SI, the approach that is taken towards reserved matters will often have an impact on devolved matters. For that reason, we consider it appropriate that Welsh Ministers consider and consent to the SI as a whole, rather than confine their consideration to the devolved areas only.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Julie', with a large, sweeping initial 'J'.

Julie James AC/AM

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