



Department
for Exiting the
European Union

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Charles Walker OBE MP
Chair, Procedure Committee
House of Commons
SW1A 0AA

8 October 2018

Dear Charles,

Thank you for your letter of 13 September and the further observations from the Procedure Committee on the sifting procedure in the EU (Withdrawal) Act 2018 and the statutory instruments needed for EU exit.

Government disagreement with a Committee recommendation

I want to set out clearly what our intentions are if the government decides to disagree with any referral from the European Statutory Instruments Committee (ESIC). I am convinced that we want to achieve the same thing - effective scrutiny. I want to work with the Committee and make sure we have an open dialogue both before and after sifting has occurred.

I am very concerned that the Committee believes that our intention is for ESIC to find out that we have not agreed with its recommendation *after* a Minister has made a statutory instrument under the negative procedure. This is absolutely not the intention. While the EU (Withdrawal) Act sets out that the way in which a statement is made is at the discretion of the Minister, I have reflected on the Committee's perspective in your letter and I am happy to take your advice that a Written Ministerial Statement to the House is the preferred way.

Your letter showed real concern about this part of the new process and I thought it may help if I set out how we see it working (I have set this out with the Commons in mind, but it applies in the same way to the Lords):

- An SI is laid for sifting;
- Ministers may be asked for additional information, if required;
- An SI is considered ('sifted') by ESIC and the recommendation is for the affirmative procedure;
- After consideration of the Committee's recommendation a Minister decides an SI should be subject to the negative procedure;

- The Minister writes to ESIC to set out their view and why they consider this is the case (it would be for ESIC to decide, in the usual way, whether and when to publish the Minister's letter);
- A Written Ministerial Statement is made to the House setting out the reasons for disagreeing with the recommendation;
- This explanation would, in addition, be included as a statement in the EM, thereby making the 'audit trail' easily accessible to all those with an interest in the SI itself;
- An SI is made; and
- The ESIC may call a Minister to give oral evidence on the SI in question.

On the last point, we have clearly committed that, if called, a Minister will give oral evidence.

I understand why the Procedure Committee has interpreted the point the Leader of the House of Lords made as a commitment to a Written Ministerial Statement (WMS). Equally, I am clear that the commitment was to provide Parliament and the public with a written explanation in some form. I hope the above goes some way to resolving the Committee's concern.

I am keen to ensure the government works effectively with your Committee and ESIC throughout this process. I would be happy to discuss any further concerns with you and Sir Patrick.

Use of the urgent procedure

I completely understand the Committee's concern about use of the urgent procedure in the EU (Withdrawal) Act. I want to be clear that we are working across all government departments to ensure the volumes of SIs that are laid as manageable as we can. We have been very clear with departments that the urgent procedure can only be used in exceptional circumstances - it is not a fallback plan.

Regular updates to ESIC

There are practical obstacles to giving regular updates, as the National Audit Office report you mention recognises. However, as we committed to Parliament, we are working with departments to manage the spread of SIs with a view to mitigating serious peaks. The triage process is part of mitigation and does not add to the time departments require to be ready.

If you think it is useful I would be more than happy to meet with you and Sir Patrick to discuss further the coming months.

In the meantime, my Ministerial colleagues will be able to answer any further questions you have at your meeting on 10th October.

I am copying this letter to Sir Patrick McLoughlin, Lord Trefgarne and Lord Cunningham, the Chief Whips and Leaders of both Houses, the Secretary of State for Exiting the European Union and Gavin Barwell.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Chris', with a stylized flourish extending to the right.

**CHRIS HEATON-HARRIS MP
PARLIAMENTARY UNDER SECRETARY OF STATE FOR EXITING THE EUROPEAN
UNION**