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

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Dear Charles,

**PROCEDURE COMMITTEE REPORT ON SCRUTINY OF DELEGATED LEGISLATION
UNDER THE EU (WITHDRAWAL) ACT 2018**

Thank you to you and your committee for their consideration of how the new EU (Withdrawal) Act 2018 (EUWA) sifting mechanism for proposed negative SIs should work. The attention you have given to this new process and how it can work in practice has been valuable.

Now the Standing Orders are in place, I wanted to respond to your Committee's 6th report of this session. It is important that the new European Statutory Instrument Committee (ESIC) and Government departments are clear on what to expect and what the process is.

Overall, I support the majority of the Committee's recommendations that are for the Government - there are several that are a matter for the House. There are four points where the Government will take another approach:

- Making a written *Ministerial* statement when the Government does not agree with the ESIC's recommendation;
- Providing a regular update to ESIC;
- Providing an anti-transposition note; and
- Agreeing to a similar sifting mechanism for the Withdrawal Agreement and Implementation Bill.

I take each of the above points in turn:

Written statement

I would like to clarify one of the points the Procedure Committee identifies in its report about what the Leader of the Other Place was referring to when she said '*Ministers will be required*

to make and provide to Parliament a written statement explaining themselves if they disagree with a recommendation from one or both of the sifting committees'. My Noble friend was referring to the amendments before the Other Place on that day and did not specify where the written statement would be made.

Let me clarify this. The intention is for a statement to be in the Explanatory Memorandum about why the Minister has not agreed with ESIC's recommendation. We would also expect the Minister concerned to write to the Committee to set out the reasons why the recommendation is not being followed. In addition, as the Leader of the House set out on Monday, where a Minister does not agree with the recommendations of the Committee, the Minister will be prepared to appear in front of the Committee to clarify the rationale for that.

Regular updates to ESIC

I have discussed this recommendation with the Leader of the House of Commons and we understand the wish for a regular update to ESIC on the progress of instruments. The timetable for laying individual SIs depends on a number of factors which mean it is not practical to give a forward look in the way suggested. However, as ministers have previously set out, the Government are committed to ensuring a smooth flow of SIs and will continue to work closely and constructively at official level in order to assist the Committees.

An 'Anti-Transposition' Note for each SI

I have some sympathy with the recommendation that an 'anti-transposition' note should be provided for each instrument setting out the drafting approach the Government is taking to disengage UK law from EU obligations. However, I am also clear that we need to be proportionate in what departments are required to produce if we are to make sure SIs are in place by exit day. The EUWA already requires the Explanatory Memorandum accompanying EUWA SIs to set out what the law did before, what the changes are and what the law does after the changes. This is not the level of detail an anti-transposition note might give but it will explain to Parliament and others what an SI and the changes do.

A Sifting Mechanism and the Withdrawal Agreement and Implementation Bill

I will give some consideration to this however, there will be several factors that will influence what might be appropriate for the Withdrawal Agreement and Implementation Bill - known formally as the EU (Withdrawal Agreement) Bill. While we are making good progress in our negotiations with the EU, discussions are still continuing in some areas. This means that parts of the Bill will only become clear as we reach agreement on the remaining parts of the Withdrawal Agreement.

I am clear we need to ensure that the right balance is struck between effective scrutiny and ensuring our orderly withdrawal. We will want to engage with Parliament, as we did during the progress of the EUWA.

I am looking forward to making progress together, and I will be your and the ESIC's contact point for any issues that the Committee may have.

I am copying this letter to Sir Patrick McLoughlin, Chair of ESIC and also to Lord Trefgarne, Chair of the Secondary Legislation Scrutiny Committee, given the role his Committee will play in the Lords. I am also copying this letter to the Leader of the House of Commons and the Leader of the House of Lords.

Yours sincerely,

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

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