



Mick Antoniw MS  
Chair Legislation, Justice and Constitution Committee

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12 March 2021

Dear Mick

**The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021  
The Organics (Amendment) Regulations 2021**

Thank you for your letter of 11 February regarding the above regulations and the consent given to UK Government to legislate on behalf of Wales.

**The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021**

This regulation allows all competent authorities in Great Britain (GB) to carry out electronic document checks on some imported goods, for a temporary period, including at locations other than Border Control Posts, instead of checking hard copies. Additionally, it permits official control checks to be carried out by appropriately authorised, trained and qualified natural persons under the supervision of the authorities. These easements are in line with other existing Covid-19 related easements to Official Controls Regulations and are intended to prevent disruption to the system of official controls due to the pandemic, permitting social distancing and dealing with staff shortages, without compromising standards of official controls to protect human and animal health and welfare. The regulation amended retained Commission Implementing Regulation (EU) 2020/466, which expired on 1 February 2021, to allow the continuation and reintroduction of certain easements to the system of official controls in GB until 1 July 2021.

Officials were first alerted to this regulation on 21 December 2020. I gave my consent to the Secretary of State to make this regulation in relation to Wales because it was the best option to ensure the continuation of the temporary easements under the current circumstances. Not proceeding with or delaying this emergency legislation would mean competent authorities in Wales, already struggling with various other pressures, including Covid-19, Avian Influenza and the implications of EU Exit, would not benefit from the easements, potentially compromising their ability to deliver official controls while minimising risks to staff from Covid-19 and adhering to social distancing guidelines.

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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.

## **The Organics (Amendment) Regulations 2021**

This regulation was made in a reduced timescale, as the derogation for allowing document checks to replace on-site organic inspections was due to expire at the start of February 2021. Originally, this derogation was due to be extended by EU legislation coming into force before the end of the Transition Period. This legislation was delayed, resulting in the need for similar legislation to be made either at the GB level, or in Wales. There was a risk the legislation would not be made in time in the Senedd because officials were not alerted to it until 6 January, and a draft SI was not received until 21 January.

This could have put organic Control Bodies (CBs) at risk of not meeting their statutory obligations should they not conduct on-site inspections before Welsh legislation could be implemented. In such a scenario, Wales would have also been at variance with the rest of GB in granting a derogation. CBs operate across the UK's internal borders, so differing rules on Covid-19 derogations would have caused unnecessary confusion. All CBs supported these regulations being made, as they reduced the risk of their staff and producers transmitting or contracting Covid-19 and no objection was raised to them by any other stakeholder. The lack of controversy around the regulations reduced the impetus for the regulations to be made at a Wales level, as it is unlikely any objection would have been made to them.

The principles applied in agreeing to exercise concurrent functions for both these statutory instruments are at Annex A.

In these exceptional circumstances when officials are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principle is that it is appropriate for the UK Government to legislate on our behalf in a large number of statutory instruments.

There were a number of deficiencies in EU Law which were not remedied through operability amendments in 2020. The 2021 Regulations have been prepared as a result of ongoing discussions between UK and Welsh Government officials. There has been a long history of joint working in this area and this has been reflected during the current pandemic.

As these regulations were made using concurrent-plus powers, I felt it necessary to inform the Legislation, Justice and Constitution Committee I had granted consent to them. I also informed the Climate Change, Environment and Rural Affairs Committee of my decision, due to these regulations' subject matter being within their purview.

Regards

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is fluid and cursive, with the first name 'Lesley' and the last name 'Griffiths' clearly distinguishable.

**Lesley Griffiths AS/MS**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

## The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021

Principles Ministers have agreed for the exercise of concurrent functions	Comment
<p><i>Principle 1: There must be robust governance arrangements – i.e. clearly defined processes covering detailed policy negotiations at official level right through to oversight by Ministerial forums – to enable intergovernmental agreement about the exercise of functions.</i></p>	<p>There are clearly defined governance processes for this matter. This policy was agreed at the Animal Disease Policy Group (attended by the FSA and APHA as well), which is the governance body of the Common UK Animal Health and Welfare Framework.</p>
<p><i>Principle 2: If we are recommending consent for expediency in the absence of fully developed governance arrangements, or if we are not certain about how the functions will be exercised at the point when consent is sought, we should ensure that our consent is as narrowly defined as possible in terms of:</i></p> <ol style="list-style-type: none"> <li><i>1. exactly what exercise of what functions we are consenting to;</i></li> <li><i>2. the period for which we are giving consent – preferably a short period, with a defined review mechanism, and without prejudice to longer term arrangements;</i></li> <li><i>3. the minimum requirements for ongoing intergovernmental engagement.</i></li> </ol>	<p>This is not applicable as defined governance arrangements have been, fully developed. In addition, the functions and the extent of their application is well defined (as these easements have been exercised for several months since the onset Covid-19 pandemic and the EU regulation coming into force in 2020). Regular discussions continue to take place between Animal Health and Welfare policy leads, CVOs and the executive agencies to discuss these matters and agree policy direction.</p>
<p><i>Principle 3: Officials must be able to provide assurance to Ministers that they have:</i></p> <ol style="list-style-type: none"> <li><i>1. carefully considered the longer term policy rationale and wider constitutional principle that the Welsh Ministers exercise functions in relation to Wales, in the expectation that capacity issues are only material in the short term;</i></li> <li><i>2. evaluated the Wales only option and found it undesirable in this case;</i></li> <li><i>3. considered whether or not the governance arrangements are robust enough to protect Wales' interests;</i></li> <li><i>4. designed the best possible terms and process for giving consent which safeguards our position in the longer</i></li> </ol>	<ol style="list-style-type: none"> <li>1. There are no long-term commitments, with the retained Regulation 2020/466 expiring in July. However, the experiences and lessons learnt from this approach may inform future ways of enhancing the way official controls are delivered, in line with wider trends for the use of technology and remote working, which can create efficiencies.</li> <li>2. It would be possible, but undesirable to legislate separately in Wales due to various resource pressures. Additionally, there should be a consistent approach to official controls across the whole of GB and there is no interest in cross-border divergence. Variations in the way official controls are conducted could</li> </ol>

<p><i>term (with clearly defined scope and duration as well as full involvement at all stages of policy development and implementation); and</i></p> <p>5. <i>taken a consistent approach to decision making, so that the Welsh Government overall is acting coherently – at both portfolio level and more widely.</i></p>	<p>lead to market distortion if businesses and traders felt a differential treatment across borders.</p> <p>3. The governance arrangements are satisfactory and include a working Common Framework.</p> <p>4. The approval of this SI followed a detailed analysis by officials, and on the basis that the easements are time limited. If there is a need to legislate further, a thorough analysis would once again be undertaken by officials; and include the option of separate Welsh legislation, or consent once again, as appropriate.</p> <p>5. The Welsh Government is adhering to the principles set out within this table.</p>
<p><i>Principle 4: A decision on whether to give consent for the UK Government to exercise a concurrent function in relation to Wales for the first time should be presented to the Counsel General and the portfolio Minister at the earliest possible stage in the process.</i></p>	<p>Actioned via the Ministerial Advice sent by officials on 21 January.</p>
<p><i>Principle 5: Ministers should write to the relevant policy committees to inform them of an intention to consent to the UK Government exercising a concurrent plus legislative function in relation to Wales, and where time allows provide an opportunity for the Senedd to express a view before Ministers give consent.</i></p>	<p>We intend to write to CCERA and LJCC to notify them of the intention to consent to UK Government.</p>
<p><i>Principle 6: The same principles around intergovernmental working, Ministerial agreement and notifying the Senedd apply to both providing and withdrawing consent to exercise a concurrent function.</i></p>	<p>Adhered to as stated above.</p>

## The Organics Amendment Regulations 2021

Principles Ministers have agreed for the exercise of concurrent functions	Comment
<p><i>Principle 1: There must be robust governance arrangements – i.e. clearly defined processes covering detailed policy negotiations at official level right through to oversight by Ministerial forums – to enable intergovernmental agreement about the exercise of functions.</i></p>	<p>There are clearly defined governance processes for this matter. This policy was agreed at the Organics Four Nations Working Group, which is governed by the Common UK Organics Provisional Framework Outline Agreement.</p>
<p><i>Principle 2: If we are recommending consent for expediency in the absence of fully developed governance arrangements, or if we are not certain about how the functions will be exercised at the point when consent is sought, we should ensure that our consent is as narrowly defined as possible in terms of:</i></p> <ol style="list-style-type: none"> <li><i>1. exactly what exercise of what functions we are consenting to;</i></li> <li><i>2. the period for which we are giving consent – preferably a short period, with a defined review mechanism, and without prejudice to longer term arrangements;</i></li> <li><i>3. the minimum requirements for ongoing intergovernmental engagement</i></li> </ol>	<p>This is not applicable as defined governance arrangements have been, fully developed. In addition, the functions and the extent of their application is well defined (as these easements have been exercised for several months since the onset Covid-19 pandemic and the EU regulation coming into force in 2020). Regular discussions continue to take place between officials working on organic policy across the Four Nations to discuss these matters and agree policy direction.</p>
<p><i>Principle 3: Officials must be able to provide assurance to Ministers that they have:</i></p> <ol style="list-style-type: none"> <li><i>1. carefully considered the longer term policy rationale and wider constitutional principle that the Welsh Ministers exercise functions in relation to Wales, in the expectation that capacity issues are only material in the short term;</i></li> <li><i>2. evaluated the Wales only option and found it undesirable in this case;</i></li> <li><i>3. considered whether or not the governance arrangements are robust enough to protect Wales' interests;</i></li> <li><i>4. designed the best possible terms and process for giving consent which safeguards our position in the longer term (with clearly defined scope and duration as well as full involvement at</i></li> </ol>	<ol style="list-style-type: none"> <li>1. There are no long-term commitments, as this easement shall only remain in place while the risk of Covid-19 remains high.</li> <li>2. It would be possible, but undesirable to legislate separately in Wales due to the short timescale. Additionally, there is the potential for disruption should Welsh legislation come into force later or differ in its contents. Control Bodies work across the internal borders of the UK, and differing rules on official controls coming into force at short notice could significantly disrupt their operations.</li> <li>3. The governance arrangements are satisfactory and include a working Common Framework.</li> <li>4. The approval of this SI followed a detailed analysis by officials, and on</li> </ol>

<p><i>all stages of policy development and implementation); and</i></p> <p>5. <i>taken a consistent approach to decision making, so that the Welsh Government overall is acting coherently – at both portfolio level and more widely.</i></p>	<p>the basis that the easements are limited to the duration of the Covid-19 pandemic. When the threat has subsided and the easements could be lifted, a thorough analysis would once again be undertaken by officials; and include the option of separate Welsh legislation, or consent once again, as appropriate.</p> <p>5. The Welsh Government is adhering to the principles set out within this table.</p>
<p><i>Principle 4: A decision on whether to give consent for the UK Government to exercise a concurrent function in relation to Wales for the first time should be presented to the Counsel General and the portfolio Minister at the earliest possible stage in the process</i></p>	<p>Actioned via the Ministerial Advice sent by officials on 26 January.</p>
<p><i>Principle 5: Ministers should write to the relevant policy committees to inform them of an intention to consent to the UK Government exercising a concurrent plus legislative function in relation to Wales, and where time allows provide an opportunity for the Senedd to express a view before Ministers give consent.</i></p>	<p>We intend to write to CCERA and LJCC to notify them of the intention to consent to UK Government</p>
<p><i>Principle 6: The same principles around intergovernmental working, Ministerial agreement and notifying the Senedd apply to both providing and withdrawing consent to exercise a concurrent function.</i></p>	<p>Adhered to as stated above.</p>