



Ein cyf/Our ref: DET/65/19

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Tŷ Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

19 December 2019

Dear Mick,

Thank you for your letter of 7 November, following my written statement on 29 October about the Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019. My statement explained the context for the SI and the rationale for Welsh Ministers agreeing both to the SI and to entering into an Agency Agreement with DCMS in relation to these programmes. This was to allow EU regulations relating to these programmes to be revoked when the UK leaves the European Union, and to enable the Secretary of State to provide financial assistance to participants of these Programmes in Wales under the HMG Guarantee in the event that the UK leaves the EU without a withdrawal agreement in place.

In my statement, I also explained that this SI was Made and Laid before Parliament without our knowledge in March this year, although we were not made aware of this at the time. I also explained the exchange of Ministerial correspondence that took place after it became clear that a breach of the Intergovernmental Agreement between our Governments had occurred, as well as my eventual decision, in consultation with the Counsel General and Minister for Brexit, to consent to the Agency Agreement and to grant retrospective consent for the SI.

In your letter you acknowledge that this was an unintended breach of the Intergovernmental Agreement by the UK Government, but note that the National Assembly was not notified of the breach of 29 October, requesting further explanation about the timing in this case.

I agree that the length of time between the breach of the Intergovernmental Agreement occurring and National Assembly being notified of it in this case was longer than usual and not ideal. Unfortunately, many of the issues associated with Brexit are complex and without precedent. When, as in this case, established agreements and legal processes designed to enable Ministers and officials to deal with such matters are not adhered to, it can be difficult and time consuming to ensure retrospectively that our proposed actions remain legally sound and compliant.

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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.

Our priority throughout this process, necessitated by the SI, has been to ensure that a legal mechanism was put in place to allow Creative Europe and Europe for Citizens recipients in Wales who may be entitled to funding under the HMG Guarantee to receive it promptly, without disadvantage. It was also critical to ensure that this mechanism properly respects the devolution settlement and causes no diminishment to the power of Welsh Ministers.

In these circumstances, the Counsel General and I took the view that it was not sufficient simply to write to Assembly Members about the breach of the Intergovernmental Agreement; we should also be able to assure Members that there were no ongoing legal issues as a result and that an appropriate mechanism to protect Welsh funding recipients had been agreed.

I hope you will accept my assurance that my written statement was made as soon as possible once I was able to confirm and explain all of the above.

For your information, I have attached at Annex 1 a timeline of key events during the course of this work.

A handwritten signature in black ink, appearing to read 'Elis-Thomas'.

**Yr Arglwydd Elis-Thomas AC/AM**

Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth  
Deputy Minister for Culture, Sport and Tourism

## Timeline

- October 2018: Welsh Government and DCMS officials opened discussions about the need for a mechanism to protect Welsh funding recipients in the event of a no deal exit.
- January 2019: Welsh Government officials confirmed to DCMS counterparts the need for consent to be sought from Welsh Ministers before the SI progresses through Parliament.
- February – March 2019: The SI was Laid and Made in Parliament.
- Late April 2019: Welsh Government officials become aware for the first time that the SI has been Laid and Made.
- May – early July 2019: Welsh Government officials conferred with DCMS counterparts to establish the circumstances of the breach of the Intergovernmental Agreement, and to point out the need for an urgent letter to Welsh Ministers from the Secretary of State, apologising for the breach and seeking retrospective consent for the SI.

[Note: We accepted assurances from DCMS that the breach was inadvertent and unintended; the result of staff churn, volume of work and other factors.]

- 16 July 2019: The then Secretary of State, Jeremy Wright QC MP, wrote to me seeking retrospective consent. He acknowledged and apologised for an unintended breach of the intergovernmental agreement.
- 12 August 2019: I replied to the new Secretary of State, the Rt Hon Nicky Morgan MP. I said I was reassured by her predecessor's statements that the failure was unintentional and that the UK Government remains committed to the Intergovernmental Agreement, but that I viewed these events extremely seriously - especially as the National Assembly had not been informed in good time. I said we would take further advice before responding to the request for retrospective consent.
- August – October 2019: Welsh Government officials, conscious of the delays to Brexit which had occurred during the period of this work, reviewed the SI, the request for retrospective consent and the Agency Agreement, to ensure that:
  - the breach of the Intergovernmental Agreement (i.e.; the failure to seek prior consent) had no bearing on the legality of the SI;
  - there would be no diminishment of the Welsh Ministers' power as the SI does not grant any new powers to the Secretary of State in relation to Wales;
  - the Agency Agreement was drafted appropriately, to enable HMG Guarantee funding to be delivered as needed to Welsh stakeholders until the current EU programmes conclude at the end of 2020, irrespective of the date before that upon which the UK might leave the EU.
- 29 October 2019: I laid my written statement about the Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 before the National Assembly and approved the signing of the related Agency Agreement.