



Ein cyf/MA-LG-3512-22

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee

2 December 2022

Dear Huw

Thank you for your letter of 4 November, regarding the Welsh Government consenting to UK Government subordinate legislation.

Before I turn to the specific matters raised, it may be useful if I outline our general arrangements.

Our starting position is that legislative powers in devolved areas should be exercised by the Welsh Ministers in relation to Wales rather than the UK Government.

Collaborative working will, of course, sometimes be beneficial and when it is, we do so in accordance with the outcomes of the Inter-Governmental Relations Review, agreed by the four UK Governments earlier this year. The review included principles for Inter-Governmental working practices built on mutual respect and trust, as well as respecting both the reserved powers of the UK Government and UK Parliament and the devolved competences of the Scottish Government, Welsh Government, Northern Ireland Executive and their legislatures. The system provided for by the Review provided a positive basis for productive relations, facilitating dialogue where views are aligned and resolution mechanisms where they are not.

In relation to EU Exit, and since the end of the transition period, UK Government instruments making technical operability amendments to retained EU law were within the remit of our Principles for Correcting Deficiencies in EU-derived Domestic Legislation. Those principles reflected Cabinet's agreement that UK legislation could be corrected by UK Statutory Instruments (UKSIs) if the deficiencies were purely technical in nature and there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UK Government.

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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.

In relation to Instruments that go beyond correction, the Welsh Government's agreed approach has been to take decisions which may impact on divergence / alignment of laws based on case-by-case advice, acknowledging there will sometimes be legitimate justifications for consenting to the exercise of powers in devolved areas by the UK Government.

In considering individual contexts, I consider the options for Wales-only legislation in light of the starting position highlighted above, and before consenting, seek to ensure there are robust governance arrangements in place. This includes consideration of arrangements at official level, through to oversight by Ministerial forums. If governance arrangements are not as comprehensive as I would like, but consent is nonetheless appropriate for reasons of expediency, it is Welsh Government policy to limit consent as narrowly as possible with a suitable review mechanism included.

The Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022

I have noted the Committee's comments and agree it would be good practice to refer to the powers under which an Instrument is made.

The Pests of Plants (Authorisations) (Amendment) Regulations 2022

1. *Please can you state when you first knew about the need for these Regulations and accordingly, whether they could have been introduced in a single bilingual instrument made by the Welsh Ministers earlier than 1 November 2022, when they came into force.*

I received a letter advising me of the upcoming Statutory Instrument (SI) programme on 14 June 2022. At this point, no details were known of the actual amendments, it was just an expression of intent.

It is unlikely a consistent approach between GB nations could have been achieved by the deadline of 1 November if the SI had been introduced by Welsh Ministers. SIs drafted by Defra are reviewed by my policy and Legal Services officials before any recommendation as to consent is given.

2. *Please can you explain why separate Welsh regulations would not be: a) the most appropriate way to effect the changes or b) a prudent use of resources?*

The Plant Health regulations are a fundamental tool to tackling plant pests and diseases, sometimes on an emergency basis, and it is important to maintain a shared GB approach. I considered the option for Wales-only legislation, but concluded it was more expedient to consent to UK Government legislating in this instance. I believed Legal Services and Senedd resources could be used on other pressing legislative issues where policy divergence occurred. The Plant Health: Provisional Common Framework¹ was an important factor in the decision.

¹ [Plant health: provisional common framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/plant-health-provisional-common-framework)

3. *Please can you explain the purpose of the reference to the Programme for Government? Do implications for the Programme for Government impact on whether the Welsh Government makes its own regulations in devolved areas when correcting the statute book as a consequence of EU exit?*

The Programme for Government reference was included to inform committee members the changes made by the regulations do not impact on the Welsh Government's policy ambitions. The Programme for Government does not impact whether Welsh Government makes its own Regulations in devolved areas when correcting the statute book because of EU exit.

The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 (the Persistent Organic Pollutants Regulations)

The Control of Mercury (Amendment) (EU Exit) Regulations 2022 (the Control of Mercury Regulations)

The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022 (the Animals, Feed and Plants Regulations)

4. *Please can you confirm that in future you will at the very least include the date of correspondence with UK Ministers in your letter to us and that, where possible, you will include a copy of that correspondence?*

I confirm in future I will include the date of correspondence with UK Ministers in my letters to the Legislation, Justice, and Constitution Committee (LJCC) and any other relevant committee. I will aim, where possible, to provide a copy of the correspondence to the appropriate Committees.

5. *When you receive correspondence from UK Ministers seeking your consent, is this generally received before or after the Regulations have been drafted by the UK Government?*

Correspondence formally seeking my consent is generally received before the Regulations have been drafted. When the regulations are in final draft form, I am provided with advice from my officials on the appropriateness of agreeing the same. My officials are notified and engaged before this point to ensure the drafting is correct from a Welsh perspective and I am provided, when appropriate, with update briefings from them. In respect of the regulations covered under this section, UK Ministers wrote to Welsh Government in June seeking consent for the Statutory Instruments which needed to be laid in October.

6. *Are there intergovernmental agreements in place between your department and relevant UK Government departments in relation to consent?*

Please refer to my outline of the general position on Inter-Governmental working and process for considering consent, provided at the outset of this letter.

Please can you explain why separate Welsh regulations would not be: a) the most appropriate way to effect the changes or b) a prudent use of resources?

In relation to the three sets of Regulations, I considered the option for Wales -only legislation, but concluded it was more expedient to consent to UK Government legislating in this instance. The presence of common frameworks was an important factor in that decision. The relevant frameworks are:

For the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 (the Persistent Organic Pollutants Regulations) and the Control of Mercury (Amendment) (EU Exit) Regulations 2022 (the Control of Mercury Regulations) this is the 'Approaches to Decision Making' and 'Principles of Working Together' sections of the Chemicals and Pesticides: Provisional Common Framework on Chemicals and Pesticides (<https://www.gov.uk/government/publications/chemicals-and-pesticides-provisional-framework>).

For the Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022 (the Animals, Feed and Plants Regulations) provisional frameworks relating to animal health and welfare; plant health; and food and feed are all relevant.

For the Pests of Plants (Authorisations) (Amendment) Regulations 2022 this is the "UK Plant Health Concordat between the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive" section of the Plant Health: Provisional Common Framework (<https://www.gov.uk/government/publications/plant-health-provisional-common-framework>).

The Biocidal Products (Health and Safety) (Amendment) Regulations 2022

7. *Given that Chloe Smith MP left that Ministerial post on 6 September 2022, please can you explain why there was a delay in notifying the Committee of this request, meaning it has been provided with less time to consider these regulations given they were laid on 18 October 2022, eight days after you wrote?*

I received a letter from Chloe Smith MP, Minister for Disabled People, Health and Work, on 19 August, requesting consent to the Biocide Regulations. At that time, the SI was still in draft format and a final version was circulated on 7 September during summer recess. During this time, I considered officials' advice and reached a decision to consent to the Regulations, however, due to the changes in Ministers in UK Government at the time, there was no Minister assigned to the Health and Safety Executive (HSE) portfolio to write to. Once a Minister had been officially confirmed on 7 October, I signed the consent letter to Claire Coutinho MP, Parliamentary Under-Secretary of State for Disabled People, Health and Work, on the same day.

In relation to question 2, these regulations make technical operability amendments to retained EU law, correcting deficiencies that are technical in nature and so are within the remit of our Principles for Correcting Deficiencies in EU-derived Domestic Legislation. Those principles reflected Cabinet's agreement that such amendments could be corrected by UK Statutory Instruments (UKSIs) on the basis there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UK Government. Any divergence from a GB approach would result in the Health and Safety Executive (HSE), which acts as the Competent Authority for Biocides in England and Wales, having mixed competencies.

In relation to question 3, I refer to my answer to question 3 above.

The Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022

8. *Please can you confirm when the Secretary of State requested that you consent to these Regulations?*

The then Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, wrote requesting my consent to these Regulations on 18 July 2022.

9. *Your letter states “I am giving consent” to the Secretary of State to lay the draft Regulations. Your letter to us was issued the day after the Regulations were laid. What date did you inform the Secretary of State that you were giving consent?*

I wrote to inform the Secretary of State of my consent to these Regulations on 17 October 2022.

10. *Why are Regulations covering Great Britain necessary, when you say you will be making equivalent regulations for Wales?*

The UK Government’s regulations apply wholly to England and Scotland, but apply in relation in Wales in two respects. The regulations contain a power for the Secretary of State to legislate in relation to Wales, but only if the Welsh Ministers give their consent i.e., the concurrent plus power. The regulations provide that the Secretary of State is the appropriate authority in relation to Wales, but only in so far as a matter relates to functions outside of the legislative competence of the Senedd.

11. *Why is the creation of concurrent plus functions appropriate when you will be making your own regulations?*

The concurrent plus function was considered appropriate for policy reasons. I consider it is appropriate to have flexibility and an option for Welsh Ministers to consent to the Secretary of State legislating for Wales in certain exceptional circumstances. The Secretary of State can only legislate for Wales on devolved matters with consent from the Welsh Ministers; therefore, there is no loss of powers arising from this instrument.

12. *What are the exceptional circumstances in which you would provide consent for UK Ministers to act under the draft Regulations?*

The nature of animal and public health trade policy is that legislative changes can be required urgently, to restrict or reopen trade, given how dynamic animal diseases are and given obligations to our trading partners. Exceptional circumstances for the use of these concurrent plus functions could include responding to international obligations of the UK, such as those in trade agreements or when dealing with emerging diseases in third countries. In such instances, import health conditions may need to be quickly amended, in order to swiftly impose or remove import health conditions in response to changing disease risks. In such cases it could be appropriate to consent to the use of these powers where there is cross-government agreement in policy.

We operate within the Animal Health and Welfare provisional Common Framework which was designed to facilitate shared ways of working and common approaches, where appropriate, whilst fully respecting devolution. The framework allows for divergence with an emphasis on non-harmful divergence, as there will be instances where it is appropriate for individual Governments to take different approaches.

The policy decision-making body in the framework is the Animal Disease Policy Group (ADPG). ADPG reaches, where possible, official-level agreement on UK and GB control strategies and, where appropriate, informs officials' recommendations to their respective Ministers. Membership includes the four Chief Veterinary Officers and heads of policy in each government, alongside delivery partners such as government agencies and other government policy leads, and advisory and expert bodies (e.g., public health). These new governance arrangements reflect the many new functions that GB Ministers have acquired following Brexit.

13. *Given that there will be Great Britain-wide regulations and Wales-wide regulations in place, how does this square with the Welsh Government's commitment to accessible legislation?*

The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 were laid before the Senedd on 22 November 2022 to amend the Trade in Animals and Related Products (Wales) Regulations 2011 and make the necessary modifications to the relevant EU Directives, for the purposes of those 2011 Regulations. These Regulations made by the Welsh Ministers will, subject to the approval of the Senedd, contain a number of Welsh Ministers legislative functions and it is my intention that Welsh Ministers will exercise those functions to legislate in relation to Wales. These Regulations will, subject to the Senedd's approval, be made bilingually in so far as practicable. However, as a good deal of the text in the draft Regulations modifies a number of EU Directives, those modifications will be made in English only, as the Directives themselves are not available in Welsh.

The powers contained in the Secretary of State's regulations will, by comparison to those contained in the Welsh Ministers' draft Regulations, be relied upon only exceptionally. It is regrettable that in so far as the regulations made by the Secretary of State apply in relation to Wales, they will not be available bilingually. However, in view of the fact that the modifications to the Directives are not made bilingually in our own Regulations, coupled with my stated intention that these powers will be available only as a useful secondary tool, I consider the approach appropriate.

14. *You have previously justified consenting to regulations on grounds of ensuring a coherent and consistent statute book with the regulations being accessible in a single instrument but, for these Regulations, you would appear to be taking a different view. Please can you explain why this is the case?*

In relation to EU Exit in particular, we have, in accordance with our Principles for Correcting Deficiencies in EU-derived Domestic Legislation, consented to corrections being made within UK Statutory Instruments (UKSIs) if the deficiencies were purely technical in nature and there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UK Government.

However, in regulation to these Regulations, the Welsh Ministers have consented to them only in so far as they provide for the Secretary of State to have a concurrent plus style power. The Secretary of State's regulations modify the relevant Directives for the purposes of the Secretary of State's functions. The Welsh Ministers will, subject to the approval of the Senedd, legislate in the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022, to create Welsh Ministers legislative functions. This has resulted in both sets of regulations separately modifying the relevant Directives. However, the modifications are effectively incorporated into their respective Regulations, and so this is appropriate.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style with a large initial 'L' and 'G'.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd