

Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and
Trefnydd

4 November 2022

Dear Lesley

Welsh Government consenting to UK Government subordinate legislation

In our [annual report](#) for 2021/22, which we published last month, we indicated that we would be seeking greater clarity from the Welsh Government in relation to the giving of consent to make subordinate legislation in devolved areas (see paragraphs 118-119 and 128).

At our meetings on 10, 17 and 24 October 2022 we considered a series of notifications to the Committee and Senedd regarding the Welsh Government's intention to consent, or confirmation of it having given consent, to the UK Government's making subordinate legislation in devolved areas.

We have a number of observations we wish to make in relation to these notifications.

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

Your letter of [3 October 2022](#) noted that these Regulations would be laid in the UK Parliament on 8 November 2022 and we welcome the advance notice provided allowing us to respond before this date.

For reasons of transparency and the public record, we believe the letter should have included details of the UK Act under which the Regulations are to be made. We also note that you are consenting to the Regulations "for reasons of efficiency and expediency, and to ensure consistency and coherence of the statute book." Our predecessor Committee noted that consenting "[on grounds of clarity and accessibility lacks credibility](#)" in the context of devolution and a broader sense that the Welsh statute book is being made less accessible. While we recognise that there are circumstances in which it may

be appropriate for correcting Regulations (that apply to England and Wales) to be made by the UK Government, we broadly share the sentiments expressed by our predecessor Committee and draw them to your attention.

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

Your letter of 6 October 2022 noted that you had given consent to these negative resolution regulations that were laid in the UK Parliament on 3 October 2022.

As well as consenting to the Regulations on grounds of ensuring “a coherent and consistent statute book with the regulations being accessible in a single instrument”, you state:

“... there is an urgent need to introduce this legislation, to protect biosecurity in Wales. I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, especially given the urgent nature of the Regulations, nor a prudent use of Welsh Government resources given other important priorities.

These Regulations do not have implications for the Programme for Government...”.

We would be grateful to receive responses to the following questions.

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

We note that, in your letters of 6 October 2022 on the Persistent Organic Pollutants Regulations, your letter of 10 October 2022 on the Control of Mercury Regulations, and your letter of 18 October 2022 on the Animals, Feed and Plants Regulations, you state that you received a letter from the Rt Hon Victoria Prentis MP, the then Minister of State for Farming, Fisheries and Food asking for consent to these Regulations.

We would find it helpful in future if you could provide the dates of the inter-ministerial correspondence you refer to when notifying us of your intention to consent. Given our responsibility for scrutinising intergovernmental relations, we are keen to understand how discussions on consent are initiated.

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?

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?

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

Question 2 is also relevant to information included in your letters about the Persistent Organic Pollutants Regulations and the Control of Mercury Regulations.

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

In your letter of 10 October 2022 you told us that the Welsh Government received a letter from Chloe Smith MP, formerly Minister of State for Disabled People, Health and Work asking for consent to these Regulations.

The First Minister has advised us that “where time allows” the Welsh Government would provide an opportunity for the Senedd to express a view before it consents to subordinate legislation.

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?

Questions 2 and 3 are also relevant to information contained in your letter about the Regulations.

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

We have some questions regarding your letter of 21 October 2022.

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

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?

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

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

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

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?

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?

Yours sincerely,

Huw Irranca-Davies

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Chair

