

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

31 January 2019

Dear Rebecca

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement issued under Standing Order 30C for the above named regulations at its meeting on 28 January 2019.

I would like to draw your attention to a number of concerns we have with the effect of these Regulations.

The Nagoya Protocol relates to access to genetic resources (EU Regulation 511/2014). The Welsh Government states that it is not practically possible for the Welsh Ministers to exercise functions relating to the Nagoya Protocol independently from the UK Government. Therefore, functions are conferred solely on the Secretary of State. The Welsh Government offers no explanation as to why this is the case. We invite the Welsh Government to provide further detailed information on this point.

As regards the remaining EU Regulations (and the one Directive) which relate to devolved policy areas, namely the:

- Persistent Organic Pollutants (EC Regulation 850/2004);
- European Pollutant Release and Transfer Register (EC Regulation 166/2006);
- Mercury (EU Regulation 2017/852); and



- Industrial Emissions (EU Directive 2010/75 (described in the Welsh Government’s statement as “adopting BAT conclusions”))

the Welsh Government states that there is “no impact on the Assembly’s legislative competence”. However, it is not clear whether this assertion is correct and we invite further explanation.

Where a function is conferred on the Secretary of State in an area which falls within the legislative competence of the National Assembly for Wales, this may have the effect of restricting the Assembly’s ability to legislate in this area. Under paragraph 11 of Schedule 7B to the Government of Wales Act 2006, an Assembly Act cannot remove or modify a function of a Minister of the Crown that relates (among other things) to control of pollution of water resources unless the UK Government consents.

If these Regulations confer functions on the Secretary of State that relate to control of such pollution, then the Assembly will not have competence to remove that function without the consent of the UK Government. This is despite the fact that the function will operate in a devolved area.

For that reason, we request further detail from the Welsh Government as to whether any of the functions conferred on the Secretary of State relate to the control of pollution of water resources (or any other matter listed in paragraph 11(1) of Schedule 7B to the Government of Wales Act 2006).

I would be grateful for a response and clarification on these matters by 7 February 2019.

I am copying this letter to Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs.



Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

