

Sir Bernard Jenkin
Chair
Public Administration and Constitutional Affairs
Committee
House of Commons

6 February 2019

Dear Sir Bernard

The State Aid (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement (issued under Standing Order 30C of the National Assembly for Wales) for the above named regulations at its meeting on 4 February 2019.

These Regulations transfer functions to non-devolved public authorities, namely the Competition and Markets Authority and the Secretary of State; and giving functions to non-devolved public authorities restricts the legislative competence of the National Assembly for Wales.

As noted in a recent letter to Lord Trefgarne, Chair of the House of Lords Secondary Legislation Scrutiny Committee, regarding the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, functions transferred to a public authority other than a devolved Welsh authority engage paragraph 10 (and in this case paragraph 11) of Schedule 7B to the Government of Wales Act 2006. In brief, this means that if the National Assembly for Wales wishes to pass primary legislation to remove or modify such functions in future, it will need the consent of the UK Government.

As with the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, this is being done without any prior notice being given to the National Assembly for Wales and, of course, without the Regulations being laid before the National Assembly for Wales.

However, in this case, there is the added problem that the Welsh Government and the UK Government disagree as to whether State Aid is devolved.



At our meeting we considered correspondence from the Welsh Government's Counsel General. In his letter to us, the Counsel General states:

"The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent. The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response."

The approach being adopted by the UK Government therefore appears to be a breach of paragraph 8 of the Intergovernmental Agreement on the European Union (Withdrawal) Bill, which states:

"The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency."

In reaching this view we also note that the UK Government has not responded to the Welsh Government's request for an explanation of their position that State Aid is a reserved matter.

In his letter to us, the Counsel General has confirmed that the Welsh Ministers do not intend on granting to the UK Government unilateral consent for these Regulations.

It is our understanding that discussions between the Welsh Government and the Secretary of State for Business, Energy and Industrial Strategy are ongoing.

Given the significant effect of these Regulations, we wish to draw these matters to your attention not least because it highlights a concern that, where a dispute exists about whether a matter is within the National Assembly's legislative competence, the UK Government, which is also the Government of England, appears to have the final say.

The Counsel General's letter and Welsh Government written statement are enclosed.

I am also drawing these matters to the attention of Lord Trefgarne, Chair of the House of Lords Secondary Legislation Scrutiny Committee, and Baroness Taylor of Bolton, Chair of the House of Lords Constitution Committee.



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.

