

Mark Drakeford AM
First Minister
Welsh Government

14 January 2019

Dear Mark

Interpretation of the European Union (Withdrawal) Act 2018 and the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

Further to the former First Minister's letter of 7 December 2018 regarding the Animal Welfare (Amendment) (EU Exit) Regulations 2018, there are a number of issues we would be grateful to receive clarification on relating to the Welsh Government's interpretation of the *European Union (Withdrawal) Act 2018*. (the 2018 Act).

The letter states that:

“The enabling power within the Withdrawal Act cannot be used to introduce new policies, but is to be used to address deficiencies within retained EU law.”

It goes on to say that “this is not a new policy but a necessary correction to address a deficiency that would otherwise arise”.

In the section headed “Use of Concurrent Powers in the Withdrawal Bill”, the intergovernmental agreement states that the UK Government will not use its powers to enact new policy in devolved areas but rather they would be used for administrative efficiency only. This suggests that new policy can be enacted by



using the powers to correct deficiencies under the 2018 Act, as does the UK Government's Explanatory Memorandum to the Animal Welfare (Amendment) (EU Exit) Regulations 2018, which we refer to in our first letter and which clearly identifies a change in policy.

In our view what the 2018 Act prevents is the introduction of new policy which is unrelated to correcting deficiencies in EU law that arise from the UK's exit from the EU, and a change in policy is a new policy (unless there is absolutely no choice as to how the change can be effected).

Furthermore, by its nature, correcting deficiencies in EU law may require a substantive policy decision to be taken. While this may, from the Welsh Government perspective, result in the same policy decision being taken as that by the UK Government, under the terms of the intergovernmental agreement, we believe the Welsh Government should have introduced its own Animal Welfare (Amendment) (EU Exit) Regulations.

In addition, the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 used the power to correct deficiencies to, among other things, introduce a new reporting regime in respect of urban waste water and sludge (see, for example, new regulation 12A inserted into the Urban Waste Water Treatment (England and Wales) Regulations 1994).

There were many ways this new reporting regime could have been drafted, therefore a policy decision was made to draft the reporting regime in the way it is set out in the Regulations. Our view is that this amounts to enacting new policy and certainly goes beyond administrative efficiency.

We have considered this example further since we considered these Regulations at our meeting of 7 January and come to the conclusion that because the Regulations enact new policy, they should have been made by the Welsh Ministers, in accordance with paragraph 8 of the memorandum to the intergovernmental agreement.

We would be grateful for your observations on the above points, and as part of those observations, clarification on the meaning of paragraph 8 of the



memorandum to the intergovernmental agreement relating to the use of concurrent powers.

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.

