

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

7 February 2019

Dear Mick,

Thank you for your letter regarding the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. I will answer each of the issues raised in your letter in turn.

You have asked for more information about why functions relating to the Nagoya Protocol have been conferred solely on the Secretary of State.

The legislation relating to the EU Regulation on Access to Genetic Resources and Benefit Sharing (Nagoya Protocol) (EU Regulations 511/2014) contains an intricate mixture of clearly reserved functions, with some others, which can be described as devolved. The existing domestic legislation in this area contains functions, which are undertaken solely by the Secretary of State and the previous Nagoya Protocol (Compliance) (EU Exit) Regulations 2018 and this EU Exit SI continue this approach. It is not possible practically to exercise functions independently by the Welsh Ministers due to this mingling of the devolved and reserved elements.

You also asked for a further explanation about why the Welsh Government is able to state that the other corrections in relation to devolved policy areas do not impact on the National Assembly's legislative competence.

The committee has raised concerns that if the EU Exit SI conferred functions on the Secretary of State relating to the control of pollution of water resources, the operation of paragraph 11(1) of Schedule 7B to the Government of Wales Act 2006 would mean that the Assembly would not have competence to remove that function without the consent of the UK Government. You have requested further detail about 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).

It is the Welsh Government's view that the functions conferred on the Secretary of State in relation to persistent Organic pollutants (POPs); the European Pollutant Release and

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

Transfer Register (EPRTR) and mercury and industrial emissions by this EU Exit SI are not functions exercisable in relation to water supply, water quality, water resources management, control of pollution of water resources, sewerage, rivers and other watercourses, land drainage or flood risk management or coastal protection, being the matters listed in paragraph 11(1)(c) of Schedule 7B to the Government of Wales Act 2006 (“the water matters”).

Each of the functions conferred is exercisable only in relation to a specific aspect of regimes, which each regulate specific substances, or emission(s). Moreover, none of them directly relate to the actual discharge of these substances or emissions into the environment (including water).

These functions are more accurately characterised as being “exercisable in relation to... [the control of] POPs, mercury, the EPRTR and harmonisation of “best available techniques” (BAT) relating to certain industrial activities”. More specifically:

- Regulation 2 confers functions exercisable in relation to POPs waste concentration limits and the use of POPs in accordance with international agreements.
- Regulation 4 confers functions exercisable in relation to reporting on releases of relevant pollutants from diffuse sources where no data exists, adopting guidelines for the monitoring and reporting of emissions and the amendment of technical annexes to the regulation in light of scientific and technical progress or international agreements.
- Regulation 8 confers functions exercisable in relation to mercury export and import restrictions, technical requirements for the environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury, the authorisation of new mercury-added products or manufacturing processes and time limits for the temporary storage of mercury waste.
- Regulation 9 confers functions exercisable in relation to the adoption of BAT conclusions in relation to activities listed in the industrial emissions directive (IED), which concern only the harmonisation of agreed statements of industry BAT for the IED activities.

While such functions might have applications which touch on the water matters (and might even make provision about water), they cannot be directly exercised in relation to the water matters.

For example, while BAT conclusions might set out the current BAT for processes/plant that will include processes/plant that involve discharge of material in liquid form, the BAT conclusions do not prescribe requirements for the actual discharge of pollutants into water, for example. That is determined in relation to individual installations by the environmental regulators pursuant to the environmental permitting regime. Equally, the power to adopt BAT conclusions cannot be used to make provision in relation to water resources/pollution of water resources (or any of the other water matters).

I hope this additional information is helpful to the committee.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a small horizontal line above the 'i' in Evans.

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