

Rebecca Evans AM  
Minister for Finance and Trefnydd  
Welsh Government

31 January 2019

Dear Rebecca

### **The Nutrition (Amendment etc) (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.

First, the written statement refers to Regulations which were laid before the UK Parliament on 16 January 2019. The Regulations were subsequently withdrawn and a new version of the Regulations were laid on 17 January. The later version of the Regulations differ from the version laid the previous day.

It is not clear, from the written statement laid on 18 January, whether the Welsh Government has consented to the most recent version of the Regulations and what role, if any, the Welsh Government had in respect of the re-drafting of the Regulations. We seek confirmation on this point and, more generally, on what process is followed in circumstances where the UK Government withdraws, amends and then re-lays regulations.

It is our view that written statements must document fully and accurately the consent Welsh Government has provided. Where necessary, this should involve the laying of revised written statements to cover subsequent changes to regulations



made on their behalf, however minor the Welsh Government perceives them to be, with an explanation for the changes made.

We have noted that, on 29 January 2019, a revised written statement was issued with a link to the version of the Regulations laid on 17 January. This does not satisfy the concerns and questions raised above.

Secondly, and as with a number of other Regulations which we have drawn to the attention of Welsh Government, while these Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance, they also contain provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf.

Where a function is conferred on the Secretary of State (or a reserved authority) 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 without requiring UK Government consent. If these Regulations confer functions on the Secretary of State, it is not clear whether the restriction in paragraph 11 of Schedule 7B will serve to restrict the Assembly's ability to modify or remove those functions 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 clarification from the Welsh Government on this important constitutional issue.

Thirdly, we noted that the UK Government's consultation on the Regulations was carried out between 3 and 14 December 2018. We also noted that almost a quarter of respondents to the consultation reported negative feedback about the 11 day consultation period.

The Explanatory Memorandum accompanying the Regulations states that the Welsh Government was engaged throughout the development of the consultation and in relation to the amendments included in the Regulations. The Explanatory Memorandum further explains that the Regulations were adapted to incorporate changes and comments that were proposed by the Devolved Administrations.



However, it is not clear whether the consultation sought the specific involvement and views of Welsh public bodies, organisations and individuals etc. We would like clarification on the Welsh Government's current approach to UK Government led consultations on draft Regulations to be made by UK Ministers which impact on devolved areas.

There are also a number of other issues which we draw to your attention.

The written statement does not make clear that the list of retained EU law which is being amended by the instrument, as provided in the statement, is not an exhaustive list. There is a series of retained EU law which are subject to minor and technical amendments by this instrument which have not been included in the list within the written statement.

Additionally, retained EU law has been included in the list of retained EU law which is being amended, when in reality that law is being revoked by this instrument.

Furthermore, on a minor point, in the list of amended retained EU law in the written statement, the first bullet point should read Regulation (EC) 1924/2006 (not 1924/2206).

I would be grateful for a response and clarification on these matters by 7 February 2019. I am copying this letter to Vaughan Gething AM, Minister for Health and Social Services.

Yours sincerely



**Mick Antoniw**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

