



Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff

7 February 2019

Dear *Mick*,

Thank you for your letter of 14 January about the interpretation of the European Union (Withdrawal) Act 2018 ('the 2018 Act') and the Intergovernmental Agreement (IGA) on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks. This letter focused particularly on the Animal Welfare (Amendment) (EU Exit) Regulations 2018, and the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019.

You will have noted the corresponding Welsh SIs have been laid in the National Assembly for sifting. Your committee reported on the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 on 21 January, noting the issue of certificates of competence and recommending the SI be laid according to the affirmative procedure. Your committee's report on the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 SI was published on 21 January and recommended for the negative procedure. We can therefore discuss these SIs as we have seen the complete scope of amendments proposed through the UK SIs and the Welsh SIs.

In respect of the interpretation of the 2018 Act, there is an element of policy choice in deciding the appropriate way in which to address a deficiency, but a policy choice is not necessarily a substantive change to the policy itself. We have given careful consideration to all UK regulations, which make provision in devolved areas and where there is no policy divergence about how to correct the deficiencies, consent has been provided.

We note your view that, in respect of the regulations you have highlighted, there has been a 'new' policy, but we disagree with that assessment. The policy choice is limited to what is necessary to make the law operational on exit.

In both these SIs, we have opted to retain the fundamental aspects of the existing policy, as far as they can be retained once the participation of the EU is removed. This means that in some cases the mode of delivery has needed amendment but, in our view, the substantive policy position has remained unchanged.

The question is what degree of policy change constitutes a new policy, and we do not consider that threshold to be met in this case.

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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.

In terms of the Animal Welfare (Amendment) (EU Exit) Regulations 2018 and Council Regulation (EC) 1099/2009 about the protection of animals at the time of killing, we accept the corrections to the deficiency will have the effect of reducing the number of countries from which certificates of competence will be recognised in the UK post exit. This is clearly a consequence of exit to enable the enforcement framework to remain operational and it also maintains the fundamental policy of a UK-wide certification scheme for slaughterers, with an effective ability to enforce standards.

As the UK Government Explanatory Memorandum makes clear, there is currently a certificate of competence, issued to slaughterers by other Member States, which must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to demonstrate an individual has been trained and successfully assessed as reaching a sufficient level of competence to undertake animal handling, stunning and killing and related operations required of them. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 remove this recognition requirement.

Continued recognition of certificates issued in other Member States would open up potential enforcement issues – we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation. The European Commission has already confirmed certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU.

We have opted to retain the fundamental aspects of our existing policy, which is to remain within the existing UK-wide system for certificates of competence. An alternative would be to adopt a new policy and establish a separate Welsh system for certificates of competence. There was not a compelling policy rationale for doing so at this point, although this option remains open to us in the future should this become Welsh Government policy.

With respect to the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019, we do not consider the amendments introduce a 'new' policy position, but instead place the existing obligations on a domestic footing. Taking the obligation relating to urban waste water as an example – the reporting provision introduced as new Regulation 12A in the Urban Waste Water Treatment (England and Wales) Regulations 1994 is designed to replace the Member State function of producing a situation report to the Commission found in Article 16 of Council Directive 91/271/EEC of 21 May 1991, concerning urban waste water treatment.

Article 16

Without prejudice to the implementation of the provisions of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [5], Member States shall ensure that every two years the relevant authorities or bodies publish situation reports on the disposal of urban waste water and sludge in their areas. These reports shall be transmitted to the Commission by the Member States as soon as they are published.

The same is done throughout this SI in relation to areas such as Nitrates and Bathing Waters among others.

The difference is the current reports will be made public rather than be sent to the Commission. Not to replace this function, or to replace the function on a Wales-only basis, would have been a change from the current policy, where action is taken at a UK level. The Defra Explanatory Memorandum states: "Where there was a reference in an EU Directive to a Member State reporting to the European Commission, for example the requirement in the

Urban Waste Water Treatment Directive to provide a situation report on the disposal of urban waste water and sludge, this is being replaced by a requirement in the domestic legislation that such an environmental report is to be made publicly available. This is being done as the Department wishes to remain transparent about its environmental performance”.

Our policy position remains the same – it is important to be transparent about environmental performance and therefore this function should be retained. The cross-border nature of flooding and water management (where the boundaries of devolved competence do not match the geographical border) means we have decided to retain our existing approach of reporting on a UK level.

We appreciate the points you have raised about the interpretation of the 2018 Act and the application of the IGA; in particular the regulations you have highlighted as examples.

This valuable discussion highlights the careful consideration which needs to be given to the correction of deficiencies by regulations under the 2018 Act and we will ensure we will continue to assess carefully the regulations made by the UK on our behalf so they are made in accordance with the IGA.

Best wishes,

Mark

Mark Drakeford