

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 of 14 January regarding the scrutiny of regulations arising from the European Union (Withdrawal) Act 2018.

The EU Exit legislation programme requires both Welsh Ministers and the National Assembly to consider an unprecedented amount of legislation in a very short period of time. Determining which elements fall within devolved competence is one of factors Welsh Ministers must determine when considering how best to prepare for Brexit. It is important to ensure our approach to analysing issues of competence is proportionate, while being mindful of the importance of protecting and preserving that competence. I am content our approach secures both aims.

As the Welsh Government has previously observed, the written statements do not detail which parts of SIs Welsh Ministers have consented because they are consenting to the whole SI. Where an SI is in at least part devolved, Welsh Ministers will consider whether to consent.

There are several reasons why Welsh Ministers have adopted this approach. When an SI is partially devolved, the non-devolved elements will affect the exercise of the devolved elements because these elements work together as a whole. We must consider the effect of the SI on the legislative competence of the National Assembly as well as the executive competence of the Welsh Ministers. To restrict our consideration to the devolved areas only would do a disservice to devolution in Wales.

Logically, it follows that the priority for analysis of competence is whether an SI is within competence or not, at least in part. Issues of competence are often not clear-cut. The devolved and non-devolved elements of an SI are, in many cases, so intertwined that it can become artificial to draw rigorous distinctions between them. Taking a proportionate approach that focuses on the impact of the SI means the exact boundary of devolution

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.

within the SI is not of immediate relevance, as long as we are confident that it falls within competence to an extent.

Once the presence of a devolved element has been identified, officials and lawyers can focus on a detailed analysis of the effect and impact of the SI; negotiations about how functions are to be exercised, and considerations about whether the UK SI sets out an approach that aligns with that of the Welsh Government's.

Your letter asks for information about the preparation of the explanatory memoranda to be laid in Parliament. In general, the Welsh Government does not routinely provide the UK Government with material for inclusion in these. The drafts have been shared with the Welsh Government in advance of being laid in Parliament and officials have considered and commented as appropriate.


You also raise the issue of directly-applicable EU law. None of the regulations laid in the National Assembly have so far amended directly-applicable EU law. SIs amending directly-applicable EU law are being considered on a case-by-case basis and the Welsh Ministers will keep this approach under review. In the cases seen so far, the Welsh Government's approach has been to retain a UK-wide approach, rather than create new policies and delivery structures in the immensely constrained circumstances of Brexit.

Powers to amend directly-applicable EU law were included in the EU (Withdrawal) Act at the request of the Welsh Government to ensure parity between the powers being conferred on the Welsh Ministers and UK Government Ministers. Having the powers to amend directly-applicable EU law means that taking a UK-wide approach has been a conscious policy choice rather than one we are compelled to accept due to a lack of powers to do otherwise. It also gave the Welsh Ministers the flexibility to consider how best to make legislation addressing directly-applicable EU law.

Finally, you requested information about which Welsh EU Exit SIs were not dependent on the UK legislation. An analysis of the Welsh EU exit legislation programme indicated the only Welsh EU Exit SI, which did not have a dependency on UK EU Exit legislation was the Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019. This was laid for sifting as scheduled on 29 January. All other SIs have links with the UK's legislative programme to a greater or lesser extent. This is a consequence of EU law having a UK-wide impact as the UK is the Member State.

I hope this information is helpful to the committee.

Yours sincerely,



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