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Y Gweinidog Cyllid a'r Trefnydd  
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Llywodraeth Cymru  
Welsh Government

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
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7 February 2019

Dear Mick,

Thank you for your letter regarding the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. I will address each of the points you raise in your letter in turn.

There is not a set process for how the Welsh Government responds when an EU Exit SI is withdrawn and re-laid by the UK Government. The Welsh Government's actions depend on why the SI was withdrawn, and what changes are required to the SI before it is re-laid in Parliament. A very small number of SIs have been withdrawn and re-laid and the Welsh Government has considered each on a case-by-case basis.

In the majority of cases, the SI has been withdrawn because minor errors have been detected (such as spelling mistakes and inaccuracies in EU Regulation reference numbers). In these cases, officials have considered no action is required, as these minor corrections do not affect the substance of the SI, nor do they affect the consent of the Welsh Ministers. In the very small number where more substantive changes have been required, officials have worked with their counterparts in the UK Government to understand the rationale and impact of the changes. Where the changes have had a substantive impact on an SI, Ministers have been engaged and a decision has been taken about whether the changes materially affect the consent of the Welsh Ministers and whether to confirm or withdraw consent to the SI.

In this particular case, Welsh Government officials were not informed about the SI being withdrawn and re-laid until after it was laid for the second time on 17 January. Officials were unaware of any issues up to this point but they have subsequently been made aware that errors were spotted in two schedules of the regulations shortly after they were laid on 16 January following legal validation.

Further to this, officials were last week informed by their UK Government counterparts that further minor amendments were requested by the Lords legislative committee, requiring the regulations to be laid for a third time on 30 January. Neither sets of amendments has changed the purpose or effect of the regulations. Officials are content the final regulations

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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.

laid by the UK Government on 30 January reflect the approach agreed by the Minister for Health and Social Care and the Counsel General and Brexit Minister.

I note your view that when an SI is withdrawn and re-laid, the corresponding written statement should also be withdrawn and re-issued. This is a view, which clerks have also communicated to officials.

Our reading of SO.30C is that this is not required to comply with Standing Orders, and where the corrections have been very minor and have no impact on the substance of the SI (such as rectifying spelling errors), it would add no value to highlight these.

However, if you feel it would be beneficial for the transparency of the process, we can lay revised written statements when UK SIs are withdrawn and re-laid for the rest of the EU Exit SI programme.

Thank you for also for bringing the drafting issues in the written statement for this SI to our attention. These matters can be addressed in a revised written statement.

You have also asked for more information about the Welsh Government's approach to UK-led consultations about the EU Exit SIs. In general, EU Exit SIs have not been subject to public consultation as they make technical corrections to remedy deficiencies in the statute book. However, there are exceptions where consultation is considered necessary. In these particular cases, the Welsh Government works with the UK Government to establish what kind of consultation is required, depending on the changes to be made and who will be affected.

The Nutrition (Amendment etc.) (EU Exit) Regulations 2019 required a consultation under Article 9 of Regulation (EC) No 178/2002. A shortened consultation period of two weeks was held for these regulations. This was considered necessary to ensure UK officials met the deadline to lay the regulations and – given the processes and procedures outlined in the regulations – replicate those set out in current EU law. They do not introduce any additional burdens for industry or enforcement bodies. This consultation was shared with relevant stakeholders in Wales but no responses were received.

You have asked for some clarification on the exercise of concurrent powers. I refer you to my response to your letter about plant breeders' rights, which raised the same point about the effect on the National Assembly's competence of the creation of concurrent powers and conferral of functions on UK-wide bodies. I trust this will provide the clarity which you have requested.

Yours sincerely,



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