



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

14 February 2019

Dear Mick,

Thank you for your letter of 6 February regarding The Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019.

There were errors in the written statement under SO30C, for which I apologise. It was an administrative error where only the text relating to equalities was included. The revised written statement was laid within a few days of the error being noticed. I can confirm that the version laid on 25 January is the complete version of the SO30C written statement.

You requested clarification about which functions are affected by this SI, how they will be exercised and whether they are new functions. The Welsh Ministers have no extant functions under existing procurement legislation and therefore the executive powers of the Welsh Ministers are not affected by this instrument. In terms of the nature of functions being created by this instrument, I thought it best to answer this by specifying each of the functions below. References to “regulations” are to regulations in the SI.

The following functions have been transferred to the Minister for the Cabinet Office (“MCO”) where the prior consent of the Welsh Ministers is required in relation to devolved Welsh authorities as defined in section 157A GoWA 2006 (“DWAs”) - see regulations 5(56), 7(31) and 9 (63) for the full provisions in relation to consent:-

- (i) Amendment of electronic means of communication in the submission process - regulations 5(19) Public Contracts Regulations 2015 (PCR 2015) and 9 (27) Utilities Contracts Regulations 2016 (UCR 2016).
- (ii) Amend the list of technical details and characteristics that tools and devices for the electronic receipt of documents must possess – regulations 5(19) (PCR 2015) and 9 (27) (UCR 2016).

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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.

- (iii) Update the list of international treaties ratified by the UKG - regulations 5(37) (PCR 2015), 7(21) (CCR 2016 and) and 9 (45) (UCR 2016.)

The following functions have been transferred to the MCO and the Welsh Ministers to be exercised concurrently:

- (i) To request reports under regulation 31(16) Concession Contracts Regulations 2016 (CCR 2016) – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 7(17).
- (ii) To request reports under regulation 99 Utilities Contracts Regulations 2006 (UCR 2016) – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 9(58).

The following functions have been transferred to the Cabinet Office, some of which are exercised concurrently with the Welsh Ministers (as indicated)

- (i) The UK e-notification system which will replace the Official Journal of the European Union in terms of the notices required to be submitted. Applies to the PCR 2015, UCR 2016 and UCR 2016.
- (ii) To request reports under regulation 32 PCR 2015 – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 5(27).
- (iii) To request reports under regulation 84 PCR 2015 – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 5(55).

The following functions have been transferred to the MCO

- (i) Review thresholds limited to ensure compliance with the Agreement on Government Procurement (“GPA”) - the UK is applying for membership of it. This applies to the PCR 2015, UCR 2016 and UCR 2016.
- (ii) To review the Common Procurement Vocabulary codes - regulation 16.
- (iii) To request reports under regulation 8(3) Utilities Contracts Regulations 2006 - regulation 12(f).
- (iv) To amend the list of arms, munitions and war material adopted by the Council of the EEC in its decision 255/58 of 15th April 1958 – regulations 5(3) (PCR 2015), 7(4) (CCR 2016) and 9(3) (UCR 2016).
- (v) To request certain information in relation to contracts awarded by utilities in relation to Northern Ireland – regulation 9(21).

With respect to Statutory Instrument Consent Memoranda, the new arrangements put in place via this Statutory Instrument are largely made in relation to UK subordinate legislation. SO30A requires a SICM to be laid in relation to any Statutory Instrument that is laid before the UK Parliament by UK Ministers which makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly. The only changes made to UK primary legislation are in relation to The Equality Act 2010, The Public Services (Social Value) Act 2012 and The Greater London Authority Act 1999. A SICM has been laid in respect of the changes made to The Equality Act 2010 as this is UK primary legislation

that is within the legislative competence of the Assembly. The amendments to the other two Acts do not require a SICM as these Acts are not within the devolved competence of the Assembly.

For the sake of completeness, and as per our previous letters, Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions.

I hope this 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, flowing style.

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