

Rebecca Evans AM  
Minister for Finance and Trefnydd

18 October 2019

Dear Rebecca

### **UK regulations relating to exiting the European Union**

The Constitutional and Legislative Affairs Committee considered a number of Welsh Government written statements, issued under Standing Order 30C, for the following regulations at its meeting on 16 September 2019:

- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Health and Safety (Amendment) (EU Exit) Regulations 2018
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019
- The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

There are a number of overlapping concerns which we wish to draw to your attention.

### ***Dispute over devolved matters***

The written statement for The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 indicates that there has been disagreement with the UK Government as to whether the Common Organisation of the Markets (CMO) and Common Agricultural Policy (CAP) are devolved or reserved, meaning the UK Government did not ask for the consent of the Welsh Government. A similar dispute is referenced in the written statement for The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019.

However, we noted that the Welsh Government's subsequent handling of each of the Regulations appears to be different. With regards to the former, the written statement indicates that, despite the dispute over whether consent was needed, the Welsh Government was content with the effect of the Regulations. With the latter, we noted from the statement that Welsh Government initiated correspondence with the UK



Government informing it that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence. We would welcome clarification on why different actions were taken. We would also be grateful if you could provide details of the UK Government's response to the correspondence.

### ***Impact on legislative and/or executive competence***

The second matter which we wish to highlight relates to the impact that regulations may have on legislative and/or executive competence. We are concerned that the written statements for both The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 and The Health and Safety (Amendment) (EU Exit) Regulations 2018 do not specify which legislative powers of the National Assembly or executive powers of the Welsh Ministers are affected by the regulations.

As you will be aware, Standing Order 30C.3(ii) requires the written statement to "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Minister's executive competence". We would therefore be grateful if you would clarify which powers are affected in each case.

### ***Impact on legislative and/or executive competence - concurrent functions***

The final matter we wish to draw to your attention relates to the potential negative impact on the National Assembly's legislative competence by the exercise of concurrent functions.

We have, over the past year, regularly raised the issue of concurrent functions impacting negatively on the National Assembly's legislative powers (by virtue of engaging paragraph 11 of Schedule 7B to the Government of Wales Act 2006). This matter is relevant to: The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019, The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019, and The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019.

However, there are differences in how the respective written statements comment on the issue. In respect of the latter mentioned regulations, the written statement states that Welsh Government officials are working with the Office of the Secretary of State for Wales with a view to amending Schedule 7B to the *Government of Wales Act 2006* by an Order under section 109A of that Act. This information is not provided in the written statements for the first and second sets of regulations mentioned above. The Counsel General's letter to us, dated 9 April 2019, stated that a section 109 Order was being considered by the Welsh and UK Governments. In evidence to us on 16 September, the Counsel General said he had not received a draft of the section 109 Order, and suggested there was a possibility that the UK Government was considering whether the Order should tackle issues identified to date or whether it would address broad principles.



We would be grateful for clarification on whether the issues identified in all three above-mentioned regulations will be addressed in a forthcoming section 109 Order. We would also welcome an update on the position and timing of a forthcoming section 109 Order (or Orders), including whether any such Order(s) will address only the specific issues raised to date or whether it/they will make broader changes to the test set out in paragraph 11 of Schedule 7B.

I am copying this letter to Jeremy Miles AM, the Counsel General.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw AM**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.  
We welcome correspondence in Welsh or English.

