



Llywodraeth Cymru
Welsh Government

Sarah Sargent
Clerk of Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Dear Sarah

UK regulations relating to exiting the European Union

The response from the Minister for Environment, Energy and Rural Affairs dated 11 November to the Chair of Constitutional and Legislative Affairs Committee (CLAC) promised that officials would provide further information in respect on the impact on legislative and executive competence. I now enclose that information in relation to following two statutory instruments.

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 transferred functions to the Secretary of State to recognise producer organisations and to publicise a list of recognised producer organisations as well as to permit producer organisations to outsource any of their activities in specified sectors (Regulation 1299/2007 and Regulation 2016/232). The Secretary of State also has the function of making a determination of equivalence before any eggs may be imported into the UK (Regulation 589/2008). In addition, functions have been transferred to the Secretary of State in relation to the fixing of export refunds and the operational running of the export refund system for agricultural produce (Regulation 1370/2013) and in respect of marketing standards of agricultural products. The amendments have effect so as to transfer power to the Secretary of State to set terms and conditions in relation to contractual relations within the milk and milk products sector. Power has also been transferred to the Secretary of State in relation to the export refund system for agricultural produce. As regards Regulations 1370/2013 and Regulation 510/2014, the Secretary of State has functions concerning the fixing of export refunds and the operational running of the export refund system for agricultural produce.

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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 respect of Regulation 511/2012, Article 149(2) (c) of Regulation EU 1308/2013 provides the legal basis for Regulation 511/2012. Article 149(2) (c) relates to contractual relations and negotiations in the milk and milk products sector. Article 2 of Regulation 511/2012 relates to notifications of the volumes of raw milk covered by contractual negotiations. These notifications will now have to be made to the Competition and Markets Authority.

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 transfer functions of both an administrative and legislative nature to the Secretary of State, exercisable by them alone. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 ("GoWA"). A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The conferral of an administrative function on the Competition and Markets Authority potentially engages paragraph 10 of Schedule 7B to GoWA. This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate (UK) Minister consents to the provision. A future Assembly Bill seeking to remove or modify these functions would require the consent of the appropriate Minister of the Crown.

As CLAC has previously been informed, we have engaged with the UK Government and reached an agreement in principle that this will be addressed by way of amendments to legislative competence in a s.109 Order; specifically, amendments to the consent requirements in paragraphs 8 and 11 of Schedule 7B of GoWA.

The Health and Safety (Amendment) (EU Exit) Regulations 2018

The amendments made by Health and Safety (Amendment) (EU Exit) Regulations 2018 to the Genetically Modified Organisms (Contained Use) Regulations 2014 and the Control of Major Accident Hazards Regulations 2015 do not have effect so as to transfer any functions.

The Genetically Modified Organisms (Contained Use) Regulations 2014 cover all aspects of contained use involving genetically modified micro-organisms (GMMs) and the human health aspects of the contained use of larger GMOs (for example, GM animals and plants). Acting jointly, the Health and Safety Executive (HSE) and the Secretary of State for Defra are the competent authority in England and Wales responsible for the 2014 Regulations. These functions are delegated to officials of the HSE and Defra. Although not part of the competent authority, officials of the Welsh Government are involved in all matters related to GMO contained use in Wales. The amendments made by the Health and Safety (Amendment) (EU Exit) Regulations 2018 remove a redundant reference and amend requirements for the competent authority to notify European Economic Area (EEA) States and report to the European Union which will no longer be appropriate once the UK leaves the EU.

The Control of Major Accident Hazards Regulations 2015 are intended to prevent on-shore industrial major accidents and to limit their consequences to people and the environment. The Regulations lay down rules for the prevention of major accidents which might result from certain industrial activities sites involving the production, use or storage of dangerous substances at or above certain thresholds, and the limitations of their consequences. The amendments made by the Health and Safety (Amendment) (EU Exit) Regulations 2018 relate to the provision of information, the requirement to provide information to and advise Member States, provide information to the European Commission and in relation to the contents of external emergency plans which will no longer be appropriate once the UK leaves the EU. A new definition of 'international organisation' is also being inserted by these Regulations for consistency under the domestic regime. The functions in respect of the provision of

information are conferred on the competent authority which, under the Control of Major Accident Hazards Regulations 2015, means, in relation to an establishment in Wales, the Natural Resources Body for Wales acting jointly with the Health and Safety Executive.

The Health and Safety (Amendment) (EU Exit) Regulations 2018, have no impact on the National Assembly for Wales' legislative competence, nor do they impact on the Welsh Ministers ability to exercise functions in relation to Wales."

Yours sincerely

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Rural Economy and Legislation