

Mike Hedges MS
Chair
Climate Change, Environment and Rural Affairs Committee

17 November 2020

Dear Mike

Written statements under Standing Order 30C: The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020

We considered the Welsh Government's written statement, laid under Standing Order 30C, in respect of **The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020** at our meeting on **9 November 2020**.

The Regulations that are the subject of the written statement make numerous amendments to domestic and EU derived legislation, the purpose of which is to provide for the domestic administration and enforcement of Geographical Indicators (GIs) for Great Britain.

We are aware of the **work** your Committee undertook last year on protected food names and, because of your Committee's general interest and responsibilities in this area, we wish to draw the Regulations and the written statement to your attention for the reasons set out below.

The UK and EU agreed in the Withdrawal Agreement's Ireland-Northern Ireland Protocol that Northern Ireland GIs will continue to be protected by the EU's GI regime after the end of the transition period. You may be aware that the future of GIs between the UK and EU is currently being negotiated as part of the future relationship negotiations. In the absence of an agreement, GB products will need to comply with the EU's third country application procedure to obtain EU registration.

The amendments made by these Regulations will therefore create working GB GI schemes, and domestically enforceable UK regulations for the wine and spirit drink sectors with the dual aim of ensuring continued protection for 86 existing UK product names registered as GIs under EU schemes and ensuring that the UK continues to meet its World Trade Organisation obligations.



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The Regulations also provide for a new GI logo to be used on products protected under the scheme, i.e. Welsh lamb as a protected food will be accompanied in the future by a 'UK protected' logo.

There is a disagreement between the Welsh and UK Governments as to whether GI schemes are devolved. In its written statement, the Welsh Government states its view on this point:

"Welsh Government officials are of the view that the 2020 Regulations contain provisions conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence.

(...)

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). Previous instruments that are being consolidated into the 2020 Regulations have been the subject of continued correspondence between Defra and the Welsh Government, with Welsh Government officials disputing Defra's position that GIs relate to reserved matters."

However, Welsh Ministers have agreed to having a 'meaningful role' in the governance arrangements for the GI scheme. This role has been secured via an intergovernmental agreement; as your Committee will be aware, such agreements are not binding on either government. Furthermore, this solution to the dispute does not, of course, resolve the issue as to whether GI schemes are devolved. No intergovernmental agreement appears to have been published.

You may also wish to be aware that the Regulations create concurrent functions exercisable by both the Welsh Ministers and UK Ministers. If the Senedd wishes to remove the UK Minister element of a concurrent function, then the UK Government would have to consent to the removal. To that extent, the Regulations impact on the legislative competence of the Senedd. The Welsh Government is in discussions with the UK Government regarding an Order in Council made under section 109 of the *Government of Wales Act 2006*. Such an Order would negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions, but the timetable for this Order is not yet available.

You will be aware that Food Geographical Indications (Protected Food Names) remain one of the common framework policy areas that is contested. The UK Government's September 2020 common frameworks analysis states that this matter is subject to ongoing discussions between the governments. It is unclear to us why the UK Government has proceeded with these Regulations when such discussions have not been concluded. Therefore, whilst these Regulations seek to maintain the current EU regime post-transition, should any government of the UK seek to diverge from the scheme introduced by these Regulations there is no agreed process for managing such a situation.

We are also aware that your previous work on this issue noted concerns about the impact of any future trade agreements on a GI scheme.



I am writing to the Welsh Government to express our concerns with the making of the Regulations, particularly as they raise matters of constitutional, political and legal importance. I also intend to highlight the increasing complexity of the devolution settlement in Wales, as demonstrated by the dispute over the Regulations.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw AM
Chair

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

