

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

1 March 2019

Dear Rebecca

The Nutrition (Amendment etc) (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government revised written statement issued under Standing Order 30C on 8 February 2019 for the above named regulations at its meeting on 18 February 2019.

In considering the revised written statement we noted, in particular, the information relating to the impact the regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence. The written statement includes the following paragraphs:

"The Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance. It also contains provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf.

Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes Schedule 7B to Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas."

We believe that the powers given to the Welsh Ministers by virtue of the Regulations are not concurrent powers, nor are they "transferred" as described in the written statement. Rather, the powers appear to be exercised by the Secretary of State on behalf of, and with the consent of, the Welsh Ministers.

In addition, as the powers in question do not appear to fall within the criteria in paragraph 11 of Schedule 7B to the 2006 Act, which would restrict the Welsh



Ministers ability to remove consent at a later date once it has been given, it is not clear in what way the Assembly's competence may be restricted.

If the Welsh Government is of the view that these Regulations could have an effect on the Assembly's future competence, we respectfully suggest that it clearly explains which parts of paragraph 11 of Schedule 7B to the 2006 Act are engaged.

We have already highlighted with the First Minister, in our letter to him of 21 February 2019, our broader concerns about the unintended restrictions on the National Assembly's competence created by powers conferred in EU Exit regulations and other legislation.

In the meantime, I would be grateful for clarification on the specific issues we raise about these regulations by 11 March 2019. I am copying this letter to Vaughan Gething AM, Minister for Health and Social Services.

Yours sincerely



Mick Antoniw

Chair

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

