

Rebecca Evans AM  
Minister for Finance and Trefnydd

11 July 2019

Dear Rebecca

### **The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019**

We considered the Welsh Government written statement issued under Standing Order 30C for the above named regulations at our meeting on 1 July 2019.

I am writing to raise concerns with the approach that has been adopted in respect of these regulations.

The Explanatory Memorandum prepared by the UK Government to accompany them states:

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Public authorities can be devolved in nature and therefore we have consulted with the Scottish and Welsh Governments during the development of this instrument. Provisions have been included so that an application by a devolved Welsh authority (as defined in section 157A of the Government of Wales Act 2006 c. 32) or a Scottish public authority (as defined in section 126(1) of the Scotland Act 1998 c. 46) must not be approved or rejected by the Secretary of State without agreement from the devolved Ministers (the Scottish or the Welsh Ministers, as appropriate). This will ensure that devolved matters are fully respected in both Scotland and Wales.

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However, contrary to what the Explanatory Memorandum states, by virtue of regulation 6(1)(e) of the Regulations, where the Welsh Ministers do not agree with the decision of the Secretary of State in relation to an application from a public



authority wishing to become a member of an European Grouping of Territorial Cooperation, the Secretary of State must reject the application.

It would appear therefore that the Welsh Government has adopted a position whereby it is potentially permitting the Secretary of State to reject an application by Welsh public authorities, that it would itself be able to agree if it had made its own regulations using the powers available to the Welsh Government under the European Union (Withdrawal) Act 2018.

In our view, as well as being difficult to comprehend, this is not compatible with, and goes beyond, paragraph 8 of the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks which refers to powers being used for administrative efficiency.

It is also unclear why the Welsh Government has not made regulations itself when there appears to have been a slowdown in its legislative activity as regards the making of subordinate legislation.

In expressing our view, we also note and welcome that the House of Commons in its Twenty-seventh Report of Session 2017–19 has said about the instrument:

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2.5 It is not clear why the Secretary of State has to be in agreement with the devolved Minister in order for an application from a devolved public authority to be granted and we therefore believe the House would benefit from further scrutiny of this instrument.

**2.6 We therefore recommend that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure) on the ground that it is of political importance.**

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We would therefore welcome an urgent explanation as to why the Welsh Government has decided against making its own regulations in this policy area.

I am copying this letter to the First Minister and Counsel General, as well as the



Chairs of the House of Commons European Statutory Instruments Committee  
and House of Lords Secondary Legislation Scrutiny Committee.

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.

