



PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

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Rt Hon Greg Clark
Secretary of State for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

11 January 2019

Dear Greg

I am writing regarding the State Aid (EU Exit) Regulations 2019 Statutory Instrument laid by the Department for Business, Energy and Industrial Strategy on 21 January 2019. I have received a letter from Mick Antoniw, Chair of the National Assembly for Wales Constitutional and Legislative Affairs, informing me of the concern of his Committee and the Welsh Government that the UK Government has not sought the Consent of Welsh Ministers for these regulations, in line with the Intergovernmental Agreement on the European Union (Withdrawal) Bill (a copy of this letter is attached).

As I understand the situation, there is acknowledged disagreement between the UK and Welsh Government as to whether the area of State Aid is a reserved or devolved matter. I also understand that the Welsh Government has requested that the UK Government provide an explanation for the position that State Aid is a reserved matter, but have not received such an explanation. PACAC does not have a position on whether State Aid is a reserved matter, however, the Committee has been clear on the importance of developing and maintaining good intergovernmental relations.¹ The Intergovernmental Agreement on the European Union (Withdrawal) Bill was reached after great efforts on the part of the UK and devolved Governments, and so it important to make every effort to maintain good intergovernmental relations.

While I understand that the Government's position is that State Aid is reserved, this is clearly an area of disagreement. Given this dispute, to help maintain good intergovernmental relations I would encourage the UK Government to publish the explanation for why it regards State Aid as a reserved matter and to make efforts to consult with devolved Governments over regulations in such areas in dispute.

Sir Bernard Jenkin MP

Chair, Public Administration and Constitutional Affairs Committee

Copied to: Rt Hon David Lidington MP, Chancellor of the Duchy of Lancaster;
Mick Antoniw AM, Chair of the National Assembly for Wales Constitutional and Legislative Affairs

¹ Public Administration and Constitutional Affairs Committee, Eighth Report of the 2017-19 Session, Devolution and Exiting the EU: reconciling differences and building strong relationships, HC 1485

Sir Bernard Jenkin
Chair
Public Administration and Constitutional Affairs
Committee
House of Commons

6 February 2019

Dear Sir Bernard

The State Aid (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement (issued under Standing Order 30C of the National Assembly for Wales) for the above named regulations at its meeting on 4 February 2019.

These Regulations transfer functions to non-devolved public authorities, namely the Competition and Markets Authority and the Secretary of State; and giving functions to non-devolved public authorities restricts the legislative competence of the National Assembly for Wales.

As noted in a recent letter to Lord Trefgarne, Chair of the House of Lords Secondary Legislation Scrutiny Committee, regarding the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, functions transferred to a public authority other than a devolved Welsh authority engage paragraph 10 (and in this case paragraph 11) of Schedule 7B to the Government of Wales Act 2006. In brief, this means that if the National Assembly for Wales wishes to pass primary legislation to remove or modify such functions in future, it will need the consent of the UK Government.

As with the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, this is being done without any prior notice being given to the National Assembly for Wales and, of course, without the Regulations being laid before the National Assembly for Wales.

However, in this case, there is the added problem that the Welsh Government and the UK Government disagree as to whether State Aid is devolved.



At our meeting we considered correspondence from the Welsh Government's Counsel General. In his letter to us, the Counsel General states:

"The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent. The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response."

The approach being adopted by the UK Government therefore appears to be a breach of paragraph 8 of the Intergovernmental Agreement on the European Union (Withdrawal) Bill, which states:

"The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency."

In reaching this view we also note that the UK Government has not responded to the Welsh Government's request for an explanation of their position that State Aid is a reserved matter.

In his letter to us, the Counsel General has confirmed that the Welsh Ministers do not intend on granting to the UK Government unilateral consent for these Regulations.

It is our understanding that discussions between the Welsh Government and the Secretary of State for Business, Energy and Industrial Strategy are ongoing.

Given the significant effect of these Regulations, we wish to draw these matters to your attention not least because it highlights a concern that, where a dispute exists about whether a matter is within the National Assembly's legislative competence, the UK Government, which is also the Government of England, appears to have the final say.

The Counsel General's letter and Welsh Government written statement are enclosed.

I am also drawing these matters to the attention of Lord Trefgarne, Chair of the House of Lords Secondary Legislation Scrutiny Committee, and Baroness Taylor of Bolton, Chair of the House of Lords Constitution Committee.



Yours sincerely



Mick Antoniw
Chair

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

