

Lord Trefgarne
Chairman
Secondary Legislation Scrutiny Committee
House of Lords
London

14 January 2019

Dear Lord Trefgarne

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

As part of its preparations for exiting the European Union, the Welsh Government has consented to the UK Government making many (around 150) correcting statutory instruments under the *European Union (Withdrawal) Act 2018* (the Withdrawal Act) on behalf of the Welsh Government. These are correcting statutory instruments that the Welsh Government could make under the Withdrawal Act, but has chosen to consent to the UK Government making on its behalf instead (in accordance with Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks).

For each such statutory instrument, the Welsh Government notifies the National Assembly, giving brief details of the statutory instrument in question. The Welsh Government's notification in relation to the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 (the PBR Regulations) has raised a particular issue. The issue was summarised by the Welsh Government in its notification as follows:

“These regulations confer functions on the Controller of Plant Variety Rights, an officer established by the Plant Varieties Act 1997 as the head of the Plant Variety Rights Office. The Controller acts under the direction of and is



appointed by the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly.

Functions transferred to a public authority other than a devolved Welsh authority would engage paragraph 10 of Schedule 7B to the Government of Wales Act 2006 (the 2006 Act). This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas."

Under paragraph 10 of Schedule 7B to the 2006 Act, the National Assembly cannot remove or modify any functions of a public authority (other than the functions of a devolved Welsh authority and the functions captured by the exceptions in paragraph 10, none of which are relevant in this case) unless the appropriate UK Government Minister consents. Therefore, by conferring functions on the Controller of Plant Variety Rights (a non-devolved Welsh authority), the PBR Regulations restrict the Assembly's legislative competence to pass primary legislation, albeit in a narrow field. For example, if the National Assembly wished to pass a Bill that removed or modified the functions that are conferred on the Controller of Plant Variety Rights by the PBR Regulations, then the Assembly could not do so without UK Government consent.

We accept that subordinate legislation is, in general, a matter for governments. However, given the effect the PBR Regulations have on this legislature, we wanted to bring the issue to your attention. The issue becomes particularly stark when summarised like this: the Welsh Government has consented to the UK Government making a negative resolution statutory instrument that restricts the legislative competence of the National Assembly for Wales.

We are also writing to the Welsh Government, voicing our concern about the effect of the PBR Regulations and dismay that the National Assembly was not even given



advance warning of them.

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

Chair

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

