

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

17 November 2020

Dear Lesley

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**.

You will know that the purpose of the Regulations is to create working Geographical Indicator (GIs) schemes for Great Britain, 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.

We have taken an interest in the progress of the common frameworks programme, particularly as the establishment of these frameworks is intrinsically linked to the **Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks**, and the legislation that is being brought forward under the terms of that Agreement.

Where a framework is legislative (or part legislative) in nature and that legislation is laid before the Senedd, it is our intention to report in accordance with our remit under Standing Order 21, in addition to reporting on any broader constitutional matters. You will be aware that we adopted this approach with the recent Greenhouse Gas Emissions Trading Scheme Order 2020.

The making of the Regulations is relevant to common frameworks and it for these reasons that we set our concerns below.

We are aware that Food GIs (Protected Food Names) remain one of the common framework policy areas that is contested. The UK Government's September 2020



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common frameworks analysis states that this matter is subject to ongoing discussions between the governments. It is therefore unclear to us why the UK Government has proceeded with these Regulations when such discussions have not been concluded. We would be grateful to receive an explanation of the Welsh Government's understanding on this point.

Furthermore, whilst these Regulations seek to maintain the current EU regime post-transition, we are unclear how, should any government of the UK seek to diverge from the scheme introduced by these Regulations, the process for managing such divergence and any potential dispute would be managed. Again, we would be grateful to receive an explanation of the Welsh Government's view on this matter.

We are also aware that, initially, there was UK-wide agreement that a new GI scheme (to replace the EU GI scheme) would be put in place via primary legislation. While far from ideal, we consider that a UK Bill to deliver this aim would have provided some opportunity for discussion and scrutiny in the Senedd via the legislative consent process.

We acknowledge that, once again, these Regulations create concurrent functions exercisable by both the Welsh Ministers and UK Ministers, and have noted the view expressed in the written statement:

“The 2020 Regulations also contain provision that enables functions conferred on the Welsh Ministers to be exercisable by the Secretary of State in relation to Wales with consent of the Welsh Ministers. Further, certain functions are conferred on the Secretary of State alone, but are exercisable in relation to Wales only with the consent of the Welsh Ministers. These functions have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, Welsh Government officials are in negotiations with the Office of the Secretary of State for Wales in relation to an Order under section 109 of GoWA to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.”

We are all aware that if the Senedd wishes to remove the UK Minister element of a concurrent function, then the UK Government would have to consent to that removal. To that extent, and as highlighted in the written statement, the Regulations impact on the legislative competence of the Senedd.

We recognise that 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* to negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions. However, it is concerning that the timetable for this Order is not yet available. We would be grateful to receive an update on this particular matter.

That there is also a disagreement between the Welsh and UK Governments as to whether GI schemes are devolved adds to our concerns and serves to further highlight the increasing complexity of the devolution settlement in Wales.



We note the Welsh Government's position as set out in the written statement:

"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, following discussions, it was agreed that Welsh Ministers will have a meaningful role in the governance arrangements for the GI scheme."

The Welsh Government securing an intergovernmental agreement with the UK Government that would provide the Welsh Ministers with a 'meaningful role' in the governance arrangements for the GI scheme does not, in our view, represent a satisfactory resolution to this matter. You will know that we have been consistent in voicing our concerns about the frequency of such agreements, particularly as they are not binding on either government. Furthermore, this solution to the dispute does not resolve the issue as to whether GI schemes are devolved. The terms of the agreement entered into by the Welsh and UK Governments should be made publicly available and shared with the Senedd as soon as possible.

We have drawn these matters to the attention of the Senedd's Climate Change, Environment and Rural Affairs (CCERA) Committee. My letter to the Chair of the CCERA Committee is enclosed for your information.

I am also copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

We would be grateful to receive a response to this letter by 1 December 2020

Yours sincerely



Mick Antoniw AM
Chair

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



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 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
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