

**Jeremy Miles AC/AM**  
**Y Cwnsler Cyffredinol a Gweinidog Brexit**  
**Counsel General and Brexit Minister**



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-L/KS/0051/19

Mick Antoniw AM  
Chair,  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

8 March 2019

Dear Mick,

Further to my letter of 25 January updating you on the Welsh Ministers' approach to the UK Government's laying of the State Aid (EU Exit) Regulations in Parliament, I am writing to inform you of the Welsh Government's position in respect of a connected Statutory Instrument: **the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2019** ('the PSO SI').

As you are aware the Department for Business, Energy and Industrial Strategy laid the **State Aid (EU Exit) Regulations 2019** in Parliament on 21 January. It is our position that State aid is not a reserved matter and, under the terms of the Intergovernmental Agreement, we believe the consent of Welsh Ministers should have been sought prior to the laying of the instrument. In addition, we are disappointed that the regulations as they have been laid do not provide for decision making by mutual consent and do not provide for a State aid regime that is truly owned by all four Governments in the UK.

The PSO SI is affected by our position on State aid. Regulation 1370/2007 sets out the conditions under which operators of public service obligations (PSOs) are to be compensated for the costs they incur as a result of carrying out public service obligations. Regulation 1370 provides for a sectoral exemption from the general State aid rules (for public passenger transport services by rail and road), releasing competent authorities from the need to acquire prior state aid approval from the Commission in each case where a public service operator is compensated, provided that any compensation complies with the requirements of Regulation 1370/2007.

However, we recognise the need to ensure that the statute book is operable on exit day and acknowledge that the corrections to legislation underpinning the rail franchising regime established by this SI are vital to the continuation of rail services across the UK.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[PSCGBM@gov.wales](mailto:PSCGBM@gov.wales) / [YPCCGB@llyw.cymru](mailto:YPCCGB@llyw.cymru)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Furthermore, there is the ongoing engagement with officials of the Department for Business, Energy and Industrial Strategy in developing a Memorandum of Understanding for the operation of a UK wide State aid regime.

The Department for Transport has informed us that the SI had to be laid for sifting on 28 January in order to give sufficient time for it to come into force on exit day if the sifting committees had determined the SI should follow the affirmative procedure. However, the Explanatory Memorandum states that the instrument will not be made without the consent of the Welsh Ministers.

It is clear to us that, exceptionally, the impending deadlines limit the scope for negotiation around this complex point, which has remained unresolved for many years. We are therefore willing to take a pragmatic approach in order to protect citizens, and grant consent to the SI as a whole on the basis that there is no policy divergence and that the concerns of the Devolved Authorities will be addressed, though this is without prejudice to our position on legislative competence in respect of State aid.

The Minister for Economy and Transport has written to the Parliamentary Under Secretary of State for Transport, Andrew Jones MP, responsible for this SI, to convey this opinion, and discussions will continue between both administrations.

We will inform Assembly Members of this approach via a written statement shortly.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Miles'.

**Jeremy Miles AM**

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Counsel General and Brexit Minister