

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 4, Tŷ Hywel

Meeting date: 13 February 2023

Meeting time: 12.00

For further information contact:

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Committee Clerk

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On-site – Supplementary Pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

5 Papers to note

(12.15 – 12.20)

5.6 Correspondence from the Counsel General and Minister for the Constitution: Retained EU Law (Revocation and Reform) Bill

(Pages 1 – 6)

Attached Documents:

LJC(6)–06–23 – Paper 24 – Letter from the Counsel General and Minister for
Constitution, 10 February 2023

LJC(6)–06–23 – Paper 25 – Letter to the Counsel General and Minister for
Constitution, 3 February 2023

9 Legislative Consent Memorandum on the Retained EU Law (Revocation and Reform) Bill: Draft report

(15.45 – 16.30)

(Pages 7 – 82)

Attached Documents:

LJC(6)–06–23 – Paper 19 – Draft report



10 Legislative Consent Memoranda on the Levelling-up and Regeneration Bill: Draft report

(16.30 – 17.15)

(Pages 83 – 106)

Attached Documents:

LJC(6)-06-23 – Paper 22 – Draft report

Ein cyf/Our ref: CG/PO/42/2023

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

10 February 2023

Dear Huw,

Legislation, Justice and Constitution Committee, 16 January 2023 - Welsh Government's Draft Budget for 2023-24 (spending in relation to justice) and general scrutiny

Thank you for your letter of 3 February. I will provide answers to your questions by 23 February in the normal way.

You asked for answers to questions 7 to 10 on retained EU law by 10 February. You will see those answers in the attached annex.

Yours sincerely,



Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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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.

Annex

Retained EU Law (Revocation and Reform) Bill

7. Please could you provide an update on intergovernmental joint working and advise of any joint plans agreed to date?

I have remained in contact with UK Ministers to make clear the Welsh Government's significant and continuing concerns about the aspects of the Bill that have previously been set out. Officials from the Welsh Government, and the other Devolved Governments, remain in regular and constructive contact with their counterparts in the UK Government, both centrally and with relevant policy departments, including on potential joint work, though no formal plans have been agreed.

8. What action will you take if the Senedd refuses consent to the Bill and how will you draw any concerns you have to the attention of the UK Parliament?

In such circumstances, the Welsh Government believes that the correct approach would be for the UK Government to withdraw the Bill or to amend it so that devolved law is removed from the sunset. We would anticipate that, should the Senedd refuse consent to this bill, the Senedd would notify Parliamentary clerks of that outcome in the usual way and that, in turn, the Senedd's position would be included on the UK Parliament website pages dedicated to this Bill.

9. What action will you take if the Bill subsequently becomes law, without the amendments you would like to see made?

As above, in such circumstances, the Welsh Government will continue to work to minimise the negative consequences of the Bill for the people of Wales. However, more detail on the precise actions we would need to take remains to be identified, once we have the necessary information from the UK Government on its intentions for REUL for which it is responsible, and subject to any changes to the Bill in its Parliamentary passage.

10. Does the Welsh Government consider that the Senedd has the legislative competence to bring forward a Welsh Bill that would amend the Retained EU Law (Revocation and Reform) Bill (if and when enacted) so as to amend the sunset date as it currently applies to retained EU law in devolved areas? Is the Welsh Government considering bringing forward such a Bill if the sunset date of 31 December 2023 remains in the Bill?

The Welsh Government is considering all options for minimising the negative impact of the Bill on the people of Wales. As in any situation, should the Welsh Government bring forward primary legislation, it would need to be satisfied that the legislation falls within legislative competence.

Mick Antoniw MS
Counsel General and Minister for Constitution

3 February 2023

Dear Mick

Legislation, Justice and Constitution Committee, 16 January 2023 - Welsh Government's Draft Budget for 2023-24 (spending in relation to justice) and general scrutiny

Thank you for appearing before the Committee on 16 January and giving evidence on matters relating to the Welsh Government's Draft Budget for 2023-24, specifically as regards spending in relation to justice, and to answer more general questions regarding your portfolio responsibilities.

There are a number of issues which we were not able to raise with you during the meeting. There are also matters we would like to pursue further.

I would be grateful to receive your response to the majority of the questions listed in the Annex by 23 February 2023 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Given our reporting deadline for the legislative consent memoranda on the Retained EU Law (Revocation and Reform) Bill, I would be grateful to receive a response to the questions 7 to 10 by noon on 10 February 2023.

Yours sincerely,



Huw Irranca-Davies
Chair

1. In your correspondence to the Committee, you reiterated the Welsh Government's commitment to bring forward legislation to create a modernised tribunal system for Wales. Please can you provide any updates on work that is underway to prepare for that legislation and when we might expect it to come before the Senedd?

UK Internal Market Act 2020

2. Does the Welsh Government still intend to use the Environmental Protection (Single-use Plastics) (Wales) Bill as a practical example in a legal challenge against the UK Internal Market Act (on matters that do not relate to legislative competence), and if so what route will you use?
3. We questioned you at some length on the impact of the UK Internal Market Act (RoP 94-115). You told us that:

"I think the fact that the single-use plastics Bill has now been passed, will be going for Royal Assent now—. I think there is a period of time before implementation, because of the World Trade Organization requirements, et cetera, but the Attorney-General has clearly taken the decision that it's not a matter to be referred to the Supreme Court, and I'm content to accept that. It doesn't mean that there aren't issues with the internal market Act, but they may arise at a later stage." [Our emphasis].

As regards the last sentence, please can you explain what the potential issues are with the Act and when you might expect them to arise?

4. During the Plenary debate on a consent motion for the Genetic Technology (Precision Breeding) Bill on 17 January, the Minister for Rural Affairs stated: "When the Senedd legislates they do so free of the UK Internal Market Act, so primary legislation in a devolved area can be made free from requirements of UKIMA" [Plenary RoP para 439]. It is clear that UKIMA does not affect the Senedd's competence to make legislation, but our concern remains that UKIMA can have a practical impact on the operation of such legislation once enacted. Can you set out on what grounds the Welsh Government has concluded that provisions in an Act of the Senedd are not;
 - 'relevant requirements' for the purposes of the mutual recognition principle for goods in section 2 of UKIMA;
 - a 'legislative requirement' in relation to services, in accordance with section 17 of UKIMA?

5. Given the Welsh Government's views on the Genetic Technology (Precision Breeding) Bill, will you be seeking an exclusion for genetic technologies from the market access principles in the UK Internal Market Act if the Bill becomes law?

Intergovernmental Relations

6. There are a large number of ongoing disagreements on legislation between the Welsh and UK governments, not least around the Retained EU Law Bill. Has the Welsh Government considered using the intergovernmental dispute resolution mechanisms to address these issues? If not, why not? Are the mechanisms fully operational?

Retained EU Law (Revocation and Reform) Bill

7. Please could you provide an update on intergovernmental joint working and advise of any joint plans agreed to date?
8. What action will you take if the Senedd refuses consent to the Bill and how will you draw any concerns you have to the attention of the UK Parliament?
9. What action will you take if the Bill subsequently becomes law, without the amendments you would like to see made?
10. Does the Welsh Government consider that the Senedd has the legislative competence to bring forward a Welsh Bill that would amend the Retained EU Law (Revocation and Reform) Bill (if and when enacted) so as to amend the sunset date as it currently applies to retained EU law in devolved areas? Is the Welsh Government considering bringing forward such a Bill if the sunset date of 31 December 2023 remains in the Bill?

Accessibility of the Law

11. What plans do you have for 2023-24 to improve the accessibility of Welsh law?
12. Please can you provide an update on when the Welsh Government will be introducing legislation to consolidate planning law?
13. What progress has the Welsh Government made on the consolidation and remaking of the National Assembly for Wales (Representation of the People) Order 2007?
14. How is the accessibility of the law considered when the Welsh Government decides whether to agree to UK Bills making provisions in devolved areas? Is any kind of risk assessment or similar undertaken?

Legislation

15. Are there any policy areas that you foresee a significant amount of secondary legislation being required for over the next 12 months?

- 16.** What, if any, significant secondary legislation must be brought forward in this calendar year, perhaps to implement Acts passed by the Senedd in recent years or because new and updated regulations must be made?
- 17.** Does the Welsh Government as a whole have a priority list of secondary legislation that must, or is to, be made in 2023? If the Welsh Government does have a priority list, how will it deprioritise, or what contingencies are being put in place, if government resources need to be diverted to drafting secondary legislation needed to save or reform REUL?

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