

Mick Antoniw MS
Counsel General and Minister for the Constitution

16 May 2023

Dear Mick

The Retained EU Law (Revocation and Reform) Bill

At this week's meeting we discussed the latest developments surrounding the Retained EU Law (Revocation and Reform) Bill and last week's announcement by the UK Government regarding the Bill; in particular we discussed its new position on the retained EU law to be revoked at the end of 2023.

We appreciate that developments with the Bill appear to be moving at a fast pace and we are further mindful that intergovernmental discussions about the Bill have not been optimal to date.

Nonetheless, given the significance of the recent developments, there are a number of matters which will be of great importance to the Senedd, not least if Members of the Senedd are asked to make a further consent decision linked to the Bill following amendments at House of Lords' Report Stage.

We ask that the questions we raise below are addressed in the further supplementary legislative consent memorandum we anticipate you will lay before the Senedd. We would also welcome confirmation in correspondence to us that this has been actioned.

I am copying this letter to the Llywydd, Chair of the Business Committee.

Yours sincerely,

Huw Irranca-Davies

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Chair



ANNEX

Amendment to clause(1) of the Bill removing the current 31 December 2023 sunset date for retained EU law and instead providing that retained EU law to be revoked is listed in a new Schedule

Question 1: What is the Welsh Government's view of the new approach proposed by the UK Government?

Question 2: Did the UK Government consult the Welsh Government on this new approach before tabling the relevant amendments for Lords' Report Stage? If so, were any matters and/or concerns raised by the Welsh Government taken on board by the UK Government?

Question 3: Does the list of retained EU law to be revoked, as set out in the new Schedule amendment, include instruments in devolved areas?

Question 4: What is the Welsh Government's view of the list of retained EU law set out in the new Schedule amendment?

Question 5: To what extent did the Welsh Government and UK Government work together on the list of retained EU law in the new Schedule amendment?

Question 6: Does the Welsh Government have concerns about anything listed or not listed in the new Schedule amendment?

Amendment replacing subsections (3) and (4) of clause 1 with a new regulation-making power for both the Welsh Minsters and the UK Minsters to exclude retained EU law listed in the Schedule from revocation (regulations to be subject to the affirmative procedure to be made by 31 October 2023)

Question 7: Did the UK Government consult the Welsh Government about this amendment and giving this power to the Welsh Ministers?

Question 8: What is the Welsh Government's view on the timescales involved in reviewing the Schedule list and laying any necessary regulations before the Senedd for scrutiny and approval before the expiration date of 31 October 2023?

Question 9: How and when would the Welsh Government go about using this power?

Question 10: To what extent will the Welsh Government and the UK Government work together on identifying and excluding retained EU law from the Schedule list? How will disagreements, if they arise, be resolved?

The sunseting of directly effective rights and obligations (the repeal of section 4 of the European Union (Withdrawal) Act 2018) remains 31 December 2023

Question 11: What does the Welsh Government consider to be the impact of this sunseting of directly effective rights and obligations? Will it impact on the exercise of the new regulation-making power to be included in new clause 1(3), and on the power to restate, reproduce, revoke, replace or update in clauses 13 to 17?

Question 12: Amendment 15 will require the Welsh Ministers to make a statement to the Senedd before the end of October 2023 of any right, power, liability, obligation, restriction, remedy or procedure that will fall at the end of December 2023, and would give the Senedd the opportunity to resolve that any such rights etc be retained. What is the Welsh Government's view of amendment 15 being agreed?

Powers in the Bill to restate, reproduce, revoke, replace or update have not been changed

Question 13: What is the Welsh Government's view of the fact that the powers in clauses 13 to 17 of the Bill to restate, reproduce, revoke, replace and update retained EU law have not been changed?

Question 14: Does the Welsh Government anticipate that the UK Government will use the clause 15 powers to revoke or reform further areas of retained EU law before the end of this year? If so, is the Welsh Government engaged in any discussions on this, and does it know if such future regulations are likely to cover devolved areas?

Question 15: Does the Welsh Government intend to use any powers provided to it in the Bill to revoke, amend, replace or update any Senedd made or devolved retained EU law by the end of this year?

Concurrent powers remain in the Bill

Question 16: What is Welsh Government's current position on the use of concurrent powers by UK Ministers on matters which are devolved to Wales?

Question 17: In what circumstances, if any, would the Welsh Government be content for the UK Government to make regulations under the Bill in devolved areas?

Amendments to clauses 20 and 23 - consequential, transitional, supplementary etc powers will be given to the Welsh Ministers

Question 18: Did the UK Government consult the Welsh Government before giving these powers to the Welsh Ministers?

Question 19: The power in clause 20 includes the express power to amend the Bill itself. Does the Welsh Government intend to use this power?

General matters

Question 20: What is the Welsh Government's general view of the Bill as amended at Lords' Report Stage?

Question 21: What is the Welsh Government's revised strategy for dealing with the Bill in light of amendments agreed in the House of Lords to the Bill?

UK Government Department for Business and Trade, Smarter Regulation to Grow the Economy policy paper

Question 22: Was the Welsh Government consulted on the development of the UK Government's Smarter Regulation to Grow the Economy policy paper?

Question 23: What are the Welsh Government's views on the proposals contained in the paper?

Question 24: What is the Welsh Government's view on the new criteria set out in the paper for the reform or removal of legislation "no longer fit for purpose"?

Question 25: What is the Welsh Government's view on the addition of reviewing domestic regulation in addition to regulations which originated from the EU?