



# Department for Business & Trade

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Dear Huw,

## **Letter in response to the report on the Welsh Government's Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill**

I would like to thank the Legislation, Justice and Constitution Committee for your letter of 22 February which accompanies the Report on the Welsh Government's Legislative Consent Memorandum on the Retained EU Law (Revocation and Reform) 'REUL' Bill. I am responding as Secretary of State for Business and Trade. My sincere apologies for the delay in my response.

As you may be aware, the Government tabled a set of amendments to the REUL Bill for Lords Report stage on 10 May. Most notably, these included an amendment to clause 1 of the Bill and amendments to the consequential power and the power to make transitional, transitory and savings provision under clauses 19 and 22 respectively.

The amendment to clause 1 sets out in a Schedule a full list of the retained EU law (REUL) which will be revoked on 31 December 2023. The amendments to clauses 19 and 22 extend the powers within these clauses on the devolved authorities. Further detail on these amendments can be found on the UK Parliament website.

This letter responds to the Committee's conclusions and recommendations regarding the REUL Bill as set out in the LCM report as well as clarifying points of detail regarding the government amendments in relation to the Committee's concerns.

### ***REUL Dashboard***

The Committee expressed concerns regarding the potential impact of the Bill on legislation within areas of Welsh competence. In particular, concerns that the REUL dashboard does not indicate the devolution status of REUL.

The dashboard presents an authoritative catalogue of REUL. The REUL dashboard has identified over 4,800 pieces of REUL across 16 departments. It is not intended to provide a comprehensive account of REUL in general, nor of REUL that sits with the competence of the devolved governments, although it may contain individual pieces of REUL which do sit in devolved areas. The devolved

governments remain responsible for identifying REUL within their respective areas of devolved competence.

### ***Devolved REUL***

I support the Committee's recommendation to encourage the Welsh Government to undertake the necessary work required and share a list of devolved Welsh REUL with the UK Government.

Furthermore, we recognise the importance of identifying the split of reserved and devolved REUL to ensure that we have a consistent understanding across the UK Government and devolved governments. The UK Government is committed to working with the devolved governments as we update the dashboard. That is why, we have established regular intergovernmental meetings, intended to support devolved government counterparts with the identification of which REUL is devolved or reserved, as part of the REUL reform programme.

### ***Legislative consent***

I would like to highlight that this Government is committed to respecting the devolution settlements and the Sewel Convention. As you will be aware, we sought legislative consent for the provisions in the Bill that engage the LCM process from the Senedd. Despite our close work with the Welsh Government, the Senedd decided to withhold legislative consent for the REUL Bill. While we regret this decision, we will continue to work with Welsh Government colleagues at ministerial and official levels. This Bill is vital for the whole of the UK to be able to fully take advantage of the benefits of Brexit.

### ***DA engagement***

The Committee raised concerns that the UK Government has not sufficiently engaged with the devolved governments on the Bill. I would like to reiterate that we have been proactively engaging with the devolved governments on the progress of the Bill and the wider REUL reform programme. The Government has made use of the structures created by the Review of Intergovernmental Relations to engage with devolved Ministers on the Bill. For example, the Bill has been discussed at meetings of the Interministerial Standing Committee. Most recently, Minister Ghani attended a meeting of that Committee on 17 May to discuss the REUL Bill with devolved Ministers.

We are committed to sustained engagement with the devolved governments. In addition to this, I consider that the government amendments tabled at Lords Report stage, and agreed to by the House of Commons on 24 May, further demonstrate that we have actively listened and sought to make meaningful changes which address the devolved governments' concerns regarding the Bill.

### ***Concurrent powers***

We note the Committee's concerns regarding the delegated powers in the Bill. With a revocation Schedule in place, the UK Government and the devolved governments will still retain the powers in the Bill that will allow us to continue to amend REUL and assimilated law.

The powers in the Bill will be conferred concurrently on the devolved governments. This will enable the Welsh Government to make active decisions regarding REUL within its devolved competence.

The concurrent nature of the powers is not intended to influence decision making in devolved governments. Rather, it is intended to reduce additional resource pressure by enabling the UK Government to legislate on behalf of a devolved government where they do not intend to take a different position. Furthermore, we remain committed to continuing discussions with the devolved governments over the exercise of concurrent powers in the Bill.

As I indicated above, the Government has tabled amendments to extend the consequential power (clause 19) and the power to make transitional, transitory and savings provision (clause 22) on the devolved authorities. The powers will be conferred concurrently in the same way as the other delegated powers within the Bill. This will enable the Welsh Government and other devolved governments to make any necessary consequential, transitional and savings provisions arising from the operation of the Bill. This decision has been made in response to concerns raised by the devolved governments. I hope the Committee will recognise this as a meaningful change that demonstrates our commitment to working collaboratively and constructively with the devolved governments on the REUL Bill and wider REUL reform.

### ***Sunset***

As I have set out above, the Government tabled an amendment to clause 1 in the Bill at Lords Report stage. This amendment replaced the original sunset with a list of specified pieces of REUL to be revoked at the end of 2023. The revocation Schedule will provide greater certainty on which REUL will be revoked by the end of the year. It will enable the UK Government and the devolved governments to prioritise more ambitious and complex reform of former REUL which remains on the statute book at the end of 2023. As a result of this amendment, clauses 2 and 3 have been removed from the Bill, as they are no longer required.

However, the Bill still includes a limited preservation power that will be conferred concurrently on the devolved governments. Where devolved governments wish to disapply the revocation of REUL presently listed on the Schedule, they will be able to exercise the preservation power in respect of the relevant REUL within their areas of devolved competence. The preservation power will expire on 31 October 2023 and it will be subject to the affirmative procedure.

I hope you will agree that the amendment we have tabled is a meaningful change to the Bill which addresses many of the concerns raised in your letter regarding the sunset. It is my view that the greater certainty provided by the revocation Schedule will allow the UK Government and the devolved governments to continue to make meaningful reforms, for the benefit of citizens and business across all parts of the UK.

### ***Extension power***

As outlined above, as a result of the Government's amendment to replace the original sunset under clause 1 with a revocation Schedule, the extension power under clause 2 no longer forms part of the Bill.

### ***Parliamentary scrutiny***

We would support the Committee's recommendation to establish a new relevant committee once the Seventh Senedd is in place. We recognise the significant role Parliament has played in scrutinising instruments subject to sifting procedures previously and are committed to ensuring the appropriate scrutiny under the delegated powers in this Bill. We have sought to ensure robust scrutiny measures are included in the Bill. This includes ensuring there is appropriate scrutiny for any repeals or reforms of REUL that are made using the powers contained in the Bill, whilst ensuring the most effective use of Parliamentary time.

### ***International obligations***

In response to recommendation 10, as you will be aware, Minister Ghani made a commitment at Report Stage in the House of Commons that the Government will ensure that the provisions within the Bill will ensure the continued implementation of our international obligations, including the Northern Ireland Protocol (and now in the Windsor Framework), the Trade and Cooperation Agreement and the Withdrawal Agreement. Furthermore, the Schedule amendment removes the requirement for such legislation to be explicitly preserved, given that REUL will no longer

automatically sunset. However, the sentiment in this commitment remains unchanged and, as such no REUL that is required to uphold international commitments is included in the Schedule.

***REUL reform***

I would support the Committee's conclusion for the Welsh Government to progress its delivery plans for REUL reform. It will be important to work with the devolved governments in order to understand their plans for REUL reform and how best to work jointly on the use of concurrent powers and other measures within the Bill. We remain committed to continuing discussions with the devolved governments over the use of concurrent powers in the Bill to ensure the provisions work for all parts of the UK.

***Intra-UK divergence***

As you will be aware, Common Frameworks and the UK Internal Market (UKIM) Act are some of the existing mechanisms which have been developed with the devolved governments to enable joint working in devolved areas. The UK Government and the devolved governments agree where Common Frameworks are operating that they are the right mechanism for discussing REUL reform in the areas that they cover. The Government will continue to work closely with the devolved governments to manage intra-UK divergence through these existing structures.

I would like to reiterate that my officials have been working together with devolved counterparts to address any concerns and to ensure the Bill works for all parts of the UK. It is right that people across all parts of the UK should benefit from the ability to reform and amend REUL so that the opportunities of Brexit can be further seized.

Best wishes,

A handwritten signature in black ink that reads "Kemi Badenoch". The signature is written in a cursive, flowing style.

**THE RT HON KEMI BADENOCH MP**

Secretary of State for Business & Trade and President of the Board of Trade  
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