

Mick Antoniw MS
Counsel General and Minister for the Constitution

27 June 2023

Dear Mick

The Retained EU Law (Revocation and Reform) Bill

At our meeting this week, we again discussed the latest developments surrounding the Retained EU Law (Revocation and Reform) Bill.

We acknowledged that the Bill has progressed through several stages of 'ping-pong' in the UK Parliament and, to date, the House of Commons has not been content to agree to the Lords' amendments which have sought to add new clauses to the Bill relating to the non-regression of environmental standards and a higher procedure for the exercise of clause 15 powers.

At the time of our meeting, the House of Lords reconsidered the Commons amendments to the Bill for a third time. You will likely know that the Lords did not pursue the amendments any further.

We are aware that, subject to the final stages in the UK Parliament, it remains likely that the Bill will receive Royal Assent and will become an Act in the coming weeks.

While the original clause 1 sunset provision has been removed from the Bill, we and the Senedd more widely had further, broad concerns about the implications of this new legislation. In more recent weeks we have discussed potential issues relating to the approach and substance of provisions which replaced the clause 1 sunset provision.

As such, further to my letter to you on 16 May 2023 and your response on 2 June, we would welcome an update from you on a number of matters. Questions to you are set out in the enclosed Annex.

If possible, we would welcome a written response by the morning of Friday 7 July. This would enable us to follow-up on your responses when you appear before us at our meeting on Monday 10 July. If this is not possible, a response in writing would be gratefully received as soon as possible. It is likely that we will, in any case, cover some of these matters with you during the forthcoming session.

As always, I am grateful for your continued engagement with us on this important and significant matter, and we look forward to seeing you on 10 July.

Yours sincerely,

Huw Irranca-Davies

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Chair



ANNEX

Schedule to the Bill listing retained EU law that will be revoked at the end of this year, and the power to exclude retained EU law from the list

Several questions in our letter to you on 16 May asked about the new Schedule to the Bill. You told us that the Welsh Government was not consulted before the UK Government tabled the new Schedule amendment and the amendment which adds a new regulation-making power which may be exercised by both the Welsh Ministers and the UK Ministers to exclude retained EU law listed in the Schedule from revocation. You also told us that the Welsh Government was working its way through each of the instruments listed in the Schedule.

In her letter to the Committee on 16 June, the Secretary of State for Business and Trade, the Rt Hon Kemi Badenoch MP, said:

"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."

Question 1: What progress has the Welsh Government made on its review of the retained EU law listed on the new Schedule?

Question 2: Can you provide an update on the Welsh Government's plans on whether it will use the new regulation-making power to exclude retained EU law listed in the Schedule from revocation.

Question 3: Can you provide an update on any discussions that you have held with the UK Government on whether UK Ministers intend on using the new regulation-making power to exclude retained EU law listed in the Schedule from revocation, including in devolved areas.

The UK Government may make regulations in devolved areas and there is no requirement in the Bill for UK Ministers to seek the consent of, or notify or consult, the Welsh Government, meaning there is a significant risk the Senedd will not only be bypassed, but will not be alerted to what is happening to law in Wales

You will know that significant concurrent powers remain in the Bill which can be used by UK Ministers to make provision in devolved areas. You will also know that the Bill does not contain any requirements for the UK Government to seek the consent of the Welsh Ministers, nor consult or notify the Welsh Ministers, before it proposes to make or makes regulations in devolved areas.

In her letter to the Committee, the Secretary of State said:

"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. (...)

"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."

Question 4: In what circumstances would the Welsh Government be content for the UK Government to make regulations under the Bill in devolved areas?

Question 5: What discussions have taken and/or are taking place with the UK Government on the exercise of the concurrent powers in the Bill?

Question 6: Have discussions with the UK Government included seeking commitments on the terms of the exercise of the concurrent powers, including whether the Welsh Government is content for the UK Government to legislate on its behalf "where they do not intend to take a different position"?

Question 7: What agreements and commitments are being sought and put in place by the Welsh Government in terms of when and how the UK Government will notify the Welsh Government of when it intends to make regulations in a devolved area?

Question 8: How is the Welsh Government intending on sharing relevant information with the Senedd in a timely manner about the exercise (or planned exercise) of these powers?

The Welsh Ministers exercising the regulation-making powers in the Bill

The powers in the Bill to restate, reproduce, revoke, replace and update retained EU law have not been changed.

In our letter to you on 16 May we asked whether the Welsh Government intended to use any powers provided to it in the Bill to Senedd made or devolved retained EU law by the end of this year.

We also asked if the Welsh Government anticipated 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 and, if so, is the Welsh Government engaged in any discussions on this, particularly on whether future regulations are likely to cover devolved areas.

In addition, we asked if the Welsh Government intended to use the power in clause 20, which includes the express power to amend the Bill itself.

You will be aware that amendments made to the Bill extend its consequential and transitional, transitory and saving powers to the relevant devolved Ministers, thereby increasing the number of powers available to the Welsh Government.

Question 9: Can you provide updated responses to questions 14, 15 and 19 in my letter of 16 May, and provide your views on the further powers which have been granted to the Welsh Ministers.

Sifting of proposed negative instruments

The Bill includes a sift procedure that will apply to regulations which the Welsh Ministers (and UK Ministers) are seeking to make under certain clauses via the negative scrutiny procedure.

It is our understanding that the sift procedure in the Bill replicates that which appears in the 2018 Act and the *European Union (Future Relationship) Act 2020* (the 2020 Act). You will be aware that we (in accordance with Standing Orders) are the responsible Committee for considering regulations to be sifted under the 2018 Act and the 2020 Act.

You will be aware that, for the exercise of 2018 Act powers, our predecessor Committee in the Fifth Senedd entered into a protocol with the Welsh Government as a way of attempting to manage practical arrangements related to the Welsh Ministers exercising the powers in that Act.

One such practical matter resulted in the Welsh Government agreeing to try to lay proposed negative instruments for sifting on a Tuesday (and to avoid laying such instruments on a Thursday and Friday) to give the Committee two possible opportunities for scrutiny at a committee meeting.

Question 10: Subject to a formal decision being made that we will also take on the responsibility of being the 'sift committee' for when the relevant powers are exercised under this Bill, would you agree to a similar commitment to that which was previously in place and agree that the Welsh Government will again aim to lay any proposed negative instruments for sifting on a Tuesday (and avoiding a Thursday and Friday)?

Sunsetting of EU-derived rights, and principles of EU law

We previously asked you for the Welsh Government's assessment of the impact of the sunset of EU-derived rights retained principles of EU law, such as supremacy, which will take place on 31 December 2023.

Question 11: Can you provide an update on the Welsh Government's discussions with the UK Government on the sunset of directly effective rights and obligations, and if and when the UK Government envisages powers in the Bill being used to reinstate the principle of supremacy or other retained principles.

Retained EU law dashboard and identifying retained EU law

In your response to our report on the Welsh Government's Legislative Consent Memoranda on the Bill you said the Welsh Government was keen to ensure the UK Government's retained EU law dashboard reflects the full extent of both devolved and reserved retained EU law once each piece has been authoritatively identified, and that the Welsh Government did intend to share its own list of Welsh-made retained EU law with the Committee and with the UK Government as soon as possible.

In her letter to the Committee, the Secretary of State said:

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

...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."

Question 12: Can you provide an update on the Welsh Government's work to identify Welsh-made retained EU law.

Question 13: Can you confirm whether the Welsh Government has now asked the UK Government to add the Welsh Government's list of Welsh-made retained EU law to the dashboard.

Question 14: Can you provide an update on discussions the Welsh Government has had (or is having) with the UK Government about identifying the split of reserved and devolved retained EU law.

Retained EU law reform and Common Frameworks

In her letter to the Committee, the Secretary of State told us:

"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."

Question 15: What are the Welsh Government's views on how the existing structures to support UK-wide Common Frameworks are being used (or will be used) to discuss reform of retained EU law?