

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/308/2023

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

15 September 2023

Dear Llyr,

Thank you for your letter of 25 July 2023 regarding the implications of the Retained EU Law (Revocation and Reform) Act 2023 on environmental legislation.

We share the Committee's concerns about the potential negative impact of the REUL Act on environmental law in Wales. Overall, we maintain the view the REUL Act as an unnecessary, imprecise and politically motivated initiative. It was not a sensible basis for a reasonable reform of retained EU law, which could have been undertaken in a more considered fashion gradually over a period of years.

As it stands, we are confident that revocation of the legislation listed in Schedule 1 to the Act does not do any immediate and substantial impact to environmental law in Wales. However, we have particular concerns about the powers given by the Act to UK Ministers to reform existing pieces of retained EU law (now known as "assimilated law") by statutory instrument. We do not currently have information on exactly if, how, when and in what areas these powers could be used to reform environmental law, and we are seeking further clarity with Defra. Although any such reform in areas of devolved competence would not normally be extended into Wales by decisions of UK Ministers and the UK Parliament, the cross-border implications of any such changes could have negative impacts in Wales. My officials continue to work with Defra to understand their intentions in this area and will keep the Committee informed of developments.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

Could you share the Welsh Government's assessment of the environmental retained EU law listed in the Schedule with this Committee?

We have assessed the Schedule through a light touch policy review and agree with the UK Government's assessment that the Schedule contains largely redundant pieces of legislation that are no longer needed, particularly in the context of the UK no longer being a member of the EU. Should any instrument in the Schedule be identified as still being of use, it can be retained by 31 October through a further SI.

However, the schedule includes Provisions 9 and 10 of The National Emission Ceilings Regulations 2018, the decision to revoke these in their entirety was made without consideration of devolved governments through the Air Quality Common Framework. These provisions relate to the Secretary of State's duty to prepare and review a National Air Pollution Control Programme to set out how the UK can meet air pollutant emission reduction targets. Having revoked these provisions with no clear plans to replace them may now lead to a lack of transparency in information made available to stakeholders regarding the emission reduction pathway the UK intends to take.

I believe transparency and public scrutiny are important principles to retain, and have asked the Secretary of State for Environment, Food and Rural Affairs to engage constructively with all governments of the UK on this matter. Meaningful discussions are now beginning to take place through the Air Quality Common framework.

What impact will the revocation of the REUL listed in Schedule 1 have on environmental law in Wales?

For the reasons set out above we do not believe there is any meaningful impact, apart from the provisions related to the National Emission Ceilings Regulations 2018 as mentioned above.

Can you provide assurances that the revocation of environmental retained EU law listed on the Schedule will not result in reduced environmental protection in Wales?

As mentioned above, our initial policy review of the schedule indicates we don't anticipate a reduction in environmental protection in Wales

How can the revocation of Schedule 1 be reconciled with the Welsh Government's long-term ambition to increase standards post-Brexit?

As explained above, none of the instruments in Schedule 1 have any continuing substantive legal effect.

Has the Welsh Government conducted formal or informal consultations with stakeholders regarding the potential impact of revoking the REUL listed in the Schedule to the Act?

Through the EFRA Inter-Ministerial Group I urged the Secretary of State to make public the list of legislation to be revoked as soon as possible. However, due to the nature and timing of the UK Government approach no such formal consultation was possible. The change in approach to revocation in the REUL Bill was made by the UK Government late into the Westminster Parliamentary process in the second half of April, and the Schedule itself published in May.

Prior to the publication of this list, I had received correspondence from concerned stakeholders regarding the potential impacts of losing environmental legislation (which was not subsequently included in the Schedule 1 list of legislation the UK Government intends to revoke). I have encouraged these organisations to continue to make any concerns known to both myself and the UK Government.

As explained above, there are powers to retain, by 31 October, any instrument listed in the Schedule that is found to still have any benefit. We will keep the Schedule under review, continuing to speak to expert advisors to ensure our review has not missed vital legislation. HSE have already provided advice on two commission decisions related to biocides which had been included in the Schedule but are still necessary. The UK Government will now be removing this legislation from the Schedule. Where stakeholders identify further legislation which is still in use, I would be open to considering any reasoned argument to propose a similar approach if necessary.

How do you plan to ensure ongoing engagement and consultation with stakeholders during the implementation of the Act, particularly regarding any potential amendments, exemptions, or modifications to the Schedule?

My officials continue to engage with Defra to understand their approach to changes to the Schedule and on implementation of the Act. More generally, we do not have plans at this stage to use any powers under the REUL Act to revoke or reform assimilated law.


We do not yet have a full understanding of the UK Government's intentions to use its powers to revoke or reform assimilated law. We wish to work closely with the UK Government on any such proposals and we will need to consider how to respond on a case-by-case basis. We expect any future UK Government reforms due to the REUL Act to go through proper routes of engagement with both ourselves and with stakeholders. I will be reiterating this point to the UK Government during my inter-ministerial discussions. For any changes proposed by the UK Government we will first need to understand any impacts in relation to Wales and then consider appropriate mitigating measures where necessary. We will have to consider how to engage with stakeholders if and when UKG makes clear its intention to reform in areas that affect devolved policy in Wales.

Does the Welsh Government plan to introduce new legislation or regulations to replace any REUL that may be revoked under the Act? If so, what will be the process and timeline for this?

The Welsh Government has no plans to use its powers under the Act to revoke any further pieces of assimilated law, or to introduce new legislation to replace legislation contained in the Schedule 1 of the Act

I am copying this to Huw Iranca-Davies MS, Chair, Legislation, Justice and Constitution Committee.

Yours sincerely,



Julie James AS/MS
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