

Mick Antoniw MS  
Counsel General and Minister for the Constitution

22 September 2023

Dear Mick,

**Retained EU Law (Revocation and Reform) Act 2023**

Thank you for your letter of 12 September 2023 which we considered at our meeting of 18 September 2023. We welcome the responses you provided to the questions we asked in our letter on 14 July.

In recent weeks we have considered correspondence from other Welsh Ministers which relate to the *Retained EU Law (Revocation and Reform) Act 2023* (the REUL Act). While we have written to those Ministers with some specific questions, there are matters on which we would welcome your views. In addition, we would also like to follow-up on a number of issues raised in your most recent letter to us.

As such, I would be grateful if you could provide a response to our further questions, which are included in the annex to this letter, by 12 October 2023.

Yours sincerely,



Huw Irranca-Davies  
Chair

## Annex

1. In your letter you state that Nusrat Ghani MP, Minister of State for Industry and Economic Security, wrote to you on 2 August requesting Welsh Ministers' consent to regulations which would remove "a small number of instruments in the Schedule [to the REUL Act] that should, on further investigation, be preserved as they are still of use". We have also received correspondence from the Minister for Climate Change and the Minister for Rural Affairs and North Wales and Trefnydd in which they have informed us that they too have consented to UK Ministers making regulations using powers in the REUL Act. You will be aware that the REUL Act does not contain a provision requiring the consent of the Welsh Ministers to be sought before a UK Minister exercises a delegated power in a devolved area under that Act. In your letter you state that the issue of an 'alternative consent mechanism' is not yet fully resolved. Given the correspondence we refer to above, please would you:
  - i. confirm and provide details of the consent process which has been agreed between the UK Government and the Devolved Governments,
  - ii. confirm that the consent process "protects and respects the devolution settlement", and
  - iii. provide a copy of the relevant intergovernmental agreement to Senedd Committees.
2. In your letter you state that cross-government work to review Schedule 1 to the REUL Act has continued. As mentioned in question 1, you state that the Minister of State for Industry and Economic Security wrote to you on 2 August requesting Welsh Ministers' consent to regulations which would remove a small number of instruments from Schedule 1 to the REUL Act because the Health and Safety Executive has identified these instruments as "the legal basis for the continued safe use of [biocidal products containing copper]". You confirm that Welsh Government officials have further reviewed the provisions identified by the Health and Safety Executive and agree that they should be preserved. The identification of these provisions is a welcome but serious matter. In a letter to the Climate Change, Environment and Infrastructure (CCEI) Committee, the Minister for Climate Change said her department has "assessed the Schedule through a *light touch policy review*". [Emphasis added]. What advice and guidance has been provided to individual departments in the Welsh Government about the work they must undertake to ensure they are confident that the retained EU law listed in the Schedule to the REUL Act is no longer needed?
3. We believe the regulations which are the subject of the letter from the Minister of State for Industry and Economic Security are The Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023. In addition to this

instrument “prevent[ing] the revocation of instruments which further analysis has indicated should not have been included in the REUL Act’s revocation Schedule”, these Regulations also “will revoke 93 pieces of REUL, using the power conferred in section 14(1) of the REUL Act to revoke pieces of legislation which are redundant, have been superseded or no longer have any legal effect in the UK following our exit from the EU”. The UK Government’s draft explanatory memorandum states that “the [devolved administrations] were engaged on the purpose and contents of this instrument”. Please can you confirm the nature and details of this engagement, and what analysis the Welsh Government has undertaken on the 93 pieces of retained EU law which are included in Schedule 2 to these Regulations.

4. In your letter, you confirm that “Our review to date has been primarily focused on instruments in devolved areas”. What mechanisms, if any, exist within the Welsh Government to monitor changes to retained EU law in reserved areas that may impact Wales, including its impact in devolved areas up to June 2026?
5. In her letter to the CCEI Committee, the Minister for Climate Change stated “More generally, we do not have plans at this stage to use any powers under the REUL Act to revoke or reform assimilated law.” The Minister also stated “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.” Please would you confirm that this is the position across all Welsh Government departments.
6. The two items that are the subject of the aforementioned correspondence from the Minister for Climate Change show that for one set of Regulations (relating to fluorinated greenhouse gases) the relevant common framework was used but not for another (relating to National Emissions Ceiling Regulations).
  - i. Please would you explain why this was the case?
  - ii. You have previously told us that you did not have sight of Schedule 1 to the REUL Act prior to its addition to the Bill during the amending stages in the UK Parliament. Can you confirm whether the decision to include any of the retained EU law listed on Schedule 1 to the REUL Act went through the corresponding common framework?