

Huw Irranca-Davies AS/MS
Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion
Gwledig
Cabinet Secretary for Climate Change & Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: HID/PO/0143/24

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

24 May 2024

Dear Llyr,

Thank you for your letter regarding retained EU law (REUL). Please see below responses to your questions:

Your assessment of the Retained EU Law (Revocation and Reform) Act 2023 on environmental law in Wales.

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 is an unnecessary, imprecise and politically motivated initiative. It is 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 have any immediate and substantial impact for environmental law in Wales. However, we have particular concerns about the powers the Act provides 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 from 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.

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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.

Your view on the implications for environmental governance in Wales.

Whilst aspects of EU environmental law have been kept through the REUL Act, one of its effects is to abolish the remaining effects of retained general principles of EU law in the UK so that they no longer apply nor influence the interpretation of EU law that has otherwise been retained on the UK statute book. This includes the environmental principles set out within Article 191(2) of the Treaty of the Functioning of the EU.

In light of this, the Welsh Government intends to bring forward primary legislation to incorporate the EU environmental principles into Welsh law. Subject to the outcome of the White paper consultation, the Environmental Governance, Principles and Biodiversity Targets Bill will make provision to set out environmental principles that reflect those of the EU. Through this bill, we will exceed the previous arrangements by placing a duty on Welsh Ministers to apply the environmental principles when making policy decisions. This approach will ensure the principles are part of the decision-making process on a statutory basis once the Bill comes into force.

This approach will be further supported through the establishment of an environmental governance body, which will oversee compliance with environmental law by Welsh Ministers and Welsh public bodies – including the environmental principles – as well as monitoring the effectiveness of environmental law in Wales.

You will be aware of our previous exchanges with the former Minister for Climate Change, who told us that the Welsh Government wished to retain elements of the National Emission Ceilings Regulations which the UK Government had included on Schedule 1 for automatic revocation on 31 December 2023;

i. Could you provide an update on the intergovernmental discussions regarding these regulations?

The National Emission Ceilings Regulations 2018 (NECR) set UK emission reduction targets for five pollutants to be achieved by 2030. The National Air Pollution Control Programme (NAPCP) provisions in the National Emissions Ceiling Regulations were subject to revocation by the REUL Act. The Secretary of State was under a duty to review, revise and publish an NAPCP within 18 months if emissions projections showed that the targets would be missed. The measures included in an NAPCP illustrate how the UK would meet its targets. The Secretary of State was also under a duty to consult the public before preparing or significantly revising the NAPCP.

The decision by UK Government to remove the NAPCP provisions from the National Emission Ceilings Regulations in the context of Schedule 1 of the REUL Act was made without consideration through the Air Quality Common Framework. Although there were recognised weaknesses with the process, I want to avoid environmental protections being weakened.

My officials are currently working with Defra and the other Devolved Governments via the Air Quality Common Frameworks to inform Defra's proposed alternative arrangements to the NAPCP. They have emphasised to Defra that transparency and public scrutiny are important aspects of the Environment (Air Quality and Soundscapes) (Wales) Act, and I am keen to see them applied here.

ii. Will the Welsh Government use the powers available to Welsh Ministers under the Act, or other powers available to Welsh Ministers, to reinstate the NEC Regulations, in whole or in part?

The UK emission reduction targets and reporting provisions set out in the regulations remain in place. My officials continue to engage with Defra and the other Devolved Governments to seek an open and collaborative pan-UK approach to the development of processes to achieve the UK's targets. The Welsh Government therefore has no plans to use its powers in this context.

iii. Whether the revocation of the NEC Regulations had any practical impact or effect?

Noting the emission reduction targets and reporting provisions remain in place, any practical wider effects of the revocation of the NAPCP provisions will depend on the alternative arrangements adopted.

Your view on the expiration of general principles of EU law at the end of 2023 and the implications for environmental law in Wales.

As I have already outlined, since the REUL Act abolishes the remaining effects of retained general principles of EU law in the UK, the Welsh Government intends to bring forward primary legislation to incorporate the EU environmental principles into Welsh law.

Your view on the plans set out by the UK Government in its first REUL report to the UK Parliament as they relate to areas of this Committee's remit, particularly its timetable, the capacity of the Welsh Government to respond and implications for environmental law in Wales;

i. Could you confirm what role, if any, the Welsh Government had in the preparation of this report.

The UK Government did not seek any input from the devolved governments on the preparation of its first REUL report to the UK Parliament. As our [Written Statement](#), published in response to the report, stated; "it is for the devolved legislatures to decide whether, how and to what extent, domestic law and policy should diverge from that of the EU. This principle is equally applicable to the whole range of changes which REUL Act powers can be used to achieve.

Whether the Welsh Government is aware of additional upcoming changes under the Act to environmental assimilated law?

The Welsh Government is not aware of any additional upcoming changes under the Act to environmental assimilated law. If we become aware of any proposed changes, we will notify you through the usual methods.

Whether WG themselves has any current plans to use powers in the REUL Act in relation to the environment?

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 Schedule 1 of the Act

Thank you for raising these detailed matters with me and I hope this response assists the Committee.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Huw Irranca-Davies'.

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