

Mick Antoniw AS/MS

**Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution**



**Llywodraeth Cymru
Welsh Government**

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
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12 September 2023

Dear Huw,

Thank you for your letter of 14 July 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Bill. My answers are set out in the following Annex.

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style and is underlined.

Mick Antoniw AS/MS

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Counsel General and Minister for the Constitution**

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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.

ANNEX

Question 1:

In your letter to us on 7 July you confirmed that the Welsh Government has undertaken an assessment of the retained EU law listed in Schedule 1 to the Act and “there are no apparent problems for areas within devolved competence arising from the revocation of the instruments listed” and that “we do not currently see the need for the exercise of such powers [to exclude retained EU law from the Schedule] and have no current plans to use them”.

- a. During our meeting you told us that this work was “still work in progress”, it would be “something that we will want to scrutinise much more closely leading up to that particular point”, and that engagement with UK Government officials is continuing. Please would you confirm our understanding that the Welsh Government’s assessment of the Schedule is therefore still ongoing, and will you confirm that you will provide an updated and final assessment to us as soon as possible.*

We can confirm that the work on Schedule 1 of the Act (‘the Schedule’), has continued. While our initial review of the schedule did not raise any apparent issues, we also explained in the meeting of 10 July that we are unable to confirm with 100% accuracy that there will be no further issues that may present themselves. Welsh Government officials continue to work with the UK Government and other devolved governments to review the contents of the schedule.

As advised at the 10 July meeting, the UK Government itself recognises that the schedule was put together very quickly and that a further review might uncover issues that had not been identified at that time.

In that context, I received correspondence from Nusrat Ghani MP, the Minister of State for Industry and Economic Security, on 2 August. She highlighted a small number of instruments in the Schedule that should, on further investigation, be preserved as they are still of use. Of those, two, concerning biocidal products containing copper, are in devolved areas. These had initially been included in the Schedule for revocation, but the Health and Safety Executive has identified these as a legal basis for the continued safe use of such products and the UK Government intends to remove them from the Schedule, using the powers under the REUL Act.

Minister Ghani acknowledged these were public health measures and so a devolved responsibility and asked for Welsh Ministers’ consent to an SI to remove them from the Schedule.

Welsh Government officials have further reviewed these provisions in light of the additional information in the letter and have concluded that both these Commission Decisions (2014/85/EU and 2014/395/EU) should be preserved. The Decisions currently permit the Health and Safety Executive to issue specific product authorisations for biocidal products containing or generating copper to be supplied and used.

Copper forms the basis for 19 so-called 'essential use' authorisations for biocidal products used for purposes such as the prevention of Legionella in hospitals and public buildings, and to prevent fouling in water inlets on oil rigs.

If these provisions were to be revoked via the Schedule, users of copper biocides would be obliged to change to alternative technologies. This would be costly and time-consuming for many users, as it would require refitting and rebuilding completely different types of systems. Selection of systems for these applications is complex and could risk less-effective systems being used. On that basis, we wrote in August to UK Government to consent to these legal provisions being preserved so that this safe supply and use of copper biocides continues to be legally permissible.

Our assessment of the Schedule, in collaboration with UK Government, is ongoing. We will provide further updates on any necessary changes to the committee.

- b. Please would you clarify if the Welsh Government's assessment has involved consideration of any and all implications for Wales, and not just matters which fall within devolved competence.*

Our review to date has been primarily focused on instruments in devolved areas.

- c. When we asked for your response to the concerns expressed by environmental organisations about the Schedule, you said you were not aware of any concerns but you acknowledged that concerns may have been raised in other ministerial portfolios. We would welcome confirmation as to whether any concerns with the retained EU law listed in the Schedule has been raised with any Welsh Minister, and details of the concern(s) raised.*

I am aware that the Chair of the Climate Change Environment and Infrastructure Committee wrote to the Minister for Climate Change on this issue on 25 July. I understand that she will be replying to this letter shortly and that it will be copied to you.

Question 2:

In your letter of 7 July, in response to questions 4 to 6 which related to the exercise by UK Government Ministers of regulation-making powers in devolved areas, you told us that the Welsh Government remained in discussion with the UK Government about "an alternative consent mechanism". During our meeting you told us "we have a concession, I think in writing, that, basically, the UK Government... will not legislate in these areas without the consent of Welsh Government". Please can you confirm the terms of this agreement and share with us the correspondence which sets out its negotiation and final details. Please can you also clarify how the Welsh Government will keep the Senedd informed and share relevant information about the exercise of these regulation-making powers by UK Government Ministers.

This issue is not yet fully resolved between the UK Government and the Devolved Governments. We hope that it will be soon, in a way that protects and respects the devolution settlement. We will continue to keep the Senedd informed and share relevant information through the normal channels.

Question 3:

In relation to the sunseting of directly effective rights and obligations, in your letter to us on 7 July you said discussions are ongoing between the UK Government and the Devolved Governments on this matter, including whether concerns could be addressed using the appropriate powers in the Act. You added "This is a significant piece of work that we are now having to apply on a case-by-case basis across different policy areas and pieces of legislation", and you said you would keep us informed of progress. We welcome your commitment to keep us informed. Please would you also provide further detail on the work which is being undertaken by the Welsh Government.

The implications of the Act are heavily dependent on any decisions yet to be taken by UK Ministers for reform of existing REUL in key areas. We remain in discussion with the UK Government at official level on possible developments of this kind. The immediate focus for Welsh Government officials is on implementation of the Act, including an SI to change references related to "retained EU law" to "assimilated law" (or similar) across the existing body of legislation made in Wales) and in relation to the ending of provisions on the interpretive effects of REUL.

We will continue to keep the Committee informed as work progresses.