

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol / The External Affairs and
Additional Legislation Committee
Bil y Diddymu Mawr / The Great Repeal Bill
EAAL(5) GRB 02
Ymateb gan Sefydliad Siartredig yr Archaeolegwyr / Evidence from Chartered
Institute for Archaeologists

Inquiry into the Great Repeal Bill and its implications for Wales

This evidence

Thank you for the opportunity to provide evidence to this inquiry. Written evidence submitted on behalf of The Chartered Institute for Archaeologists is attached.

The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,200 members and around 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

Evidence of The Chartered Institute for Archaeologists (CIfA)

1.1 What is your view on the UK Government's approach to legislating for Brexit and the implications this might have for Wales, devolution and the balance of power between the Assembly and Welsh Ministers?

1.1.1 CIfA supports the UK Government's approach 'to convert the body of existing EU law into domestic law, after which Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once we have left the EU'¹. However, we are concerned that the need to resort to secondary legislation to effect this change (which is understood), may, in practice, result in substantive changes to the law without any or any adequate parliamentary scrutiny. This concern is increased when the additional complications of devolved government have to be taken into account in Wales².

¹ Paragraph 1.12 of the White Paper

² Furthermore, there may be significant resource implications for Wales if matters previously dealt with at EU level are to be dealt with in Wales. If, for instance, CAP funding calculated on an area basis, is to be the responsibility of Welsh Government, that responsibility may not be adequately reflected in the Welsh budget traditionally calculated on a per capita basis

1.1.2 The Institute's primary concern in this regard is the historic environment and the effect of any changes upon it. Much environmental law in Wales (and elsewhere in the United Kingdom) is underpinned by European Union law, most notably through the operation of the Environmental Impact Directive and related legislation.

1.1.3 Over 95% of historic assets in Wales (including, in some cases, assets of national importance) are not protected by any specific designation such as scheduling or listing. The planning system provides the only effective protection for most of those undesignated assets, supplemented in appropriate cases by environmental impact assessment (EIA). With administrations throughout the United Kingdom increasingly looking to deregulate the planning process in an effort to 'free up' development, the importance of EIA for the historic environment is, if anything, increasing.

1.1.4 If the 'Great Reform Bill' or any subsequent legislation were in any way to undermine the operation of EIA in relation to the historic environment in Wales, this would have the potential significantly to reduce protection for the historic environment and leave historic assets (and their significance) vulnerable to damage or destruction.

2.1 How can the drafting of the Great Repeal Bill ensure that the Assembly has sufficient oversight over powers delegated to Welsh Ministers?

2.1.1 In the first place, the powers delegated to Welsh Ministers should only relate to technical changes and the Great Repeal Bill should, so far as possible, expressly limit the powers conferred by it to make secondary legislation to powers to make technical rather than substantive changes to current law. The challenge is defining permitted and prohibited changes but this challenge should be met (perhaps building on the UK Government's expressed desire to ensure that the power will not be available 'to make a policy change which is not designed to deal with deficiencies in preserved EU-derived law arising out of our exit from the EU'³).

2.1.2 In addition to any requirement for Welsh Ministers to report to the Assembly upon the exercise of such powers, it would also be helpful to establish an Assembly committee or committees (or task existing committees such as the Climate Change, Environment and Rural Affairs Committee) to oversee and review any amendments made by Welsh Ministers under the Great Repeal Act to ensure that they do not substantively alter the law.

3.1 Are the constraints proposed in the White Paper sufficient?

3.1.1 ClfA supports the constraints envisaged in the White Paper (including time-limiting the powers), but further safeguards may be necessary. These might include oversight committees (see paragraph 2.1.2 above) and a provision requiring saved Statutory Instruments in certain circumstances to be treated as

³ Paragraph 3.17 of the White Paper

primary legislation so that they could only be amended by further primary legislation (ensuring adequate scrutiny).

3.2 Should the Assembly be free to determine the procedures for making and approving secondary legislation where powers are delegated to Welsh Ministers?

3.2.1 Yes, and those procedures (including an appropriate sifting mechanism) should ensure that substantive changes to the law are adequately considered by the Assembly.

4.1 How can the Assembly ensure that the Welsh people, stakeholders and organisations have sufficient opportunity to contribute to the legislative processes established by the Great Repeal Bill?

4.1.1 The Welsh Assembly (working together with the UK Government) should identify and publicise as quickly and precisely as possible changes proposed to environmental legislation affecting Wales and the procedures by which such changes will be considered. Openness and transparency will be crucial to public confidence in the arrangements for transition and will facilitate the constructive engagement of people, stakeholders and organisations in the process.