

Mick Antoniw MS

Counsel General and Minister for Constitution

14 December 2022

Dear Mick

Legislative Consent: Retained EU Law (Revocation and Reform) Bill - Follow-up to the meeting of 5 December 2022

Thank you for appearing before the Committee on 5 December and giving evidence on matters relating to Retained EU Law (Revocation and Reform) Bill (the Bill).

There are a number of issues which we were not able to raise with you during the meeting. There are also matters we would like to pursue further.

I would therefore be grateful to receive your responses to the questions listed in the Annex by 12 January 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Yours sincerely,



Huw Irranca-Davies

Chair



Annex

Wales-made REUL

Q1 – You told us that the Welsh Government’s focus “has got to be firstly to ensure that we analyse and retain our own EU retained law, that we focus on that law that’s been made within Wales” (RoP, 242). Has that analysis been completed? If not, what is your target date for its completion?

Reviewing REUL

Q2 – You and your officials said that Welsh Government policy teams are working closely with their Whitehall counterparts to analyse spreadsheets of data prepared by those Whitehall departments “to see whether [you] agree with that analysis” (RoP, 242 to 254). What is the target date for the completion of that work?

Welsh Government’s approach

Q3 - Has the Welsh Government had any reassurance from the UK Government that it will not change or remove devolved REUL without the consent of the Welsh Government? If so, does the UK Government intend to amend the Bill to reflect this commitment?

Q4 – You told us that “if you don’t take measures to be able to identify and understand what it is you want to retain, then everything else is going to go.” (RoP, 295). You also told us that you have not yet decided on your approach to retaining REUL but that you want to “make sure that [the Welsh Government] focus on those areas that are most important to us”.

- a. Can you therefore confirm that you do not intend to save all REUL in devolved areas?
- b. On what basis will you decide which areas are most important to the Welsh Government?
- c. Can you tell us which areas these are, or if not, when you will be able to tell us?
- d. What are the risks to the areas deemed not important or less important and how have they been determined?
- e. How will you mitigate and manage the risks associated with this, particularly if you are not carrying out your own impact assessment (RoP, 256)?

Q5 - You told us that you may adopt a “triage approach”, where you try to “identify those that are most obviously relating to devolved issues that may be the most important issues, rather than technical issues, so that we make sure we focus on those areas that are most important to us” (RoP, 277). What do you mean by “technical issues”?

Q6 – You told us that you think the Bill has created a great deal of uncertainty for the Welsh Government. However, stakeholders have accused you of ‘fuelling’ / exacerbating this by not clearly setting out your approach. To what extent could the Welsh Government reduce this uncertainty?

Q7 - What will the Welsh Government do to reassure stakeholders of its overall strategy in relation to REUL and about the steps it is taking to address their concerns?

Q8 - You told us “We will want to retain law and not see any diminution of standards. So, we will want to ensure that we retain those standards out of this.” (RoP, 277) How will you maintain or improve standards if they are weakened or reduced under the Bill, either by omission or by action taken by the UK Government?

Saving REUL

Q9 – You said “The complexity comes in knowing the scale of what we're going to do. If, for example, in a whole large area of these 3,800-plus pieces of legislation, the UK Government equally decides that what they should do is retain a large number of them, then that actually solves part of that problem. It solves part of that problem and it makes it a lot easier to manage those areas that have not been retained.”

- a. This suggests to us that the Welsh Government will defer decision-making and action to the UK Government to make regulations. Is this correct? Do you have concerns for what this approach means for Wales, including the Senedd?
- b. Will the Welsh Government wait to see what the UK Government saves and subsequently decide what it may need to save itself?

Amendments

Q10 – In addition to the single amendment to the Bill we know you have requested (in relation to the Welsh Ministers having the ability to extend the sunset date up to 23 June 2026), you said that you would be “encouraging changes to be made that give us the guarantees that we have sought” and you specifically mentioned concurrent powers in the Bill and the powers of the law officers in devolved Governments (RoP, 285). You also said that the Welsh Government would “do the normal things in terms of briefings, in terms of discussions, in terms of engagement with the UK Government and interested parties, who will all make their own representations” (RoP, 289).

- a. What specific changes to the Bill are you seeking?
- b. Can you confirm that you have made formal requests to the UK Government and, if not, when will you do so?

- c. Why are your suggested changes not detailed in your LCM, which only lists one amendment put forward, for consideration by this Committee and wider Senedd?
- d. You said that we can expect the Welsh Government to put forward further amendments and that you have set these out. When will the Senedd have the opportunity to scrutinise these?
- e. You mention that an option available to the Welsh Government is to rely on others to bring forward amendments which reflect your position rather than acting collaboratively. Could you provide more information on this and confirm who the “others” might be?

Q11 – Under clause 15 of the Bill, Ministers will be prevented from increasing the regulatory burden when revoking or replacing REUL. You described this as a “constraint that is totally unacceptable” (RoP, 269). Why have you not, therefore, requested an amendment to remove this constraint from the Bill?

Q12 – You have previously commented on the enormous powers that will be given to Ministers via this Bill. You told us that these are “powers that, in normal circumstances, you would not wish to give to governments”. You also said “it’s not a question of whether we want them; we will probably have no choice because if we want to do anything about retaining legislation that maintains standards and so on, things that we agree with them in devolved areas, then we’re going to have to exercise them” (RoP, 291). Have you requested that the Bill be amended to uplift the scrutiny procedures attached to the powers if and when they are exercised by the Welsh Ministers?

Divergence and disputes

Q13 – Have you identified any areas where you have policy intentions which diverge from those of the other governments of the UK?

Q14 – When we asked you how disputes could be resolved you told us that the new inter-governmental process that has been established “is probably not going to be particularly ideal process” and “It may be that you can create something specifically to try and resolve those disagreements” (RoP, 279).

- a. Can you clarify why the recently created structures for intergovernmental dispute resolution would not be the appropriate structures to use to resolve any disputes in this area?
- b. Can you confirm that, where relevant, disputes would go through the relevant common framework process in the first instance?
- c. Given the need for timely action because of the 31 December 2023 sunset date, how realistic is it that a new dispute resolution process could be created?

Capacity and resource

Q15 - The First Minister told the Scrutiny of the First Minister Committee on 9 December that, as the Welsh Government has no spare capacity, "diverted capacity" will be needed away from its legislative programme to work on the Bill. Given the First Minister's comments, when will decisions be taken about when and where resources will be diverted, and will you commit to updating the Senedd as soon as decisions are made?

Q16 – You told us that the Welsh Government wants to deliver its legislative programme but there was uncertainty around the demands the Bill will place on resources. Are you coordinating Cabinet discussions regarding your concerns about delivery of the legislative programme?

Impact and role of the Senedd

Q17 – You also said "I think one thing is clear: it makes the sort of detailed scrutiny and the timescale for that scrutiny incredibly difficult" and "we have to look at how that will work". You told us that there is "going to be a need for very close co-operation between the Government and the Senedd in terms of an understanding as to precisely what is required, what is happening and how we best manage that. It's not just an issue for the Welsh Government; obviously, it's an issue for the Senedd itself, in terms of how it scrutinises and assesses those steps as well" (RoP, 307).

- a. How will the Welsh Government maximise the scrutiny opportunities afforded to the Senedd?
- b. How will the Welsh Government involve the Senedd in determining what is required as a consequence of the Bill?

Q18 – You did not confirm to us that you are liaising with the Llywydd and the Business Committee regarding the potential impact on the Senedd's timetable. Could you confirm that discussions are taking place? If not, is the Welsh Government waiting on clarity from the UK Government before doing so?

Regulatory landscape

Q19 - Would the Bill introduce a regulatory ceiling?

Q20 - How could the Bill impact the Welsh Government's policy and ability to improve standards, where possible, post-Brexit?

Q21 - The UK Government has stated that environmental protections will not be weakened and that the devolved nations can preserve legislation within competence. Which environmental protections will the Welsh Government preserve?

Stakeholders

Q22 - You told us "there's going to have to be engagement with stakeholders because we're going to have to have that understanding of some of the steps that have been taken. I think the problem is, at this stage, it's not completely clear who we will be engaging with, to what extent, and within what framework." (RoP, 350)

- a. Could you clarify whether the Welsh Government is engaging stakeholders on the Bill at this stage, or when it plans to if this is not yet the case?
- b. You identified agriculture and environment as areas where there will be a "big focus" which you anticipate to be "very intense" (RoP, 323). Is the Welsh Government prioritising stakeholder engagement in these fields?
- c. How will you engage stakeholders in order to determine what issues are important to them?

Agriculture Bill

You told us that the Agriculture Bill "contains within it elements of retained EU law, and there may be issues that will arise during this process that need to be addressed; it's just not clear what they might be at this stage" (RoP, 335).

Q23 - Why was it appropriate to use the Agriculture Bill as a vehicle to provide broad powers for the Welsh Ministers to amend retained EU law when the Welsh Government has undertaken no analysis of the implications of the REUL Bill in this policy area?

Q24 - Is it the Welsh Government's intention to save the REUL on which the Agriculture Bill relies under the REUL Bill? What happens if the REUL on which it relies is revoked by the UK Government? Is the UK Government aware of the Welsh Government's need for the REUL to remain in place for the operation of the Agriculture Bill?

Q25 - When do you anticipate being in a position to understand the breadth and detail of any issues which need to be addressed during the passage of the REUL / Agriculture Bills?

Q26 - Is it your attention to make amendments to the Agriculture Bill to address any such issues?

Q27 - Does the Welsh Government intend to adopt this approach of taking broad executive powers to deal with the uncertainty of REUL rather than bring forward primary legislation when the picture is clearer?