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Llywodraeth Cymru
Welsh Government

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Chair
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Dear Huw

Thank you for your letter of 3 February seeking further information following my recent attendance at the Legislation, Justice and Constitution Committee in relation to Welsh Government's Draft Budget for 2023-24 (spending in relation to justice) and general scrutiny.

My response to the questions raised in your letter can be found in Annex A.

Yours sincerely,

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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 A

Justice

Q1. In your correspondence to the Committee, you reiterated the Welsh Government's commitment to bring forward legislation to create a modernised tribunal system for Wales. Please can you provide any updates on work that is underway to prepare for that legislation and when we might expect it to come before the Senedd?

We have made clear in "Delivering Justice for Wales" that the Government intends to legislate to create a modernised tribunal system for Wales. I cannot at this time offer a definitive timescale for the timetabling of legislation as this is, of course, subject to separate processes for the development of the Government's Legislative Programme. In the meantime, we are working through the Law Commission's recommendations to develop detailed proposals for reform, drawing on the evidence base for change and conversations with those affected by the reform agenda. As a next step we propose to progress to consult on our approach via a White Paper to inform the legislation we intend to bring forward.

UK Internal Market Act 2020

Q2. Does the Welsh Government still intend to use the Environmental Protection (Single-use Plastics) (Wales) Bill as a practical example in a legal challenge against the UK Internal Market Act (on matters that do not relate to legislative competence), and if so what route will you use?

There are no current plans to use the Environmental Protection (Single-use Plastics) (Wales) Bill in this way. The Welsh Government has been very clear in its position on, and opposition to, the UK Internal Market Act and we will continue to monitor and consider opportunities to challenge.

Q3. We questioned you at some length on the impact of the UK Internal Market Act (RoP 94-115). Please can you explain what the potential issues are with the Act and when you might expect them to arise?

The Welsh Government has raised many issues with the UK Internal Market Act since its inception. These include the cross-border impact of English legislation passed in the UK Parliament as well as the wide-ranging financial assistance powers.

I have also been very clear that when the Senedd passes primary legislation to create new regulatory requirements in Wales, it does so free from the UK Internal Market Act.

I understand that others may not share this view, and this is where issues in the future may arise.

Q4. During the Plenary debate on a consent motion for the Genetic Technology (Precision Breeding) Bill on 17 January, the Minister for Rural Affairs stated: "When the Senedd legislates they do so free of the UK Internal Market Act, so primary legislation in a devolved area can be made free from requirements of UKIMA" [Plenary RoP para 439]. It is clear that UKIMA does not affect the Senedd's competence to make legislation, but our concern remains that UKIMA can have a practical impact on the operation of such legislation once enacted. Can you set out on what grounds the Welsh Government has concluded that provisions in an Act of the Senedd are not;

- ***‘relevant requirements’ for the purposes of the mutual recognition principle for goods in section 2 of UKIMA;***
- ***a ‘legislative requirement’ in relation to services, in accordance with section 17 of UKIMA?***

The Welsh Government’s position is that the UK Internal Market Act cannot have had the impact it purports to have on the Senedd’s legislative competence, i.e. to prevent the Senedd from banning the sale of a variety of items in Wales, unless those same items are also banned across the UK, or because the UK Government has agreed to a specific exclusion on an issue. If this were the case, this could amount to a reservation of large areas of competence, which, given the status of the Government of Wales Act 2006 as a constitutional statute, and because the devolution arrangements are a permanent part of the UK’s constitutional structures, could only be achieved by express amendment. To do otherwise – to impliedly amend competence – is contrary to the principle of legality.

The manner in which the UK Internal Market Act seeks to achieve the purported impact outlined above (and establish the overall architecture of the Act) is through the introduction of ‘relevant requirements’ and ‘legislative requirements’ as outlined in your question. Given the Welsh Government’s position above – that the UK Internal Market Act has not had this purported impact – it follows that provisions in Senedd legislation will not be ‘relevant requirements’ or ‘legislative requirements’ for the purposes of section 2 or section 17 of the Act.

Q5. Given the Welsh Government’s views on the Genetic Technology (Precision Breeding) Bill, will you be seeking an exclusion for genetic technologies from the market access principles in the UK Internal Market Act if the Bill becomes law?

Ministers recently agreed to a careful review of our precautionary approach to these technologies, where we will consider if there is evidence to support a policy change in Wales. As part of that we will consider whether a UKIMA exclusion is necessary in relation to these technologies and will update the committee in due course.

Intergovernmental Relations

Q6. There are a large number of ongoing disagreements on legislation between the Welsh and UK governments, not least around the Retained EU Law Bill. Has the Welsh Government considered using the intergovernmental dispute resolution mechanisms to address these issues? If not, why not? Are the mechanisms fully operational?

We want to work with the UK Government pragmatically – on legislation and indeed any other issues – as part of what should be routine intergovernmental engagement. The machinery set up by the intergovernmental relation review can provide escalation routes – through, for example, the Interministerial Groups (‘IMGs’) set up across portfolios. We would hope that these forums should be sufficient to allow us to raise concerns and resolve disagreements without needing to invoke the formal dispute resolution process. However, if we cannot reach agreement through these arrangements, the dispute resolution processes are operational and remain open to us.

Retained EU Law (Revocation and Reform) Bill

A response to questions 7 to 10 were set out in my letter of [10 February](#).

Accessibility of the Law

Q11. What plans do you have for 2023-24 to improve the accessibility of Welsh law?

The Government's five-year programme, *The Future of Welsh Law*, sets out the details of the projects that we currently anticipate undertaking during this Senedd term. This is subject to ongoing evaluation and review, including assessing the impact of other legislative pressures on the Welsh Government. We do not intend to set out a year-by-year schedule of activity to supplement the programme, not least because many of the projects span several years. We will continue to use the annual report to update the Senedd on progress made under the programme and if changes to the programme are required these will be made in accordance with section 2(7) of the Legislation (Wales) Act 2019.

However you will be aware that in late 2021 we began the work with The National Archives on the technical changes needed to the functionality of legislation.gov.uk to support annotation of legislation. That work continued right up until it went live in October 2022, and alongside that our staff were receiving the initial and supplementary training they needed to begin annotation. Work on annotation is now well underway, including for example almost all of the legislation relating to Renting Homes now being available in up-to-date form in both languages.

I can also update the Committee that we are now considering the consultation responses on the draft Statute Law (Repeals) (Wales) Bill and expect to introduce a Bill into the Senedd before summer recess.

Q12. Please can you provide an update on when the Welsh Government will be introducing legislation to consolidate planning law?

Significant work has been achieved on the preparation of Bill to consolidate planning law, but there is quite some way yet to go. We are looking at a Bill that will consolidate significant swathes of the statute book and that will take time to get right. The planned introduction of that Bill will be announced in the usual way during a future legislative programme statement by the First Minister.

Q13. What progress has the Welsh Government made on the consolidation and remaking of the National Assembly for Wales (Representation of the People) Order 2007?

The position remains as I set out in the annual report to the Senedd of October 2022: work is underway, and a consultation will be held on a draft of the proposed Order in due course.

Q14. How is the accessibility of the law considered when the Welsh Government decides whether to agree to UK Bills making provisions in devolved areas? Is any kind of risk assessment or similar undertaken?

We always start from the position that legislation in devolved areas should be made in the Senedd, with accessibility of the law being one of the principles underpinning that. Any decision to agree to provision being made in a UK Bill, in line with our principles, will therefore involve an analysis of the various factors involved including accessibility but also the potential benefits of bringing forward provision, as set out in our principles.

Legislation

Q15. Are there any policy areas that you foresee a significant amount of secondary legislation being required for over the next 12 months?

Q16. What, if any, significant secondary legislation must be brought forward in this calendar year, perhaps to implement Acts passed by the Senedd in recent years or because new and updated regulations must be made?

Q17. Does the Welsh Government as a whole have a priority list of secondary legislation that must, or is to, be made in 2023? If the Welsh Government does have a priority list, how will it deprioritise, or what contingencies are being put in place, if government resources need to be diverted to drafting secondary legislation needed to save or reform REUL?

As the First Minister set out in his July Legislative Statement, the Government's programme of legislation includes substantial subordinate legislation, much of which contributes to the implementation of Acts of Senedd Cymru. This includes subordinate legislation to implement the Tertiary Education and Research (Wales) Act, additional learning needs reform and The Environmental Protection (Single-use Plastic Products) (Wales) Bill which is at Post-Stage 4. The programme also includes subordinate legislation necessary to implement UK Government Acts.

The programme is kept under continuous review and while it is not possible to fully assess the scale of the impact of REUL until we know the detail of the UK Government's plans, we are considering the potential implications it could have on the Welsh Government's planned work.