

Mick Antoniw MS  
Counsel General and Minister for Constitution

3 February 2023

Dear Mick

Legislation, Justice and Constitution Committee, 16 January 2023 - Welsh Government's Draft Budget for 2023-24 (spending in relation to justice) and general scrutiny

Thank you for appearing before the Committee on 16 January and giving evidence on matters relating to the Welsh Government's Draft Budget for 2023-24, specifically as regards spending in relation to justice, and to answer more general questions regarding your portfolio responsibilities.

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 be grateful to receive your response to the majority of the questions listed in the Annex by 23 February 2023 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Given our reporting deadline for the legislative consent memoranda on the Retained EU Law (Revocation and Reform) Bill, I would be grateful to receive a response to the questions 7 to 10 by noon on 10 February 2023.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

## Annex

### Justice

1. 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?

### UK Internal Market Act 2020

2. 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?
3. We questioned you at some length on the impact of the UK Internal Market Act (RoP 94-115). You told us that:

*"I think the fact that the single-use plastics Bill has now been passed, will be going for Royal Assent now—. I think there is a period of time before implementation, because of the World Trade Organization requirements, et cetera, but the Attorney-General has clearly taken the decision that it's not a matter to be referred to the Supreme Court, and I'm content to accept that. It doesn't mean that there aren't issues with the internal market Act, but they may arise at a later stage." [Our emphasis].*

As regards the last sentence, please can you explain what the potential issues are with the Act and when you might expect them to arise?

4. 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?

5. 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?

## **Intergovernmental Relations**

6. 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?

## **Retained EU Law (Revocation and Reform) Bill**

7. Please could you provide an update on intergovernmental joint working and advise of any joint plans agreed to date?
8. What action will you take if the Senedd refuses consent to the Bill and how will you draw any concerns you have to the attention of the UK Parliament?
9. What action will you take if the Bill subsequently becomes law, without the amendments you would like to see made?
10. Does the Welsh Government consider that the Senedd has the legislative competence to bring forward a Welsh Bill that would amend the Retained EU Law (Revocation and Reform) Bill (if and when enacted) so as to amend the sunset date as it currently applies to retained EU law in devolved areas? Is the Welsh Government considering bringing forward such a Bill if the sunset date of 31 December 2023 remains in the Bill?

## **Accessibility of the Law**

11. What plans do you have for 2023-24 to improve the accessibility of Welsh law?
12. Please can you provide an update on when the Welsh Government will be introducing legislation to consolidate planning law?
13. What progress has the Welsh Government made on the consolidation and remaking of the National Assembly for Wales (Representation of the People) Order 2007?
14. 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?

## **Legislation**

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

- 16.**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?
- 17.**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?