

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair
Health and Social Care Committee

SeneddHealth@senedd.wales

27 February 2023

Dear Russell,

Thank you for your letter of 26 January in relation to the potential implications of the UK Government's Retained EU Law (Revocation and Reform) Bill for health and social care in Wales. I shall answer your questions in the order in which they were asked.

Overarching issues and identification of REUL

Question 1: What are your views on the impact of the Retained EU Law (Revocation and Reform) Bill on health and social care in Wales?

I share the Welsh Government's overall opposition to the approach being taken by the Bill. REUL generally operates effectively and provides crucial protections across different aspects of Welsh life, including workers' rights, environmental protections and public health safeguards. The Bill poses a significant distraction at a time when governments across the UK should be focused on matters of greater importance such as the cost-of-living crisis.

REUL forms an important part of the legal framework underpinning a variety of issues relevant to my portfolio. The general concerns about the potential implications of the Bill are therefore applicable to a health and social care context. Of particular concern is the deadline set by the Bill to review REUL before the sunset date of 31 December 2023, which sets an unnecessary and arbitrary timescale for reviewing an entire body of law and runs the risk of important legal protections being removed from the statute book on this date, without appropriate scrutiny.

For health and social care, REUL provides important protections which have been built up over a significant period of time. In responding to the Bill over the coming year my priority will be to ensure that key standards and protections are maintained as far as possible.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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.

Question 2: We note that the UK Government's REUL Dashboard only includes REUL made by UK Ministers. Could you provide us with a list of REUL made by Welsh Ministers that relates to health and social care?

The dashboard published by UK Government includes REUL relating to a number of health policy areas, including regulation of medicines, medical devices and substances of human origin, as well as a high concentration relating to food standards and safety. It is also important to note that UK Government's identification of REUL is an iterative process and therefore its dashboard is subject to ongoing review. The current list comprises examples of both reserved and devolved REUL, and my officials are continuing to work with counterparts in UK Government on this analysis and to develop more granular detail about whether instruments apply to Wales within devolved areas.

In addition to the REUL which falls to the Department for Health and Social Care (DHSC) as the lead UK Government department, it is important to note that REUL in other areas such as environmental regulation will also be of interest to my portfolio. We will look to engage in key developments from other parts of Government where there is a clear health and social care policy interest.

We recognise that significant work is also needed to ensure we identify all relevant REUL which has been made in Wales (and is therefore not captured in UK Government's dashboard). This will mostly comprise statutory instruments made by Welsh Ministers to transpose EU Directives into Welsh law. Work is progressing to identify such REUL, drawing on a variety of sources and including support from the National Archives. A full list is not yet available but I will be able to provide further information on this in due course.

Decisions on REUL

Question 3: The Counsel General told the LJC Committee on 5 December 2022 that the Welsh Government intended to implement a triage process to inform its decisions in respect of REUL. Could you identify which pieces of REUL, or which policy areas affecting health and social care (for example public health or food labelling) the Welsh Government intends to prioritise for consideration within the triage process?

REUL currently provides important protections across a range of regulatory issues. Whilst the arbitrary timescale imposed by the UK Government's Bill means there will be a need to prioritise, I am also mindful that each specific piece of REUL performs an important function in its own right. In approaching this issue my intention will be to minimise the risks of important protections being lost and to do everything we can to ensure that standards are not reduced.

Until the work referred to under Question 2 above is completed, it is too early to single out particular policy issues which will be given priority consideration. We will be in a position to prioritise effectively once we have a fuller picture and all the relevant information in place, including detail of UK Government's intentions for where it will be looking to remove or amend specific pieces of REUL. However, at this early stage I can confirm that REUL which is identified as being most closely linked to public safety will be uppermost in my mind as this work progresses over the coming months.

Question 4: Could you confirm whether the Welsh Government plans to use the powers in this Bill to preserve the standards relating to health and social care that are within competence?

In considering the REUL which is within devolved competence, my overall priority will be to ensure that we minimise risks of important legal protections falling off the statute book at the end of this year. My starting position is that the majority of REUL should be preserved / assimilated as far as possible, with clear evidence needed to justify any plans for changes. I have no plans to reduce standards in important areas of devolved regulation. Whilst I am minded to be in favour of preservation, the mechanics of precisely how that would be achieved needs to be worked through.

Notwithstanding this clear starting position, in considering individual pieces of REUL it is also important to note that Wales does not operate in a regulatory vacuum. It will therefore be important to take account of the approaches being taken in other parts of the UK. Where changes to the status quo are being considered outside Wales, it will be important to understand as far as possible the implications of either aligning with, or diverging from, positions being taken elsewhere. Whilst our ability to do this work is limited by the timing constraints imposed by the Bill, it remains an important consideration in ensuring that legal frameworks remain fit for purpose and are able to operate effectively in the future.

Question 5: How would you respond to the concerns raised by stakeholders such as the Welsh NHS Confederation, the WCVA and the Food Standards Agency that important standards and protections relating to issues such as public health and food labelling could be lost in Wales if regulations are not saved or reformed?

I broadly recognise and share the concerns raised by key stakeholders. The risks of important protections being lost, either unintentionally or as part of a wider UK Government 'deregulation' agenda, are a major part of the rationale for the Welsh Government's strong opposition to the Bill.

For health and social care, our response will be focused on mitigating the types of risks raised by stakeholders. Our intention to preserve / assimilate devolved REUL as outlined earlier in this response will be a key component of this. For the REUL which does not clearly lie within devolved competence, our preference is to maintain the REUL that applies to Wales unless there are very good reasons for not doing so, and we will continue to put forward that position in our engagement with UK Government.

In looking to minimise the risks as far as possible, we will be keen to work closely with key partners and stakeholders, for example to ensure that all the Welsh REUL within the scope of the Bill is identified and considered. The Food Standards Agency (FSA) in Wales is already actively engaged in this work due to the significant amounts of REUL within its areas of responsibility, and FSA and Welsh Government officials are continuing to work closely on the development of a specific programme of work in this policy area.

Question 6: Could you set out how the Welsh Government will consider the long term implications for population health and wellbeing when making decisions in relation to REUL?

Whilst I believe REUL generally works effectively, I accept that there may be some instances where future changes will be appropriate. However, in considering any potential changes or reforms, it is important to first have a full understanding of the implications, both in the short and long term. The timescales imposed by the UK Government's Bill as currently drafted do not sufficiently allow for this detailed work, and therefore in my view changes being driven through at speed risk having unintended consequences.

My preferred approach of initially maintaining REUL as far as possible seeks to mitigate this risk whilst also providing the flexibility to consider areas for potential future reform in a more responsible way. Consideration of regulatory reforms should not happen to an arbitrary timescale but should instead take place in a managed way and to a timescale which allows for full analysis of the potential implications to take place, with appropriate consultation with affected stakeholders.

Stakeholder engagement

Question 7: Can you outline how the health and social care sector in Wales will be involved in the processes of triaging REUL, and reaching decisions in relation to whether pieces of REUL should be saved, reformed or removed in line with the 31 December deadline set out in the Bill?

As indicated earlier in this response, my priority in responding to the UK Government's Bill will be to maintain devolved REUL as far as possible in order to reduce risks of important protections being lost from the statute book at the end of this year. This will be a pragmatic response which effectively means maintaining as much of the status quo as we can, whilst giving us the flexibility to consider future reforms over a longer period.

The timescale imposed by the UK Government's Bill is likely to constrain the amount of proactive engagement which we can undertake, and by seeking to maintain the status quo as far as possible we will be focusing on mitigating what we consider to be the greatest risk in the short term. We will of course engage with stakeholders from the Welsh health and social care sector as far as we are able to in the time available. Where we will be considering priorities for future changes, our intention would be for this to be done over a more realistic timescale which allows for much fuller involvement with the sector.

Question 8: Will you commit to engaging stakeholders and considering their views throughout this process?

My intended approach of maintaining the REUL which applies in Wales as far as possible aims to preserve as much of the status quo as we can, at least in the short term. This mitigates the greatest short-term risk of losing important protections from the statute book at the end of this year.

The timescales imposed by the UK Government Bill will inevitably constrain the amount of engagement which can take place at this stage. However, I am very happy to commit to engaging key stakeholders as far as the time available allows. Where future changes or reforms are being considered over a longer timescale, stakeholder views will be sought more fully as part of general policy development processes.

Intergovernmental working

Question 9: Could you provide information about any discussions you or your Deputy Ministers have had with other governments in the UK about the impact of the Bill on health and social care, or about how any changes to relevant REUL would be coordinated if the Bill is passed?

Outside of health, discussions are continuing between Welsh Government and UK Government on the overall concerns with the Bill in its current form. I expect these discussions will cover issues such as coordination and consent mechanisms as UK Government's intended approach becomes clearer.

Discussions to date with the UK Government's Department for Health and Social Care have focused at official level, and have included discussion around the identification of relevant REUL and consideration of the balance between reserved and devolved responsibilities. I would expect that discussions at Ministerial level will also be needed at certain points in the process.

I can also confirm that responsibility for matters relating to the FSA in Wales (which has responsibilities related to a significant volume of REUL) rests with the Deputy Minister for Mental Health and Wellbeing.

Question 10: What is your view on how the Bill might interact with other post-Brexit arrangements which affect health and social care, such as common frameworks, the Internal Market Act 2020 or trade agreements?

There are a range of potential interdependencies between REUL and other arrangements. This again demonstrates the complexity around these issues and underlines the risks of the Bill unintentionally undermining other aspects of the broader legislative, policy and regulatory landscape. These complexities reinforce my general view that substantial changes to REUL should only be considered over a longer timescale than the current UK Government Bill provides.

A number of the health policy areas with REUL currently in place are covered by UK common frameworks which were developed by the four nations following the UK's exit from the EU. Notable examples cover aspects of nutrition policy, food and feed safety, and substances of human origin. I remain fully committed to the effective implementation of these agreements, and they should provide structure for discussions between different parts of the UK about the developing approaches to REUL in these areas, including managing possible future divergence. I would emphasise that it will be crucial that the frameworks are implemented in the collaborative spirit in which they were developed, in order that all countries of the UK are equal partners in discussions.

In relation to the Internal Market Act 2020, the Counsel General has expressed concerns that the effects of this Act could have further impacts should regulatory divergence occur (for example through the UK Government amending or repealing REUL in England). This could have implications for the ability to maintain and improve standards, in effect, in REUL in Wales. These concerns have been relayed to UK Government.

A further potential interdependency relates to the international trade agreements being negotiated by the UK Government. Any obligations entered into as part of new trading relationships will need to be cognisant of existing and planned legal obligations. As a Government we continue to press UK Government to ensure that key protections and standards are not undermined through its trade negotiations.

Impact on the Welsh Government's legislative programme

Question 11: Could you explain whether any elements of the Welsh Government's legislative programme relevant to health and social care (for example the Clean Air Bill) will be affected by the Bill, and if so how.

It is too early to tell whether, and to what extent, the Bill will impact on the Welsh Government's wider activity. It is however clear that the Bill in its current form has potential to distract resources and focus from other important activity. As we respond to the Bill we will also work tirelessly to protect the delivery of our Programme for Government and legislative programme.

I hope you will find the information in this response helpful.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

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Minister for Health and Social Services