

**Mick Antoniw AS/MS**

**Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution**



**Llywodraeth Cymru  
Welsh Government**

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Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
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09 March 2023

Dear Huw,

Thank you for your letter of 22 February providing your Committee's Report on the Welsh Government's Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill.

The responses to your conclusions and recommendations are set out in an Annex to this letter.

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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**

### **Conclusions and Recommendations**

*Conclusion 1. As the Senedd Committee with overall responsibility for the scrutiny of secondary legislation, and as the Committee which takes a broad role in seeking to assess and improve Welsh law, we cannot overestimate our concerns as to the effect this Bill could have on the certainty and quality of law as it applies in Wales.*

The Welsh Government shares the Committee's concerns about the potentially very significant, negative, impact of the Bill on law in Wales. As I set out in my letter to the Committee of 19 January, the precise impact of the Bill depends fundamentally upon decisions yet to be taken by UK Ministers within the framework of the Bill once it becomes law, as well as any changes that are made to the Bill during its Parliamentary passage.

*Conclusion 2. As a Senedd Committee, we are very concerned that the Bill's provisions do not sufficiently engage or acknowledge the role of a legislature in a parliamentary democracy.*

The Welsh Government agrees with the Committee. As stated in my letter of 19 January, the Bill is not of our making or choosing. In any reasonable situation, we would not be expecting to make any significant changes to important pieces of law without proper debate and scrutiny in the Senedd.

*Conclusion 3. The Bill enables an unacceptable power imbalance between executive and legislature. We support the calls by the DPRR Committee and others to remove from the Bill the unlimited and unnecessary Ministerial powers.*

The Welsh Government shares much of this concern about a Bill that is not of its own making. As at Conclusion 2, there is a balance between the possible need for urgent reform or replacement of laws otherwise being ended by the Bill, and appropriate scrutiny of the legislation.

*Conclusion 4. Given what we know the Bill will do, the views expressed by the Welsh Government, and based on the little information we have been given by the Welsh Government as regards any strategic plan, we must conclude that the timetable for the Bill, caused by the sunset date of 31 December 2023, means we and the Senedd could likely be confronted with an unprecedented workload in the autumn of 2023.*

As I set out in my letter of 19 January, whilst we continue to develop our internal thinking and plans in line with our overall approach, we await the necessary information from the UK Government to allow us to set out a more detailed definitive timeline and programme of work. In the meantime, as the Committee is aware, we

have pressed for an extension to the sunseting deadline and for Welsh Ministers to have powers to extend that deadline, both directly to the UK Government and with interested members of the House of Lords.

*Conclusion 5. It is vital that the Welsh Government makes urgent progress with its plan on how it will approach the requirements of the Bill, if and when it is enacted.*

Agreed, and our work continues urgently in the context of the response to Conclusion 4.

*Conclusion 6. The Welsh Government needs to engage urgently with the Senedd and closely coordinate with it on the implications of the Bill, if and when it is enacted, on the Welsh Government's programme for government and the impact on Senedd business.*

We will continue to share information about the Bill as it becomes available, and we are open to having preliminary discussions in confidence about potential implications for business in the Senedd.

*Conclusion 7. We agree with the Welsh Government's assessment that the Senedd's consent should be sought for all clauses of and Schedules to the Bill, with the exception of clause 18.*

This is appreciated and is noted.

*Conclusion 8. A majority of the Committee agrees with the Counsel General that the Senedd should withhold its consent to the Bill; not all members of the Committee are of the view that consent should be refused.*

The Welsh Government welcomes the majority view of the Committee.

*Conclusion 9. We believe that decisions taken under the Bill's regime (if and when enacted) should be made on a case-by-case basis with full stakeholder consultation and parliamentary oversight.*

We would wish to ensure proper stakeholder consultation and engagement by the Senedd in relation to any significant changes in legislation that would be brought about as a result of the Bill, though the timeline created by the Bill and limited information available from the UK Government on its plans may make that difficult to deliver as we would have wished.

*Conclusion 10. We consider the current approach by the UK and Welsh governments means that the risk of the Senedd being bypassed is very high.*

The risk of the Senedd being bypassed is due to the whole approach being taken by the UK Government on this Bill, and it would be incorrect to attribute this to the Welsh Government.

*Recommendation 1. The 31 December 2023 sunset date should be removed from the Bill.*

As explained in my 19 January letter, “the Welsh Government fundamentally opposes the whole intent of the Bill”, including the very concept of a sunset date. In the context of our mutual concerns on the Bill, we have, in co-operation with the Scottish Government, extended a number of potential amendments to also cover Wales, which were shared with members of the House of Lords ahead of committee stage commencing. This includes amendments, that would remove the sunset date from the Bill entirely; remove devolved areas from the sunset; change the sunset to a later date; or give the Welsh Ministers the power to extend it.

*Recommendation 2. If the 31 December 2023 sunset date remains in the Bill, the Bill should be amended so that the power in clause 2 to extend the sunset date is also granted to the Welsh Ministers in relation to devolved matters.*

Agreed. As above, we have promoted amendments in the House of Lords to this effect.

*Recommendation 3. If the 23 June 2026 sunset date remains in the Bill, the Welsh Government should, as a matter of urgency, raise with the UK Government the unique issue of the 2026 Senedd election and its conflict with the 23 June 2026 sunset date.*

We agree with the Committee’s comments on this and will raise with the UK Government the issue of the proximity of the 2026 Senedd election to the 23 June 2026 deadline.

*Recommendation 4. If the 23 June 2026 sunset date remains in the Bill, the Welsh Government should ensure that the Senedd dissolution period ahead of the election for the Seventh Senedd is factored into long-term planning for all regulations that may need to be made before that sunset date.*

We will reflect on this and discuss further with the Senedd as necessary, in the light of any comments from the UK Government as a follow-up to our action under Recommendation 3 above.

*Recommendation 5. If the 23 June 2026 sunset date remains in the Bill, the Business Committee, in its preparation for the Seventh Senedd, should ensure that its successor is aware that there will be a priority need for an appropriate committee to be urgently established so that regulations to be made before that sunset date may be considered and, further, that Plenary sittings may be needed for Members of the new Seventh Senedd to consider and vote on any regulations subject to the draft affirmative procedure.*

This is a matter for the Senedd.

*Recommendation 6. We support the Welsh Government's call for the UK Government's dashboard to identify how each piece of retained EU law falls across reserved and devolved competencies.*

We agree with the Committee's recommendation. We are keen to ensure the UK Government's dashboard reflects the full extent of both devolved and reserved REUL once each piece has been authoritatively identified.

*Recommendation 7. The Welsh Government should share its own list of Welsh-made retained EU law with our Committee and with the UK Government as soon as possible.*

We intend to do so.

*Recommendation 8. The Welsh Government should request that Welsh-made retained EU law should be added to the dashboard.*

Agreed, as per Recommendation 6 above.

*Recommendation 9. The Bill should be amended so as to require Ministers to lay before the legislatures of the UK by 30 September 2023 the details of the retained EU law which is not to be saved or reformed – i.e. that which will be deliberately revoked and not replaced, and that which will be subject to the 31 December 2023 sunset provision (if this sunset date remains in the Bill).*

We are supportive of this, which would add to clarity in law making and minimise the risk of errors, misunderstandings and inadvertent sunseting. We will pursue this point further with the UK Government.

*Recommendation 10. We call on the Welsh Government to ensure that Wales remains compliant with international obligations, as required by the devolution settlement and by the Welsh Government's Ministerial Code.*

The Welsh Government is keen to ensure that anything arising from the REUL Bill does not jeopardise its compliance with any international obligations. Given the complex nature of compliance, and the UK Government's responsibility for international relations, we will need to engage further with the UK Government to understand better their approach to this issue. We will revert to the Committee in due course in light of their response.

*Recommendation 11. The Welsh Government should clarify with the UK Government how it will take into consideration the views of the Senedd in respect of changes to reserved retained EU law particularly in areas not covered by common frameworks.*

Agreed. The Welsh Government has its own concerns about the potential impact, on matters of devolved competence, of potential changes to reserved legislation, and has raised this with the UK Government and will continue to do so, along the recommendation regarding the views of the Senedd.

*Recommendation 12. We call on the Welsh Government to urgently provide an assessment of the combined impact of the Bill, common frameworks and the UK Internal Market Act 2020.*

We agree that there is a fundamental relationship between all three elements. However, it is premature to be able to provide an assessment of the combined impact until, at least, the precise intentions of UK Government are clearer, as at Conclusions 4 and 5 above. Even when that information becomes available, this will still be a complex set of issues with some unknowns.

*Recommendation 13. The Welsh and UK Governments should provide an assurance that all changes being made to retained EU law within an area covered by a common framework is taken through the relevant common framework process before it is saved, sunsetted, revoked, or reformed.*

Our expectation is that the UK Government should work through the mechanisms in the relevant common frameworks before changes are made to retained EU law. Whether it does so will be a key test of the UK Government's ability to live up to commitments it has entered into.

*Recommendation 14. The Business Committee should urgently consider whether the autumn term should be extended to 22 December 2023, in order to accommodate additional meetings of this Committee and additional Plenary sittings which may be required for the consideration of regulations arising from the Bill.*

This is essentially a matter for the Business Committee. In the coming months, the Welsh Government will provide the earliest possible assessment as to whether this might be necessary.

*Recommendation 15. The Welsh Government should assess the Bill's impact on Wales as a matter of urgency to assist the Senedd and stakeholders to better understand the Bill's implications for Wales.*

As per Conclusions 4 and 5, we will provide our best assessment as soon as we have received and analysed the necessary further information from UK Government. However, the potential impacts of decisions by UK Ministers within the framework of the Bill are significant and complex which makes this a more challenging undertaking. To re-emphasise, however, the Welsh Government has been clear that the potential impact of the Bill on Wales, in terms of the devolution settlement and the regulatory standards and protections that citizens in Wales currently benefit from, is deeply damaging.

*Recommendation 16. The Counsel General should:*

- *confirm whether there would be circumstances under which the Welsh Government would recommend the Senedd's consent is given to the Bill and explain what these are;*
- *provide to us a comprehensive list of the amendments to the Bill the Welsh Government has sought and/or supported.*

As I have explained, this is a wholly unwelcome Bill that the Welsh Government does not support. Given the outcome of our engagement with the UK Government so far it is difficult to foresee a version of the Bill that could emerge from Parliament that would bring about a recommendation to the Senedd for consent.

I wrote in February 2023 to a number of members of the House of Lords with a set of amendments that we asked them to support and sent a copy to the Committee. My letter notes that the proposed amendments “would at least go some way to addressing our concerns with the Bill”, rather than fully resolving them all.

*Recommendation 17. The Welsh Government must clarify and set out a frank and candid assessment about the resource and capacity implications for the Welsh Government of implementing the Retained EU Law (Revocation and Reform) Bill (should it be enacted), and clearly set out what, if any, other legislative activity will need to be displaced in order to ensure that it can deliver on the tasks it will need to complete by the end of 2023.*

As per Conclusion 6, we will do so when it is possible to make a detailed assessment of the implications of the Bill.

