

P-06-1368 The Welsh Govt should take steps to save the Environmental Information Regulations in relation to Wales

Y Pwyllgor Deisebau | 13 Tachwedd 2023
Petitions Committee | 13 November 2023

Reference: SR23/7092-1

Petition Number: P-06-1368

Petition title: The Welsh Govt should take steps to save the Environmental Information Regulations in relation to Wales

Text of petition: The pro bono student Environment Project of the School of Law and Politics, Cardiff University, has examined the Environmental Information Regulations 2004 and how they could be improved in Wales, producing a short report.

However, If the REUL Bill passes, it will 'sunset' all EU-derived subordinate legislation in 2023, including the 2004 Regulations.

The UK would be in breach of the Aarhus Convention.

The Welsh Government must use its powers to save the 2004 Regulations for Wales.

More details

The importance of the rights granted to the public by the Aarhus Convention (and hence by the 2004 Regulations) are summarised brilliantly in *Fish Legal v Information Commissioner United Utilities plc Yorkshire Water Services Ltd and the Secretary of State for the Environment, Food and Rural Affairs* [2015] UKUT 52 (AAC), at para 57:



"The Aarhus Convention...links environmental rights and human rights. It acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It links government accountability and environmental protection. It focuses on interactions between the public and public authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements...it is also a Convention about government accountability, transparency, and responsiveness..."

1. Background

1.1. Environmental Information Regulations 2004

The UK converted EU law to domestic law, referring to it as retained EU law (REUL), to minimise disruption when exiting the EU. REUL meant that pre-Brexit laws stayed in place to avoid gaps in important areas like product standards, animal welfare and environmental law.

The *Environmental Information Regulations 2004* (the '2004 Regulations') are REUL. They provide public access to environmental information held by public authorities. Under the 2004 Regulations:

- public authorities must make environmental information available proactively; and
- members of the public may request environmental information from public authorities.

The 2004 Regulations implement the European Council Directive 2003/4/CE on public access to environmental information (the EC Directive) in the UK. The EC Directive stems from an international agreement called the 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters', known as 'the Aarhus Convention'. The Aarhus Convention grants the public rights on access to information, public participation and access to justice in governmental decision-making processes on environmental issues. The UK is a party to the Aarhus Convention.

1.2. Retained EU (Revocation and Reform) Act 2023

The *Retained EU (Revocation and Reform) Act 2023* (the 'Act') became law on 29 June 2023.

During the Bill's passage the approach for dealing with REUL was significantly amended (after this petition was submitted). The sunset clause referred to in the petition, which would've automatically revoked the majority of REUL, was replaced by a list of 587 pieces of REUL that'll expire at the end of 2023.

This list is Schedule 1 to the Act. UK and Welsh Ministers could exempt REUL from Schedule 1, thus saving it, but were required to pass regulations to do so by 31 October 2023. The UK Government exempted four pieces of REUL from Schedule 1 before this deadline but the Welsh Government did not exercise its powers.

The 2004 Regulations referenced by the petition are **not** listed in Schedule 1, and so are **not due to expire** as a result of the Act.

While the 2004 Regulations continue to apply, they are subject to the following changes made to REUL by the Act:

- UK and Welsh Ministers have powers to preserve, amend, repeal and replace REUL and assimilated law more easily;
- The UK Government and Parliament can make changes in devolved areas without obtaining consent from the Welsh Ministers or the Senedd, potentially bypassing Welsh institutions;
- From 1 January 2024, REUL will be renamed "assimilated law";
- Changes to the domestic legal hierarchy include that the principles of supremacy and principles of EU law will be abolished after the end of 2023. Principles of EU law include legal certainty, equal treatment, proportionality, respect for fundamental rights and the precautionary principle.
- EU-derived rights, powers, liabilities etc will expire on 31 December 2023.

The UK Government committed to maintaining compliance with the UK's international obligations during the Bill's passage through the UK Parliament.

2. Welsh Government action

The Welsh Government opposed the Act from the start, believing that REUL works well and could be updated as needed. It said:

... our position is that retained EU law (REUL), like EU law before it, works well. We had no intention to repeal, revoke or amend REUL, particularly to an arbitrary deadline.

The Interim Environmental Protection Assessor for Wales wrote a report to the Welsh Government making recommendations regarding the Retained EU (Revocation and Reform) Bill. This was prior to the amendment which changed the sunset clause approach. The report conveyed the “serious concerns” from stakeholders that legislation could be “discarded” without proper assessment or stakeholder consultation. The report states this lack of consultation could constitute a breach of the Aarhus Convention by depriving the public of the opportunity to contribute to changes in environmental law. Overall, the Welsh Government agreed with the issues and concerns raised and said:

... we completely agree with the report that proper stakeholder consultation and engagement by the Senedd needs to accompany any significant changes in environmental legislation that would be brought about as a result of the Bill.

3. Welsh Parliament action

The Senedd voted to withhold consent to the Act twice, in March and June 2023. Senedd committees have already considered regulations made under the Act and will continue to monitor its operation.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.