

Mick Antoniw AS/MS

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

Our ref: CG/PO/385/2023



**Llywodraeth Cymru
Welsh Government**

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@Senedd.Wales

15th November 2023

Dear Huw,

Thank you for your letter of 1st November 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Act. My answers are set out in the following Annex.

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

Mick Antoniw AS/MS

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Counsel General and Minister for the Constitution**

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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

1. It remains the case that no mechanism has been agreed between the UK Government and the Welsh Government in relation to consent for UK Ministers making regulations using powers in the REUL Act.

I am not aware of any localised agreements or arrangements. There are good official-level technical discussions and information flows between Welsh Government and a number of UK Departments, including Defra, on a range of aspects of the implementation of the REUL Act.

We continue to make clear to UK Ministers our disappointment at their refusal to include statutory requirements on the face of the REUL Act for UK Government Ministers to obtain consent from Welsh Ministers on instruments covering devolved matters.

During the progress of the REUL Bill, UK Government Ministers indicated they do not intend normally to use the powers in the Bill in devolved areas without agreement of the relevant devolved government (albeit our requests for this to be on a statutory basis were refused).

Since the passing of the REUL Act, we have engaged constructively with the UK Government on proposals to use powers under the REUL Act. In the absence of a statutory mechanism we are pressing for a formal mechanism for dealing with consent matters under the REUL Act, including guidance to apply across the UK Government to ensure that the devolution settlement is properly and fully respected in implementing the Act.

In this context, the approach Ministers in Defra have taken as set out in your letter are consistent with the UK Government's non-statutory commitment to seek agreement from devolved governments. In turn, it also demonstrates Welsh Ministers' pragmatic approach to engage constructively on these matters given the potential impacts in devolved areas.

Should any formal agreements be reached, I will keep the Committee informed.

2. It is not my interpretation what the Minister described amounts to a veto. The process followed by Defra appears to be a standard request for agreement where a proposal for a Westminster SI includes Wales in scope in relation to a matter of devolved competence. We would expect that should Welsh Ministers not consent to the inclusion of Wales in the instrument, that Defra would not do so.

3. The absence of a statutory consent mechanism in the Act is highly regrettable, especially when we made clear to UK Ministers our preference for this on a number of occasions. However, given that absence, it is not a requirement under the Act for UK Ministers to obtain the consent of the Welsh Ministers to Westminster SIs made under the Act in devolved areas. Nevertheless, to respect the integrity of the devolution settlement our view still stands that they should do so, as in this instance and many others in the case of Defra.

In this instance the UK Government appears to be acting in accordance with the non-statutory commitments they made in the absence of a statutory requirement or formal agreement with the Devolved Governments. We continue to communicate with the UK Government on devolution aspects of the implementation of the REUL Act and will keep the Committee informed of meaningful developments.

4. My statements that you quote are in line with each other, with each applying at a different time period. I explained on 2 June that there had not been substantive engagement by UK Government with Welsh Government on the contents of Schedule 1 prior to its inclusion in the Bill at Lords Report stage on 17 May. Following the inclusion of Schedule 1 in the Bill (but not prior to it), Welsh Government officials considered its contents and held discussions with UK Government officials on relevant matters. This latter process took place as the Bill completed its passage through Westminster, prior to Royal Assent on 26 June.