

Mick Antoniw MS
Counsel General and Minister for the Constitution

1 November 2023

Dear Mick,

Retained EU Law (Revocation and Reform) Act 2023

Thank you for your letter of 12 October 2023 which we considered at our meeting on 16 October 2023. We welcome the responses you provided to the questions we asked in our letter on 22 September 2023.

In my previous letter I highlighted to you correspondence from other Welsh Ministers that relates to the *Retained EU Law (Revocation and Reform) Act 2023* (the REUL Act) and which we have considered in recent weeks. We have now received responses from Julie James MS, the Minister for Climate Change, and Lesley Griffiths MS, the Minister for Rural Affairs and North Wales, and Trefnydd.

We discussed the information we have received from yourself and the other Welsh Ministers at our meeting on 23 October 2023 and we agreed to write again to you given your overall responsibility in the Welsh Government for constitutional affairs. We would welcome additional clarity on a number of important matters; not least what appears to be a working consent-seeking process between UK Ministers in the Department for Environment, Food and Rural Affairs (DEFRA) and relevant Welsh Ministers.

We have agreed to also write to Ministers in DEFRA to seek information about the consent they have sought for making regulations in devolved areas under the REUL Act.

I would be grateful if you could provide a response to our further questions, which are included in the annex to this letter, by 16 November 2023.

I am copying this letter to the Minister for Climate Change and the Minister for Rural Affairs and North Wales, and Trefnydd.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Annex

1. In your letter to us on 12 October 2023 you told us “No mechanism has been agreed between UK Government and the Devolved Governments about how consent should be obtained in relation to UK Ministers making regulations using powers in the REUL Act”. The letters from the Minister for Climate Change and the Minister for Rural Affairs and North Wales, and Trefnydd are examples of Ministers in DEFRA seeking the consent of the Welsh Government before regulations are to be made under the REUL Act. Given you state that a mechanism for seeking such consent has not been agreed:
 - a. Are you aware of specific UK Government departments, such as DEFRA, making localised agreements and/or arrangements with relevant departments in the Welsh Government about when and how UK Ministers will engage with and seek the informal consent of Welsh Ministers before making regulations in devolved areas under the REUL Act?
 - b. What is your view on such localised agreements and/or arrangements, if they are in place, and what role do you consider they will play in you seeking a mechanism that applies across the whole UK Government?
 - c. If departmental agreements and/or agreements are in place, please would you provide us with the specific details.
2. In her letter to us on 27 September 2023, in relation to the Fluorinated Greenhouse Gases (Amendment) Regulations 2023, the Minister for Climate Change said “If Welsh Ministers had refused consent, or not confirmed their decision in the requested timescales, the Regulations would not have been laid before the UK Parliament.” This could be interpreted as the Welsh Ministers having a power of veto over whether UK Ministers proceed with their regulatory intentions. What is your view on this matter and, in particular, is this your understanding of the terms under which Lord Benyon sought consent for the making of these Regulations?
3. In her letter to us on 3 October 2023, in relation to the Plant Protection Products (Miscellaneous Amendments) Regulations 2023, the Minister for Rural Affairs and North Wales, and Trefnydd said “Whilst there is not a legal requirement to seek consent, the UK Government have sought the Welsh Ministers consent in accordance with the convention on legislating in devolved areas.” This appears to apply the terms of the Sewel Convention to the making of subordinate legislation. What is your view on this matter and, in particular, is this your understanding of the terms under which Rebecca Pow MP, Minister for Environmental Quality and Resilience, sought consent for the making of these Regulations?

4. In your letter to us on 12 October 2023, and in response to our question 2 on Welsh Government departments undertaking work to ensure the retained EU law listed in the Schedule to the REUL Act is no longer needed, you said “Welsh Government officials in the central team dealing with post-Brexit matters worked with individual policy teams to ensure that the contents of the Schedule for revocation were fit for purpose **when it was constructed in the latter Parliamentary stages** at Westminster”. (Emphasis added.) This statement is not in line with information you have previously provided to us. On 2 June 2023 you told us “The Welsh Government was not engaged by the UK Government on the formulation of the list of REUL in the new schedule. (...) While there was some official level engagement before the UK Government amendments were tabled this was not sufficiently meaningful or detailed for the Welsh Government to know what form those amendments would take nor what instruments would be included in the new Schedule of REUL to be revoked. (...) The Welsh Government was only able to review the full list at the same time as the LJC Committee...”. Please would you confirm and provide the necessary clarity on whether Welsh Government officials were involved in the construction of the Schedule to the REUL Act, as described in your most recent letter, or if the statements you made in June are accurate and the UK Government did not engage the Welsh Government in the formulation of the list of retained EU law in that Schedule.