

Mick Antoniw MS

Counsel General and Minister for Constitution

Dr Andrew Goodall CBE,

Permanent Secretary to the Welsh Government

20 October 2022

Dear Mick and Andrew

Follow-up to the meeting of 10 October 2022

Thank you for appearing before the Committee on 10 October and giving evidence on matters relating to the Welsh Government's legislative programme and capacity to legislate.

There are a number of issues which we were not able to raise with you during the meeting. There are also matters we would like to pursue further. The Permanent Secretary also agreed to provide us with further information; details are included at the end of the Annex.

I would therefore be grateful to receive your responses to the questions listed in the Annex by 3 November 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Yours sincerely,



Huw Irranca-Davies

Chair



Welsh Government's legislative programme and capacity to legislate

1. Why do you consider it to be the case that the number of pieces of primary legislation passed in the Senedd has remained relatively static since 2007? Does the Welsh Government have a plan or ambition to increase the volume of primary legislation it brings forward to the Senedd?
2. Do you have any concerns about the effect of the growing amount of Welsh law being made through UK Parliament Bills on the Welsh Government's programme to improve the accessibility of the law in Wales?
3. Can you explain why disagreements on legislation have continued despite a new intergovernmental relations process being in place? For example, on the UK Infrastructure Bank Bill.
4. Does the Welsh Government accept that using UK Bills to legislate in devolved areas limits the opportunity for the Senedd to properly fulfil its scrutiny role?
5. Do you consider there to be an opportunity for the Senedd to play a greater role in deciding when the Welsh Government will seek provisions in UK Parliament Bills?
6. The Welsh Government has seconded staff to the Cabinet Office to work on the UK Procurement Bill. Is this a common practice or likely to be so? Was any assessment made of the resources needed to develop a Welsh Bill instead?

Retained EU Law (Revocation and Reform) Bill

7. You told us that your approach to the Retained EU Law (Revocation and Reform) Bill will be determined by what format the Bill might take (RoP [118]). Can you expand on this.
8. Has the process of reviewing retained EU legislation (REUL) begun?
9. How many pieces of REUL have been made by the Welsh Ministers, which are not included in the UK Government's estimated 2,400 pieces?
10. You said in Plenary on 5 October that you will do everything you can to protect standards that are important to Wales. Which REUL are you treating as priority? What reassurances can you give stakeholders, businesses and people in Wales who are concerned by the Bill?
11. You told us that you "want to get the constitutional principles right about the Bill" and to guarantee your position (RoP [118]). Can you expand on this.
12. You suggested that your current strategy is to prioritise intergovernmental engagement, via talks with UK Ministers and individual UK Government departments (RoP [118]). Can you set out what changes you are pursuing to the Bill in these discussions.
13. You said "at the moment, there are a number of areas where [the Bill] gives powers to UK Government to legislate in devolved areas. The discussions I've had with the relevant Minister have been to say that that has to change" (RoP [118]). Can you confirm whether the Welsh Government is seeking amendments to the Bill to remove these powers?

14. You explained that you have received “positive assurances” from the UK Government on the matter of powers in the Bill for UK Ministers to act in devolved areas (RoP [118]). Can you confirm if this means that the UK Government is open to removing these powers?
15. You also said “the proof of the pudding will be when we actually see the detail—that is, that the UK Government won't legislate, and certainly won't legislate unless we consented to that legislation” (RoP [118]). Not legislating in devolved areas and not legislating in devolved areas without the consent of Welsh Ministers are very different actions. Which of the two outcomes are you negotiating to achieve?
16. You said in Plenary on 5 October that you are carefully considering using powers in the Bill to restate legislation en bloc. What consideration has been given to using the power in clause 1(2) to avoid the initial sunset by simply listing all instruments that are devolved REUL, without individually analysing each instrument?
17. To what extent could the Senedd amend the Bill if it becomes an Act? For example could the Senedd change the December 2023 sunset clause insofar as it applies to devolved retained EU law?
18. How will you meet the capacity and resource challenge you outlined in Plenary on 5 October?
19. What impact might the need to preserve retained EU law have on your ability to bring forward Welsh Bills? Do you expect to see a further increase in the use of UK Bills to deliver your policy and legislative objectives as a result?
20. Does it remain the Welsh Government’s intention to bring forward a consolidation Bill on planning to the original planned timetable, given the impact that the Bill is likely to have on the Welsh Government’s capacity?
21. When will the Welsh Government engage with the Business Committee about the likely impact on Senedd business, including this Committee?

To the Permanent Secretary

22. Have you considered the recommendations of Audit Wales’ report on the Welsh Government’s workforce planning and management in relation to developing legislation?
23. You told us that the Welsh Government has made some decisions over recent months to expand the number of lawyers within the organisation “in order to give some additional headroom” (RoP, [28] to [45]). You agreed to provide us with figures confirming the number of lawyers working in Welsh Government on legislative matters and how many of these are additional recruits from the recent expansion exercise.
24. You said that you had put a plan in place that has been an opportunity to address some of the capacity concerns (RoP [81]). We would be grateful to receive further details about the plan, including broadly how it addresses capacity issues and what the Welsh Government is aiming to achieve through it. For example, is it to deliver more legislation or to fill vacancies to maintain current capacity?

25. As regards your plan, it would also be useful to know when it was introduced, what objectives or milestones it sets and to what timeframes, and the outcome of any reviews, evaluation or assessments undertaken to date? This information would also be welcome for any equivalent predecessor plans or strategies in place from 2007 onwards.
26. We asked how long does it take to train somebody to be a parliamentary counsel if they're already a solicitor and a barrister (RoP, [83] to [87]). You agreed to provide us with detail and clarity on this point.