

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Hybrid – Committee Room 4 Tŷ Hywel
and video conference via Zoom

Meeting date: 23 January 2023

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

Hybrid – Supplementary pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

7 Papers to note

14.50 – 14.55

7.8 Correspondence from the Counsel General and Minister for the Constitution: Historic Environment (Wales) Bill

(Pages 1 – 2)

Attached Documents:

LJC(6)–03–23 – Paper 32 – Letter from the Counsel General and Minister for the Constitution to Peredur Owen Griffiths MS, 19 January 2023

7.9 Correspondence from the Counsel General and Minister for the Constitution: Retained EU Law (Revocation and Reform) Bill

(Pages 3 – 14)

Attached Documents:

LJC(6)–03–23 – Paper 33 – Letter from the Counsel General and Minister for the Constitution, 19 January 2023

7.10 Correspondence from the Business Committee: Retained EU Law (Revocation and Reform) Bill

(Pages 15 – 16)



Attached Documents:

LJC(6)-03-23 – Paper 34 – Letter from the Business Committee, 19 January 2023

7.11 Correspondence from the Business Committee: The Environmental Protection (Single-use Plastic Products)

(Pages 17 – 19)

Attached Documents:

LJC(6)-03-23 – Paper 35 – Letter from the Business Committee, 19 January 2023

LJC(6)-03-23 – Paper 36 – Letter to the Business Committee, 13 December 2022

7.12 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Welsh Government consenting to UK Government subordinate legislation

(Pages 20 – 27)

Attached Documents:

LJC(6)-03-23 – Paper 37 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 19 January 2023

7.13 Correspondence from the Business Committee: Historic Environment (Wales) Bill

(Pages 28 – 29)

Attached Documents:

LJC(6)-03-23 – Paper 38 – Letter from the Business Committee, 19 January 2023

10 Agriculture (Wales) Bill: Draft report

15.10 – 15.55

(Pages 30 – 101)

Attached Documents:

LJC(6)-03-23 – Paper 25 – Draft report

Ein cyf/Our ref: CG/PO/16/2023

Peredur Owen Griffiths MS
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

18 January 2023

Dear Peredur

HISTORIC ENVIRONMENT (WALES) BILL

Thank you for your contribution to the Initial Consideration debate on the Bill yesterday evening. I undertook to write on the matters you raised.

Advisory panel

You sought assurance that the removal of the provision for the establishment of the advisory panel established in the Historic Environment (Wales) Act 2016 would not compromise the availability of expert and impartial advice to the Welsh Ministers.

The reasons for not including sections 38 and 39 of the 2016 Act within the consolidation Bill were set out in paragraph 30 of the Explanatory Memorandum to the Bill, laid before the Senedd on 4 July 2022. I subsequently gave evidence to the Committee on this matter on 11 July, where I was able to confirm that although Cadw is part of the Welsh Government, its board includes external members who are appointed through a public appointments process, and they provide that level of independent advice if the need arises.

Additionally, I am satisfied that Cadw can access a range of expert and impartial advice, alongside that which exists within its board structures. The removal of provisions from the 2016 Act, which have never been commenced, will not impact on that.

Planning policy

You asked for further details on protection afforded by planning policy to the archaeological heritage of Wales compared to the provisions contained in the 1979 Act for the creation of archaeological areas.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.

Areas of archaeological importance were introduced for Wales, England and Scotland in Part II of the 1979 Act. The provisions aim to prevent archaeological sites from being damaged or destroyed without first allowing for investigation and recording. No areas have ever been designated in Wales.

Planning policy provides greater protection than designation as an area of archaeological importance would. Planning Policy Wales and Technical Advice Note 24 recognises the need to conserve archaeological remains. The conservation of archaeological remains, whether a scheduled monument or not, and their setting is a material consideration in determining a planning application. Archaeological investigation and recording are routinely placed as conditions on planning permissions.

Bilingual legislation

You sought assurance that increasing the availability of bilingual legislation will be a central aim of future consolidation projects brought forward.

The introduction to the current Future of Welsh Law programme makes clear, from the very start, that all of the work we are doing under that programme will increase the amount of law that is available bilingually. Producing more law in Welsh, accompanied by a range of explanatory and supporting material, makes it easier for the Welsh language to be used in the law and in our public administration in Wales.

I am very pleased to put on record that all consolidation Bills will be introduced in both languages together with fully bilingual supporting documentation.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee and am content for this letter to be published on the Senedd's website pages on the Bill itself.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

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

Mick Antoniw AS/MS

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Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

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

19 January 2023

Dear Huw,

Thank you for your letter of 14 December seeking responses to questions following my appearance on 5 December in relation to the Retained EU Law (Revocation and Reform) Bill. We are grateful to the Committee for its dedicated work to consider the implications of this Bill.

The responses to your questions are set out in an Annex to this letter. However, to contextualise these correctly, I would like to make two important and fundamental observations that the Committee might wish to consider in its work on the Bill.

Firstly, the Welsh Government fundamentally opposes the whole intent of the Bill. In general, our position is that retained EU law, like EU law before it, works well. Consequently, beyond gradually amending the law as appropriate with evidence-gathering, public consultation, and legislative scrutiny in the normal way, over time as with any body of law, we had no intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds. However, simply to propose legislation such as this that, by default, would repeal essential economic, social and environmental protections is unacceptable and irresponsible. This is especially true because of the use of valuable time by governments and legislatures when a good deal of this work will be merely to maintain in law those essential provisions that the Bill would otherwise automatically remove. This nugatory work has no demonstrable benefit to anyone and is a regrettable use of finite resource in both the Welsh

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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.

Government and the UK Government, caused by the decisions made by UK Government Ministers.

Secondly, the Bill is essentially an enabling Bill and its full implications will be influenced by policy choices of UK Government Ministers about which pieces of legislation should be retained, amended, or left to sunset. Unless and until that detailed information is provided, we are all working in a very uncertain situation, with the obvious attendant difficulties that that causes both for the Welsh Government, and for your Committee in a scrutiny role. I hope we can continue to engage collaboratively in dealing with this Bill in these regrettable circumstances, recognising our distinctive institutional roles but also common interests in relation to the integrity of the devolution settlement.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal blue line.

Mick Antoniw AS/MS

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

ANNEX

Wales-made REUL

- 1. You told us that the Welsh Government's focus "has got to be firstly to ensure that we analyse and retain our own EU retained law, that we focus on that law that's been made within Wales" (RoP, 242). Has that analysis been completed? If not, what is your target date for its completion?**

We are working to have a settled list of this REUL as soon as we are able to do so. This is a complex task and we will be happy to update your Committee on progress.

Reviewing REUL

- 2. You and your officials said that Welsh Government policy teams are working closely with their Whitehall counterparts to analyse spreadsheets of data prepared by those Whitehall departments "to see whether [you] agree with that analysis" (RoP, 242 to 254). What is the target date for the completion of that work?**

While we have received some information from the UK Government this is not comprehensive. We are continuing to receive this in something of a piecemeal fashion but are considering and assessing it as we receive it. We hope to have a more complete picture in the near future so that we can conduct a proper assessment of it.

Welsh Government's approach

- 3. Has the Welsh Government had any reassurance from the UK Government that it will not change or remove devolved REUL without the consent of the Welsh Government? If so, does the UK Government intend to amend the Bill to reflect this commitment?**

We remain in dialogue with the UK Government on this issue, but still await the necessary reassurance.

- 4. You told us that "if you don't take measures to be able to identify and understand what it is you want to retain, then everything else is going to go." (RoP, 295). You also told us that you have not yet decided on your approach to retaining REUL but that you want to "make sure that [the Welsh Government] focus on those areas that are most important to us".**
 - a. Can you therefore confirm that you do not intend to save all REUL in devolved areas?**
 - b. On what basis will you decide which areas are most important to the Welsh Government?**
 - c. Can you tell us which areas these are, or if not, when you will be able to tell us?**
 - d. What are the risks to the areas deemed not important or less important and how have they been determined?**

e. How will you mitigate and manage the risks associated with this, particularly if you are not carrying out your own impact assessment (RoP, 256)?

It is not our intention to allow REUL in devolved areas to come to an end, unless there are very good reasons for this to take place. However, as a matter of good governance, our final position on specific instruments will need to take into account what the UK Government decides in relation to existing REUL for England; or in relation to existing REUL on reserved matters that impacts on devolved matters in Wales. Where the UK Government wishes to review any piece of REUL that impacts on a devolved matter, we would expect the UK Government to work collaboratively and pro-actively with us on this.

Further to this our ambition is to retain all REUL pertaining to Wales, subject to the caveat above.

5. You told us that you may adopt a “triage approach”, where you try to “identify those that are most obviously relating to devolved issues that may be the most important issues, rather than technical issues, so that we make sure we focus on those areas that are most important to us” (RoP, 277). What do you mean by “technical issues”?

We await a mature and comprehensive list of REUL, and statements of policy intent regarding REUL instruments, from the UK Government. Given the complexity of the interrelationships between and within REUL across the UK, knowledge of the detail of the UK Government’s intentions will help to inform our analysis of the pieces of REUL that could be retained without creating complexities (and so require a technical piece of work to preserve them but no more), and those which require a more substantive consideration of whether we should retain them and how, for example because the UK Government is proposing to repeal or amend them in relation to England or in relation to reserved matters that impact on devolved matters in Wales.

6. You told us that you think the Bill has created a great deal of uncertainty for the Welsh Government. However, stakeholders have accused you of ‘fuelling’ / exacerbating this by not clearly setting out your approach. To what extent could the Welsh Government reduce this uncertainty?

7. What will the Welsh Government do to reassure stakeholders of its overall strategy in relation to REUL and about the steps it is taking to address their concerns?

Regarding Questions 6 and 7, as set out in the covering letter, the Bill is a UK Government initiative with which we do not agree. It is its commitment to the Bill, without clarity on what will happen to each piece of legislation, which is creating the uncertainty. Our ability to mitigate that for stakeholders in Wales is very limited until we have that clarity from the UK Government. We plan to engage with both the Senedd, and with stakeholders, on this work.

8. You told us “We will want to retain law and not see any diminution of standards. So, we will want to ensure that we retain those standards out of

this.” (RoP, 277) How will you maintain or improve standards if they are weakened or reduced under the Bill, either by omission or by action taken by the UK Government?

The Welsh Government’s position is clear as above at Question 4: We have no desire or intention to repeal, or allow to end through the Bill, any REUL that applies to Wales and is within devolved competence, unless there are very good reasons for this to take place. However, as outlined above, the issue of cross-border divergence means that we will want to take into account the UK Government's position and intentions when making our decisions regarding the implications for Wales in certain policy areas of taking particular approaches.

Saving REUL

9. You said “The complexity comes in knowing the scale of what we're going to do. If, for example, in a whole large area of these 3,800-plus pieces of legislation, the UK Government equally decides that what they should do is retain a large number of them, then that actually solves part of that problem. It solves part of that problem and it makes it a lot easier to manage those areas that have not been retained.”

a. This suggests to us that the Welsh Government will defer decision-making and action to the UK Government to make regulations. Is this correct? Do you have concerns for what this approach means for Wales, including the Senedd?

Our preference is to maintain all REUL that applies to Wales, unless there are very good reasons not do this. Broadly, if the UK Government maintains a piece of REUL for England, then we will very likely do the same in relation to devolved matters in Wales. The mechanics by which this would be achieved will also need to be considered.

b. Will the Welsh Government wait to see what the UK Government saves and subsequently decide what it may need to save itself?

As stated in answer to a. above, our preference is to maintain all REUL that applies to Wales, unless there are very good reasons not do this. However, if the UK Government decides to change REUL on the English side of the border, there are complex policy decisions to be made. Each of these areas of change to the status quo initiated by the UK Government would require a proper assessment of the economic, social and environmental implications and risks for Wales. Similar considerations will need to be made in relation to proposed UK Government changes to reserved legislation that impacts on devolved matters in Wales.

Amendments

10. In addition to the single amendment to the Bill we know you have requested (in relation to the Welsh Ministers having the ability to extend the sunset date up to 23 June 2026), you said that you would be “encouraging changes to be made that give us the guarantees that we have sought” and you specifically

mentioned concurrent powers in the Bill and the powers of the law officers in devolved Governments (RoP, 285). You also said that the Welsh Government would “do the normal things in terms of briefings, in terms of discussions, in terms of engagement with the UK Government and interested parties, who will all make their own representations” (RoP, 289).

- a. What specific changes to the Bill are you seeking?
- b. Can you confirm that you have made formal requests to the UK Government and, if not, when will you do so?
- c. Why are your suggested changes not detailed in your LCM, which only lists one amendment put forward, for consideration by this Committee and wider Senedd?
- d. You said that we can expect the Welsh Government to put forward further amendments and that you have set these out. When will the Senedd have the opportunity to scrutinise these?
- e. You mention that an option available to the Welsh Government is to rely on others to bring forward amendments which reflect your position rather than acting collaboratively. Could you provide more information on this and confirm who the “others” might be?

We have engaged with the UK Government over several months on the concerns that we have with the Bill. As set out in the Legislative Consent Memorandum, these include not only who can exercise the power to extend the sunseting deadline but also the issue of consent for the exercise of concurrent powers by UK Government Ministers in devolved areas, the sunseting deadline itself, the regulatory burden and the intervention and reference powers exercisable by the Law Officers within the UK. We have sought changes to the Bill on all these matters. We have raised these concerns in correspondence with the lead UK Ministers for the Bill, in Ministerial meetings and in my written response to the Public Bill Committee on the Bill, with the objective of having them addressed through amendments.

While we have hoped for progress and for common sense to prevail, UK Government Ministers have yet to give us reassurance that they are willing to make changes to the Bill to address our concerns.

Alongside seeking to secure changes to the Bill from UKG, the Bill was among those topics discussed with members of the House of Lords last week.

11. Under clause 15 of the Bill, Ministers will be prevented from increasing the regulatory burden when revoking or replacing REUL. You described this as a “constraint that is totally unacceptable” (RoP, 269). Why have you not, therefore, requested an amendment to remove this constraint from the Bill?

Please see the answer to question 10 above.

12. You have previously commented on the enormous powers that will be given to Ministers via this Bill. You told us that these are “powers that, in normal circumstances, you would not wish to give to governments”. You also said “it’s not a question of whether we want them; we will probably have no choice because if we want to do anything about retaining legislation that maintains

standards and so on, things that we agree with them in devolved areas, then we're going to have to exercise them” (RoP, 291). Have you requested that the Bill be amended to uplift the scrutiny procedures attached to the powers if and when they are exercised by the Welsh Ministers?

As noted above, we have strongly expressed our concerns about the Bill to the UK Government. However, if passed as drafted we will have to exercise the powers conferred on the Welsh Ministers in order to make decisions about REUL in devolved areas, where possible, as part of our work to defend the devolution settlement. However, the Legislative Consent Memorandum sets out our concerns that the sunset provision will mean that parliament and the devolved legislatures will have no scrutiny or oversight role where REUL is allowed to sunset automatically and will likely not provide sufficient time for effective consultation on proposed modifications to REUL, which could result in unidentified issues and potential negative impacts, for example on protected groups.

Divergence and disputes

13. Have you identified any areas where you have policy intentions which diverge from those of the other governments of the UK?

Since the detailed and comprehensive policy intentions of the UK Government in any given area are either not yet clear or are just emerging, it is not possible to give a definitive answer to this at this stage.

14. When we asked you how disputes could be resolved you told us that the new inter-governmental process that has been established “is probably not going to be particularly ideal process” and “It may be that you can create something specifically to try and resolve those disagreements” (RoP, 279).

- a. Can you clarify why the recently created structures for intergovernmental dispute resolution would not be the appropriate structures to use to resolve any disputes in this area?**
- b. Can you confirm that, where relevant, disputes would go through the relevant common framework process in the first instance?**
- c. Given the need for timely action because of the 31 December 2023 sunset date, how realistic is it that a new dispute resolution process could be created?**

We will always reserve the right to escalate issues within the Dispute Avoidance and Resolution procedure agreed following the joint Review of Intergovernmental Relations (IGRR), wherever it becomes appropriate to do so. The resolution process in the IGRR should be seen as part of a much wider system of active IGR, and as a process of last resort. This is embedded into the machinery it sets up – it is agreed that machinery should “promote dispute avoidance by ensuring there are effective communication and governance structures at all levels, from working-level officials to ministers”. As you will know, the Dispute Avoidance arrangements are without prejudice to the legal provisions within the devolution settlements which govern matters relating to legislative competence. We would always need to consider the

appropriate forum to which to take our concerns, particularly where there is a dispute as to whose competence a piece of legislation is within.

Common Frameworks will play some part in elements of dispute resolution related to REUL, though the timescale available to undertake this work will massively impact the ability to engage fully in this process, along with the fact that not all areas of REUL are covered by a Common Framework.

The current sunseting deadline means it is unrealistic that a suitable dispute resolution process could be created in time to service the process appropriately. This is the responsibility of the UK Government, not the Welsh Government.

Capacity and resource

15. The First Minister told the Scrutiny of the First Minister Committee on 9 December that, as the Welsh Government has no spare capacity, “diverted capacity” will be needed away from its legislative programme to work on the Bill. Given the First Minister's comments, when will decisions be taken about when and where resources will be diverted, and will you commit to updating the Senedd as soon as decisions are made?

16. You told us that the Welsh Government wants to deliver its legislative programme but there was uncertainty around the demands the Bill will place on resources. Are you coordinating Cabinet discussions regarding your concerns about delivery of the legislative programme?

Regarding Questions 15 and 16, for the reasons set out above, it is not possible to assess fully the scale of the impact on the legislative programme until we know the detail of the UK Government's plans for REUL as it applies in England, particularly the extent to which it intends to amend this body of law.

Discussions on this matter will continue between Ministers as the situation develops as will our liaison with the Senedd on the legislative programme.

Impact and role of the Senedd

17. You also said “I think one thing is clear: it makes the sort of detailed scrutiny and the timescale for that scrutiny incredibly difficult” and “we have to look at how that will work”. You told us that there is “going to be a need for very close co-operation between the Government and the Senedd in terms of an understanding as to precisely what is required, what is happening and how we best manage that. It's not just an issue for the Welsh Government; obviously, it's an issue for the Senedd itself, in terms of how it scrutinises and assesses those steps as well” (RoP, 307).

- a. How will the Welsh Government maximise the scrutiny opportunities afforded to the Senedd?
- b. How will the Welsh Government involve the Senedd in determining what is required as a consequence of the Bill?

In general, it is premature to answer this question with complete precision as we are again seeking comprehensive information from the UK Government about its decisions.

I would expect the Senedd to have the opportunity, in the normal way, to scrutinise any proposals regarding REUL. We will engage with the Senedd on this.

The task of determining what is required is difficult to quantify, or to identify precisely. I would expect Ministers to keep the Senedd informed by way of Ministerial Statements once the task is clearer.

18. You did not confirm to us that you are liaising with the Llywydd and the Business Committee regarding the potential impact on the Senedd's timetable. Could you confirm that discussions are taking place? If not, is the Welsh Government waiting on clarity from the UK Government before doing so?

We will certainly be in contact with the Llywydd and Business Committee regarding the Senedd's timetable once we have sufficient information from the UK Government to be able to have meaningful discussions about the potential implications.

Regulatory landscape

19. Would the Bill introduce a regulatory ceiling?

The power within clause 15 of the Bill to revoke or replace includes a requirement that any changes to, or replacement for, a piece of REUL, cannot "increase the regulatory burden". However, the precise meaning of this in the context of the Bill is not clear, though the Bill appears to have been drafted so as to mean that what could be considered a regulatory burden can be interpreted very widely. Moreover, the UK Government has made no particular policy statement on the meaning of this provision.

However, the nature of the Bill, and potential UK Government changes to REUL, may arguably increase the regulatory burden for some businesses, at least in the short term, as they adjust to new standards, even if they are lower.

20. How could the Bill impact the Welsh Government's policy and ability to improve standards, where possible, post-Brexit?

The Bill fundamentally fails to appreciate how the principles of devolution need to be applied in the field of regulatory policy in the UK, now that it has left the EU. There are also concerns that the effects of the UK Internal Market Act will have further impacts should regulatory divergence occur (for example through the UK Government amending or repealing REUL for England). This could have significant implications for the ability to maintain and improve standards, in effect, in REUL in Wales.

21. The UK Government has stated that environmental protections will not be weakened and that the devolved nations can preserve legislation within

competence. Which environmental protections will the Welsh Government preserve?

The Welsh Government has no intention to weaken existing environmental protections, the majority of which are derived from REUL. We intend to consider all options and, as a minimum, will be working to seek to ensure that REUL on environmental protections is assimilated by the sunset deadline.

Stakeholders

22. You told us “There’s going to have to be engagement with stakeholders because we’re going to have to have that understanding of some of the steps that have been taken. I think the problem is, at this stage, it’s not completely clear who we will be engaging with, to what extent, and within what framework.” (RoP, 350)

- a. **Could you clarify whether the Welsh Government is engaging stakeholders on the Bill at this stage, or when it plans to if this is not yet the case?**
- b. **You identified agriculture and environment as areas where there will be a “big focus” which you anticipate to be “very intense” (RoP, 323). Is the Welsh Government prioritising stakeholder engagement in these fields?**
- c. **How will you engage stakeholders in order to determine what issues are important to them?**

We have already made clear our general concerns about the Bill and opposition to it. The real engagement will need to be with stakeholders on a sectoral basis in light of the UK Government’s decisions about changes to REUL that it intends to make.

The areas you refer to account for a significant amount of the REUL that is within devolved competence. Accordingly, we will expect to engage with stakeholders in those areas as fully as possible, once the UK Government’s approach is clear.

Agriculture Bill

You told us that the Agriculture Bill “contains within it elements of retained EU law, and there may be issues that will arise during this process that need to be addressed; it’s just not clear what they might be at this stage” (RoP, 335).

23. Why was it appropriate to use the Agriculture Bill as a vehicle to provide broad powers for the Welsh Ministers to amend retained EU law when the Welsh Government has undertaken no analysis of the implications of the REUL Bill in this policy area?

As indicated above, we are considering our response to the situation, in effect, imposed by the UK Government on reviewing REUL. In general our position is that retained EU law, like EU law before it, works well and, consequently, beyond gradually amending the law as appropriate over time as with any body of law, we had no

intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds.

Furthermore, there is currently no certainty as to what the final version of the REUL Bill will look like, whether it will actually proceed to Royal Assent, nor what will happen to each piece of REUL. As a result, the Agriculture (Wales) Bill is proceeding on the basis of what is currently known.

24. Is it the Welsh Government's intention to save the REUL on which the Agriculture Bill relies under the REUL Bill? What happens if the REUL on which it relies is revoked by the UK Government? Is the UK Government aware of the Welsh Government's need for the REUL to remain in place for the operation of the Agriculture Bill?

As currently drafted, the REUL Bill has powers which the Welsh Government could exercise to preserve REUL in areas of devolved competence. The Welsh Government is considering how it will respond to this Bill and is working with the UK Government to identify all devolved REUL, including those instruments made by the UK Government and Parliament.

25. When do you anticipate being in a position to understand the breadth and detail of any issues which need to be addressed during the passage of the REUL / Agriculture Bills?

We will continue to engage and, in parallel, are considering how to respond in the coming months as the new UK Government's position on the REUL Bill is understood.

26. Is it your intention to make amendments to the Agriculture Bill to address any such issues?

As above, we will continue to engage and are considering how to respond as the new UK Government's position on the REUL Bill is understood.

27. Does the Welsh Government intend to adopt this approach of taking broad executive powers to deal with the uncertainty of REUL rather than bring forward primary legislation when the picture is clearer

As above, we will continue to engage with the UK Government and are considering how to respond as its position is understood. In the meantime, there are no plans to change the executive powers in the Agriculture (Wales) Bill.

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee

19 January 2023

The Retained EU Law (Revocation and Reform) Bill

Dear Huw,

Thank you for your letter of 21 December 2022 drawing the Business Committee's attention to the Retained EU Law (Revocation and Reform) Bill and to comments made by the Counsel General and Minister for the Constitution concerning the Bill's potential impact on the business of the Senedd.

Business Committee considered the letter at its meeting on 10 January 2023 and noted your concerns about the volume of work that the Bill is likely to create for your Committee, the Senedd and the Welsh Government. Subsequently, the Business Committee agreed to monitor developments in relation to the Bill and to seek to maintain a dialogue with the Welsh Government and your Committee, with a view to keeping all options open in order to deal with the demands that the Bill may bring.

We welcome your continued monitoring of the Bill and would be grateful if you could continue to draw relevant matters to the attention of Business Committee as required and, in particular, those aspects with potential implications for Senedd Business.

Kind regards,

Elin Jones

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Huw Irranca–Davies MS
Chair of the Legislation, Justice and Constitution Committee

19 January 2023

The Environmental Protection (Single–use Plastic Products)

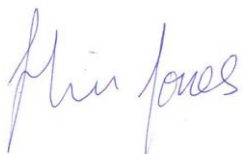
Dear Huw,

Thank you for your letter of 13 December 2022 that draws our attention to the Minister for Climate Change’s response to your correspondence regarding the expedited timetable for scrutiny of the Environmental Protection (Single–use Plastic Products).

Business Committee considered the letter on 10 January 2023 and noted your concerns, as well as the fact that we met on 14 December and agreed that officials will draft a report for Business Committee to consider, detailing the lessons learnt from the scrutiny process on this Bill for reference in the event of future requests for expedited scrutiny of a Bill. This will hopefully go some way to avoiding the issues that have arisen during scrutiny of this Bill in the future.

I will enclose a copy of this letter to the Minister for Climate Change and Minister for the Constitution and the Minister for Rural Affairs and North Wales, and Trefnydd.

Kind regards,



The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Rt Hon Elin Jones MS
Llywydd
Chair, Business Committee

13 December 2022

Annwyl Lywydd

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

Thank you for your letter of 6 December regarding expedited scrutiny of the above Bill.

I also wish to draw your attention to the response we have received from Julie James MS, Minister for Climate Change which responds to our letter of 25 November 2022 and which we copied to you on the same date.

The letter does not adequately address the questions we raised and does not alleviate our concerns about the expedited scrutiny of this Bill.

We are due to meet this week to discuss the procedure for Statutory Instrument Consent Memoranda and I confirm that I would also like to raise the expedited scrutiny of Bills.

I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



Huw Irranca-Davies
Chair



Llywodraeth Cymru
Welsh Government

Huw Irranca Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Huw.irranca-davies@senedd.wales

19 January 2022

Dear Huw,

Thank you for your follow-up letter of 15 December, regarding the Welsh Government consenting to UK Government subordinate legislation.

I look forward to receiving your further comments in due course. In the meantime, as requested, please find enclosed a copy of the Welsh Government's Principles for Correcting Deficiencies in EU-derived Domestic Legislation.

Yours sincerely,

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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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.

European Transition Legislation Board

Principles for Correcting Deficiencies in EU-derived Domestic Legislation: Guidance for Officials

Background

1. The Welsh Ministers' powers under clause 10 of and Schedule 2 to the EU (Withdrawal) Bill¹ extend to making regulations which amend UK legislation (i.e. made by Parliament or a Minister of the Crown), so far as that amendment is within the Welsh Ministers' devolved competence (as defined in the Withdrawal Bill). These powers overlap with those conferred on Ministers of the Crown under clause 7, which allow Ministers of the Crown to make provision within the Welsh Ministers' competence. It is therefore open to the Welsh Ministers to agree that the UK Government amend UK legislation on our behalf, even if it would be within the Welsh Ministers' competence to do so.
2. The Cabinet Sub-Committee on European Transition has discussed this issue and agreed that, in the exceptional circumstances of the UK's withdrawal from the EU, UK legislation can be corrected by UKG SIs under clause 7, if the deficiencies are purely technical in nature and there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UKG.
3. A working group – with representatives from Legal Services, the European Transition Team and Environment, Planning and Rural Affairs – was set up under the auspices of the European Transition Legislation Board Sub-Group on Secondary Legislation to discuss and propose principles for how the Welsh Ministers should approach dealing with deficiencies in:
 - a. UK legislation –, the modification of which is within the Welsh Ministers' 'devolved competence' (as defined in the Withdrawal Bill).
 - b. Composite instruments – i.e. made individually by the Welsh Ministers and a Minister of the Crown, albeit in a single composite SI.
 - c. Joint instruments – i.e. made by both the Welsh Ministers and a Minister of the Crown acting together in a single SI.
4. It was accepted that the Welsh Ministers will, alone, make any necessary modifications to Wales-only legislation (i.e. made by the Assembly or by the Welsh Ministers in an SI given a separate number in the Welsh series published by

¹ References to clause numbers are based on the EU (Withdrawal) Bill as introduced and are subject to updating.

National Archives)), It was further noted that UK Government must make any necessary modifications which are outside the Welsh Ministers' powers under the Withdrawal Bill.

5. The working group produced a set of principles (see **Annex A**) and examples of how Welsh Government ('WG') policy divergence with UK Government might inform their application (**Annex B**).
6. However, officials are reminded that Ministerial consent must be obtained for the approach they propose to take for the correction of deficient instruments.

Annex A: Principles to inform how the Welsh Ministers should approach the correction of ‘deficiencies’ , where there is an overlap between the powers of the Welsh Ministers and Ministers of the Crown under the EU (Withdrawal) Bill

A. Provision in UK legislation that extends and applies to England and Wales (excluding joint and composite instruments)

1. This would include provisions in Acts of Parliament and provisions in subordinate legislation made by UK Ministers that extends and applies to England and Wales (whether or not it also extends and applies to other territories).
2. The following principles should apply to corrections to this type of provision:
 - a. **UK Ministers should use their powers to correct the deficiency unless —**
 - i. **there is divergence between the Welsh Government and the UK Government on the policy for the correction, or**
 - ii. **the substance of the correction is politically sensitive.**
 - b. **If a. i. or ii. apply, and it is within their powers under the Withdrawal Bill, the Welsh Ministers should use these powers to correct the deficiency.**

B. Provision in Composite instruments

1. Composite legislation is a single instrument in which more than one person legislates – each with a different territorial application (creating, in effect, two versions of the same legislation). Composite England-Wales legislation is subject to both Assembly and Parliamentary procedures. Making legislation by way of composite instrument is a matter of choice (often for reasons of accessibility / efficiency where there is no policy divergence), and does not flow from a statutory requirement to do so. It is widespread within certain policy areas (for instance the environment and, to a lesser extent, agriculture and fisheries).
2. Legislation made on a composite basis can, under the Withdrawal Bill, be amended either by the Welsh Ministers (in relation to Wales) or a Minister of the Crown (in relation to England or England-and-Wales) acting alone or by way of a composite amending instrument.
3. There are strong policy, legal and practical arguments in favour of simplifying amendments to composite instruments such that only one amending instrument be used. This will help to ensure that the legislation as amended remains accessible, does not require that currently identical legislation be split into Wales- and England-

only versions (again, important in terms of stakeholder accessibility) and maximises the efficiency of available resource in both WG and UKG to focus on areas of greater existing policy divergence. It is noted, however, that there may be instances in which the WG and UKG policy approach to corrections does not align (**Annex B**).

4. The following principles should apply to corrections to provisions in composite instruments:
 - a. **If there is no policy divergence between WG and UKG and the substance of the correction is not politically sensitive:**
 - i. **UKG agreement and co-operation be sought to make those amendments on a composite basis.**
 - ii. **Where UKG does not agree to make amendments on a composite basis, WG requests that UKG makes those amendments in relation to England and Wales.**
 - iii. **Where UKG does not agree to make amendments in relation to Wales, amendments be made by the Welsh Ministers alone.**
 - b. **If there is policy divergence between WG and UKG but it is agreed that this can be accommodated in a composite instrument, the amendments may be made on a composite basis.**
 - c. **If there is policy divergence between WG and UKG which cannot be accommodated in a composite amending instrument, or if the substance of the correction is politically sensitive, amendments be made by the Welsh Ministers alone.**

C. Provision in Joint instruments

5. A joint instrument is a single piece of legislation made by more than one party with a single territorial application (e.g. 'England and Wales'). The parties are normally *required* to exercise the relevant power together, but may in some circumstances be expressly empowered to make legislation jointly. Joint legislation is relatively rare, but common in some areas (such as water).
6. The Welsh Ministers are prohibited from making amendments to joint instruments² other than by way of an amending instrument made jointly with the relevant Minister

² ... or, more accurately, to a 'matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless... made jointly with the Minister of the Crown' – which is a broader restriction in that it also prohibits making any provision equivalent to such amendment.

of the Crown by paragraph 7(2) of Schedule 2 to the Withdrawal Bill. Such joint amending instruments are, however, provided for by paragraph 1(2) of that Schedule. It should be noted that Ministers of the Crown are not similarly restricted – and are, therefore, able to modify joint instruments unilaterally.

7. The following principle should apply to corrections to provisions in joint instruments:

Policy colleagues with responsibility for joint instruments containing deficiencies contact their opposite numbers in Whitehall to ascertain how UKG proposes to amend such instruments and offer to work with them on the production of joint amending instruments where appropriate.

D. Provision in UK legislation that applies only in relation to Wales

8. This includes provisions in Acts of Parliament and provisions in subordinate legislation made by UK Ministers that applies only in relation to Wales (or applies only for the purpose of enforcing or making effective provision that applies only in relation to Wales). This would include provision that was originally enacted or made to apply in relation to Wales and other territories but which has subsequently been amended so that it applies only in relation to Wales.

9. The following principles should apply to corrections to this type of provision:

a. If it is within their powers under the Withdrawal Bill, the Welsh Ministers should use these powers to correct the deficiency unless—

- i. there are other provisions applying in relation to England (or England and Wales) that require correction in the same legislative instrument in which the deficient Wales only provision is contained,**
- ii. the connections between the provisions make it impractical from the drafting and handling perspectives for the corrections to be dealt with in two separate SIs,**
- iii. there is agreement between the Welsh Government and the UK Government on the policy for the correction, and**
- iv. there are no political sensitivities on the substance of the correction.**

b. If a. i, ii, iii and iv. apply, UK Ministers should use their powers to correct the deficiency along with the deficiencies in other provisions applying in relation to England (or England and Wales).

Annex B: Examples of policy divergence between the Welsh Government and the UK Government

The transfer of functions from the European Commission to a Minister of the Crown or to an existing or newly established UK-wide public authority

1. Regulations under clause 7/Schedule 2 can provide for functions of EU entities (such as the European Commission) to be exercisable by a public authority in the UK, including a newly established public authority or one established for the purpose.³
2. The transfer of functions from the European Commission to a Minister of the Crown or to an existing UK-wide public authority may be something on which there is a policy divergence between UKG and WG. The Welsh Government may consider that it would be more appropriate for the functions to be transferred to the Welsh Ministers or to a devolved public authority. Or WG may consider that it would not be appropriate for some of the functions which were exercised by the Commission to be exercised by a UK body, for example powers of inspection.

Modifications to obligations under existing reciprocal arrangements

3. One of the items which are regarded as a deficiency under clause 7(2) is reciprocal arrangements which are no longer appropriate. The Explanatory Notes to the Withdrawal Bill refer to reciprocal arrangements between states which include reciprocal rights of citizens and note that the obligations under those arrangements (both UK obligations and EU member states' obligations to the UK) will fall away at the point where the UK leaves the EU. Any obligations beyond that time would only exist if they were agreed between the EU and the UK as part of the arrangements for a future relationship. However, without a correction, the UK's law would still include recognition of EU citizens' rights. The power to deal with deficiencies can therefore modify, limit or remove the rights which domestic law presently grants to EU nationals.
4. One of the examples of UK obligations under reciprocal arrangements is the requirement in the UK regulations for mutual recognition of professional qualifications which transpose the UK's obligations under EU Directive 2005/36. Once the obligations under these arrangements fall away there are policy choices to be made as to whether the equivalent professional qualifications of EU nationals will continue to be recognised. Where the regulation of professions is devolved, it may be that WG policy diverges from UKG policy, such that it would not be

³ A UK government amendment to Clause 7 will remove the power to create a new public body. The effect of this change will be that any new public body required as a result of EU exit would be created via primary legislation.

appropriate for regulations made by a Minister of the Crown to modify retained EU law in way which is not consistent with WG policy.

Common legislative frameworks

5. It may be that in areas where UKG believes a common legislative framework is required / desirable (whether taking the form of UK Parliamentary legislation alone, or alongside equivalent provision by the DAs) their approach to operability differs from ours. It may be, for instance, that the UKG preference in such cases is for more limited, or even temporary, 'corrections' than WG would like – which might give rise to circumstances in which the WMs wished to exercise their own powers more broadly.

Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

19 January 2023

The Historic Environment (Wales) Bill

Dear Huw,

Thank you for your letter of 23 December 2022 drawing our attention to two recommendations in your report on the Historic Environment (Wales) Bill, which are relevant to the Business Committee:

Recommendation 13. The Business Committee should, when conducting any review of the Senedd's Standing Orders which relate to new requirements or restrictions on how the Senedd considers legislative proposals within the context of a consolidated area of law, consult with Members of the Senedd, Senedd Committees and the Senedd Commission.

Recommendation 14. The Business Committee should review Standing Order 26C after the first two proposed Consolidation Bills have been considered by the Senedd.

We considered the recommendations at our meeting on 10 January 2023 and I am writing to confirm that the Business Committee is happy to accept both recommendations. As stated in the [report](#) published by the Fifth Senedd's Business Committee on Standing Order 26C, when carrying out the review, we will consult with the Welsh Government and the Legislation, Justice and Constitution Committee and also with Members of the Senedd, Senedd committees and the Senedd Commission in order to inform that review and identify any areas of the procedure that require reform.



We are happy to confirm that we would intend that review to take place once the second anticipated Consolidation Bill has been considered by the Senedd.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Elin Jones', is positioned below the closing of the letter.

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

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