

Mick Antoniw AS/MS

**Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
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

7 July 2023

Dear Huw,

Thank you for your letter of 26 June 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Bill. You will know that the Bill has now received Royal Assent and become an Act. My answers are set out in the following Annex.

I look forward to appearing before your Committee on 10 July 2023, when I am sure that we can discuss some of these issues in further detail.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style and is underlined.

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

Question 1: What progress has the Welsh Government made on its review of the retained EU law listed on the new Schedule?

The UK Government did not consult Devolved Governments on the initial drafting of the Schedule. Nevertheless, the Welsh Government's assessment is that there are no apparent problems for areas within devolved competence arising from the revocation of the instruments listed in the Schedule.

Question 2: Can you provide an update on the Welsh Government's plans on whether it will use the new regulation-making power to exclude retained EU law listed in the Schedule from revocation.

As above, we do not currently see the need for the exercise of such powers and have no current plans to use them.

Question 3: Can you provide an update on any discussions that you have held with the UK Government on whether UK Ministers intend on using the new regulation-making power to exclude retained EU law listed in the Schedule from revocation, including in devolved areas.

Based on discussions at official level with the UK Government, we do not expect it to use such powers in relation to any instruments in the Schedule, whether reserved or devolved.

Question 4: In what circumstances would the Welsh Government be content for the UK Government to make regulations under the Bill in devolved areas?

As we have stated on several occasions, the Welsh Government pushed strongly for the UK Government to ensure that a requirement for Ministers of the Crown to obtain the consent of the Welsh Ministers before legislating in devolved areas was on the face of the Bill. Regrettably, the UK Government did not agree to that. We remain in discussion with the UK Government about an alternative consent mechanism and would only be satisfied with the exercise of such powers in devolved areas if sufficient time were to be given to consider any such proposal, and if the views of the Welsh Government were to be respected.

Question 5: What discussions have taken and/or are taking place with the UK Government on the exercise of the concurrent powers in the Bill?

As above, we remain in discussion with the UK Government on this matter.

Question 6: Have discussions with the UK Government included seeking commitments on the terms of the exercise of the concurrent powers, including whether the Welsh Government is content for the UK Government to legislate on its behalf “where they do not intend to take a different position”?

Yes.

Question 7: What agreements and commitments are being sought and put in place by the Welsh Government in terms of when and how the UK Government will notify the Welsh Government of when it intends to make regulations in a devolved area?

This matter remains under discussion with a view to ensuring that there is proper consideration and respect for Welsh Ministers’ positions.

Question 8: How is the Welsh Government intending on sharing relevant information with the Senedd in a timely manner about the exercise (or planned exercise) of these powers?

We are very keen to ensure that the Senedd is properly involved in this process, as I have previously stated. My officials are in regular contact with the Committee clerks and I would be happy for the details of this to be explored in those discussions. I will update the Committee in due course.

The Welsh Ministers exercising the regulation-making powers in the Bill

Question 9: Can you provide updated responses to questions 14, 15 and 19 in my letter of 16 May, and provide your views on the further powers which have been granted to the Welsh Ministers.

As regards the questions in your 16 May letter, on Q 14, we still do not know the detail of the UK Government’s intentions for the use of these powers to revoke or replace under what is now section 14 of the Act (previously clause 15).

On Q 15, as above I can further state that we have no current plans to use any powers to amend Schedule 1 as there is no apparent need to do so. We will keep the Senedd informed if that position changes.

On Q 19, there is no present intention to use the power to amend the Bill itself, though we are considering using the power in order to make necessary consequential amendments to legislation made in Wales.

Sifting of proposed negative instruments

Question 10: Subject to a formal decision being made that we will also take on the responsibility of being the 'sift committee' for when the relevant powers are exercised under this Bill, would you agree to a similar commitment to that which was previously in place and agree that the Welsh Government will again aim to lay any proposed negative instruments for sifting on a Tuesday (and avoiding a Thursday and Friday)?

Yes.

Sunsetting of EU-derived rights, and principles of EU law

Question 11: Can you provide an update on the Welsh Government's discussions with the UK Government on the sunseting of directly effective rights and obligations, and if and when the UK Government envisages powers in the Bill being used to reinstate the principle of supremacy or other retained principles.

The Welsh Government has stated its concerns on this complex set of issues to the UK Government over an extended period of time during the Bill's passage at Westminster. However, this has not been a priority for the UK Government and it did not seek to make any changes to the Bill to address it. Now that the Bill has become an Act, UKG is discussing the matter with Devolved Governments, to see how this could best be addressed using appropriate powers for UK or Devolved Ministers in the Act, such as restatement. This is a significant piece of work that we are now having to apply on a case-by-case basis across different policy areas and pieces of legislation. We will keep the Committee informed of progress.

Retained EU law dashboard and identifying retained EU law

Question 12: Can you provide an update on the Welsh Government's work to identify Welsh-made retained EU law.

The fundamental need to identify the pieces of legislation that constitute retained EU law made in Wales was overtaken by the changes to what is now section 1 of the Act that removed the automatic revocation ("sunset") of all applicable REUL and replaced it with the list in Schedule 1. Accordingly, we have prioritised other matters such as ensuring the instruments in the Schedule are not of concern in relation to devolved matters in Wales.

Question 13: Can you confirm whether the Welsh Government has now asked the UK Government to add the Welsh Government's list of Welsh-made retained EU law to the dashboard.

Similarly, we have not pursued this matter as the context for it is now fundamentally altered.

Question 14: Can you provide an update on discussions the Welsh Government has had (or is having) with the UK Government about identifying the split of reserved and devolved retained EU law.

The fundamental change to the Bill outlined above removed the requirement to identify all pieces of REUL in order to preserve them and also need to clarify the devolved or reserved nature of REUL that had been identified by the UK Government. As and when specific pieces of REUL are identified by the UK Government, for example for restatement or reform, we will focus on the devolved/reserved split of those instruments and where there is a devolved interest, on understanding the implications of any proposed change for Wales. More broadly, we remain in close dialogue with the UK Government at official level about relevant matters relating to the implementation of the REUL Act.

Retained EU law reform and Common Frameworks

Question 15: What are the Welsh Government's views on how the existing structures to support UK-wide Common Frameworks are being used (or will be used) to discuss reform of retained EU law

It was agreed at the Interministerial Standing Committee in February this year that when REUL is in areas covered by Common Frameworks they are the most appropriate fora for the discussion of any potential reform of REUL. We remain in discussion with the other governments in the UK on this, especially on the most pertinent policy areas.