

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Dr Nerys Llewelyn Jones
Interim Environmental Protection Assessor, Wales

April 2023

Dear Nerys,

Thank you for your letter of 16 February enclosing a copy of your report on The Retained EU Law (Revocation and Reform) Bill. I am incredibly grateful for the work you have done to both engage with stakeholders on this matter and assess the potential impact of the Bill on environmental law in Wales. Your report and recommendations will provide a very useful input into the Welsh Government's own assessment on the impact of the Bill.

Overall, Welsh Government very much agrees with the issues and concerns highlighted in your report. The Welsh Government fundamentally opposes the whole intent of the Bill, including the very concept of a sunset date. In general, our position is that retained EU law (REUL), like EU law before it, works well. We had no intention to repeal, revoke or amend REUL, particularly to an arbitrary deadline. This UK Government Bill, as it currently stands, would repeal essential economic, social and environmental protections by default. This is unacceptable and irresponsible. As your report makes clear, any amendments to environmental REUL should be made with evidence gathering, public consultation, and legislative scrutiny as is usual for changes to legislation.

Your report has thoroughly covered the implications of the Bill and I am grateful to you for your recommendations, dealing with matters such as the sunseting deadline, consent and regulatory burdens. I have included individual responses to the recommendations as an annex to this letter. As I'm sure you will be aware my response, along with your report, will be laid in the Senedd. Your report will therefore provide helpful evidence as we continue to raise our concerns with the UK Government on such matters and will inform our further work relating to this Bill.

Yours sincerely

Julie James AS/MS
Y Gweinidog Newid Hinsawdd

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

Minister for Climate Change

Annex

Interim Environmental Protection Assessor Wales - Report on The Retained EU Law (Revocation and Reform) Bill – Recommendations and Welsh Government Response.

The Interim Environmental Protection Assessor Wales (IEPAW) considers concerns raised by members of the public about the functioning of environmental law in Wales. The IEPAW advises Welsh Ministers on whether the submissions raised are valid and makes recommendations for any action they consider may need to be taken.

The IEPAW received a number of concerns from stakeholders about the UK Government's proposed Retained EU Law (Revocation and Reform) Bill and its potential impact on environmental law in Wales. Having considered these, the IEPAW submitted a report to the Minister for Climate Change in February 2023. This report makes 11 recommendations for Welsh Ministers in relation to various aspects of the Bill.

A response from the Minister for Climate Change to each of these recommendations is outlined below and will be laid along with the report in the Senedd.

Recommendation 1: The Welsh Government should set out:

- 1) what processes it is putting in place to ensure that the potential impacts from the REUL Bill on environmental law in Wales are properly considered and managed; and*
- 2) what resource it is making available to manage these processes.*

The precise impact of the REUL Bill depends fundamentally upon decisions yet to be taken by UK Ministers within the framework of the Bill once it becomes law, as well as any changes that are made to the Bill during its Parliamentary passage. However, Welsh Government, like many of the respondents to the call for evidence, is very concerned about the potential impact of the Bill on environmental law in Wales. We have put in place a team to co-ordinate across Welsh Government environmental and wider policy areas affected by the Bill. We have also had representations from groups and organisations that have written in or approached and these have been valuable in helping us understand the possible impacts of the Bill. We welcome all representations and will look to work with others as the details of the Bill become clearer.

Resource from each of the policy areas is being made available to review and consider information from the UK Government on their proposals regarding individual pieces of environmental law as it becomes available. This resource is limited and has to be considered alongside other Welsh Government priorities, it's not ideal that resources are having to be diverted from other priorities to deal with this Bill to make sure we can make the right decisions for Wales. In parallel, we are also considering the status of legislation made in Wales by the Senedd. This analysis is ongoing and we hope to have a more complete picture in the near future.

Recommendation 2: The Welsh Government should press the UK Government to remove the sunset clause in relation to environmental law or to grant the devolved governments of Wales, Scotland and Northern Ireland the power to extend the deadline themselves. As a minimum, the UK Government should be encouraged to extend the sunset deadline so that it gives sufficient time for REUL to be fully assessed and for the governments in the different parts of the UK to fully consider what new legislation could be brought forward to improve environmental outcomes.

The Welsh Government shares the concerns expressed in the report: we fundamentally oppose the whole intent of the Bill, including the very concept of a sunset date. We have made these points to the UK Government in writing and in meetings and will continue to do so. We have also promoted amendments in the House of Lords to allow Welsh Ministers to have the power to extend the sunset date. Regrettably UK Government has not, to date, changed its position on these issues.

Recommendation 3: *The Welsh Government should press the UK Government to publish an exhaustive list of the legislation across all devolved administrations that will be affected by the REUL Bill as soon as possible and also to provide the full analysis of legislation impacted by the Bill as soon as possible. Such publication must occur at the outset. Following this, sufficient time must be allowed for impacted parties and stakeholders to give full consideration to the Bill's impact before it is passed.*

Welsh Government shares the view expressed in the report and we continue to press these points with UK Government. We do not believe that the so-called “dashboard” published by UK Government, that lists pieces of REUL is accurate, comprehensive or sufficient. We also recognise that identifying and publishing such a list is only part of the process and that UK Government should make clear its intention on each piece of REUL clearly and as quickly as possible. We recognise that working collaboratively with others will help us understand and impact and limit the potential damage caused by the UK Government. At the recent Environment, Food and Rural Affairs Inter-Ministerial Group meeting in April, we urged Defra Ministers to publish a draft list of legislation in these areas and their intentions under the REUL Bill, with sufficient time for stakeholders to fully consider and comment on the proposals. The production of this report, clearly highlighting your concerns will help us work more collaboratively on the proposals in the Bill.

Recommendation 4: *The Welsh Government should explore the possibility of bringing forward regulations aimed at retaining environmental REUL in Wales. These regulations should not contain any sunset clause. The regulations should ensure that policymakers are able to fully consider where improvements can be made to the existing framework of environmental law. In areas where improvements can be made, Welsh Government should ensure that there is wide-reaching, clear and timely consultation and that draft regulations are subject to full parliamentary scrutiny in the Senedd.*

As outlined in my response to recommendation 2, Welsh Government fundamentally opposes the whole intent of the Bill, including the concept of a sunset date. It is not our intention to allow REUL in devolved areas, including environmental REUL, to come to an end unless there are very good reasons for this to take place. We are therefore considering all options for minimising the negative impact of the Bill on the people of Wales. This does not mean that we don't recognise that in some areas the existing framework of environmental law could be improved to ensure that it is fit for purpose to tackle the climate and nature emergencies. However, we completely agree with the report that proper stakeholder consultation and engagement by the Senedd needs to accompany any significant changes in environmental legislation that would be brought about as a result of the Bill.

Recommendation 5: *The Welsh Government should press the UK Government to ensure that the powers granted by this Bill are not overly broad. The Bill should also contain a requirement to ensure that any legislation brought forward under these powers are subject to full scrutiny in their respective parliaments and are widely and at an early stage consulted on with interested stakeholders.*

In the absence of such assurance, Welsh Government should seek to ensure that any changes to environmental legislation in Wales made under the powers granted by this Bill are subject to robust scrutiny in the Senedd and are fully consulted on, to the extent possible under the timescales imposed by the Bill.

We agree that any legislative changes brought forward by this Bill are afforded appropriate scrutiny through respective parliamentary procedures. The Welsh Government believes that this is an ill-constructed Bill with unduly imprecise effects, and which concentrates too much power in the hands of Ministers without the chance for appropriate scrutiny by legislatures. We also agree that full and early consultation with interested stakeholders will be critical. We have made these points clearly to UK Ministers and have supported amendments in the House of Lords to increase scrutiny by legislatures of measures under the Bill. The Welsh Government has no intention at present to make substantive policy changes to environmental, or any other legislation, using the powers that would be provided to Welsh Ministers under the Bill. However, as stated in response to the previous recommendation, we completely agree with the report that proper stakeholder consultation and engagement by the Senedd needs to accompany any proposed changes in environmental legislation that would be brought about because of the Bill.

Recommendation 6: *The Welsh Government should push for changes to the Bill to prevent environmental legislation from being automatically revoked without the express approval of Parliament and/or the Senedd. Similarly, there should be no revocation of any piece of environmental legislation without consultation and a full assessment of the impact.*

Welsh Government fully shares the concern 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 has sought changes to the Bill on this matter. We are also pressing the UK Government to make available its lists of legislation proposed for revocation in the first instance to ensure interested parties have time to consider and respond to the proposals. Where a proposed revocation relates to redundant or obsolete REUL it is likely that we would agree to this. We would however wish to ensure proper stakeholder consultation and impact assessment in relation to any proposed changes in environmental legislation that would be brought about as a result of the Bill.

Recommendation 7: *The Welsh Government should press the UK Government to accept the OEP's recommendation for a non-regression principle for environmental law to be included in the REUL Bill. In the absence of this principle at the UK level, the Welsh Government should make a clear commitment that no changes should be made to environmental law in Wales as a result of the REUL Bill unless these result in a greater, or at least equivalent, level of protection for the environment.*

We agree that we do not wish to see the impact of the Bill result in a regression in environmental standards in Wales. It has been a long-standing commitment of Welsh Government to ensure environmental standards are maintained, enhanced and improved following the UK's exit from the EU. It is therefore not Welsh Government's intention to allow REUL in devolved areas, including environmental law, to come to an end or diminish existing or future standards unless there are very good reasons for this to take place. We will continue to press the UK Government on our intention to maintain environmental standard and that no changes brought about by the Bill should result in a lesser level of protection for our environment.

Recommendation 8: *The Welsh Government should press the UK Government to amend the wording of the Bill so that it cannot be interpreted that there is a barrier to increasing*

regulatory burdens where this is necessary to achieve better environmental outcomes. Any increase in regulatory burdens must be subject to a thorough consultation and a full assessment of the potential impacts.

We agree that any proposals for increased regulatory measures to achieve environmental improvement or to meet environment standards should be subject to appropriate consultation and assessment of impact. Our ongoing discussions with the UK Government on the concerns that we have with the Bill have included the regulatory burden as a totally unacceptable constraint. With clauses in the bill that prevent increases in regulatory burden such as financial cost, administrative inconvenience and profitability it is hard to see how environmental improvements can be made. We have sought changes to the Bill on this matter. UK Government Ministers have yet to give us reassurance that they are willing to make changes to the Bill to address our concerns.

Recommendation 9: *The Welsh Government should continue to press for the inclusion of a provision in the REUL Bill making clear that the UK Government cannot seek to restate, reform or repeal REUL in devolved areas of environmental law without the consent of the devolved administrations.*

The Welsh Government fully agrees with this and has indeed made these points to the UK Government and supported amendments in the House of Lords to this effect. It is fundamental to the devolution settlement that such consent should be given by Welsh Ministers before any measure relating to devolved matters in Wales, made by UK Ministers under the Bill, can proceed, especially those that restate, reform or revoke any REUL. Following a recent visit to Holyhead with the First Minister, the Prime Minister expressed the UK Government's commitment to upfront engagement between respective departments on legislation so that Welsh Government could consider recommending consent to the Senedd. We will continue to press UK Government to follow this commitment.

Recommendation 10: *The Welsh Government should press for the creation of a clear process and mechanism which would enable collaborative working between the four nations to analyse impacts of the Bill on environmental law and agree approaches on areas that require or would benefit from a joint approach. This process/mechanism should be established with equal standing for all four nations and be supported by topical working groups.*

I agree with the importance of collaborative working on environmental law with the other governments of the UK. The REUL Bill has been a consistent agenda item on the Environment, Food and Rural Affairs Inter-Ministerial Group that the Minister for Rural Affairs, North Wales and Trefnydd and I attend on behalf of Welsh Government. This provides the ideal mechanism to enable a joined up approach and a forum to discuss the impact of the Bill on environmental law. Disappointingly this opportunity has been lost and seemingly dismissed due to the absence of the SoS Environment, Food and Rural Affairs over the last several meetings. I have repeatedly written to the SoS and expressed our concerns with this repeated absence. I have now received assurance that the SoS will be attending in future so we can take forward discussion on REUL with all Governments represented.

At an official level, the current four nations' Environment Working Group provides a forum for the four governments to discuss issues in relation to environmental regulations. This now includes a sub-group considering environmental REUL where environmental law requiring a joined up approach across the four nations can be considered and discussed,

including any opportunities for improvements as they arise. Any issues that arise from these discussions can be escalated to the Inter-Ministerial Group for further consideration. Where we have established structures around our common Frameworks we will be able to use these forums to discuss any proposals for amendments to environment law in these areas.

Recommendation 11: *The Welsh Government should undertake an urgent review of the interaction between the REUL Bill and the UKIM Act, particularly in relation to the potential impacts on environmental law in Wales. Consideration must also be given to what measures may be available to mitigate any negative impacts arising from this interaction.*

We agree that there is a fundamental relationship between the REUL Bill and the UKIM Act. Without prejudice to our view that there is nothing in the UKIM Act that can fetter the discretion of the Senedd, it will be important to assess the interaction between these. We intend to do so as intentions of UK Government in relation to individual pieces of REUL become clearer. We appreciate the relationship will be complex in some areas and therefore proper consideration will be needed to understand where negative impacts may arise.

I would like to thank the Interim Environmental Protection Assessor for Wales again for her time and consideration of the impacts of the REUL Bill on environmental law and the implications in relation to Wales. These recommendations will help inform others as they consider the Bill and its proposals and will continue to aid us in our representations to the UK Government and our discussions at an official level. It remains important that the rights and protections afforded from European legislation are not inadvertently lost at the end of the year through the sunset provision being proposed and we will continue to explore all options to ensure this is not the case.

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