



The Scottish Parliament
Pàrlamaid na h-Alba

Committee Conveners (by e-mail)

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1 June 2023

Dear Convener,

Retained EU Law (Revocation and Reform) Bill: Schedule 1

Further to the update on REUL which I provided at the Conveners' Group yesterday, the following may be useful in informing your Committee's consideration of any initial work you may wish to undertake in relation to Schedule 1 of the Retained EU Law (Revocation and Reform) Bill ("the Bill").

At report stage in the House of Lords the UK Government lodged amendments which removed the automatic sunset of REUL. Instead, only the REUL specified in a new Schedule attached to the Bill will be revoked at the end of the year. REUL not specified in Schedule 1 will remain on the statute book. In other words, the default position taken in the Bill, as introduced, that all REUL would be revoked except pieces which were expressly saved, has changed to a default position that all REUL remains on the statute book unless it is on the specified list of REUL that will be revoked.

This Schedule provides that 587 specific instruments will be revoked. The date of the revocation remains "the end of 2023".

The [UK Government published information on the REUL contained in Schedule 1](#). Of the 587 instruments listed on the Schedule, the Scottish Government assesses 148 as making some devolved provision. It is the UK Government's view that these are obsolete.

The Scottish Government published a supplementary Legislative Consent Memorandum (sLCM) on 24 May 2023. It indicates that the Scottish Government is satisfied that 139 of the 148 instruments listed in Schedule 1 (which make some devolved provision) are obsolete and can be revoked. The Scottish Government is concerned about the revocation of nine instruments. The sLCM states that "to date the SG considers that 9 cannot yet be said to be obsolete; and therefore opposes their sunset."¹ The sLCM also notes that in "the limited time available it has not been

¹ [Supplementary Legislative Consent Memorandum \(parliament.scot\)](#) para 15

possible to comprehensively review all aspects of the Schedule” and that therefore this is a “cautious assessment.”

The power to preserve REUL has changed and is now a power which relates to removing instruments listed in the Schedule. The power allows for Ministers to specify that an instrument listed in Schedule 1 is not revoked at the end of 2023. This power can be exercised within Scottish devolved competence by both Scottish Ministers and UK Ministers, concurrently or jointly, and is not subject to a consent or consultation requirement when exercised by UK Ministers. This power is subject to the affirmative procedure and cannot be exercised after 31 October 2023.

The Cabinet Secretary for Constitution, External Affairs and Culture provided further details on the potential challenge in the exercise of this power in a letter to the Committee dated 31 May 2023. He stated that there “is uncertainty and complexity in how we could remove an instrument from the Schedule where the instrument is not entirely within devolved competence.” This is partly because “the eventuality may arise whereby the UK Government is of a different opinion to a Devolved Government in relation to what should be done in respect of a particular law.”

The Cabinet Secretary has stated that he is “open to discuss what might be the appropriate role for the Scottish Parliament on considering whether any instruments should be removed from the Schedule, to the extent that they are within devolved competence, whilst noting that this would likely need to be by way of agreement rather than an amendment to the Bill.”

If your Committee wishes to consider what instruments within your remit appear on Schedule 1 and have any views on instruments which should be removed from the Schedule then you may wish to do so before Summer recess. This is because the power to remove instruments from the Schedule cannot be used beyond 31 October 2023. That may entail draft regulations which remove instruments from the Schedule being laid for approval early in September 2023².

SPICe will provide a briefing on the instruments in Schedule 1 which the Scottish Government believes to contain at least some devolved provision applicable in Scotland and which fall within your remit. This briefing will be circulated to you early next week.

Yours sincerely



Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee

² Where the power is to be used by the Scottish Ministers, the Bill requires draft affirmative regulations to be laid for approval by resolution of the Scottish Parliament. A resolution would be required on or before 31 October 2023, to allow the regulations to be made by that date. Under Standing Orders, lead committees have 40 non-recess days to consider and report on draft affirmative instruments, although the Parliament may suspend Standing Orders for particular cases. Similar timescales are likely to apply to draft regulations laid in the UK Parliament by UK Ministers.