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24 May 2023

Retained EU Law (Revocation and Reform) Bill – Supplementary Legislative Consent Memorandum (LCM)

Dear Ms Adamson

The UK Government tabled amendments to the Retained EU Law (Revocation and Reform) Bill on 10 May 2023 ahead of the Bill's House of Lords report stage. It is the view of Scottish Government officials that these amendments are, in part, for a purpose within the legislative competence of the Scottish Parliament and alter the executive functions of Scottish Ministers. The amendments therefore engage the requirement to provide a supplementary Legislative Consent Memorandum (LCM) to the Scottish Parliament. The UK Government amendments were accepted in the Lords on 15 May, with four non-government amendments also passed at report stage now subject to debate in the House of Commons.

I have lodged the supplementary LCM today, in which the Scottish Government recommends the Scottish Parliament withhold consent for the UK Government amendments and voice its deep concern at the way the UK Government have treated the Scottish Parliament in relation to this Bill.

I wish to make you aware of two significant issues with the way the UK Government are approaching these amendments and the latter stages of the Bill which have had an impact on lodging the supplementary LCM: the speed at which Royal Assent is being pursued by the UK Government and their lack of any consultation or seeking of consent to the new Schedule of REUL to sunset at the end of 2023.

It is also vital to recall that the Bill still contains deeply concerning powers for UK Ministers to amend or revoke any instrument of devolved REUL. This means that thousands of pieces of REUL are subject to change by UK Ministers with no requirement for consent from the Scottish Ministers or Scottish Parliament. Given UK Ministers' approach to imposing the new

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Schedule without notice, I have no confidence that these delegated powers will be used responsibly.

Timing and legislative consent

On 19 May, the UK Government wrote to the Scottish Government seeking legislative consent for some of the amendments tabled on 10 May. The letter did not provide any assessment about the impact of the Schedule on devolved law. The Bill returns to the House of Commons today as part of its legislative passage. This is the same day that the Scottish Government lodges our supplementary LCM with the Scottish Parliament.

Scottish Government officials have made clear to the UK Government that the correct procedure to adhere to is for the UK Government to request legislative consent for any amendments that make relevant provision if it applies to Scotland for any purpose within the legislative competence of the Parliament, or if it alters that legislative competence or if it alters the executive competence of the Scottish Ministers. The UK Government should then afford the Scottish Government appropriate time to make recommendation to the Scottish Parliament on whether or not to grant consent to the amendments.

The UK Government Bill Minister in the Lords, Lord Callanan, said in the House on Monday that the UK Government:

“intends to proceed with the Bill without their (Scottish Parliament and Senedd Cymru) consent.”

In requesting legislative consent on Friday 19 May and then Lord Callanan’s statement on Monday 22 May, it is clear that the UK Government had no intention of respecting the views of the Scottish Government or Scottish Parliament, or the devolution settlement more broadly. Lord Callanan’s statement simply confirmed this. Regrettably, it is likely that the Scottish Parliament’s view, once it has scrutinised the supplementary LCM, will come at a point where the Bill is shortly to receive Royal Assent and UKG have already indicated the views of the Scottish Parliament will be irrelevant. The Parliament should however continue to make its voice heard.

UKG approach to the Schedule of REUL to be sunset

The most significant amendment tabled by UK Government on 10 May and now accepted in to the Bill removes the clause 1 automatic sunset of REUL and replaces it with a new Schedule which includes a list of REUL to sunset on December 31 2023.

The UK Government gave the Scottish Government no advance sight of the full list of REUL in this Schedule, which numbers 587 pieces of legislation. Scottish Government officials saw this list for the first time on 10 May, the same day as the UK Government amendment was tabled and the requirement for a supplementary LCM for the Scottish Parliament was triggered – and it was not provided in accessible format at this point.

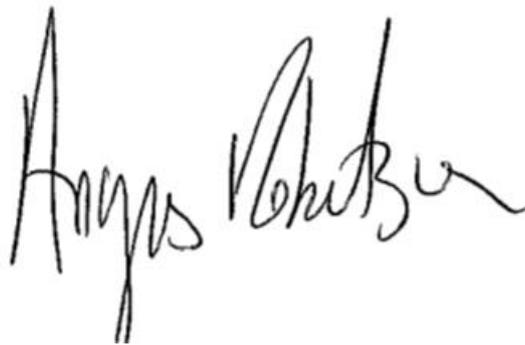
Scottish Government officials therefore have had 10 working days to analyse the Schedule of REUL to be sunset, and to ensure they can provide a focussed assessment of the status of the REUL on the Schedule for the Scottish Parliament in a supplementary LCM. This timeframe has proved challenging and is – in my view – an extremely poor way for the UK Government to legislate.

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I would draw the committee's attention to part 2 of Annex B of the supplementary LCM which lists the legislation on the Schedule that Scottish Government officials have raised concerns over. I welcome the committee's views on these pieces of REUL; however given the timeframe I have instructed my officials to urgently press the UK Government to remove such REUL from the Schedule as I believe that its sunset could pose a risk to the devolved statute book.

The Bill confers new powers on the Scottish Ministers to effectively "remove" devolved REUL from the Schedule after Royal Assent, up until 31 October 2023 – although it remains a point of concern whether such REUL would remain operable if the UK Government chose to revoke the reserved provisions of such REUL. Careful analysis of material in the Schedule will continue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Angus Robertson', written in a cursive style.

ANGUS ROBERTSON

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