

Written Submission by SCOTSS to the Constitution, Europe, External Affairs and Culture Committee on the Retained EU Law (Revocation and Reform) Bill

Background

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional Trading Standards managers representing every Scottish local authority trading standards service.

The Society liaises with local council colleagues across the UK and engages with government and others around the operation of the consumer protection landscape, providing leadership and consistency to Scotland's 31 trading standards teams. We aim to educate, coordinate, and support.

Local authority Trading Standards services are responsible for the enforcement of a wide range of consumer and trading laws. This includes both devolved and reserved legislation.

Overview

SCOTSS is concerned that the “sunset clause” in the Retained EU Law (Revocation and Reform) Bill (“REUL”) risks causing the loss of a wide range of crucial Trading Standards legislation which protects people, businesses, animals and the environment from both physical and financial harm. A number of these laws are devolved to Scotland, particularly around the topics of animal feedstuffs, animal welfare and human health, and so are directly relevant to discussion of the Bill in the Scottish Parliament. Many others – covering topics such as product safety, scams, consumer rights, intellectual property and weights and measures – are reserved to Westminster but affect Scottish communities daily through the enforcement work of local authority Trading Standards services, and so are of interest to the Scottish Parliament and its committees.

We have general concerns about the process surrounding the REUL Bill: for example the fact that if legislation that has not been considered is disapplied via the sunset clause in December 2023, the law has in effect been significantly changed without Parliamentary scrutiny or impact assessments. However, we recognise that the committee is hearing evidence from legal and parliamentary experts who will deal with these issues with greater expertise than us. Accordingly, we restrict this submission to discussion of Trading Standards technical matters.

Devolved Matters

SCOTSS shares the concern expressed by a range of bodies and individuals that the timescale in the REUL Bill is much too short to enable proper scrutiny of all the legislation that is in scope for the sunset clause taking effect in December 2023. The fear is that the lack of attention that can be paid will result in a loss of vital protections contained in a variety of legislation.

The main areas of affected Trading Standards law in the devolved sphere are:

- Regulation of the safety and quality of animal feedstuffs
- Upholding animal health and welfare standards
- Matters affecting human health around controls on tobacco and vaping products
- Environmental protections such as control of Volatile Organic Compounds
- Fertiliser and Pesticide standards

We understand that primary legislation such as Acts of Parliament are exempt from the REUL Bill sunset clause, but that all subordinate legislation that implements EU requirements and all retained direct EU legislation are covered by the clause. Therefore, the vast majority of the affected Trading

Standards legislation is subject to the clause. See below for a brief commentary on the devolved topic areas. Note however that the UK Government's REUL "dashboard" states:

"This catalogue is provided by the UK Government and is therefore not intended to provide an authoritative account of REUL that sits with the competence of the Devolved administrations. However, it may contain individual pieces of REUL which do sit in devolved areas"¹.

This seems to us to be a problematic approach, with some Scottish law included but probably most Scottish REUL missing. We are not aware of a comprehensive Scottish list being held anywhere so there is a danger of some pieces of legislation falling to the sunset clause by accident.

Controls on animal feedstuffs play a crucial role in ensuring that the food chain in Scotland operates safely and effectively. Accordingly these provisions are fundamental to daily life in Scotland. Trading Standards works closely with Food Standards Scotland to enforce these requirements through local inspections, sampling and investigations. Officers also work collaboratively with feed manufacturers, wholesalers and farmers, providing legal guidance and specific advice to ensure compliance. We understand that virtually all the legislation underpinning this system is in scope for the sunset clause as it is retained direct EU law or Scottish subordinate legislation.

Trading Standards work on **Animal Health and Welfare** ensures acceptable standards are met, particularly in relation to farm animals. A wide range of EU-related legislation regulates such matters as the keeping of farm animals, their transportation, and arrangements for their slaughter at abattoirs. The provisions both ensure the humane treatment of the animals and interact with animal feed laws to sustain a safe food chain for humans. The full "Farm to Fork" journey in Scotland involves the implementation of EU laws. So while some law in this area is exempt from the sunset clause through being primary legislation or not being EU-derived, most of it is under threat from the clause.

Further in relation to animal health are **disease control measures** covering outbreaks of the likes of Avian Influenza, Anthrax, Foot-and-Mouth Disease and Rabies. These measures protect animal and human health and seek to minimise economic damage. Much of this is not EU-related and presumably not subject to the REUL Bill. However, some of it is EU-derived and in danger of disapplication via the sunset clause. This may cause problems in relation to those specific provisions but may also have a negative effect on domestic legislation with which it interacts. Given these complications, the effect of the REUL Bill on animal disease control is very unclear and worrying.

Trading Standards teams play a key role in promoting good health in Scotland through the regulation of the **sale of cigarettes, tobacco and vaping products**. This regime is a complex mix of EU-derived laws and domestic legislation, much of it Scottish. It is aimed at ensuring that such products are not sold to children and that adults are protected from dangerous goods. While some of the domestic legislation is not subject to the sunset clause, other provisions are. As with disease control measures, this risks the important provisions in the EU-derived laws and presents a risk to the effectiveness of the unaffected legislation with which it works in tandem.

Various **environmental protections** are also included in devolved Trading Standards law. An example are controls of **Volatile Organic Compounds (VOCs) in paints and varnishes**, which play an important role in reducing the formation of ground level ozone and promotes improvements in air quality and public health. Unlike the other legislation cited above, this is a more niche topic and not part of the

¹ See: <https://public.tableau.com/app/profile/governmentreporting/viz/UKGovernment-RetainedEULawDashboard/Guidance>

normal daily work of Trading Standards teams. However, these provisions are important in underpinning environmental protection and allowing Trading Standards to take action when required.

Regulation of Fertilisers and Pesticides is yet another area of law covered by Trading Standards which includes devolved provisions. This body of law is a further complex mix of EU, UK and Scottish legislation and tackles safety and quality issues in relation to these products which have an important role in the Scottish economy through use in agriculture.

Reserved Matters

Most Trading Standards laws are reserved to Westminster and those that are affected by the REUL Bill may not be directly part of the remit of the committee. However, the possibility that these provisions could be lost in a year's time poses a major threat to the wellbeing of both consumers and businesses in all our Scottish communities. Further, these UK laws work in tandem with devolved legislation and so their loss influences the effectiveness of the devolved provisions. Accordingly, there follows a brief explanation of the main topic areas. Each of these involves vital provisions that if lost would seriously affect Scottish businesses and consumers.

Fair Trading: prominent among the affected legislation is the Consumer Protection from Unfair Trading Regulations 2008, which prohibit false descriptions, misleading omissions, aggressive practices and have a general provision that requires businesses to trade fairly. It is no exaggeration to say that these Regulations are the bedrock of the UK's consumer protection regime, and their loss would be a major boon to scammers and any business that seeks to treat consumers badly.

Product Safety: while a handful of specific provisions – such as safety of upholstered furniture – are not in scope, the bulk of UK laws that protect consumers from dangerous products are EU-derived. These include toys, electrical products, gas appliances, baby goods, cosmetics, PPE and machinery. The risk to public safety if these provisions are lost is obvious. Further, the Regulations² that enable Trading Standards to take action at ports and other importation sites in Scotland is in scope.

Consumer Buying Rights: while some rights are “safe” from the sunset clause as they are in the Consumer Rights Act 2015, many others are not. For example, the framework for retail e-Commerce in the UK – including information and cancellation rights for online buyers – is in scope of REUL.

Weights and Measures: this regime has its origins in ancient times but still plays a vital role in an effective economy. It ensures that consumers get fair measure at the petrol pump and in the supermarket and goes much further into industrial spheres. Trading Standards work in this area involves daily testing of weighing and measuring equipment that affects many millions of pounds worth of commercial contracts. These laws are widespread, technical and complex and would be particularly difficult to review in the twelve months left until the sunset clause deadline.

Intellectual Property: this regime prohibits the sale of fake products to consumers and provides important protections for Scottish businesses in terms of trade marks, copyright, designs and patents.

Business Protection Regulations: these provisions prohibit unfair advertising that targets business buyers and provide some important protections for small local businesses with whom local Trading Standards teams in Scotland have regular contact in their role of boosting local economies.

Others: a variety of other legislation is covered, including the **Package Travel** etc Regulations which protect millions of British holidaymakers both in the UK and abroad.

² [Regulation \(EC\) No 765/2008 setting out the requirements for accreditation and market surveillance](#)

Regulatory Divergence

In addition to the threat to the wellbeing of consumers and businesses in Scotland, the loss of even some of the provisions listed above would also seriously exacerbate a trend that is already happening, i.e. regulatory divergence from the EU. The Chartered Trading Standards Institute's "Brexit Think Tank" Report³ describes the effects this can have on consumers and businesses in the UK. Some of the areas that have already seen divergence are:

- Cosmetic products: EU technical provisions for safety have changed, with the UK not taking similar steps.
- Product Standards: much of consumer safety law is underpinned by detailed standards for the construction and use of goods and EU approaches are starting to diverge from the UK.
- Online marketplaces: important modernisation of the obligations of these platforms (e.g. the clear identification of whether a seller is in business) in the EU not replicated in the UK.
- Fulfilment houses: a potential "loophole" in the regime on unsafe goods has been tackled by the EU making these businesses liable if no clear importer in the EU. No provisions in UK.

Conclusion

SCOTSS is very concerned that the REUL Bill sunset clause and its short timescale make scrutiny of the wide range of affected Trading Standards laws impossible, and the loss of these protections would seriously affect Scottish consumers, businesses and communities. This is a loss that would be particularly unwelcome during the ongoing Cost of Living Crisis. We recognise that the Bill allows for a three-year extension to the clause. While even that extension may not provide enough time for proper scrutiny of all affected laws, it would at least create some "breathing space" to allow better consultation and for appropriate Parliamentary time to be allocated in both London and Edinburgh. However, we understand that the sunset extension provisions are not intended to be applied in a "blanket" manner but on a case-by-case basis. One fear arising from that is the possibility that the Trading Standards matters get overlooked while the short time that is left before December 2023 is spent by legislators considered other provisions and applying an extension to those while the Trading Standards legislation falls victim to the sunset clause. This fear is exacerbated by the fact that the list of the REUL "dashboard" is incomplete: as discussed above it omits Scottish laws, plus the recent "discovery" of a further 1400 pieces of UK REUL suggests that there is a real possibility that some reserved law is also missing.

We look to recommend that the committee and the Scottish Parliament give attention to the devolved matters raised in this submission and take whatever action is possible to retain these important public protections. It is hoped that the UK Internal Market Act will not inhibit the Scottish Government and Parliament from taking necessary action in relation to these matters. Further, we recommend that representations are made to the UK authorities regarding the importance of the provisions in reserved Trading Standards retained EU law.

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Chair, The Society of Chief Officers of Trading Standards in Scotland

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³ See: <https://www.tradingstandards.uk/media/documents/news--policy/brexit-think-tank-2020.pdf>