

Report on the Statutory Instrument Consent Memorandum for the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023

November 2023



1. Background

- 1.** The UK Government laid a draft of The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (the Regulations)¹ before the UK Parliament on 16 October 2023.
- 2.** Standing Order 30A states that a member of the government must lay a Statutory Instrument Consent Memorandum in relation to any statutory instrument, or a draft statutory instrument, laid before the UK Parliament by UK Ministers which makes provision (“relevant provision”) in relation to Wales amending primary legislation within the legislative competence of the Senedd.
- 3.** On 24 October 2023, Lesley Griffiths MS, the Minister for Rural Affairs and North Wales, and Trefnydd (the Minister), laid before the Senedd a Statutory Instrument Consent Memorandum (the Memorandum)² for the Regulations, in accordance with Standing Order 30A.
- 4.** The Minister wrote to notify us of the Memorandum on 25 October 2023, and confirmed that it was laid outside the three-day deadline prescribed by Standing Order 30A “due to the need to check the complexity and detailed wording in the instrument”.³

2. The Statutory Instrument Consent Memorandum

- 5.** The objective of the Regulations is to update references in existing primary legislation from ‘retained EU law’ to ‘assimilated law’.
- 6.** The Memorandum states that:

“This reflects section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”), which provides that retained EU law (“REUL”) (and related terms) that remains in force will be

¹ [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(draft\)](#)

² [Welsh Government Statutory Instrument Consent Memorandum: The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023](#)

³ [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 25 October 2023](#)

known as “assimilated law” (and related terms), at all times, after the end of 2023.”⁴

7. The Memorandum also notes that the Regulations:

“...remove references to rights recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and terms such as “retained general principles of EU law”, because of the changes made by the REUL Act to remove the EU law interpretive features applied to REUL, after the end of 2023.”⁵

8. The Regulations to which the Memorandum relates are subject to the draft affirmative procedure, with provisions coming into force on 1 January 2024.

9. The Memorandum notes that the Regulations amend various pieces of primary legislation in devolved areas.⁶ For example, the Regulations change references to ‘retained EU law’ to ‘assimilated law’ in:

- the *Environmental Protection Act 1990*;
- the *Animal Welfare Act 2006*; and
- the *Professional Qualifications Act 2022*.

10. In paragraph 13 of the Memorandum, the Minister sets out why it is appropriate for the Regulations to make these provisions, stating:

“...whilst it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence, in certain circumstances there are benefits in working collaboratively with the UK Government and other Devolved Governments where there is a clear rationale for doing so. The amendments are mostly minor operational and consequential changes flowing from terminology changes... Therefore, it is my view that it is appropriate to deal with these provisions in this Instrument as it represents the most practicable and

⁴ Statutory Instrument Consent Memorandum, paragraph 7

⁵ Statutory Instrument Consent Memorandum, paragraph 8

⁶ Statutory Instrument Consent Memorandum, paragraph 11

proportionate legislative vehicle to enable these provisions to apply in Wales.”⁷

3. Committee consideration

11. We considered the Memorandum at our meeting on 13 November 2023.⁸

12. Further to our consideration of the Memorandum, we wrote to the Minister on 15 November 2023.⁹ The Minister responded on 22 November 2023.¹⁰

13. On 27 November 2023, we considered the Minister’s response, and agreed our report.

Our view

14. We acknowledge the Minister’s explanation for the delay in tabling the Memorandum in relation to the Regulations.

15. We note that the Welsh Government laid its own set of Regulations for approval by the Senedd to changes references, in existing legislation, from “retained EU law” to “assimilated law”.¹¹ We sought clarification from the Minister in respect of this matter. In particular, we asked:

- whether the approach adopted was to use a Welsh Statutory Instrument, brought forward by the Welsh Ministers, to make changes to legislation made by the Senedd and the Welsh Ministers, while proposing the use of a UK Statutory Instrument for changes to UK Acts; and
- why a single Welsh Statutory Instrument was not considered appropriate on this occasion.

16. The Minister responded as follows:

“I can confirm we have adopted the approach you note above. The conferring of concurrent powers on Welsh Ministers occurred at a late stage in the UK Government’s process for

⁷ Statutory Instrument Consent Memorandum, paragraph 13

⁸ [Legislation, Justice and Constitution Committee](#), 13 November 2023

⁹ [Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 15 November 2023](#)

¹⁰ [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 22 November 2023](#)

¹¹ [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Wales\) Regulations 2023 \(draft\)](#)

updating legislation. It was neither practical, efficient nor readily achievable in the time available, to ask for Wales to be removed from the scope of the already well-advanced UK Government's Statutory Instrument so that we could introduce a Statutory Instrument to cover all UK legislation applying to devolved matters in Wales."¹²

17. We note the Minister's response and are disappointed to hear of the apparent poor engagement between the UK Government and the Welsh Government in respect of updating legislation as a result of the *Retained EU Law (Revocation and Reform) Act 2023*. This appears to have contributed to the Welsh Government's decision to consent to the inclusion of devolved provisions within this instrument.

18. We have previously made recommendations that the Welsh Government should table motions in respect of provisions subject to statutory instrument consent memoranda;¹³ recommendations which have been rejected.¹⁴ We therefore asked the Minister to confirm whether the Welsh Government would table a motion in respect of the provisions within the Memorandum.

19. In her response, the Minister confirmed that a motion would be tabled for debate, scheduled for 12 December 2023.¹⁵

Conclusion 1. We welcome the Minister's confirmation that a motion will be tabled under Standing Order 30A.10 to seek the Senedd's agreement to the inclusion of a relevant provision in The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023.

¹² Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 22 November 2023

¹³ Legislation, Justice and Constitution Committee, [Report on the Statutory Instrument Consent Memorandum for The Climate Change \(Targeted Greenhouse Cases\) Order 2022](#), November 2022; Legislation, Justice and Constitution Committee, [Report on the Statutory Instrument Consent Memorandum for The Animals and Animal Health, Feed and Food, Plants and Plant Health \(Amendment\) Regulations 2022](#), December 2022

¹⁴ [Letter from the Minister for Climate Change, 17 January 2023](#), [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 23 January 2023](#)

¹⁵ Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 22 November 2023
