

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO.3)

Retained EU Law (Revocation and Reform) Bill

1. This Supplementary Legislative Consent Memorandum (“LCM”) is laid under Standing Order 29.2. Standing Order 29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Retained EU Law (Revocation and Reform) Bill (“the Bill”) was introduced in the House of Commons on 22 September 2022, and an LCM was laid based on the Bill as introduced.
3. Fifteen UK Government amendments¹ were tabled to the Bill on 16 November, for consideration at House of Commons committee stage, which were considered in the [supplementary LCM\(2\)](#) laid on 21 December.
4. On 11 January 2023 the UK Government tabled 19 further amendments² to the Bill, ahead of report stage, which took place on 18 January. These amendments are considered in this legislative consent memorandum.
5. The Bill, as brought forward from the Commons, can be found at [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](#).
6. I wrote to the Llywydd on 13 January to outline that, because the UK Government did not share the content of tabled Government amendments prior to their tabling, there had not been sufficient time to clarify the implications of these changes in the Bill for devolution, and more widely, and that it would not be possible to lay a supplementary LCM within the normal two-week period. In my letter I also indicated we would await conclusion of the Commons report stage to capture any further amendments tabled or agreed, of which there were none.

Policy Objective(s)

7. The UK Government’s stated policy objective for retained EU law (“REUL”) was described in its Benefits of Brexit document of January 2022, outlining that ‘Our intent is to amend, replace, or repeal all the retained EU law that is not right for the UK’³.

Summary of the Bill

¹ Committee Stage: Wednesday 16 November 2022 – Tabled amendments: [retained_rm_pbc_1116.pdf \(parliament.uk\)](#)

² Report Stage; Wednesday 11 January 2023 – amendments paper: [retained_rep_rm_0111.pdf \(parliament.uk\)](#)

³ [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](#)

8. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.
9. The key provisions of the Bill, cover:
 - Repealing (sunsetting) or assimilating REUL by the end of 2023.
 - Repealing the principle of supremacy of EU law from UK law by the end of 2023.
 - Facilitating domestic courts to depart from retained case law.
 - Providing a mechanism for the Law Officers of the UK and Devolved Governments to intervene in cases regarding REUL, or to refer them to an appeal court, where relevant.
 - Repealing directly effective EU law rights and obligations in UK law by the end of 2023.
 - Abolishing general principles of EU law in UK law by the end of 2023.
 - Establishing a new priority rule requiring retained direct EU legislation (RDEUL) to be interpreted and applied consistently with domestic legislation.
 - Downgrading the status of RDEUL for the purpose of amending it more easily.
 - Creating a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or amended to reduce burdens.
10. The Bill makes changes to the European Union (Withdrawal) Act 2018 (“EUWA”), which is a protected enactment under the Government of Wales Act 2006. Various clauses within the Bill (as outlined below) modify the current provisions within EUWA, and as such modify the legislative competence of the Senedd.

Changes to the Bill since the publication of the first Legislative Consent Memorandum and the supplementary LCM(2), which now require Senedd consent

11. The table at annex 1 describes the UK Government amendments and considers their effect. However, broadly the UK Government amendments can be grouped into four categories:
 - a. amendments relating to the extension of the sunset;
 - b. amendments relating to “assimilated law”;
 - c. amendments relating to the meaning of “restatement”; and
 - d. amendments relating to the High Court of Justiciary (“HCJ”).
12. The amendments to clauses 2, 6, 14 and 22 of the Bill modify clauses which were all considered ‘relevant provision’ and within the scope of Standing Order 29 for the purpose of the LCM laid on 3 November. We consider that a supplementary LCM is required in relation to the amendments to those clauses on the basis that they also make relevant provision.
13. The insertion of a new clause (“*Assimilated law*”) and a new Schedule (“*Assimilated law: consequential amendments*”), in place of the original clause 6 of the Bill, are also considered relevant provision and within the

scope of Standing Order 29. This is for the same reason as set out within the competence analysis for the original clause 6, contained within paragraph 55 of the LCM laid on 3 November, i.e. insofar as it is for a purpose within the legislative competence of the Senedd to the extent that this applies to devolved areas. It also modifies the legislative competence of the Senedd by virtue of modifying EUWA, a protected enactment.

14. We do not consider that a supplementary LCM should be laid in relation to the amendments relating to the HCJ, on the basis that they relate specifically to the HCJ, part of the Scottish judicial system.

Welsh Government position on the Bill as amended

15. The Welsh Government's position set out in the LCM laid on 3 November⁴ is unchanged as the Bill continues to present the same legal, constitutional, policy and practical concerns. These concerns have been conveyed to the UK Government but have not been addressed in these in subsequent amendments to the Bill.

16. On the basis that the UK Government has not addressed any of the concerns (outlined in our LCM) we will not be able to recommend to the Senedd that it gives consent to the Bill as currently drafted.

Financial implications

17. It remains unclear on the face of the Bill whether there will be direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill.

Conclusion

18. As set out above, the amendments to clauses 2, 6, 14 and 22 of the Bill, and insertion of NC1 and NS1 (in place of the original clause 6 of the Bill), make provision within the devolved competence of the Senedd and therefore the Senedd's consent is required. However, given our continuing concerns with the Bill, which are not addressed by the amendments, we are not in a position to recommend that consent be given to the inclusions in the Bill, or to the other provisions of the Bill, as set out in the original LCM.

Mick Antoniw MS

Counsel General and Minister for the Constitution

February 2023

⁴ Retained EU Law (revocation and reform) Bill [LEGISLATIVE CONSENT MEMORANDUM](#)
([senedd.wales](https://www.senedd.wales))

Annex 1 - UK Government amendments tabled on the 11 January 2023, and subsequently agreed to during Commons Report Stage.

| Amendment no ⁵ | Clause being amended | Comments |
|--|---|---|
| Amendments relating to the extension of the sunset | | |
| Gov 1 | Clause 2: extension of sunset under section 1 | <p>Technical amendment.</p> <p>This amendment inserts a new subclause which clarifies that regulations under subsection 2(1) extending the sunset date for an instrument or description of legislation are to be read as referring to the instrument or description as it has effect immediately before the time when the sunset would otherwise apply in relation to it.</p> |
| Amendments relating to “assimilated law” | | |
| Gov 3 | Clause 6 “assimilated law” | <p>Technical amendment.</p> <p>This amendment removes original clause 6 to the Bill, which is replaced by NC1 and NS1, as further detailed below.</p> <p>The original clause 6 establishes “assimilated law” as a new body of law and provides that at all times after the end of 2023, REUL that remains in force will be known as “assimilated law”. It also makes clear that consequential amendments made under clause 19 allow for amendments to EUWA and other enactments may also be amended in consequence of the renaming of REUL.</p> |
| NC1 and NS1 | New provisions regarding assimilated law | <p>These amendments are new provisions in place of the original clause 6 of the Bill (as set out above), and seek to provide further clarity on the renaming REUL and how that will be implemented.</p> <p>NC1: subclauses 6(1) and 6(2) set out that “retained EU law” (and related bodies or types of law) is to be known as “assimilated law” after the end of 2023 (and similar terms). A table of relevant terms is included to demonstrate the terms used to describe REUL before and after 2023.</p> |

⁵ The amendments are arranged by the categories as outlined in on page 2, paragraph 11.

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| | | <p>Subclause 6(3) references new Schedule 1 (“Assimilated law”: consequential amendments), which is inserted via NS1. This contains amendments consequential on the renaming of bodies or types of law by subclause 6(1), including amendments to EUWA and the Bill itself.</p> <p>Subclause 6(4) provides for an ‘interpretive gloss’, so that a reference in an enactment to “retained EU law” is to be read, as regards all times after the end of 2023, as a reference to “assimilated law”. Subclause 6(5) provides that such gloss does not apply to any title of an enactment or any reference to a title of an enactment.</p> <p>Subclause 6(6) includes clarification that regulations under clause 19 (power to make consequential provision) may be used to make provision amending an enactment in consequence of the renaming in subclause 6(1). This also provides that regulations under clause 19 may be used to amend references in subclause 6(1) to include additional terms which relate to REUL (or similar terminology).</p> <p>Subclause 6(7) includes definitions for the items listed in subclause 6(1).</p> |
| Gov 4 and Gov 5 | Clause 22: Commencement, transitional and savings | <p>Technical amendment.</p> <p>These amendments clarify (i) that subclauses 6(1), (2) and (4) to (7) of NC1 come into force on the day on which the Act is passed; and (ii) that the amendments made by the Schedule inserted by NS1 do not apply as regards any time at or before the end of 2023.</p> |
| Amendments relating to the meaning of “restatement”. | | |
| Gov 2 | Clause 14: Powers to restate or reproduce: general | <p>Technical amendment.</p> <p>Clause 14 establishes the general parameters of what a restatement under clauses 12 and 13 can do and how it should be conducted. This amendment clarifies that a restatement can explicitly cover codification.</p> |