

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO.2)

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 2022, for consideration at House of Commons committee stage, which this LCM considers. The tabled UK Government amendments can be found at: [Retained EU Law \(Revocation and Reform\) Bill publications - Parliamentary Bills - UK Parliament](#). Committee stage concluded on 29 November. The Bill, as amended at Public Bill Committee and published on 29 November, can be found at: [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](#)
4. I wrote to the Llywydd on 30 November 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 committee stage to capture any further amendments tabled or agreed, of which there were none.

Policy Objective(s)

5. 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’².

Summary of the Bill

6. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.

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

² [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](#)

7. 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.

8. 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 which required Senedd consent

9. The table at annex 1 describes the UK Government amendments and considers their effect. The amendments modify clauses 1, 7, 12, 13, 14, 22 and Schedule 3 of the Bill. These clauses were all considered 'relevant provision' and within the scope of SO 29 for the purpose of the LCM laid on 3 November 2022. 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.
10. All amendments are considered to be technical in nature, except for UK Government amendment 7 to clause 22, which is considered a more substantive amend as it broadens the scope of the existing power within clause 22.

Welsh Government position on the Bill as amended

11. The Welsh Government's position set out in the LCM laid on 3 November 2022 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.

12. 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

13. It is 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

14. As we have set out above, the amendments to clauses 1, 7, 12, 13, 14, 22 and Schedule 3 of the Bill make provision within the devolved competence of the Senedd and therefore the Senedd's consent is required. However, given our 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

21 December 2022

Annex 1 - UK Government amendments tabled on the 16 November, and subsequently agreed to during Commons Committee Stage.

Amendment no³	Clause being amended	Comments
Gov 2	Clause 1(3) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	Technical amendment. Clause 1(3) currently only refers to revocation of “an instrument”. These amendments also provide that the revocation of a provision of an instrument does not affect any amendment made by the provision to any other enactment.
Gov 3	Clause 1(3) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	
Gov 4	Clause 1(6) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	Technical amendment. This amendment inserts new subsection 1(6) to clarify that the effect of regulations under subsection (2) exempting an instrument (or a provision of an instrument) from the sunset is to exempt that instrument (or that provision) as it subsists immediately before the sunset.
Gov 5	Clause 7 (Role of courts).	Technical amendment. These amendments leave out the definition of “devolved law officer” from subsection (5) of new section 6C of EUWA and instead mention each devolved law officer in subsection (2) of that section.
Gov 6	Clause 7 (Role of Courts).	These amendments will mean that the provision has the same effect in that the ‘same’ law officers are still entitled to notice of proceedings, but rather terminology has changed to remove reference to ‘devolved law

³ The amendments are arranged in the order in which they were debated at HoC Committee stage.

		officer' and each are listed individually.
Gov 8	Clause 12(4) (Power to restate retained EU law).	Technical amendment.
Gov 9	Clause 12(6) (Power to restate retained EU law).	These provisions amend clauses 12(4) and 12(6) to update/remove references specifically to 'legislation' with regard to a restatement. This means that (i) effects produced by virtue of the retained EU law referred to in subsection (5) do not apply in relation to anything that is codified; and (ii) enables regulations to produce, in relation to anything that is codified, an effect equivalent to an effect mentioned in subsection (4).
Gov 10	Clause 13(4) (Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc).	Technical amendment.
Gov 11	Clause 13(5) (Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc).	These amendments mirror the changes to clause 12, to update/remove references specifically to 'legislation' with regard to a restatement.
Gov 12	Clause 13(6) (Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc).	This means that (i) effects produced by virtue of the retained EU law referred to in subsection (4) do not apply in relation to anything that is codified; and (ii) enables regulations to produce, in relation to anything that is codified, an effect equivalent to an effect mentioned in subsection (4) and (7).
Gov 13	Clause 13(7) (Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc).	

Gov 14	Clause 14 (Powers to restate or reproduce: general).	Technical amendment. Subsection (4) already places limitations on the powers, preventing a broader reinstatement of the principle of supremacy, albeit its effect can be reproduced in relation to a restatement.
Gov 15	Clause 14 (Powers to restate or reproduce: general).	These amendments insert new clauses 14(4A) and (4B) (re-numbered as clauses 14(5) and 14(6) in the amended Bill print), to clarify that the powers under clauses 12 and 13 may not be used so as to codify or reproduce the principle of supremacy of EU law or a retained general principle of EU law.
Gov 7	Clause 22(4) (Commencement, transitional and savings).	This amendment provides that transitional, transitory or saving provision may be made in connection with anything sunsetted under clause 1 or 3. This amend to clause 22 will mean that a Minister of the Crown (only) will be able to make transitional, transitory or saving provision that is considered appropriate in connection with “(b) the revocation of anything by section 1, or (c) anything ceasing to be recognised or available in domestic law (and, accordingly, ceasing to be enforced, allowed or followed) as a result of section 3.” This could include within areas of devolved competence.
Gov 1	Schedule 3, Part 1, paragraph 2 (Combining provision).	Technical amendment. This amendment enables regulations under the Bill subject to the draft affirmative procedure to be combined with regulations that are not subject to that procedure. Where such provisions are combined, the default procedure will

		<p>be the higher procedure, which is the draft affirmative.</p> <p>The amendment also makes equivalent provision for the devolved legislatures.</p>
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