

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### (MEMORANDUM NO.5)

#### Retained EU Law (Revocation and Reform) Bill

1. This Supplementary Legislative Consent Memorandum (“SLCM”) 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 amendments<sup>1</sup> 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 amendments<sup>2</sup> to the Bill, ahead of report stage, which took place on 18 January. These were considered in the [supplementary LCM\(3\)](#) laid on 6 February.
5. On 16 February the UK Government tabled 13 further amendments<sup>3</sup>, which were considered in the [supplementary LCM\(4\)](#) laid on 10 March.
6. The Senedd debate on the legislative consent motion took place on 28 March and Members voted to withhold consent to the Bill.
7. On 10<sup>4</sup> and 19 May<sup>5</sup> the UK Government tabled further amendments, for consideration at Lords report stage and third reading.
8. The Bill, as brought forward from the Lords after third reading on 22 May, can be found at [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](#).
9. For the purposes of meeting Standing Orders and our commitment to keeping the Senedd informed, this SLCM considers only Government amendments adopted at report stage and third reading in the House of Lords.
10. The Welsh Government acknowledges that non-government amendments were tabled ahead of Lords report stage, three of which were subsequently

---

<sup>1</sup> Committee Stage: Wednesday 16 November 2022 – Tabled amendments: [retained\\_rm\\_pbc\\_1116.pdf \(parliament.uk\)](#)

<sup>2</sup> Report Stage: Wednesday 11 January 2023 – amendments paper: [retained\\_rep\\_rm\\_0111.pdf \(parliament.uk\)](#)

<sup>3</sup> Marshalled list of amendments: [HL Bill 89—I \(parliament.uk\)](#)

<sup>4</sup> Marshalled list of amendments: [HL Bill 117—I\(Rev\) \(parliament.uk\)](#)

<sup>5</sup> Marshalled list of amendments to be moved on third reading: [HL Bill 139—I \(parliament.uk\)](#)

agreed on 15 May, and one on 17 May. However there has not been sufficient time to consider these in full, and these amendments may be subject to further change, or overturning, at Commons consideration of Lords amendments, scheduled for 24 May. Therefore, this SLCM focuses on Government amendments only.

11. This provides the Senedd with an opportunity to consider changes to the Bill, albeit on a timetable that is greatly compressed because of the UK Government's decision to progress rapidly after third reading in the House of Lords, and, if time allows, to fulfil its role in considering consent to this substantively amended UK Government Bill as it passes, at pace, through its parliamentary stages.

### **Policy Objective(s)**

12. 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'<sup>6</sup>.

13. Although the broad policy objective of the Bill is unchanged from its original purpose, the UK Government has recently announced a 'new approach', which includes replacing the current 'automatic' sunset provision in the Bill with a list of the retained EU laws that will be revoked under the Bill at the end of 2023<sup>7</sup> (please see paragraph 18 and Annex 1 for more details).

### **Summary of the Bill**

14. The Bill is in the name of the Department for Business, Energy and Industrial Strategy, with the lead for the Bill now transferred to the new Department for Business and Trade.

15. The key provisions of the Bill, as introduced 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.

---

<sup>6</sup> [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/102422/benefits-of-brexit-2022.pdf)

<sup>7</sup> [Written statements - Written questions, answers and statements - UK Parliament](https://www.parliament.uk/written-questions-answers-statements/)

- 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.

16. 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, the supplementary LCM(2), the supplementary LCM(3) and the supplementary LCM(4):**

17. The table at Annex 1 describes the UK Government amendments considered in the supplementary LCM and their effect. However, broadly the amendments can be grouped as:

- a. Amendments of 10 May
  - i. Amendments relating to the sunset provision.
  - ii. Amendments to extend the power to make consequential and transitional, transitory or savings provisions to the devolved governments.
  - iii. Amendments to clause 8 (Role of courts).
  - iv. Amendments to clause 24 (Extent and short title).
- b. Amendments of 19 May
  - i. Amendment to insert a new clause (Retained EU law dashboard and report)

18. The amendments to the sunset provisions within clause 1 and Schedule 4 to the Bill, to remove existing provision and insert new provision to provide that the legislation to be revoked on 31 December 2023 is as listed in a new Schedule (Sunset of subordinate legislation and retained direct EU legislation) to the Bill, and a new power to exclude legislation listed in the new Schedule from revocation, are considered to be ‘relevant provision’ and within the scope of Standing Order (“SO”) 29. This is for the same reasons as set out in the competence analysis for original clause 1 and Schedule 3 (now Schedule 4) of the Bill, which is contained within paragraphs 13 and 14 of the LCM laid on 3 November, i.e., insofar as it is for a purpose within the legislative competence of the Senedd and to the extent that this applies to devolved areas. To the extent that the regulation making power created under this clause is conferred upon the Welsh Ministers, it also modifies the executive competence of the Welsh Ministers. Pursuant to amendments 9 and 13, clauses 2 and 3 are no longer ‘relevant provision’ as they will be omitted from the Bill. Therefore, we do not consider that a supplementary LCM should be laid for these amendments.

19. The amendments to clauses 20, 21 and 23 and Schedule 4, to extend the powers in the Bill to make consequential and transitional, transitory or

savings provisions to the devolved Ministers, are considered 'relevant provision' and within the scope of SO 29. This is for the same reasons as set out in the competence analysis for original clauses 19, 20 and 22 and Schedule 3 (now clauses 20, 21 and 23 and Schedule 4) contained within paragraphs 35, 37, 41, and 70 of the LCM laid on 3 November and paragraph 10 of the SLCM laid on 21 December, 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. To the extent that the regulation making power created under these clauses is conferred upon the Welsh Ministers, it also modifies the executive competence of the Welsh Ministers.

20. The amendments to clauses 8 and 24 modify clauses which were considered 'relevant provision' and within the scope of SO 29 for the purpose of the LCM laid on 3 November, and supplementary LCM laid on 6 February. We consider that a supplementary LCM is required in relation to the amendments to these clauses, on the basis that they make relevant provision.
21. The amendment to insert a new clause 'Retained EU law dashboard and report' into the Bill is considered to be 'relevant provision' to the extent that such reports (which are to set out progress made on the revocation and reform of retained EU law, as well as future plans for the revocation and reform of retained EU law), could include REUL that is within devolved areas, and thus has a wider impact on devolved matters.

### **Welsh Government position on the Bill as amended**

22. The Bill as amended following Lords report stage has removed the automatic sunset provisions from its Bill and replaced it with a Schedule that lists instruments to be allowed to sunset. The revised approach fundamentally alters the nature of the Bill and removes the risk of inadvertently losing REUL.
23. While this change of approach is a positive development, concerns about the overall rationale for the Bill remain. Clauses that remove the established principles by which REUL and EU law more generally, have been interpreted to date ("The interpretive provisions") remain in the Bill. Powers in the Bill to replace or update REUL remain of concern and the Bill still includes some provisions that Welsh Ministers consider constitutionally unacceptable, in that they give Ministers of the Crown concurrent powers in devolved areas without a requirement on the face of the Bill to obtain the consent of the Welsh Ministers before these powers are exercised. These concerns were raised in paragraphs 84, 88, 89 and 90 of the original LCM of 3 November.
24. The Welsh Government's position set out in the LCM laid on 3 November<sup>8</sup> is unchanged as the Bill continues to present these serious legal, constitutional, policy and practical concerns. These concerns have been

---

<sup>8</sup> Retained EU Law (revocation and reform) Bill [LEGISLATIVE CONSENT MEMORANDUM \(senedd.wales\)](#)

conveyed to the UK Government but have not been adequately addressed in these subsequent amendments to the Bill.

25. On the basis that, even following a series of amendments, including those that make substantive changes to the Bill, the Bill still fails to address our fundamental concerns sufficiently (outlined in this SLCM and summarised at paragraphs 27 to 29 below) we will not be able to recommend to the Senedd that it gives consent to the Bill as currently drafted.

### **Financial implications**

26. 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**

27. Despite the amendments, the Bill still includes provisions Welsh Ministers consider unacceptable, including those that remove the established principles by which REUL is to be interpreted ('the interpretive provisions') and those giving Ministers of the Crown concurrent powers in devolved areas without a requirement on the face of the Bill to obtain the consent of the Welsh Ministers before those powers are exercised.
28. The Bill, as drafted, would give Ministers of the Crown powers to amend or revoke REUL in devolved areas (including Senedd-made REUL) until 23 June 2026 without the consent of Welsh Ministers or the Senedd. Welsh Ministers have consistently called on the UK Government to include in the Bill a requirement for UK Ministers to obtain consent before using concurrent powers.
29. As set out above, the amendments to clauses 1, 8, 20, 21, 23, 24 and Schedule 4, and insertion of new Schedule (Sunset of subordinate legislation and retained direct EU legislation) and new clause (Retained EU law dashboard and report) to the Bill, make provision within the devolved competence of the Senedd or that otherwise impact on devolved areas, 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 Bill.

**Mick Antoniw MS**  
**Counsel General and Minister for the Constitution**

**26 May 2023**

Annex 1 - UK Government amendments agreed at Lords report stage and third reading.

Amendment no <sup>9</sup>	Clause being amended	Comments
Government amendments tabled on 10 May		
Amendments relating to the sunset provision		
1	Clause 1(1) (Sunset of EU-derived subordinate legislation and retained direct EU legislation)	This amendment removes original clause 1(1) of the Bill, which provides for the automatic sunset of retained direct EU legislation and EU-derived subordinate legislation and replaces it with a new provision which provides that the legislation to be revoked on 31 December 2023 is as listed in a new Schedule (Sunset of subordinate legislation and retained direct EU legislation) to the Bill, as further detailed below.
5	Clause 1(3) and 1(4) (Sunset of EU-derived subordinate legislation and retained direct EU legislation)	This amendment removes original clauses 1(3) and 1(4), which provides for definitions of ‘EU-derived subordinate legislation’ and ‘domestic subordinate legislation’ as references in original clause 1(2), in consequence of the above amendment, and inserts new provision providing a power for a relevant national authority to exclude legislation listed in the new Schedule from revocation under clause 1(1), by specifying in regulations made before 31 October 2023.
64	New Schedule: <i>Sunset of Subordinate legislation and retained direct EU legislation</i>	<p>This amendment inserts a new Schedule into the Bill. Part 1 lists the subordinate legislation and Part 2 lists the retained direct EU legislation, that is to be revoked by clause 1(1) (as it would be amended by government amendment 1 considered above) at the end of 2023.</p> <p>While we have not carried out a competence analyses for every individual instrument that is listed in the Schedule, at least some that apply to Wales within devolved areas. For example, Part 1 includes the Agriculture and Horticulture Development Regulations 1980 (S.I. 1980/1298), and Part 2 includes Commission Decision of 21 June 2005 establishing a network group for the exchange and coordination of information concerning coexistence of genetically</p>

<sup>9</sup> The amendments are arranged by the categories as outlined on page 3, paragraph 16.

		<p>modified, conventional, and organic crops (2005/463/EC). Both apply to Wales and are within areas of devolved competence, mainly agriculture.</p> <p>'Welsh made' instruments are not included in the new Schedule.</p>
<b>68</b>	Schedule 4 (Regulations: procedure) Part 3 (powers of relevant national authority: separate exercise)	This amendment inserts provision into Part 3 of Schedule 4, which sets out the procedure for the making of regulations by a relevant national authority acting alone under the Bill, to provide that the power within new clause 1(2) is subject to the draft affirmative procedure.
<b>Amendments relating to clause 8 (Role of courts)</b>		
<b>24, 26, 27, 29</b>	Clause 8: Role of courts	These amendments modify clause 8(8) so that instead of providing that a court 'must' accept a reference on a point of law from a lower court, instead they 'may' accept such reference.
<b>Amendments relating to consequential and transitional, transitory or savings provisions</b>		
<b>52, 53, 66, 70, 72</b>	<p>Clause 20: Consequential provision</p> <p>Schedule 4: Regulations, Procedure</p>	<p>Amendment 52 modifies clause 20, which contains a power to make consequential provision, so that such power is extended to the devolved governments, by removing references to a "Minister of the Crown" and replacing it with "relevant national authority".</p> <p>Amendment 53 modifies a reference to "Minister" to "relevant national authority", consequential on amendment 52 above.</p> <p>Amendments 66, 70, 72 make various amendments to Schedule 4, consequential on amendment 52, including to provide that the regulations made under clause 20 are (i) subject to the draft affirmative procedure where regulations amend, repeal or revoke primary legislation; and (ii) subject to the negative procedure where regulations do not amend, repeal or revoke primary legislation.</p>
<b>58, 60, 54, 55, 56, 57 and 59, 65, 67, 77</b>	Clause 23: Commencement, transitional and savings	Amendment 58 modifies clause 23, which contains a power to make transitional and savings provision, so that such power is extended to the devolved governments, by removing reference to a "Minister of the

	<p>Clause 21: Regulations: general</p> <p>Schedule 4: Regulations, Procedure.</p>	<p>Crown” and replacing it with “relevant national authority”.</p> <p>Amendments 54, 55, 56, make various amendments to clause 21, consequential on amendment 58.</p> <p>Amendments 57, 59 and 60 make various amendments to clause 23, consequential on amendment 58.</p> <p>Amendments 65, 67, 77 make various amendments to Schedule 4, consequential on amendment 58, including to reflect those regulations made under clause 23(4) are subject to no procedure.</p>
Amendments relating to clause 24: Extent and short title		
<b>62 and 63</b>	<p>Clause 24: Extent and short title</p>	<p>These amendments (i) modify existing clause 24(1), which provides that the Bill extends to England and Wales, Scotland and Northern Ireland, so that it is subject to new subclause 1A; and (ii) inserts new subclause 1A, to provide that, any amendment, repeal or revocation made by the Bill has the same extent within the United Kingdom as the provision to which it relates.</p>
Government amendments tabled on 19 May		
New clause (Retained EU law dashboard and report)		
<b>1</b>	<p>New clause (Retained EU law dashboard and report)</p>	<p>This requires the Secretary of State to update the retained EU law dashboard and report on the revocation and reform of retained EU law in periods up to 23 June 2026.</p>
<b>2</b>	<p>Clause 22: Commencement, transitional and savings</p>	<p>This amends clause 22 to provide that new clause (<i>Retained EU law dashboard and report</i>) comes into force on the day on which the Bill is passed, consequential on amendment 1 above.</p>
<b>3</b>	<p>Schedule 2: “Assimilated law”: consequential amendments</p>	<p>This modifies Schedule 2 to update references within the new clause to (<i>Retained EU law dashboard and report</i>) from “retained EU” to “assimilated”, as after the end of 2023, consequential on amendment 1 above</p>