

LEGISLATIVE CONSENT MEMORANDUM

The Retained EU Law (Revocation and Reform) Bill

1. This Legislative Consent Memorandum (“LCM”) is laid under Standing Order (“SO”) 29.2(i). SO 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. A date for Commons Committee Stage is yet to be announced. The Bill can be found at: [Retained EU Law \(Revocation and Reform\) Bill publications - Parliamentary Bills - UK Parliament](#)
3. I wrote to the Llywydd on 5 October 2022 to outline that, because significant policy content in the Bill had not been shared with the Devolved Governments before its introduction, there had not been sufficient time to clarify the implications of the Bill for devolution, and more widely, and that it would not be possible to lay the LCM within the normal two-week period.

Policy Objective(s)

4. The UK Government’s stated policy objective for retained EU law (REUL) was described in its Benefits of Brexit¹ 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*’. The Queens speech² in May 2022 confirmed the UK Government’s plan by stating, ‘*Regulations on businesses will be repealed and reformed. A bill will enable law inherited from the European Union to be more easily amended*’.
5. More specifically, in the Explanatory Notes³ for the Bill it is said that the Bill’s purpose is to provide the UK Government ‘*with all the required provisions that allow for the amendment of retained EU law (REUL) and remove the special features it has in the UK legal system*’. In the Delegated Powers Memorandum⁴ for the Bill, the UK Government goes further, stating, ‘*The main purpose of the Bill is to remove the precedence given to retained EU law in the UK statute book and to firmly re-establish our Parliament as the principal source of law in the UK, restoring the primacy of Acts of Parliament in UK statute. We will no longer have a two-tiered statute book, with the remnants of our EU membership continuing to have an outsize effect on our domestic law*’.

¹ [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](#)

² The Queens Speech - 10 May 2022 - [Queen's Speech 2022 - GOV.UK \(www.gov.uk\)](#)

³ Explanatory Note - [Retained EU Law \(Revocation and Reform\) \(parliament.uk\)](#)

⁴ [REUL Bill Delegated Powers Memorandum 20-09-22 \(parliament.uk\)](#)

Summary of the Bill

6. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.
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 (GOWA). Various clauses within the Bill (as outlined below) modify the current provisions within EUWA, and as such modify the legislative competence of the Senedd.

Provisions in the Bill for which consent is required

9. The Bill is a relevant Bill within SO 29 as it makes provision in relation to Wales within the legislative competence of the Senedd and modifies the legislative competence of the Senedd and the executive competence of the Welsh Ministers (“relevant provision” for the purposes of SO 29).
10. Consent is required in relation to provisions contained in the clauses identified below in so far as they make provision which is “relevant provision” for the purposes of SO29.

Clauses which confer regulation making powers on the Welsh Ministers and/or a Minister of the Crown

Clause 1 Sunset of EU-derived subordinate legislation and retained direct EU legislation

11. This clause provides for a sunset date of 31 December 2023 for all ‘EU derived subordinate legislation’⁵ and ‘retained direct EU legislation’ unless it is (a) specified in regulations (which in the case of legislation within the Senedd’s competence can be made by Ministers of the Crown or Welsh Ministers) before that date and assimilated into domestic law (under clause 6); or (b) granted an extension in regulations (see clause 2 below).
12. The Senedd has competence to revoke or ‘sunset’ REUL applying in Wales (other than in reserved areas) and to confer regulation making powers upon Welsh Ministers in relation to such devolved areas.
13. Therefore, this provision is for a purpose within the legislative competence of the Senedd to the extent that this clause and the regulation making power applies to devolved areas.
14. To the extent that the regulation making power created under this clause is conferred upon the Welsh Ministers, then such provision modifies the executive competence of the Welsh Ministers.

Clause 2 Extension of sunset under section 1

15. This clause provides an extension mechanism for the sunset date to a time not later than 23 June 2026 for a specific piece of REUL or a specific description of REUL, to be set out in regulations. This regulation making power is exercisable by a Minister of the Crown only.
16. This provision is for a purpose within the legislative competence of the Senedd to the extent that this power could be used to make provision within devolved areas.

Clause 8 Compatibility

17. This clause provides a power to enable a ‘relevant national authority’ (a Minister of the Crown and the Welsh Ministers in areas of devolved competence) to state the legislative hierarchy between specified pieces of domestic legislation and specified provisions of retained direct EU legislation, including that which is assimilated after 2023. As such, where a relevant national authority has exercised its power of retention under clause 1, it will be able to use this power at clause 8 to give priority to certain individual pieces of RDEUL. This power expires on 23 June 2026.

⁵ “**EU-derived subordinate legislation**” is defined to mean any domestic subordinate legislation so far as—

(a) it was made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972, or

(b) it was made, or operated immediately before IP completion day, for a purpose mentioned in section 2(2)(a) of that Act (implementation of EU obligations etc), and as modified by any enactment.

“retained direct EU legislation” is defined within section 20 of EUWA as ‘*any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after exit day)*’;

18. The effect of this clause is that, where such regulations are made, then new section 5(A2) of EUWA (inserted by clause 4, as outlined below) will be disapplied, in order to allow a relevant national authority to maintain the current legislative hierarchy instead after the end of supremacy.
19. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 below.
20. To the extent that the regulation making power under this clause is conferred upon the Welsh Ministers, then such provision also modifies the executive competence of the Welsh Ministers.

Powers relating to REUL and assimilated law: clauses 12, 13, 15 and 16:

Clause 12 Power to restate retained EU law

21. Clause 12(1) provides a power for a 'relevant national authority' (which includes a Minister of the Crown and the Welsh Ministers in areas of devolved competence) to restate provisions of 'secondary REUL'.⁶
22. Subclause (3) confirms that restatements will no longer be REUL and subclause (4) provides that the principle of supremacy, retained general principles, and section 4 rights or retained caselaw, will not apply in relation to any restatement, unless specifically reproduced (subclause 6). Subclause 7 confirms that this power expires at the end of 2023.

Clause 13 Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc

23. Clause 13 provides a similar power to clause 12 but is to operate post-2023 on 'assimilated law', when clauses 3 to 6 have taken effect.
24. Clauses 12 and 13 are supplemented by clause 14, which establishes further general parameters of what a restatement can do and how (see below).

Clause 14 Powers to restate or reproduce: general

25. As noted above, clause 14 establishes the general parameters of what a restatement under clauses 12 and 13 can do. To the extent that the regulation making powers within clauses 12 and 13 of the Bill are within the legislative competence of the Senedd, it would similarly be within competence to set out the scope and nature of such powers.

⁶ defined in 12(2) of the Bill as (a) any REUL that is not primary legislation; (b) any REUL that is primary legislation the text of which was inserted by subordinate legislation.

Clause 15 Powers to revoke or replace

26. Clause 15 provides a power for a 'relevant national authority' (which includes a Minister of the Crown and the Welsh Ministers in areas of devolved competence) to revoke any 'secondary REUL' (to be read as 'secondary assimilated law' after the end of 2023), (i) without replacing it; (ii) replacing it with such provision it considers to be appropriate and to achieve the same or similar objectives; or (iii) making such alternative provision as it considers appropriate. The powers are constrained to revocation or replacement law that a relevant national authority considers does not add to the overall regulatory burden. Any provision made by virtue of this section is not retained EU law, and this power expires on 23 June 2026.

Clause 16 Power to update

27. Clause 16(1) provides a power for a 'relevant national authority' (which includes a Minister of the Crown and the Welsh Ministers in areas of devolved competence) to make regulations to modify any secondary REUL (to be read as 'secondary assimilated law' after the end of 2023), or any provision made under clauses 12, 13 or 15 of the Bill, as considered appropriate, in order to take account of: (a) changes in technology, or (b) developments in scientific understanding.
28. Clauses 12, 13, 15 and 16 provide various powers for the Welsh Ministers to make amendments to REUL (or assimilated law post 2023), within devolved areas. The Senedd has competence to legislate for REUL that relates to Wales and is not reserved and make such other provision/confer regulation making powers upon Welsh Ministers in relation to such devolved areas.
29. Therefore, these provisions are for a purpose within the legislative competence of the Senedd to the extent that these clauses and the regulation making powers apply to devolved areas.
30. In addition, a Minister of the Crown can also exercise the powers in these clauses within devolved areas, including modifying legislation which is within the Senedd's competence in certain scenarios. The effect is that such powers could be used to make provision within areas of devolved competence.
31. To the extent that the regulation making powers under these clauses are conferred upon the Welsh Ministers, then these provisions also modify the executive competence of the Welsh Ministers.

Clause 17 Power to remove or reduce burdens

32. This clause amends Part 1 of the Legislative and Regulatory Reform Act 2006 (LRRRA) to allow Legislative Reform Orders (LROs) to be used to

amend any retained direct EU legislation.

33. While the Senedd does not have the legislative competence to amend LRRRA directly as this applies on a UK wide basis, the effect of this provision is that LROs may be made to amend RDEUL within areas of devolved competence (subject to the existing requirements for consent within section 11 of the LRRRA). As such this is provision for a purpose within the legislative competence of the Senedd to the extent that this power could be used to make provision within devolved areas.

Clause 19 Consequential provision

34. Subclause (1) provides that a Minister of the Crown may by regulations make such provision as considered appropriate in consequence of this Bill. Subclause (2) clarifies that the power to make consequential provision includes the ability to modify any enactment (including the provisions of this Bill).
35. This power confers broad powers upon Ministers of the Crown only to make consequential provision. This is provision for a purpose within the legislative competence of the Senedd to the extent such provision could be made within areas of devolved competence, or in such a way as to modify the legislative competence of the Senedd.

Clause 20 Regulations: general

36. This clause makes general provision about regulations that may be made under delegated powers conferred by the Bill. To the extent that the regulation making powers within the Bill are within the legislative competence of the Senedd, it would similarly be within competence to set out the scope and nature of such powers. This provision is therefore “relevant provision” for the purposes of SO29.
37. This clause also introduces Schedules 2 and 3, which make provision on the exercise of powers by the Welsh Ministers and on procedures for making regulations, respectively, and for the reasons outlined below are also considered to require consent.

Schedule 2 - Regulations: restrictions on powers of devolved authorities

38. Schedule 2 (as introduced by clause 20(2)) contains provisions outlining what is meant by ‘devolved competence’ and applies to regulations under the Bill where the power to make the regulations is conferred on a relevant national authority (which includes the Welsh Ministers), pursuant to clauses 1, 8, 12, 13, 15 and 16 (as outlined above).
39. To the extent that this schedule applies to regulation making powers under the Bill which the Senedd would have the legislative competence to create and/or which modify the executive competence of Welsh Ministers, then this schedule would also require consent.

Schedule 3 – Regulations: procedure

40. Schedule 3 (as introduced by clause 20(3)) contains further provision about the procedure for powers under the Bill, and detailed provisions about when devolved governments must consult or obtain consent from UKG before making regulations under the Bill, and about when provision in regulations must be made jointly with Ministers of the Crown. There are also provisions about the kind of parliamentary scrutiny required.
41. To the extent that this schedule provides for the procedure which applies to regulation making powers under the Bill which the Senedd would have the legislative competence to create and/or which modify the executive competence of Welsh Ministers, then this schedule would also require consent.

Clauses which amend the current provisions within EUWA

42. The Bill makes a number of changes to EUWA, by omitting existing clauses and inserting new provision in their place. Any amendment to EUWA (as a protected enactment) will modify the Senedd's legislative competence, by virtue of the content of such protected enactment being modified. This may be the case whether or not the content of that modification falls within devolved areas as the fact that such provision becomes a protected enactment will prevent the Senedd making even consequential amendments to those provisions in the future.
43. Notwithstanding the above, it is in any event considered that the provisions outlined below have regard to devolved matters, because of the wider impact of the changes on devolved areas.
44. For the reasons outlined above, the Welsh Government therefore considers that it is appropriate for the legislative consent of the Senedd to be sought for these provisions of the Bill, which are considered in more detail below.

Clause 3 Sunset of retained EU rights, powers, liabilities etc

45. This clause repeals section 4 of EUWA 2018 on 31 December 2023, so that nothing which is REUL as a result of that section is recognised, available or enforceable in UK law from that date.
46. The particular effect of this clause is that such rights will no longer be recognised and available within domestic law. For instance, such rights, in conjunction with supremacy, will no longer override and lead to the potential disapplication of domestic (including Welsh) legislation (unless specifically maintained via powers under clauses 8 or 12/13 of the Bill).
47. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected

enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.

Clause 4 Abolition of supremacy of EU law

48. This clause makes amendments to section 5 of EUWA which currently applies the principle of the supremacy of EU law in relation to any domestic legislation made on or before 31 December 2020. The clause repeals the principle at the end of 2023 in relation to any domestic legislation, whenever made. This clause also establishes a new priority rule following the repeal of the supremacy principle, requiring RDEUL to be read and given effect in a way which is compatible with all domestic enactments, and, where the two conflict, for domestic enactments to take priority over RDEUL.
49. This provision is altering the relationship between REUL and pre-31 December 2020 domestic legislation, and thus retrospectively altering the effect of domestic legislation within devolved areas and how courts interpret REUL within devolved areas.
50. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.

Clause 5 Abolition of general principles of EU law

51. This clause amends EUWA, so that general principles of EU law are no longer part of UK law from the end of 2023. This provision will alter how courts interpret REUL within devolved areas, as such principles are currently relevant to the interpretation of REUL.
52. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.

Clause 6 "Assimilated law"

53. Clause 6(1) establishes "assimilated law" as a new body of law. At all times after the end of 2023, REUL that remains in force will be known as "assimilated law". Clause 6(1) does not amend EUWA.
54. Clause 6(2) makes clear that consequential amendments made under section 19 allow for amendments to EUWA.
55. Clause 6 makes relevant provision 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 a protected enactment, as outlined in paragraph 42 above.

Clause 7 Role of courts in relation to retained EU law

56. This clause amends section 6 of EUWA so that, after 31 December 2023, higher courts (i.e. the Supreme Court or the Court of Appeal in England and Wales) will be granted greater flexibility to depart from retained case law and in so doing, the clause sets out a list of very broad factors that the court may take account of in deciding to do so.
57. Clause 7 also inserts new sections 6A, 6B and 6C into EUWA to establish a reference procedure, which means that lower courts will be able to refer points of law of general public importance on retained case law (on which it is bound) to a higher court (which is not so bound) to decide. Law Officers are also provided with powers to refer cases to the appeal courts or intervene in cases that raise issues relating to retained case law.
58. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.
59. This clause also confers the intervention and reference functions within new clauses 6B and 6C EUWA on the Counsel General for Wales, and so executive competence is also being modified.

Clause 9 Incompatibility orders

60. This clause inserts a new section 6D into EUWA, making provision for courts to make 'incompatibility orders' where the courts are applying the new priority rule for domestic legislation over RDEUL inserted in section 5(A2) EUWA by clause 4(1), or the contrary priority rule applied by secondary legislation made under the power in clause 8(1). An incompatibility order made by the courts under this provision could impact on domestic legislation, including Senedd legislation in devolved areas.
61. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.

Clause 10 Scope of powers

62. Clause 10 provides for amendments to Schedule 8 EUWA so that retained direct EU legislation, and anything retained by virtue of section 4 can be

amended by existing and future subordinate legislation powers (not just those in relation to which there are pre-existing Henry VIII powers).

63. Clause 10 also introduces schedule 1 (see below) to the Bill which makes consequential amendments to provisions of primary legislation containing powers to make secondary legislation amending RDEUL, reflecting the removal of the current restrictions within EUWA by this clause 10.
64. The particular effect of this clause is that all retained EU legislation and section 4 rights within devolved areas will be amendable via existing and future secondary legislation more generally, and so cause the competence of the Senedd and the executive competence of Welsh Ministers to be modified.
65. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.

Clause 11 Procedural requirements

66. Clause 11 repeals the parliamentary scrutiny requirements set out in paragraphs 13 to 15 of Schedule 8 to EUWA, which apply to the amendment or revocation of subordinate legislation made under section 2(2) of the European Communities Act 1972.
67. The particular effect of this clause is that the current scrutiny process which apply to the amendment or revocation of subordinate legislation made under section 2(2) of the ECA is changed.
68. This clause modifies a protected enactment. Therefore, the Senedd's consent would be required on the basis that this clause will modify the legislative competence of the Senedd by virtue of modifying a protected enactment, as outlined in paragraph 42 above and because of its wider impact on devolved areas.

Remaining provisions

Clause 21 Interpretation

69. This clause sets out the meanings of terms used throughout the Bill. To the extent that these definitions apply to clauses within the Bill which require consent, this clause would also require consent.

Clause 22 Commencement, transitional and savings

70. This clause sets out which provisions of the Bill come into force and when. To the extent that this clause provides for the commencement of

other clauses in the Bill which require consent, this clause would also require consent.

Clause 23 Extent and short title

71. This clause provides that the legislation extends to England and Wales, Scotland and Northern Ireland. To the extent that clauses in the Bill apply to Wales and require consent, this clause would also require consent.

Schedule 1

72. Part 1 of Schedule 1 makes consequential amendments to alter the parliamentary scrutiny procedure for certain powers conferred by EUWA or in other statutes, which may be used to amend RDEUL and Section 4 rights. These amendments reflect the removal of restrictions on such powers that are made by clause 10.
73. Part 2 makes consequential amendments to section 7 EUWA and to the Direct Payments to Farmers (Legislative Continuity) Act 2020, to modify references to the provisions of Schedule 8 EUWA that are amended by clause 10.
74. To the extent that Schedule 1 makes changes to various statutes which, in some cases, changes the procedure that applies to regulations made by Welsh Ministers, or otherwise makes consequential amends to the scope/nature of Welsh Ministers' powers, looking at the impact of these consequential amendments overall on devolved areas, Schedule 1 has regard to devolved matters and thus consent is required.

Welsh Ministers' Powers

75. Paragraph 10 of Part 2 of Schedule 3 sets out the Senedd procedure where regulations are made by the Welsh Ministers under powers in the Bill.
76. The below regulation making powers are exercisable by Welsh Ministers and are subject to the Draft Affirmative Senedd procedure:
- a) regulations under clause 8 which amend, repeal or revoke primary legislation;
 - b) regulations under clause 12 or 13 which amend, repeal or revoke primary legislation;
 - c) regulations under clause 15(2) which confer a power to make subordinate legislation or create a criminal offence;
 - d) regulations under clause 15(3).

77. The below regulation making powers are exercisable by Welsh Ministers and are subject to the Negative Senedd Procedure:
- a) regulations under clause 1;
 - b) regulations under clause 8 which do not amend, repeal or revoke primary legislation;
 - c) regulations under clause 16.
78. For any other regulation making powers in the Bill that are exercisable by Welsh Ministers (i.e. not outlined above) the procedure could be the Draft Affirmative Senedd procedure or the Negative Senedd procedure, depending on the decision of the Welsh Ministers and the outcome of a sifting exercise, if the Welsh Ministers choose the negative procedure for regulations under clauses 12, 13 or 15.

The UK Government's view on the need for consent

79. The then Secretary of State for Business, Energy and Industrial Strategy, the Rt Hon. Jacob Rees-Mogg MP wrote to the Counsel General and Minister for the Constitution on 22 September outlining the UK Government's devolution analysis of the Bill and how it had within it several provisions which will modify EUWA, which would extend to Wales, with those provisions that triggered the legislative consent process, being clauses 1, 2, 3, 7, 10, 12, 13, 15, 16, 17 and Schedule 3. This broadly (but not wholly) aligns with those clauses for which the UK Government has stated that it considers is required within Annex A to the Explanatory Notes to the Bill, as published on 22 September, being clauses 1, 2, 7, 8, 10, 12-14, 16, 17, and Schedules 2 and 3.
80. Having carried out our own analysis of the Bill our conclusion is that consent is required for all of the clauses of the Bill (as has been outlined above), save for clause 18 (which abolishes business impact target provisions within sections 21 to 27 of the Small Business, Enterprise and Employment Act 2015, which relates to reserved matters).

The Welsh Government's position on the Bill as introduced

81. The Bill has been introduced to address REUL and to realise the UK Government's objectives as outlined in the policy objectives section (see paragraphs 4 and 5 above).
82. These policy objectives are those of the UK Government and are not shared by the Welsh Government, where it is our view that the body of REUL is, in general, functioning well and does not need to be treated collectively in this way. Our position on the Bill has been strongly conveyed through Ministerial and official channels.
83. The Bill as introduced presents a number of legal, constitutional, policy and practical concerns.

Concurrent Powers

84. The bill contains several powers to assimilate, restate, revoke or update REUL that are conferred on a Minister of the Crown and which could result in a UK Government Minister using these powers in devolved areas without the consent of the Welsh Ministers. This represents a very significant constitutional issue for the Welsh Government. Our expectation is, in the first instance, that powers to amend devolved legislation should rest solely with the Welsh Ministers or, if held concurrently with Ministers of the Crown, that there should be a requirement on the face of the Bill for them to seek the consent of Welsh Ministers for their exercise in devolved areas.

Sunseting REUL

85. The Welsh Government has very significant concerns that the arbitrary sunseting deadline of the end of 2023 will force all governments across the UK to revisit this large body of law in a very compressed timescale that will likely lead to errors and inoperability issues. The consequence of such a needlessly short period in which to consider all the complex interdependencies in the law could be a dysfunctional statute book.

86. Moreover, the sunseting provision will mean that parliament and the devolved legislatures will have no scrutiny or oversight role where REUL to sunset automatically and will likely not provide sufficient time for effective consultation on proposed modifications to REUL, which could result in unidentified issues and potential negative impacts, for example on protected groups. The broader impact on the Welsh Government, requiring the redirection of resources at a time when our focus should be on far more important issues, is also of major concern and will undoubtedly impact the legislative programme of the Government and the Government's ability to deliver on other commitments.

87. There is a mechanism in the Bill to extend the sunset date until 2026 for specific pieces, or descriptions, of REUL, though this is provided only to Ministers of the Crown. These powers should also be exercisable by Welsh Ministers in relation to legislation within the scope of the Senedd. The Welsh Government has strongly conveyed this to the UK Government and requested amendments in the Bill to reflect it.

Regulatory Burden

88. The Bill places restrictions on the use of powers within clause 15 to ensure that changes cannot increase the regulatory burden. This could mean that proposals to amend REUL, for example to reflect new scientific information or policy development, could be considered to lead to an increase the regulatory burden and this in turn could limit our ability to make effective changes.

UK Internal Market Act (UKIMA) interactions

89. There is clear potential for the exercise of the powers in the Bill to result in divergence in the law in these areas between the Devolved Governments and the UK Government. The UK Government has made references to its intention to reduce the regulatory burden. The Welsh Government does not support any approach to lower the high quality and standards our consumers, workers and businesses have come to expect.

Intervention/reference powers

90. The Bill provides powers to Law Officers to refer cases to the appeal courts or intervene in cases that raise issues relating to retained EU case law. However, as drafted, the circumstances in which Devolved Law Officers (including the Counsel General) can exercise these powers of reference and intervention are far more limited than those for UK Government Law Officers. To ensure that Devolved Law Officers can protect devolved interests, these powers should be broadened so all matters, even those which are reserved, that have an effect in devolved areas can be referred.

Financial implications

91. It is not possible at this stage to provide an estimate of likely expenditure under powers set out in this Memorandum.
92. The Welsh Government will keep this under review and endeavour to inform the Senedd of any financial implications for Wales later when they are more fully understood.

Conclusion

93. Given the significant concerns we have about the Bill, as detailed above, the Welsh Ministers do not consider it appropriate for the relevant provision in this Bill to be made. I therefore recommend consent for the Retained EU Law (Revocation and Reform) Bill is withheld.

Mick Antoniw MS
Counsel General and Minister for the Constitution
3 November 2022