

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO.4)

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 were considered in the [supplementary LCM\(3\)](#) laid on 6 February.
5. On 16 February the UK Government tabled further amendments³ which are considered in this supplementary LCM(4).
6. The Bill, as brought forward from the Commons, can be found at [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](#).
7. I wrote to the Llywydd on 03 March 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.

Policy Objective(s)

8. 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’⁴.

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 Marshalled list of amendments: [HL Bill 89—I \(parliament.uk\)](#)

⁴ [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](#)

Summary of the Bill

9. 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.

10. 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.

11. 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) and supplementary LCM(3), which now require Senedd consent

12. The table at annex 1 describes the UK Government amendments and considers their effect. However, broadly the UK Government amendments can be grouped as:

- a. amendments relating to exceptions from sunset;*
- b. amendments to clarify that extension or preservation SIs are still within power, where they happen to include provisions which are outside the scope of the sunset;*
- c. amendments relating to “assimilated law”;* and
- d. amendments relating to data protection.*

13. The amendments to clauses 1, 2, 6, 22, and Schedule 4 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 and supplementary LCM laid on 6 February. 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.

14. The insertion of new clause (*Exceptions to sunset under section 1*) in place of existing clauses 1(2), 1(6) and 22(5) of the Bill, is also 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 clause 1, 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 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.
15. The new paragraphs that are inserted into Schedule 1 ("*Assimilated law*": *consequential amendments*) are also considered 'relevant provision' and within the scope of SO 29. This is for the same reasons as set out in the competence analysis for the original clause 6 (contained within paragraph 55 of the LCM laid on 3 November), and for Schedule 1 (contained within paragraph 13 of the LCM laid on 6 February), 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.
16. UK Government amendments 65 and 66 remove a cross reference to s183A of the Data Protection Act 2018 (due to be inserted by clause 43 of the Data Protection and Digital Information Bill) (DPDI Bill) and other consequential wording from section 5(A3) of EUWA (inserted by original clause 4 of the Bill), because it is not expected that the DPDI Bill will receive Royal Assent prior to the Bill. We do not consider that a supplementary LCM should be laid for these amendments, on the basis that they are technical and non-substantive, and relate specifically to the protection of personal data, which is a reserved matter by virtue of Schedule 7A to the Government of Wales Act 2006.

Welsh Government position on the Bill as amended

17. The Welsh Government's position set out in the LCM laid on 3 November⁵ 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 subsequent amendments to the Bill.
18. 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

⁵ Retained EU Law (revocation and reform) Bill [LEGISLATIVE CONSENT MEMORANDUM](#) ([senedd.wales](https://www.senedd.wales))

19. 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

20. As set out above, the amendments to clauses 1, 2, 6, 22 and Schedule 4, insertion of new clause (*Exceptions to sunset under section 1*), and insertion of new paragraphs within Schedule 1 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

10 March 2023

Annex 1 - UK Government amendments tabled on the 16 February 2023, and subsequently agreed to during Lords Committee Stage.

Amendment no ⁶	Clause being amended	Comments
Amendments relating to exceptions from sunset.		
31	Clause 1(1) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	<p>Technical amendment.</p> <p>This amendment removes the original clause 1(2) to the Bill and replaces it with a new clause (<i>Exceptions to sunset under section 1</i>), as further detailed below.</p>
41	Clause 1(6) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	<p>Technical amendment.</p> <p>This amendment removes the original clause 1(6) to the Bill and replaces it with a new clause (<i>Exceptions to sunset under section 1</i>), as further detailed below.</p>
45	New clause: (<i>Exceptions to sunset under section 1</i>).	<p>This amendment is new provision in place of the original clauses 1(2), 1(6), and 22(5) of the Bill, and sets what is automatically excepted from, or can be “specified” within regulations to be excepted from, the scope of the sunset within clause 1(1) of the Bill.</p> <p>Subclause (1)(a) contains an exception to the clause 1 sunset for “relevant financial services law”, similar to original clause 22(5) of the Bill.</p> <p>Subclause (1)(b) contains an exception to the clause 1 sunset for any “specified” instrument or provision of an instrument. Subclause (2) confirms that “specified” means in regulations made by a relevant national authority (which in the case of legislation within the Senedd’s competence can be made by Ministers of the Crown or Welsh Ministers, as per original clause 1(2) of the REUL Bill). However, this exception is extended so that anything having effect under an instrument or provision that has been “specified” is automatically saved.</p> <p>Subclause (1)(c) contains a new exception to the clause 1 sunset, to enable descriptions of</p>

⁶ The amendments are arranged by the categories as outlined in on page 2, paragraph 12.

		<p>“minor instruments” = to be “specified” and preserved within regulations.</p> <p>Subclause (1)(d) contains a new exception to the clause 1 sunset for “transitional, transitory or saving provision”.</p> <p>Subclause (2) contains definitions of terminology used in subclause (1). While the definitions of “relevant financial services law” and “specified” mirror original clauses 1(2) and 22(5), “minor instrument” and “transitional, transitory or saving provision” are new provisions, as outlined above.</p> <p>Subclause (3) clarifies that any reference in subclause (1) or in any regulations made under this clause to a thing is, unless otherwise stated, to the thing as it subsists immediately before the time when the revocation under clause 1(1) would otherwise apply in relation to it (similar to original clause 1(6)).</p> <p>Finally, subclause (1) contains wording to clarify that any preservation regulations only apply to those instruments or provisions of instruments so far as they are subject to the sunset. Similar provision is made for extension regulations (please see comments at amendment 52 to clause 2 below).</p>
144	Clause 22: Commencement, transitional and savings	<p>Technical amendment.</p> <p>This amendment removes original clause 22(5) which is contained in new clause (<i>Exceptions to sunset under section 1</i>).</p>
138	Schedule 4: Regulations: procedure	<p>Technical amendment.</p> <p>This consequential amendment removes the current reference within schedule 4 to original clause 1, and replaces it with reference to new clause (<i>Exceptions to sunset under section 1</i>).</p> <p>This also means that any regulations made under new clause (<i>Exceptions to sunset under section 1</i>) are subject to the negative Senedd procedure.</p>
<p>Amendments to clarify that extension or preservation SIs are still within power, where they happen to include provisions which are outside the scope of the sunset.</p>		

45	New clause: <i>(Exceptions to sunset under section 1).</i>	Technical amendment. Please see comments already provided at New clause: <i>(Exceptions to sunset under section 1)</i> above.
52	Clause 2: Extension of sunset under section 1.	Technical amendment. Similar to new clause <i>(Exceptions to sunset under section 1)</i> outlined above, this provision inserts wording into clause 2 to clarify that any regulations made under 2(1) to extend the sunset date only apply <i>so far as</i> the instrument or description of legislation is subject to the sunset.
Amendments relating to “assimilated law”.		
73 and 77	Clause 6: Assimilated Law.	Technical amendments. These amendments (i) insert new provision into clause 6(1) of the Bill, to rename bodies of law relating to direct payments to farmers as regards times after the end of 2023; and (ii) insert new definitions into clause 6(7), consequential on the amendment to clause 6(1).
78, 79 and 80	Schedule 1: Assimilated Law: Consequential Amendments.	Schedule 1 currently contains amendments consequential on the renaming of bodies or types of law by subclause 6(1), including amendments to EUWA and the Bill itself. Amendments 78 and 80 to Schedule 1 include consequential amendments to other high priority pieces of primary legislation, including the Interpretation Acts (being the Interpretation Act (Northern Ireland) 1954, the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010, and the Legislation (Wales) Act 2019); the Legislative and Regulatory Reform Act 2006; the Direct Payments to Farmers (Legislative Continuity) Act; the Scotland Act 1998; the Northern Ireland Act 1998; and the Government of Wales Act 2006. Amendment 79 makes further amendments to EUWA, to update references from “Retained direct EU CAP legislation” to “Assimilated direct CAP legislation”, consequential on clause 6 of the Bill (as amended by amendments 73 and 77, outlined above).

