

POLICY NOTE

THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023 (CONSEQUENTIAL AMENDMENTS) (SCOTLAND) REGULATIONS 2023

SSI 2023/374

The above Scottish Statutory Instrument (“SSI”) was made in exercise of the powers conferred by section 19(1) of the Retained EU Law (Revocation and Reform) Act 2023. The SSI is subject to the affirmative procedure.

Summary Box

The purpose of the SSI is to make consequential changes to fully devolved Scottish legislation to update the terminology of “Retained EU law” and associated expressions to “Assimilated law” and associated expressions, in consequence of section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (the “REUL Act”).

Policy Objectives

The Scottish Government opposed the Bill for the REUL Act and has committed to challenge attempts by the UK Government to use the REUL Act to legislate for lower standards.

Section 5 of the REUL Act renames the legal concept of “Retained EU law” and associated expressions to become “Assimilated law” and associated expressions, as set out in a table in subsection (1).

Whilst in the Scottish Government’s view this change of terminology appears to be ideologically driven, and potentially introduces confusion to an already complex legal landscape, the changes will take effect at the end of 2023 and cannot be prevented. Therefore, as a responsible Government the SSI is being brought forward by the Scottish Government so that the devolved statute book is appropriately updated to reference the new terminology, and there is maximal clarity. At the end of this year, retained EU law and related terms will no longer have any meaning, therefore it would be confusing to the end user of legislation for superseded terminology to remain on the devolved statute book.

In this Policy Note, devolved statute book means Acts of the Scottish Parliament, SSIs and UK Acts and Statutory Instruments (“SIs”) that comprise only devolved, Scottish provision.

Alternative approaches

Consideration was given to relying on the “gloss” in section 5(4) of the REUL Act, that retained EU law terminology must be read as if amended to assimilated law terminology, and not bringing forward the SSI. The Scottish Government considers that that approach would make the devolved statute book harder to read, and further would be inconsistent with the approach being taken by the UK and Welsh Governments.

On 7 September 2023, the Scottish Government sent a UK SI notification to the Constitution, External Affairs, Europe and Culture Committee about the proposed Retained EU Law (Revocation and Reform) Act (Consequential Amendment) Regulations 2023 (“the SI”)

which amends terms in UK wide legislation. One option would have been to include amendments to the devolved statute book in that SI, however the Scottish and UK Governments agreed that a separate SSI was preferable. The benefits of the SSI approach include that the Scottish Government has full control over the legislative drafting, and the opportunity for Scottish Parliament scrutiny is maximised.

Statement required by the European Union (Withdrawal) Act 2018 - why the Scottish Ministers consider that there are good reasons for the amendments made to regulations made under section 2(2) of the European Communities Act 1972, and that this is a reasonable course of action

The Minister for Parliamentary Business has made the following statement under paragraph 16(2) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the amendments made by this instrument to a number of regulations made under section 2(2) of the European Communities Act 1972 that comprise retained EU law. I have concluded that the making of common amendments across these instruments is a reasonable course of action. This is because it would be confusing for the section 2(2) regulations to keep references to retained EU law, and associated terminology, when that body of law becomes renamed assimilated law, with associated new terminology. There are no substantive effects on retained EU law.”

EU Alignment Consideration

This SSI is not directly relevant to the Scottish Government’s policy to maintain alignment with the EU, since the SSI is purely consequential and does not make any substantive changes to the law.

Consultation

Consultation has not been conducted outside of Government given that this is a purely consequential SSI.

Impact Assessments

Impact Assessments have not been carried out given that this is a purely consequential SSI.

Financial Effects

The Minister for Parliamentary Business confirms that no BRIA is necessary as the SSI has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Communications and Ministerial Support Directorate
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