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Clare Adamson
Constitution, Europe, External Affairs and Culture
Committee
The Scottish Parliament
Edinburgh
EH99 1SP

31 May 2023

Dear Clare,

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

Before providing evidence to the Constitution, External Affairs and Culture Committee tomorrow, I thought it would be useful to provide in advance some context regarding the recent UK Government amendments to the Bill, in particular the Schedule added to the Bill listing instruments to be revoked at the end of the year. I hope this will reassure you in regard to how the Scottish Government will facilitate an appropriate scrutiny function with the Parliament.

The UK Government amended the Bill at Report stage and Third Reading in the House of Lords on 15 and 22 May 2023, most significantly removing the general 'sunset' clause in favour of a schedule to the Bill (Schedule 1) in which REUL to be revoked at the end of the year is listed.

The Scottish Government was not consulted on the content of the Schedule prior to the UKG amendments being tabled. We carried out a rapid assessment to inform the Supplementary Legislative Consent Memorandum (SLCM) which was lodged on 24 May 2023. It is our view that the vast majority of the laws on the Schedule are no longer operable, in that they are deemed to have served their function and are 'spent'. A proportion of the statutory instruments are England-only.

As set out in the SLCM, we have currently identified up to nine laws that involve devolved competence and which we believe may be still operable in some way and for which further consideration is needed. For example, these include the Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014 and the Port Services Regulations 2019. We

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have raised these concerns with UK Government, but it is our understanding the Schedule will not be amended prior to Royal Assent, which is anticipated in June.

Scottish Ministers have the power (in effect) to remove laws from the Schedule, to the extent that they are within devolved competence, prior to 31 October 2023. The UK Government have this power in relation to any law in the Schedule. There is uncertainty and complexity in how we could remove an instrument from the Schedule where the instrument is not entirely within devolved competence. This is not only because clause 1 of the bill is not yet settled, but also because, in practice, the eventuality may arise whereby the UK Government is of a different opinion to a Devolved Government in relation to what should be done in respect of a particular law. Devolved Government and UK Government officials are discussing the detail of these arrangements and will keep Scottish Parliament clerks informed.

I am open to discuss what might be the appropriate role for the Scottish Parliament on considering whether any instruments should be removed from the Schedule, to the extent that they are within devolved competence, whilst noting that this would likely need to be by way of agreement rather than an amendment to the Bill. This would be subject to the timescales dictated by the UK Government whereby a UK SI or SSI subject to the affirmative procedure would need to be made by the end of October 2023 to remove an instrument from the Schedule. I am sure the committee will also have noted that clause 1 allows the UK Parliament to amend the Schedule after the end of October 2023, which introduces further uncertainty, although this clause of the bill also remains unsettled at time of writing. I intend to write again to the committee once there is more clarity on proposals.

The amendments made to the Bill by the House of Lords also impose reporting obligations on the UK Government regarding REUL and changes made to it. These provisions are not yet settled. I am happy to consider what reporting may be appropriate by the Scottish Government where our new approach to the annual reporting on EU Alignment will be relevant.

I should also note that Scottish Government officials will continue to assess the Schedule and its interaction with the Scottish Government's EU Alignment policy.

I look forward to our meeting tomorrow.

Yours sincerely,

Angus Robertson
Cabinet Secretary for Constitution, External Affairs and Culture

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