

Cabinet Secretary for Constitution, External
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Angus Robertson MSP



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Convener of Constitution, External Affairs
and Culture Committee
The Scottish Parliament
Edinburgh
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12th December 2023

Dear Convener,

**THE PROPOSED RETAINED EU LAW (REVOCATION AND REFORM) ACT
(CONSEQUENTIAL AMENDMENT) (NO. 2) REGULATIONS 2024
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

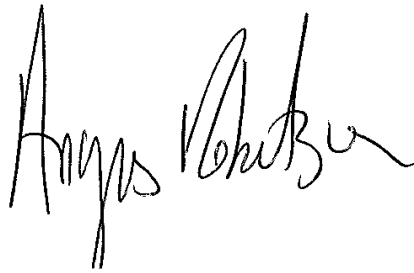
I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, the draft SI is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

This notification follows my notification of 7 September 2023 on the draft [Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023](#). Whilst at the point of sending in that notification no UK Minister had written to seek agreement to proceed on the original SI, I welcome that on 18 September a request for consent did arrive, and that subsequently a request for the No. 2 instrument has recently arrived.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by Thursday 18 January 2024.

Yours sincerely ,

A handwritten signature in black ink, reading "Angus Robertson". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail on the 'n'.

ANGUS ROBERTSON

NOTIFICATION TO THE SCOTTISH PARLIAMENT

Proposed name of the SI

The Retained EU Law (Revocation and Reform) Act (Consequential Amendment) (No. 2) Regulations 2023

Is the notification Type 1 or Type 2

Type 1.

Details of the provisions that Scottish Ministers are being asked to consent to.

Amendments to secondary legislation falling within devolved competence engage consent which are consequential on the coming into force of the provisions of the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”).

Summary of the proposals

This SI is being made in consequence of the REUL Act. Section 2 of the REUL Act revokes section 4 of the European Union (Withdrawal) Act 2018 (“EUWA”) from the end of 2023. That section saved certain directly effective rights¹ which are recognised by the courts but are not codified in EU legislation. The repeal of section 4 of EUWA means that any of those rights etc. will cease to be recognised in domestic law. This SI revokes instruments and provisions which themselves revoked specific directly effective rights.

The SI also updates the terminology of retained EU law to “assimilated law”, where relevant in the particular instruments that are being otherwise amended in the SI.

Section 19 of the REUL Act confers a power on a relevant national authorities to make consequential provision. As regards Scotland, the relevant national authorities are the Scottish Ministers (to the extent a provision falls within the meaning of devolved competence set out in paragraph 2(2) of Schedule 4 of the REUL Act), or UK Ministers (in all cases)

UK Statutory Instruments are a mixture of instruments extending to Scotland and not extending to Scotland, and for those extending to Scotland a mixture of reserved and devolved provisions. For example, updates are proposed to be made to the Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020 which extends to Scotland and is within devolved competence.

Similar provision amending primary legislation is contained in the draft [Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023](#) which was notified to the Constitution, External Affairs, Europe and Culture Committee on 7 September 2023.

¹ As well as any “powers, liabilities, obligations, restrictions, remedies and procedures”, see section 4(1) of EUWA.

The SI has no bearing on alignment with EU law since provisions are consequential.

Does the SI relate to a common framework or other scheme?

No.

Summary of stakeholder engagement/consultation

This is a consequential instrument and no stakeholder engagement is necessary. We will consider alerting relevant stakeholders as required to the SI once the draft is laid at Westminster.

A note of other impact assessments, (if available)

Since this is a consequential instrument, no Impact Assessments are appropriate.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

This SI revokes instruments and provisions relating to directly effective rights which will become redundant following the repeal of section 4 of the EUWA. The SI includes provision which would be within the legislative competence of the Scottish Parliament. The Scottish Government considers that the approach taken to updating provisions of secondary legislation that extend beyond Scotland but fall within devolved competence will deliver maximum clarity on the statute book

The Scottish Government will consider bringing forward a SSI in 2024 should any equivalent statutory references be identified in fully devolved legislation (that is to say, Acts of the Scottish Parliament, SSIs and UK Acts and SIs that comprise only devolved, Scottish provision). The Government's priority in terms of the repeal of section 4 of EUWA is considering the substantive implications of the sunset of directly effective rights and, as part of that, considering where action may be required using REUL Act or other appropriate powers.

The Scottish Government expects UK Ministers to propose, in this particular context, a further SI or SIs in 2024 to make changes to other secondary legislation, including Retained Direct EU Law, to update terminology from retained EU law to "assimilated law". The Scottish Government will carefully consider these further proposals when details are provided, and update the Committee accordingly. The Scottish Government has already proposed the update of fully devolved secondary legislation for "assimilated law" in the [draft Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023](#).

Intended laying date (if known) of instruments likely to arise

Wednesday 24 January 2024.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

N/A.

Information about any time dependency associated with the proposal

N/A.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

N/A.

Any significant financial implications?

No; this is a consequential instrument.

SI NOTIFICATION: SUMMARY

Proposed title of Instrument
The Retained EU Law (Revocation and Reform) Act (Consequential Amendment) (No. 2) Regulations 2023
Proposed laying date at Westminster
Wednesday 24 January 2024.
Date by which Committee has been asked to respond
Thursday 18 January 2024.
Power(s) under which SI is to be made
Section 19(1) of the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”)
Categorisation under SI Protocol
Type 1
Purpose
The SI’s primary purpose is to make consequential amendments to secondary legislation to reflect the repeal by the REUL Act of section 4 of the European Union (Withdrawal) Act 2018.
Other information
N/A
SG Policy contact:
Greig Walker