

CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

31st Meeting, 2023, Session 6

16 November 2023

Subordinate Legislation

Title of Instrument	The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023
Laid Date	18 October 2023
Reporting deadline	1 December 2023
Type of instrument	Affirmative
Motion to approve	S6M-10876

Purpose of the regulations

1. The purpose of the draft 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”).
2. A SPICe briefing is attached at **Annexe A**.
3. The draft SSI is attached at **Annexe B** and the policy note at **Annexe C**.

Delegated Powers and Law Reform Committee consideration

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 7 November 2023.
5. The DPLR Committee in its report drew the instrument to the attention of the Parliament on reporting ground (e), in that there appears to be a doubt whether paragraph 3 of schedule 1 is intra vires. It said there appears to be room for doubt that the provision in question is envisaged by and within the limits of the enabling power.

Constitution, Europe, External Affairs and Culture Committee consideration

6. The draft instrument was laid on 18 October 2023 and referred to the Constitution, Europe, External Affairs and Culture Committee. The instrument is subject to affirmative procedure (Rule 10.6). It is for the Constitution, Europe,

External Affairs and Culture Committee to recommend to the Parliament whether the instrument should be approved.

7. The Cabinet Secretary for the Constitution, External Affairs and Culture has, by motion S6M-10876, proposed that the Committee recommends the approval of the instrument. The Committee will take evidence on the instrument from the Cabinet Secretary and officials before the motion is debated.
8. The Committee must report its recommendation to Parliament by 1 December 2023, within 40 days of the SSI being laid. If the Committee recommends that the draft instrument be approved, the Parliamentary Bureau shall by motion propose that the Parliament agrees to approve the draft instrument.
9. The Committee is invited to delegate to the Convener authority to approve the report on the instrument for publication.

**CEEAC Committee Clerks
November 2023**

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Constitution, Europe, External Affairs and Culture Committee

31st Meeting, 2023 (Session 6), Thursday, 16th November 2023

The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023

Background

The Committee is the lead committee for consideration of the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (“the regulations”). Under Standing Orders Rule 10.6.1 the lead committee must decide whether to recommend that the draft instrument be approved.

This draft Scottish Statutory Instrument (SSI) would be made in exercise of the powers conferred by [section 19\(1\) of the Retained EU Law \(Revocation and Reform\) Act 2023](#) (“the REUL Act”). The SSI is subject to the affirmative procedure.

Purpose

The SSI makes changes to terminology rather than making substantive changes to the law. Its objective is to update the devolved statute book (i.e., Acts of the Scottish Parliament, SSIs and Statutory Instruments that comprise only devolved Scottish provision) to ensure clarity and aid accessibility in light of the changes to terminology that are made by the REUL Act.

The REUL Act renames retained EU law (REUL) which remains on the statute book after 31 December 2023 as “Assimilated law”.

The names of the different categories of REUL are similarly changed by the Act at the end of the year. For example, “Retained direct EU legislation” will be referred to

as “Assimilated direct legislation”, and “Retained EU case law” as “Assimilated case law” from 1 January 2024. This change is provided for in section 5 of the REUL Act.

Section 5(4) of the REUL Act contains a “gloss”, which is a legislative drafting technique which changes the meanings of words in legislation without specifically amending them. The gloss has the effect that after 31 December 2023 all references in legislation to “Retained” law must be read as referring to “Assimilated” law (and the same for related terms).

The SSI, however, does make textual amendments to legislation on the devolved statute book, to update it to the new terminology (i.e., references to “Retained” law are changed to “Assimilated” law), rather than relying on the gloss.

The Committee has previously noted an SI notification for the Retained EU Law (Revocation and Reform) Act (Consequential Amendment) Regulations 2023. This Statutory Instrument would make similar provision to update existing UK primary legislation (i.e., reserved and mixed competence statute).

Effect

There is no policy effect to the SSI. It does provide clarity for users of legislation by making clear in existing legislation the changes in terminology provided for in the REUL Act.

This means that the text of devolved legislation is updated to refer to “Assimilated” rather than “Retained”.

Delegated Powers and Law Reform Committee consideration

The Delegated Powers and Law Reform Committee (DPLRC) considered the SSI on 7 November 2023 and [reported on 8 November 2023](#).

The DPLRC drew *“the instrument to the attention of the Parliament on reporting ground (e), in that there appears to be a doubt whether paragraph 3 of schedule 1 is intra vires.”* Reporting ground (e) is set out in [the Standing Orders \(Rule 10.3\)](#).

The DPLRC report explained the issue as below:

“Paragraph 3 of schedule 1 of the instrument would amend the Freedom of Information (Scotland) Act 2002 (“FOI(S)A”) by changing “EU obligation” to “assimilated obligation” in two places: in FOI(S)A sections 26 and 45. This would change the references straight from “EU obligation” to “assimilated obligation”, skipping the step of amending them to “retained EU obligation”.

“The instrument is made under section 19(1) of the 2023 Act, which enables the Scottish Ministers to make any provision they consider appropriate in consequence of that Act. The power enables the modification of any enactment, including primary legislation.

“In correspondence with the Scottish Government, the Committee queried paragraph 3 of schedule 1 of the instrument. The Committee noted that these references to “EU obligation” appeared not to have been updated previously to “retained EU obligation” and asked why the Scottish Government considered that the power in section 19 of the 2023 Act enabled this amendment to be made.

“The Committee notes that there was formerly a specific power for changing references to “EU...” to “retained EU...” (such as changing “EU obligation” to “retained EU obligation”). This was the “deficiency-correcting” power in EUWA. The UK Parliament delegated that power only for a limited period of time, and provided for it to expire last year, on 31 December 2022. The UK Parliament also delegated a general power in EUWA to make such provision as is considered appropriate in consequence of that Act. That power still exists, but is available only to UK Ministers. The Committee notes that its predecessor committee, in its first report on the Legislative Consent Memorandum on the European Union (Withdrawal) Bill recommended that further thought be given to conferring this general consequential power also on the Scottish Ministers.

“The Scottish Government indicated in its response to the Committee’s questions that it considers the amendments to FOI(S)A to be in consequence, in particular, of the establishment of “assimilated obligation” as a defined term within the body of assimilated law, including for the purposes of statutory interpretation, by sections 5 and schedule 2 of the 2023 Act.

“The Committee notes that the term “EU obligation” in FOI(S)A is no longer a defined term, the definition (in the European Communities Act 1972) having been repealed on IP Completion Day, at the end of 2020. Accordingly it is unclear what those references currently mean, and it is not beyond doubt whether the new definition of “assimilated obligation” (with reference to “assimilated law”) encompasses them.

“It appears to the Committee that the provision in question may be addressing a failure to have updated these sections in consequence of the EU Withdrawal Act 2018, rather than making provision that is properly in consequence of the 2023 Act.

As such, the DPLRC concluded that *“There appears to be room for doubt that the provision in question is envisaged by and within the limits of the enabling power.”*

It is rare for the DPLRC to report an instrument on the ‘intra vires’ ground. As such, the Committee may wish to explore the issue with the Minister. Specifically, the Committee may wish to ask the Minister for further explanation of the basis for his view that section 19(1) of the REUL Act can be used to amend the Freedom of Information (Scotland) Act 2002 by changing “EU obligation” to “assimilated obligation”.

Sarah McKay
SPICe Research
9 November 2023

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

Draft Regulations laid before the Scottish Parliament under paragraph 7(1) of schedule 5 of the Retained EU Law (Revocation and Reform) Act 2023 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

RETAINED EU LAW REFORM

**The Retained EU Law (Revocation and Reform) Act 2023
(Consequential Amendments) (Scotland) Regulations 2023**

Made - - - - 2023
Coming into force - - 1st January 2024

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 19(1) of the Retained EU Law (Revocation and Reform) Act 2023(a) and all other powers enabling them to do so.

In accordance with paragraph 7(1) of schedule 5 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 and come into force on 1 January 2024.

(2) These Regulations extend to Scotland and the Scottish zone, and insofar as they extend beyond Scotland and the Scottish zone they do so only as a matter of Scots law.

(3) In paragraph (2), “Scotland” and “the Scottish zone” have the same meaning as in section 126(1) and (2) of the Scotland Act 1998(b).

Amendments of primary legislation

2. Schedule 1 of these Regulations (amendments of primary legislation) has effect.

(a) 2023 c. 28. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) 1998 c. 46. The part of the internal waters and territorial sea of the United Kingdom, and the boundaries of the sea within British fishery limits, which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

Amendments of secondary legislation

3. Schedule 2 of these regulations (amendments of secondary legislation) has effect.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE 1

Regulation 2

Amendments of primary legislation

The Prescription and Limitation (Scotland) Act 1973

- 1.—(1) The Prescription and Limitation (Scotland) Act 1973(a) is amended as follows.
- (2) In section 23A(5)—
- (a) in the definition of “the Rome I Regulation”, for “retained direct EU” substitute “assimilated direct”,
 - (b) in the definition of “the Rome II Regulation”, for “retained direct EU” substitute “assimilated direct”.

The Roads (Scotland) Act 1984

2. In paragraph 6 of schedule 1A of the Roads (Scotland) Act 1984(b), for “retained EU” substitute “assimilated”.

The Freedom of Information (Scotland) Act 2002

- 3.—(1) The Freedom of Information (Scotland) Act 2002(c) is amended as follows.
- (2) In section 26(b), for “EU” substitute “assimilated”,
- (3) In section 45(2)(c)(ii) for “EU” substitute “assimilated”.

The Water Environment and Water Services (Scotland) Act 2003

- 4.—(1) The Water Environment and Water Services (Scotland) Act 2003(d) is amended as follows.
- (2) In Part 1 of schedule 5—
- (a) in paragraph 1(1)(b), for “retained EU” substitute “assimilated”,
 - (b) in paragraph 2(a), for “retained EU” substitute “assimilated”,
 - (c) in paragraph 4(b), for “retained EU” substitute “assimilated”,
 - (d) in paragraph 4(c), for “retained EU” substitute “assimilated”,
 - (e) in paragraph 5(b), for “retained EU” substitute “assimilated”,
 - (f) in paragraph 7(a), for “retained EU” substitute “assimilated”,
 - (g) in paragraph 7(b), for “retained EU” substitute “assimilated”,
 - (h) in paragraph 11(a)(i), for “retained EU” substitute “assimilated”,
 - (i) in paragraph 11(a)(ii), for “retained EU” substitute “assimilated”,
 - (j) in paragraph 11(b)(i), for “retained EU” substitute “assimilated”,
 - (k) in paragraph 12(a)(i), for “retained EU” substitute “assimilated”,
 - (l) in paragraph 12(a)(ii), for “retained EU” substitute “assimilated”,
 - (m) in paragraph 12(a)(iii)(A), for “retained EU” substitute “assimilated”,
 - (n) in paragraph 12(a)(iii)(B), for “retained EU” substitute “assimilated”,

(a) 1973 c. 52, relevantly amended by S.S.I. 2019/834.
(b) 1984 c. 54, relevantly amended by S.S.I. 2019/415.
(c) 2002 asp 13, relevantly amended by S.I. 2011/1043.
(d) 2003 asp 3, relevantly amended by S.S.I. 2019/26.

- (o) in paragraph 13(d), for “retained EU” substitute “assimilated”,
 - (p) in paragraph 13(e), for “retained EU” substitute “assimilated”,
 - (q) in paragraph 15, for “retained EU” substitute “assimilated”,
 - (r) in the italic heading before paragraph 16, for “retained EU” substitute “assimilated”,
 - (s) in paragraph 16, for “retained EU” substitute “assimilated”.
- (3) In Part 2 of schedule 5—
- (a) in paragraph 17(1)(b), for “retained EU” substitute “assimilated”,
 - (b) in paragraph 23(b)(ii), for “retained EU” substitute “assimilated”,
 - (c) in the italic heading before paragraph 24, for “retained EU” substitute “assimilated”,
 - (d) in paragraph 24, for “retained EU” substitute “assimilated”.
- (4) In Part 3 of schedule 5—
- (a) in paragraph 27(b), for “retained EU” substitute “assimilated”.
 - (b) in the italic heading before paragraph 30, for “retained EU” substitute “assimilated”,
 - (c) in paragraph 30, for “retained EU” substitute “assimilated”.

The Environmental Assessment (Scotland) Act 2005

- 5.**—(1) The Environmental Assessment (Scotland) Act 2005(a) is amended as follows.
- (2) In section 5(3)(b), for “retained EU” substitute “assimilated”.
 - (3) In the heading before section 13, for “retained EU” substitute “assimilated”.
 - (4) In section 13(1), for “retained EU” substitute “assimilated”.
 - (5) In section 13(2), for “retained EU” substitute “assimilated”.
 - (6) In section 14(4), for “retained EU” substitute “assimilated”.
 - (7) In schedule 2, paragraph 1(e), for “retained EU” substitute “assimilated”.
 - (8) In schedule 3, paragraph 4, for “retained EU” substitute “assimilated”.

The Animal Health and Welfare (Scotland) Act 2006

- 6.** In schedule 1 of the Animal Health and Welfare (Scotland) Act 2006(b)—
- (a) in the italic heading before paragraph 1, for “retained EU” substitute “assimilated”,
 - (b) in paragraph 1(1), for “retained EU” substitute “assimilated”.

The Flood Risk Management (Scotland) Act 2009

- 7.**—(1) The Flood Risk Management (Scotland) Act 2009(c) is amended as follows.
- (2) In section 6A(2)(b), for “retained EU” substitute “assimilated”.
 - (3) In section 6A(7)(a), for “retained EU” substitute “assimilated”.
 - (4) In section 23(2)(d)(vi), for “retained EU” substitute “assimilated”.
 - (5) In section 51(1), for “retained EU” substitute “assimilated”.
 - (6) In Part 1 of schedule 1, in paragraph 4—
 - (a) in sub-paragraph (a) for “retained EU” substitute “assimilated”,
 - (b) in sub-paragraph (b) for “retained EU” substitute “assimilated”,
 - (c) in sub-paragraph (c) for “retained EU” substitute “assimilated”,

(a) 2005 asp 15, relevantly amended by S.S.I. 2019/178.
(b) 2006 asp 11, relevantly amended by S.S.I. 2019/34.
(c) 2009 asp 6, relevantly amended by S.S.I. 2022/138.

(d) in sub-paragraph (d) for “retained EU” substitute “assimilated”.

The Marine (Scotland) Act 2010

8. In section 79(5) of the Marine (Scotland) Act 2010(a), for “retained EU” substitute “assimilated”.

The Aquaculture and Fisheries (Scotland) Act 2013

9.—(1) The Aquaculture and Fisheries (Scotland) Act 2013(b) is amended as follows.

(2) In section 53(1), in paragraph (b) of the definition of “sea fisheries legislation”, for “retained EU” in both places where it occurs substitute “assimilated”.

(3) In section 59(8)(b)—

- (a) for “retained direct EU” substitute “assimilated direct”,
- (b) for “retained EU” in both places where it occurs substitute “assimilated”.

(4) In section 63—

- (a) before the definition of “British sea-fishery officer”, insert—
 - ““assimilated restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before IP completion day, and
 - (b) forms part of assimilated law,as modified from time to time.”,
- (b) repeal the definition of “retained EU restriction”.

The Agriculture (Retained EU Law and Data) (Scotland) Act 2020

10. In the heading before Part 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(c), for “retained EU” substitute “assimilated”.

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

11.—(1) The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021(d) is amended as follows.

- (2) In section 1(1)(a)(iv), for “retained EU” substitute “assimilated”.
- (3) In section 9(2)(d), for “retained EU” substitute “assimilated”.

SCHEDULE 2

Regulation 3

Amendments of secondary legislation

The Urban Waste Water Treatment (Scotland) Regulations 1994

1.—(1) The Urban Waste Water Treatment (Scotland) Regulations 1994(e) are amended as follows.

(2) In regulation 5(8), in the definition of “appropriate treatment”, for “retained EU” substitute “assimilated”.

(a) 2010 asp 5, relevantly amended by S.S.I. 2019/55.
(b) 2013 asp 7, relevantly amended by S.S.I. 2019/24.
(c) 2020 asp 17.
(d) 2021 asp 4.
(e) S.I. 1994/2842, relevantly amended by S.S.I. 2019/26.

- (3) In Part 1 of schedule 1, in sub-paragraph (c), for “retained EU” substitute “assimilated”.
- (4) In Part 1 of schedule 3, in paragraph 4, for “retained EU” substitute “assimilated”.
- (5) In schedule 4, for “retained EU” substitute “assimilated”.

The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002

2.—(1) The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002(a) are amended as follows.

- (2) In regulation 29A(7)(b), for “retained EU” substitute “assimilated”.
- (3) In regulation 29A(7)(e), for “retained EU” substitute “assimilated”.
- (4) In schedule 1, paragraph 6(4)(a)(i), for “retained EU” substitute “assimilated”.
- (5) In schedule 1, paragraph 6(4)(b)(i), for “retained EU” substitute “assimilated”.
- (6) In schedule 3, paragraph 12(a), for “retained EU” substitute “assimilated”.

The Landfill (Scotland) Regulations 2003

3.—(1) The Landfill (Scotland) Regulations 2003(b) are amended as follows.

- (2) In regulation 10(3)(b)(i), for “retained EU” substitute “assimilated”.
- (3) In regulation 11(2A)(b), for “retained EU” substitute “assimilated”.

The Food Supplements (Scotland) Regulations 2003

4. In regulation 5(2)(a) of the Food Supplements (Scotland) Regulations 2003(c), for “retained EU” substitute “assimilated”.

The Water Environment (Register of Protected Areas) (Scotland) Regulations 2004

5.—(1) The Water Environment (Register of Protected Areas) (Scotland) Regulations 2004(d) are amended as follows.

- (2) In Part 1 of schedule 1(1)—
 - (a) in paragraph 2(b), for “retained EU” substitute “assimilated”.
 - (b) in paragraph 2(c)(i), for “retained EU” substitute “assimilated”.
 - (c) in paragraph 2(c)(ii), for “retained EU” substitute “assimilated”.
 - (d) in paragraph 3, for “retained EU” substitute “assimilated”.

The Fodder Plant Seed (Scotland) Regulations 2005

6. In regulation 2(1) of the Fodder Plant Seed (Scotland) Regulations 2005(e) for “retained EU” substitute “assimilated”.

The Food Hygiene (Scotland) Regulations 2006

7. In schedule 2 of the Food Hygiene (Scotland) Regulations 2006(f), in the entry relating to Article 6(1) of Regulation 852/2004, for “retained EU” substitute “assimilated”.

(a) S.S.I. 2002/541, relevantly amended by S.S.I. 2019/57, S.S.I. 2019/86 and S.S.I. 2022/361.
(b) S.S.I. 2003/235, relevantly amended by S.S.I. 2009/247 and S.S.I. 2019/26.
(c) S.S.I. 2003/278, relevantly amended by S.S.I. 2019/54.
(d) S.S.I. 2004/516, relevantly amended by S.S.I. 2022/138.
(e) S.S.I. 2005/329, relevantly amended by S.S.I. 2019/59.
(f) S.S.I. 2006/3, relevantly amended by S.S.I. 2019/52.

The Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006

8. In regulation 24(1)(b) of the Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006(a), for “retained EU” substitute “assimilated”.

The Welfare of Animals (Transport) (Scotland) Regulations 2006

9. In regulation 23(d) of the Welfare of Animals (Transport) (Scotland) Regulations 2006(b), for “retained EU” substitute “assimilated”.

The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007

10. In paragraph 6 of schedule 1 of the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007(c) for “retained EU” substitute “assimilated”.

The Bathing Waters (Scotland) Regulations 2008

11. In regulation 4(9)(a) of the Bathing Waters (Scotland) Regulations 2008(d), for “retained EU” substitute “assimilated”.

The Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008

12. In regulation 4 of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008(e), for “retained direct EU” substitute “assimilated direct”.

The Environmental Liability (Scotland) Regulations 2009

- 13.—(1) The Environmental Liability (Scotland) Regulations 2009(f) are amended as follows.
- (2) In regulation 4(1)(b)(ii), for “retained EU” substitute “assimilated”.
 - (3) In schedule 1, paragraph A1, for “retained EU” substitute “assimilated”.

The Law Applicable to Contractual Obligations (Scotland) Regulations 2009

14. In regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009(g), for “retained direct EU” substitute “assimilated direct”.

The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009

15. In column 2 of the table set out in the schedule of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009(h), in both places it occurs, for “retained EU” substitute “assimilated”.

The INSPIRE (Scotland) Regulations 2009

16. In regulation 13(6) of the INSPIRE (Scotland) Regulations 2009(i), for “retained EU” substitute “assimilated”.

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- (a) S.S.I. 2006/337, relevantly amended by S.S.I. 2019/71.
 - (b) S.S.I. 2006/606, relevantly amended by S.S.I. 2019/34.
 - (c) S.S.I. 2007/570, relevantly amended by S.S.I. 2019/415.
 - (d) S.S.I. 2008/170, relevantly amended by S.S.I. 2019/26.
 - (e) S.S.I. 2008/404, relevantly amended by S.S.I. 2019/834.
 - (f) S.S.I. 2009/266, relevantly amended by S.S.I. 2019/276.
 - (g) S.S.I. 2009/410, relevantly amended by S.S.I. 2019/834.
 - (h) S.S.I. 2009/427, relevantly amended by S.S.I. 2019/54.
 - (i) S.S.I. 2009/440, relevantly amended by S.S.I. 2019/103.

The Official Feed and Food Controls (Scotland) Regulations 2009

17. In regulation 4(4) of the Official Feed and Food Controls (Scotland) Regulations 2009(a), for “retained EU” substitute “assimilated”.

The Management of Extractive Waste (Scotland) Regulations 2010

18.—(1) The Management of Extractive Waste (Scotland) Regulations 2010(b) are amended as follows.

(2) In regulation 2(1), in the definition of “unpolluted soil”, for “retained EU” substitute “assimilated”.

(3) In regulation 5(3)(b), for “retained direct EU” substitute “assimilated direct”.

(4) In regulation 12(2), for “retained direct EU” substitute “assimilated direct”.

(5) In regulation 13(1), for “retained direct EU” substitute “assimilated direct”.

(6) In regulation 13(5), for “retained direct EU” substitute “assimilated direct”.

(7) In regulation 14(b), for “retained direct EU” substitute “assimilated direct”.

(8) In regulation 23(4)(b), for “retained direct EU” substitute “assimilated direct”.

(9) In schedule 1—

(a) in paragraph (a)(iii), for “retained direct EU” substitute “assimilated direct”,

(b) in paragraph (b), for “retained direct EU” substitute “assimilated direct”.

The Air Quality Standards (Scotland) Regulations 2010

19. In regulation 2A(2)(h) of the Air Quality Standards (Scotland) Regulations 2010(c), for “retained EU” substitute “assimilated”.

The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010

20.—(1) The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010(d) are amended as follows.

(2) In regulation 2A(3)(b), for “retained EU” substitute “assimilated”.

(3) In regulation 10A(2)(b), for “retained EU” substitute “assimilated”.

(4) In schedule 2, in Part 2, paragraph 5(2), for “retained EU” substitute “assimilated”.

The Waste Management Licensing (Scotland) Regulations 2011

21.—(1) The Waste Management Licensing (Scotland) Regulations 2011(e) are amended as follows.

(2) In regulation 13(2)(b), for “retained EU” substitute “assimilated”.

(3) In regulation 17(8)(b), for “retained EU” substitute “assimilated”.

The Trade in Animals and Related Products (Scotland) Regulations 2012

22.—(1) The Trade in Animals and Related Products (Scotland) Regulations 2012(f) are amended as follows.

(a) S.S.I. 2009/446, relevantly amended by S.S.I. 2019/52.

(b) S.S.I. 2010/60, relevantly amended by S.I. 2011/1042 and S.S.I. 2019/273.

(c) S.S.I. 2010/204, relevantly amended by S.S.I. 2022/138.

(d) S.S.I. 2010/426, relevantly amended by S.S.I. 2017/112 and S.S.I. 2022/138.

(e) S.S.I. 2011/228, relevantly amended by S.S.I. 2019/26.

(f) S.S.I. 2012/177, relevantly amended by S.S.I. 2019/412, S.S.I. 2020/458 and S.S.I. 2021/138.

- (2) In regulation 13(1), for “retained direct EU” substitute “assimilated direct”.
- (3) In regulation 13(4)(c), for “retained direct EU” substitute “assimilated direct”.
- (4) In regulation 13(4)(e), for “retained direct EU” substitute “assimilated direct”.
- (5) In schedule 2, paragraph 10A(2)(c), for “retained direct minor EU” substitute “assimilated direct minor”.

The Pollution Prevention and Control (Scotland) Regulations 2012

23.—(1) The Pollution Prevention and Control (Scotland) Regulations 2012(a) are amended as follows.

- (2) In regulation 2(1), in the definition of “environmental quality standard”, for “retained EU” substitute “assimilated”.
- (3) In regulation 3A(1), in the definition of “Chapter IV Plant”, for “retained EU” substitute “assimilated”.
- (4) In regulation 29(3)(a), for “retained EU” substitute “assimilated”.
- (5) In regulation 29(3)(d), for “retained EU” substitute “assimilated”.
- (6) In regulation 29(3)(f), for “retained EU” substitute “assimilated”.
- (7) In regulation 30(2)(b), for “retained EU” substitute “assimilated”.
- (8) In regulation 36(4)(b)(ii), for “retained EU” substitute “assimilated”.
- (9) In regulation 63(3)(a), for “retained EU” substitute “assimilated”.
- (10) In schedule 1B, paragraph 1(7)(b), for “retained EU” substitute “assimilated”.
- (11) In schedule 4, paragraph 3(d), for “retained EU” substitute “assimilated”.

The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013

24.—(1) The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013(b) are amended as follows.

- (2) In regulation 2(1),
 - (a) after the definition of “artificial or heavily modified body of surface water”, insert—

“assimilated law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018”,
 - (b) omit the definition of “retained EU law”.
- (3) In regulation 3(1)(c), in both places it occurs, for “retained EU” substitute “assimilated”.
- (4) In regulation 10(b), for “retained EU” substitute “assimilated”.
- (5) In regulation 13(1)(a), for “retained EU” substitute “assimilated”.
- (6) In regulation 13(1)(j)(iv), for “retained EU” substitute “assimilated”.
- (7) In regulation 14(1)(f)(ii), for “retained EU” substitute “assimilated”.
- (8) In regulation 24(3), for “retained EU” substitute “assimilated”.

The Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013

25.—(1) The Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013(c) are amended as follows.

(a) S.S.I. 2012/360, relevantly amended by S.S.I. 2017/446 and S.S.I. 2019/26.
(b) S.S.I. 2013/323, relevantly amended by S.S.I. 2019/26.
(c) S.S.I. 2013/325, relevantly amended by S.S.I. 2022/138.

(2) In regulation 7(b), for “retained EU” substitute “assimilated”.

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013

26.—(1) The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013(a) are amended as follows.

(2) In regulation 2(5), for “retained EU” substitute “assimilated”.

(3) In regulation 14, for “retained EU” substitute “assimilated”.

(4) In regulation 17(2), for “retained EU” substitute “assimilated”.

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

27.—(1) The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015(b) are amended as follows.

(2) In regulation 22(4), in the definition of “relevant plan or programme”—

(a) in sub-paragraph (a), for “retained EU” substitute “assimilated”,

(b) in sub-paragraph (b), for “retained EU” substitute “assimilated”.

The Sea Fishing (EU Control Measures) (Scotland) Order 2015

28.—(1) The Sea Fishing (EU Control Measures) (Scotland) Order 2015(c) is amended as follows.

(2) In article 2(1), in the definition of “control measure”, for “retained EU” substitute “assimilated”.

(3) In article 2(1), in the definition of “third country control measure”, for “retained EU” substitute “assimilated”.

The Public Contracts (Scotland) Regulations 2015

29.—(1) The Public Contracts (Scotland) Regulations 2015(d) are amended as follows.

(2) In regulation 43—

(a) in paragraph (8), for “retained EU” substitute “assimilated”,

(b) in paragraph (10), for “retained EU” substitute “assimilated”.

The Utilities Contracts (Scotland) Regulations 2016

30.—(1) The Utilities Contracts (Scotland) Regulations 2016(e) are amended as follows.

(2) In regulation 58—

(a) in paragraph (8), for “retained EU” substitute “assimilated”,

(b) in paragraph (10), for “retained EU” substitute “assimilated”.

The Procurement (Scotland) Regulations 2016

31. In regulation 11(8) of the Procurement (Scotland) Regulations 2016(f), for “retained EU” substitute “assimilated”.

(a) S.S.I. 2013/266, relevantly amended by S.S.I. 2022/373.

(b) S.S.I. 2015/181, relevantly amended by S.S.I. 2019/80.

(c) S.S.I. 2015/320, relevantly amended by S.S.I. 2019/24.

(d) S.S.I. 2015/446, relevantly amended by S.S.I. 2020/468.

(e) S.S.I. 2016/49, relevantly amended by S.S.I. 2020/468.

(f) S.S.I. 2016/145, relevantly amended by S.S.I. 2020/468.

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

32.—(1) The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017(a) are amended as follows.

- (2) In regulation 30(2)(b), for “retained EU” substitute “assimilated”.
- (3) In regulation 60(6A)(h)(ii), for “retained EU” substitute “assimilated”.
- (4) In schedule 3, paragraph 2(c)(vi), for “retained EU” substitute “assimilated”.
- (5) In schedule 4, paragraph 8, for “retained EU” substitute “assimilated”.

The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017

33.—(1) The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017(b) are amended as follows.

- (2) In regulation 2(1), in the definition of “Union legislation”, for “retained EU” substitute “assimilated”.
- (3) In schedule 3, paragraph 6, for “retained EU” substitute “assimilated”.
- (4) In schedule 3, paragraph 9, for “retained EU” substitute “assimilated”.

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

34.—(1) The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017(c) are amended as follows.

- (2) In regulation 24(2)(b), for “retained EU” substitute “assimilated”.
- (3) In schedule 3, paragraph 2(c)(vi), for “retained EU” substitute “assimilated”.
- (4) In schedule 4, paragraph 6, for “retained EU” substitute “assimilated”.
- (5) In schedule 4, paragraph 9, for “retained EU” substitute “assimilated”.

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019

35.—(1) The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(d) are amended as follows.

- (2) In regulation 21(3), in the definition of “plant health derogation”, for “retained EU” substitute “assimilated”.
- (3) In regulation 37(1)(g), for “retained direct EU” substitute “assimilated direct”.
- (4) In regulation 42(2)(b), in both places it occurs, for “retained EU” substitute “assimilated”.
- (5) In schedule 3, in the heading, for “retained direct EU” substitute “assimilated”.

The Environmental Authorisations (Scotland) Regulations 2018

36.—(1) The Environmental Authorisations (Scotland) Regulations 2018(e) are amended as follows.

- (2) In regulation 2(1)—
 - (a) before the definition of “authorise”, insert—

(a) S.S.I. 2017/102, relevantly amended by S.S.I. 2019/80.
(b) S.S.I. 2017/113, relevantly amended by S.S.I. 2019/130.
(c) S.S.I. 2017/115, relevantly amended by S.S.I. 2019/55.
(d) S.S.I. 2019/421, relevantly amended by S.S.I. 2020/466.
(e) S.S.I. 2018/219, relevantly amended by S.S.I. 2019/26.

““assimilated law” has the same meaning as in section 6(7) of the European Union (Withdrawal) Act 2018”,

(b) omit the definition of “retained EU law”.

(3) In regulation 37(2), for “retained EU” substitute “assimilated”.

The Foods for Specific Groups (Infant Formula and Follow-on Formula) (Scotland) Regulations 2020

37. In paragraph 11(3)(a) of schedule 4 of the Foods for Specific Groups (Infant Formula and Follow-on Formula) (Scotland) Regulations 2020(a), for “Retained EU” substitute “assimilated”.

The Social Security Co-ordination (EU Exit) (Scotland) (Amendments etc.) Regulations 2020

38.—(1) The Social Security Co-ordination (EU Exit) (Scotland) (Amendments etc.) Regulations 2020(b) are amended as follows.

(2) In regulation 6(1), for “RDEUL” substitute “assimilated direct legislation”.

(3) In regulation 6(2), for “RDEUL” substitute “assimilated direct legislation”.

(4) In regulation 6(4)—

(a) for “RDEUL” substitute “assimilated direct legislation”,

(b) for “retained direct EU” substitute “assimilated direct”.

(5) In the heading before regulation 7, for “retained direct EU” substitute “assimilated direct”.

(6) In regulation 7, for “retained direct EU” substitute “assimilated direct”.

The Education (Fees) (Scotland) Regulations 2022

39. In regulation 2(1) of the Education (Fees) (Scotland) Regulations 2022(c), in the definition of “EEA agreement”, for “retained direct EU” substitute “assimilated direct”.

The Student Support (Scotland) Regulations 2022

40. In regulation 2(1) of the Student Support (Scotland) Regulations 2022(d), in the definition of “EEA agreement”, for “retained direct EU” substitute “assimilated direct”.

The Feed Additives (Authorisations) (Scotland) Regulations 2022

41.—(1) The Feed Additives (Authorisations) (Scotland) Regulations 2022(e) are amended as follows.

(2) In regulation 9(1), for “retained direct EU” substitute “assimilated direct”.

(3) In regulation 11, for “retained direct EU” substitute “assimilated direct”.

(4) In the table set out in schedule 11, in the entry for “Analytical methods”, omit “retained”.

(5) In schedule 12, in the heading, for “retained direct” substitute “assimilated direct”.

(a) S.S.I. 2020/6, relevantly amended by S.S.I. 2021/123.

(b) S.S.I. 2020/399.

(c) S.S.I. 2022/156.

(d) S.S.I. 2022/157.

(e) S.S.I. 2022/288.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to domestic legislation in consequence of the renaming of retained EU law (and related terms) as assimilated law (and related terms) as set out in section 5(1) of the Retained EU Law (Revocation and Reform) Act 2023.

POLICY NOTE

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

SSI 2023/XXX

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
October 2023