

PARLIAMENTARY BUREAU

LEGISLATIVE CONSENT MEMORANDUM - RETAINED EU LAW (REVOCATION AND REFORM) BILL (UK LEGISLATION)

Introduction

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls.

Retained EU Law (Revocation and Reform) Bill

2. The Retained EU Law (Revocation and Reform) Bill was introduced in the House of Commons on 22 September 2022.

3. An LCM was lodged by Angus Robertson MSP, Cabinet Secretary for the Constitution, Europe and External Affairs on 8 November 2022.

4. The Bill will:

- a. Repeal or assimilate retained EU law (REUL), within a defined scope, by the end of 2023
- b. Repeal the principle of supremacy of EU law from UK law by the end of 2023;
- c. Facilitate domestic courts departing from retained case law;
- d. Provide a mechanism for UK government and devolved administration law officers to intervene in cases regarding retained case law, or refer them to an appeal court, where relevant;
- e. Repeal directly effective EU law rights and obligations in UK law by the end of 2023;
- f. Abolish general principles of EU law in UK law by the end of 2023;
- g. Establish a new priority rule requiring retained direct EU legislation (RDEUL) to be interpreted and applied consistently with domestic legislation;
- h. Downgrade the status of RDEUL for the purpose of amending it more easily;
- i. Create a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or amended to reduce burdens.

5. The LCM indicates that the Scottish Government does not intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill. It states this is due to "its deregulatory agenda; its undermining of devolution; and the risk posed by the sunset provision to automatically repeal this body of law unless Ministers take legislative action and the date of sunset which will disrupt Scottish Government work, including the legislative programme."

Designation of lead committee

6. The Bill falls within the responsibilities of the Cabinet Secretary for the Constitution, External Affairs and Culture as it relates to the UK's withdrawal from the European Union. The remit of the Constitution, Europe, External Affairs and Culture Committee includes to consider and report on "the Scottish Government's EU and external affairs policy", "policy in relation to the UK's exit from the EU" and "any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture". The remit of the Constitution, Europe, External Affairs and Culture Committee is therefore engaged.

7. No other committee remit appears to be engaged by the relevant provisions of the Bill directly. However, it is possible that the powers in the Bill could be used in such a way as to impact on all devolved policy areas that were formerly EU competences. Other committees may therefore wish to explore this potential impact. The designation of the Constitution, Europe, External Affairs and Culture Committee as lead would not preclude any other committee from exploring the potential for the Bill to impact on its remit.

8. The LCM will also be considered by the Delegated Powers and Law Reform Committee in regard to provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

Recommendation

9. The Bureau is invited to agree to refer, under Rule 9B.3.5, the LCM on the Retained EU Law (Revocation and Reform) Bill to the Constitution, Europe, External Affairs and Culture Committee to consider and report on it.

Parliamentary Business Team
November 2022