



Department for
Business, Energy
& Industrial Strategy

Rt Hon Grant Shapps MP
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Stuart McMillan M.S.P
Convener of the Delegated
Powers and Law Reform Committee
Scottish Government
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By email

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Dear Stuart,

RE: Retained EU Law (Revocation and Reform) Bill

Thank you for your letter of 30 November regarding the Retained EU Law (Revocation and Reform) Bill ("REUL Bill"). This letter addresses the questions asked by the Committee in relation to **clauses 1, 2, 8, 12, 13, 15, 16 and 19**.

1. In relation to clauses 1, 2, 8, 12, 13 and 15:

- ***why the UK Government considers it appropriate that the power is exercisable by UK Ministers in relation to devolved matters;***
- ***why the UK Government considers it appropriate that when the power is exercised by UK Ministers in relation to devolved matters, there is no requirement to obtain the consent of the Scottish Ministers; and whether the UK Government intends to amend the Bill to either ensure the power is conferred solely on the Scottish Ministers in relation to Scotland, or to require UK Ministers, when exercising the power in relation to devolved matters, to obtain the consent of the Scottish Ministers.***

The UK Government takes into account a variety of factors when seeking delegated powers in devolved areas. Each Bill is drafted according to its specific policy intent and the most appropriate way to affect those policy changes.

Powers for the UK Government to make statutory instruments in devolved areas are not new and have been used across a wide range of policy areas since the advent of devolution. It is often appropriate for the UK Government to amend existing or introduce new regulations UK-wide, including in devolved areas. The UK Government would generally take this approach where the devolved governments agree, as it is more efficient and ensures greater coherence across the UK as well as making it easier for stakeholders.

The majority of the powers have been conferred concurrently on the devolved governments. This is in line with previous EU Exit related legislation and will give the devolved governments greater flexibility to decide how they regulate those areas currently governed by retained EU law in the future.

The concurrent nature of the powers is not intended to influence decision-making on devolved legislation. Rather, we assess that this would serve to reduce the additional resource pressure that the devolved governments may experience, by enabling the UK Government to act on a devolved government's behalf where they have confirmed they do not intend to take a different position to the UK Government. This will ensure that the most efficient and appropriate approach to REUL reform can be taken in every situation as well as providing greater legal certainty UK-wide.

We note the Committee's position in relation to the requirement for Scottish Ministers' consent for the use of delegated powers when exercised by UK Ministers in areas of devolved competence. We remain committed to continuing discussions with the devolved governments throughout Bill passage over the use of concurrent powers in the Bill to ensure they work for all parts of the UK.

2. In relation to clauses 1, 8, 12, 13, 15, and 16, whether the UK Government could provide examples of circumstances in which it anticipates that the power would be exercised jointly by UK and Scottish Ministers, considering that the "deficiency-correcting" power in the EU (Withdrawal) Act 2018, which is also capable of being exercised jointly, has never been used in that way?

We recognise that there may be policy areas where there is an agreed approach between the UK Government and Scottish Government, as well as other devolved governments. In such instances, a single joint exercise of the power would reduce the legislative time and ensure consistency and coherence across the relevant parts of the UK. Given the scale of the REUL reform programme and likely number of SIs, we assess that it is appropriate to have the option of joint exercise where the same effect is desired across all the relevant parts of the UK.

3. In relation to clause 2, what the procedure would be for the Scottish Ministers to request that the UK Minister exercises this power so as to extend the sunset in relation to specified devolved legislation?

UK Ministers will be able to legislate to extend pieces or descriptions of retained EU law in areas of devolved competence on behalf of Scottish Ministers. Policy officials are still developing the process for exercising the extension power and we remain

committed to working collaboratively with devolved government counterparts as we develop this process in order to ensure that it runs smoothly and efficiently and the power works for all parts of the UK.

4. *In relation to clause 8, which are the areas where the supremacy of REUL currently applies where the UK Government wishes to reverse that position?*

The cross-Government REUL Reform Programme is underway to review all retained EU law on the statute book. Departments and the devolved governments will make decisions on which provisions in the Bill to exercise to ensure their policy goals, including through exercising the compatibility power in clause 8 to maintain the legislative hierarchy of specified instruments.

5. *In relation to clause 12, the Committee seeks further explanation regarding where the outer limits of what constitutes a “restatement” lie?*

The power under clause 12 is limited to “restatements” of retained EU law. The power allows for a limited number of authorised changes, limited to resolving ambiguities or doubts, or to provide greater clarity to the law. Therefore, while different words or concepts may be used to bring greater clarity to the law or to use more traditional domestic drafting language, the policy effect of any restatement must be substantially the same as the policy effect of the retained EU law being restated.

It also allows for the codification of the effects of retained case law and EU-derived principles of interpretation where necessary to maintain the existing policy effect. Notably the power does not allow for the principle of supremacy or a retained general principle of EU law to be resurrected after the sunset date.

6. *In relation to clause 15, how the UK Government envisages this power will be used in practice, given the high level of Ministerial discretion afforded by the use of terms such as “appropriate”, “correspond” and “similar”?*

The REUL Dashboard has identified over 2,500 pieces of retained EU law across 16 departments. Therefore, it is necessary to have a power capable of acting on a wide range of REUL covering a variety of different policy areas.

The powers to revoke or replace are important, cross-cutting enablers of retained EU law reform in the Bill. The powers will provide the Government with the opportunity to amend retained EU law and will be limited to those reforms that do not add to the overall regulatory burden. Our intention is for these powers to be used to revoke any retained EU law that is not fit for purpose and to replace it with laws that are more tailored to the UK and reflect our new regulatory freedoms.

7. *In relation to clause 16, why, given that the power is so open-ended and affords Ministers such broad discretion, UK Government considers delegated legislation (rather than primary) is appropriate?*

The power to update is intended to facilitate technical updates rather than provide for fundamental policy changes. This power can only be used on secondary retained EU

law or on secondary “assimilated law” and provisions made under clauses 12, 13 and 15 in the REUL Bill.

This power is an ongoing power which is not intended to bring about significant policy change. It is instead designed to ensure that the UK keeps pace with advances in science and technology over time. This power has been designed to make it easier for Ministers to amend relevant legislation to take account of developments in scientific understanding or changes in technology without the need for sector-specific powers or primary legislation.

8. In relation to clause 19:

- ***why the power is not available to Scottish Ministers to exercise within devolved competence; and***
- ***why the UK Government considers it appropriate that the power is exercisable by UK Ministers in relation to devolved matters, and so exercisable without the consent of, or consulting, the Scottish Ministers.***

The power under clause 19 is a standard consequential power. This is to ensure the UK statute book continues to function effectively as a result of the provisions in the Bill. This power is not conferred on the devolved governments as this power is normally exercised by UK Ministers. We therefore do not consider it appropriate to extend this power to devolved governments. However, the Scottish Ministers will have the power to make consequential provision as a result of exercising the powers conferred on the devolved governments.

In relation to consent, as outlined in our response to question 1, the UK Government takes into account a variety of factors when seeking delegated powers in devolved areas. Each bill is drafted according to its specific policy intent and the most appropriate way to affect those policy changes.

9. Finally, what steps the UK Government is taking to mitigate against the risk of unintended or undesirable regulatory gaps emerging due to the blanket application of the sunset provision?

A sunset will accelerate reform and regulatory change by a specific date in the near future. This will incentivise genuine reform of retained EU laws in a way that works best for the UK. The Department for Business, Energy and Industrial Strategy will be working closely with other government departments to ensure appropriate actions are taken by the sunset date.

In order to mitigate risk in the process of reforming and preserving retained EU law, the UK Government has been cataloguing where retained EU law sits across government. This information has been collated as part of the cross-Government substance review of retained EU law into a dashboard that was published on 22 June 2022. We have also been working closely with The National Archives in developing the dashboard and asked them to search their archive for retained EU law that may have been orphaned by Machinery of Government changes.

In addition to this, departments continue to engage with their devolved government counterparts to determine the overall catalogue of retained EU law in their areas and how each piece of retained EU law relates to devolved governments. This work will continue across all departments to ensure no mistakes are made and retained EU law is preserved where needed by the sunset date. Changes to the overall retained EU law catalogue will be published quarterly via the REUL dashboard.

Alongside the work on the catalogue of retained EU law, the delegated powers in the Bill provide the tools to ensure there are no unintended gaps or legal vacuums. The preservation power will enable UK Ministers and devolved authorities to keep specific pieces of legislation that would otherwise be sunset, where the legislation meets the desired policy effects without having to fully restate or otherwise amend the legislation. The Bill also includes an extension mechanism for the sunset of specified pieces of retained EU law until 2026. Should it be required, this will provide additional time where necessary to implement more complex reforms to specific pieces of retained EU law, including any necessary legislation.

Additionally, the powers to restate will enable departments to restate or codify the effects of retained case law and other interpretive effects into legislation if they consider it appropriate to do so. The power to restate under clause 13 will be capable of acting on assimilated law after the sunset up to 23 June 2026 and will allow UK Ministers and devolved governments to reproduce the effects of things such as supremacy, general principles, and directly effective rights that will be repealed on 31 December 2023 and will not apply to assimilated law.

I hope this information addresses the questions raised by the Committee.

Yours sincerely,

RT HON GRANT SHAPPS MP
Secretary of State for Business, Energy & Industrial Strategy