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Net Zero, Energy and Transport Committee
Scottish Parliament
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30 January 2024

Dear Convener,

THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023 (REVOCATION) 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 then 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, we are yet to have sight of the final SI and it 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.

I am writing in similar terms to the Convener of the Rural Affairs and Islands Committee and copying both letters to the Convener of the Delegated Powers and Law Reform Committee.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

I look forward to hearing from you by 8 March 2024.

Yours sincerely

GILLIAN MARTIN

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

XC/001/R - The Retained EU Law (Revocation and Reform) Act 2023 (Revocation) Regulations 2024

Is the notification Type 1 or Type 2

Type 1.

A brief overview of the SI

This SI is being made in exercise of the powers conferred by Section 14(1) of the Retained EU Law (Revocation and Reform) Act 2023, and will revoke obsolete secondary assimilated law in the policy areas of food, the environment and rural affairs. It will make provision extending to all of the United Kingdom.

This SI is not relevant to the Scottish Government's policy to maintain alignment with the EU, because it revokes legislation that the Scottish Government is satisfied is already obsolete.

This SI is subject to the proposed negative procedure in paragraph 6 of schedule 5 of the Retained EU Law (Revocation and Reform) Act 2023, and is due to be laid in draft on 11 March 2024 and to come into force on the day after the day on which it is made.

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

This SI will only make one substantive provision, which is to revoke the 73 instruments listed in the Schedule. These instruments are a mix of instruments which are wholly reserved, instruments which extend only to parts of the United Kingdom other than Scotland, and instruments which apply to the United Kingdom or Great Britain and contain provision extending to Scotland and making provision within devolved competence. They cover a range of different policy areas within the EFRA portfolio.

Insofar as these provisions extend to Scotland, and make provision within devolved competence, the consent of Scottish Ministers is sought for their inclusion in the instrument.

Summary of the proposals

Section 14(1) of the Retained EU Law (Revocation and Reform) Act 2023 enables both UK and devolved ministers to bring forward secondary legislation in order to revoke secondary assimilated law (which was formerly known as “retained EU law”). Defra have been considering the legislation under their purview in light of this, and have identified 73 instruments which are now considered to be entirely obsolete. This SI is therefore intended to revoke these instruments in order to tidy up the statute book. The instruments are considered to be obsolete for one or more reasons, including:

- The instruments applied in relation to a specific time period which has now ended; and/or
- The instruments were only relevant to an EU institution, or to the UK while a member state, and are no longer relevant to the UK.

A list of these instruments is included at Annex A.

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

The list of instruments being revoked by this SI spans many different policy areas, some of which are covered by a common framework and some of which are not. The central coordination of this SI has therefore not been connected to a particular common framework, but, where relevant, information about the SI has been shared through common framework structures.

Summary of stakeholder engagement/consultation

No consultation or stakeholder engagement has been undertaken on this SI. This is because the instruments it is intended to revoke are considered to be obsolete, and therefore it is not expected to have any significant impact on stakeholders.

A note of other impact assessments, (if available)

No impact assessments have been carried out for this SI because, as above, the instruments it is intended to revoke are considered to be obsolete, and therefore it is not expected to have any significant impact on stakeholders.

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

The Scottish Government fundamentally disagreed with the Retained EU Law (Revocation and Reform) Act 2023 due to its lack of respect for devolution and its focus on deregulation and divergence from the EU. Although this SI is made under

powers in that Act, Scottish Ministers are proposing to give their consent to the devolved provisions within it. This is because the only effect of the SI will be to revoke the instruments listed in the Schedule, all of which are considered to be obsolete. Therefore, the SI will not lead to either deregulation or divergence with the EU. It is unlikely to have any significant impact on Scottish interests, and will simply serve to tidy up the statute book. Although this is not something that the Scottish Ministers would consider to be a priority at this time, it is not something that they object to, and therefore they propose to consent to the SI.

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

11 March 2024

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

Not applicable.

Information about any time dependency associated with the proposal

Not applicable.

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

Not applicable.

Annex A – List of instruments included in the SI

	Title of instrument
1	The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004
2	The Environmental Permitting (England and Wales) Regulations 2007
3	The Environmental Permitting (England and Wales) (Amendment) Regulations 2009
4	The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009
5	The Environmental Permitting (England and Wales) Regulations 2010
6	The Environmental Permitting (England and Wales) (Amendment) Regulations 2011
7	The Landfill (Maximum Landfill Amount) Regulations 2011
8	The Environmental Permitting (England and Wales) (Amendment) Regulations 2012
9	The Veterinary Surgeons' Qualifications (Recognition) (Switzerland and Croatia) Regulations 2013
10	The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2014
11	The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2015
12	The Environmental Permitting (England and Wales) (Amendment) Regulations 2015
13	The Large Combustion Plants (Transitional National Plan) Regulations 2015
14	COMMISSION DECISION of 5 February 1991 making financial provision for a project relating to the inactivation of the agents of scrapie and bovine spongiform encephalopathy (91/89/EEC)
15	93/98/EEC: Council Decision of 1 February 1993 on the conclusion, on behalf of the Community, of the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention)
16	COMMISSION DECISION of 24 June 1996 approving the plan for the control and eradication of bovine spongiform encephalopathy in the United Kingdom (96/385/EC)
17	COMMISSION DECISION of 16 December 1997 amending Decision 96/385/EC approving the plan for the control and eradication of bovine spongiform encephalopathy in the United Kingdom (97/870/EC)

18	Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste
19	COMMISSION REGULATION (EC) No 2680/1999 of 17 December 1999 approving a system of identification for bulls intended for cultural and sporting events
20	Commission Regulation (EC) No 1208/2000 of 8 June 2000 amending Council Regulation (EC) No 1420/1999 establishing common rules and procedures to apply to shipments of certain types of waste from the European Community to Bulgaria and Nigeria, and Regulation (EC) No 1547/1999 concerning the control procedures to apply to shipments of certain types of waste to Bulgaria and Nigeria (Text with EEA relevance)
21	Commission Decision of 30 October 2000 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (<i>Fragaria L.</i>), intended for planting, other than seeds, originating in the Republic of Chile (notified under document number C(2000) 3141)
22	Commission Regulation (EC) No 2630/2000 of 30 November 2000 amending Council Regulation (EC) No 1420/1999 establishing common rules and procedures to apply to shipments of certain types of waste from the European Community to Bahrain, Haiti, Honduras, Libya, Namibia, Qatar, Uzbekistan and the Vatican City (Text with EEA relevance)
23	Commission Decision of 12 December 2000 authorising the Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of <i>Vitis L.</i> , other than fruits, originating in Switzerland (notified under document number C(2000) 3743)
24	Commission Regulation (EC) No 77/2001 of 5 January 2001 amending the Annexes to Regulation (EC) No 1547/1999 and Council Regulation (EC) No 1420/1999 as regards shipments of certain types of waste to Albania, Brazil, Bulgaria, Burundi, Jamaica, Morocco, Nigeria, Peru, Romania, Tunisia and Zimbabwe (Text with EEA relevance)
25	Commission Decision of 18 January 2001 authorising Member States temporarily to provide for derogations of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in Cuba (notified under document number C(2001) 121)
26	Commission Decision of 9 March 2001 authorising the Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in New Zealand (notified under document number C(2001) 685)
27	Commission Decision of 29 May 2001 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect

	of plants of strawberry (<i>Fragaria L.</i>), intended for planting, other than seeds, originating in Argentina (notified under document number C(2001) 1485)
28	Commission Regulation (EC) No 1800/2001 of 13 September 2001 amending Council Regulation (EC) No 1420/1999 and Regulation (EC) No 1547/1999 as regards shipments of certain types of waste to Guinea (Text with EEA relevance)
29	Commission Regulation (EC) No 2243/2001 of 16 November 2001 amending Council Regulation (EC) No 1420/1999 and Commission Regulation (EC) No 1547/1999 as regards shipments of certain types of waste to Cameroon, Paraguay and Singapore (Text with EEA relevance)
30	Commission Decision of 7 December 2001 approving the schemes submitted by the United Kingdom and Ireland for the withdrawal of all fish in farms infected with infectious salmon anaemia (ISA) virus and repealing Decision 2001/494/EC
31	Commission Decision of 29 April 2002 authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (<i>Fragaria L.</i>), intended for planting, other than seeds, originating in the Republic of Chile (notified under document number C(2002) 1553)
32	Commission Regulation (EC) No 997/2002 of 11 June 2002 establishing detailed rules for the implementation of the provisions relating to the allocation of a Community financial contribution for Member States in order to strengthen inspection infrastructures for plant health checks on plants and plant products coming from third countries
33	Commission Decision of 26 June 2002 authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of <i>Chamaecyparis Spach</i> , <i>Juniperus L.</i> and <i>Pinus L.</i> , originating in the Republic of Korea (notified under document number C(2002) 2251) (2002/499/EC)
34	Commission Decision of 28 January 2003 authorising Member States to provide for temporary derogations from Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in certain provinces of Cuba (notified under document number C(2003) 338) (2003/63/EC)
35	Commission Decision of 9 April 2003 authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (<i>Fragaria L.</i>), intended for planting, other than seeds, originating in the Republic of South Africa (notified under document number C(2003) 1185) (2003/250/EC)
36	Council Regulation (EC) No 882/2003 of 19 May 2003 establishing a tuna tracking and verification system

37	COMMISSION DECISION of 10 October 2003 granting a temporary derogation from Directive 82/894/EEC as regards the frequency of notification of primary outbreaks of bovine spongiform encephalopathy (2003/724/EC)
38	Commission Regulation (EC) No 2118/2003 of 2 December 2003 amending Council Regulation (EC) No 1420/1999 and Regulation (EC) No 1547/1999 as regards shipments of certain types of waste to Tanzania and to Serbia and Montenegro (Text with EEA relevance)
39	Commission Decision of 28 January 2004 authorising Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of <i>Vitis L.</i> , other than fruits, originating in Switzerland (notified under document number C(2004) 122)
40	COMMISSION DECISION of 29 January 2004 on measures to assess the residual BSE risk in products derived from bovine animals/on a Community financial contribution for measures to assess the residual BSE risk in products derived from bovine animals (2004/110/EC)
41	COMMISSION DECISION of 14 October 2004 on the list of programmes for the eradication and the monitoring of certain TSEs qualifying for a financial contribution from the Community in 2005 (2004/696/EC)
42	Commission Regulation (EC) No 105/2005 of 17 November 2004 amending Council Regulation (EC) No 1420/1999 and Regulation (EC) No 1547/1999 as regards shipments of certain types of waste to China and Saudi Arabia. Text with EEA relevance
43	Commission Decision of 29 November 2004 authorising a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of the importation of soil originating in Australia (notified under document number C(2004) 4449) (2004/827/EC)
44	Commission Decision of 29 June 2005 providing for a derogation from certain provisions of Council Directive 2000/29/EC in respect of plants of <i>Vitis L.</i> , other than fruits, originating in Croatia (notified under document number C(2005) 1920) (2005/477/EC)
45	Commission Decision of 11 December 2006 providing for a derogation from certain provisions of Council Directive 2000/29/EC in respect of plants of <i>Vitis L.</i> , other than fruits, originating in Croatia or the former Yugoslav Republic of Macedonia (notified under document number C(2006) 6365) (2006/916/EC)
46	Commission Regulation (EC) No 737/2008 of 28 July 2008 designating the Community reference laboratories for crustacean diseases, rabies and bovine tuberculosis, laying down additional responsibilities and tasks for the Community reference laboratories for rabies and bovine tuberculosis and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council

47	2010/438/EU: Commission Decision of 10 August 2010 extending the derogation period for Bulgaria to raise objections to shipments of certain waste to Bulgaria for recovery under Regulation (EC) No 1013/2006 of the European Parliament and of the Council (notified under document C(2010) 5434) Text with EEA relevance
48	Council Decision of 8 November 2010 on the approval, on behalf of the European Union, of the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (2010/717/EU)
49	2011/854/EU: Commission Implementing Decision of 15 December 2011 extending the derogation period for Romania to raise objections to shipments of certain waste to Romania for recovery under Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste (notified under document C(2011) 9191) Text with EEA relevance
50	Commission Implementing Decision of 24 April 2012 recognising Serbia as being free from <i>Clavibacter michiganensis</i> ssp. <i>Sepedonicus</i> (Spieckerman and Kotthoff) Davis et al. (notified under document C(2012) 2524) (2012/219/EU)
51	Council Decision (EU) 2017/938 of 23 September 2013 on the signing, on behalf of the European Union, of the Minamata Convention on Mercury
52	Commission Decision 26 November 2013 on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing
53	Commission Implementing Decision of 31 October 2014 determining, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, reference values for the period 1 January 2015 to 31 December 2017 for each producer or importer who has reported placing on the market hydrofluorocarbons under Regulation (EC) No 842/2006 of the European Parliament and of the Council (notified under document C(2014) 7920)
54	Council Implementing Decision (EU) 2015/200 of 26 January 2015 amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing as regards Sri Lanka
55	Commission Implementing Decision (EU) 2015/1084 of 18 February 2015 approving on behalf of the European Union certain amendments to Annexes II, V, VII and VIII to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (notified under document C(2015) 797)
56	Commission Implementing Decision (EU) 2016/1102 of 5 July 2016 approving the national programmes to improve the production and marketing of apiculture products submitted by the Member States under Regulation (EU) No

	1308/2013 of the European Parliament and of the Council (notified under document C(2016) 4133)
57	Council Regulation (EU) 2016/1252 of 28 July 2016 amending Regulations (EU) 2016/72 and (EU) 2015/2072 as regards certain fishing opportunities
58	Council Regulation (EU) 2016/2285 of 12 December 2016 fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks and amending Council Regulation (EU) 2016/72
59	COUNCIL REGULATION (EU) 2017/135 of 23 January 2017 amending Regulation (EU) 2016/1903 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea
60	COMMISSION DELEGATED REGULATION (EU) 2017/1181 of 2 March 2017 amending Delegated Regulation (EU) 2017/117 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778
61	Council Decision (EU) 2017/939 of 11 May 2017 on the conclusion on behalf of the European Union of the Minamata Convention on Mercury
62	Council Decision (EU) 2017/1138 of 19 June 2017 on the position to be taken on behalf of the European Union at the first meeting of the Conference of the Parties of the Minamata Convention on Mercury as regards the adoption of the required content of the certification referred to in Article 3(12) of the Convention and of the guidance referred to in Article 8(8) and (9) of the Convention
63	Council Regulation (EU) 2017/1398 of 25 July 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities
64	Commission Regulation (EU) 2018/455 of 16 March 2018 laying down additional responsibilities and tasks for the European Union reference laboratory for fish and crustacean diseases and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council
65	Council Decision (EU) 2018/1730 of 12 November 2018 on the position to be taken on behalf of the European Union at the second meeting of the Conference of the Parties to the Minamata Convention on Mercury with regard to the adoption of guidelines on the environmentally sound interim storage of mercury, other than waste mercury, referred to in Article 10(2) and (3) of the Convention
66	Commission Implementing Regulation (EU) 2018/1992 of 14 December 2018 amending Implementing Regulation (EU) No 1191/2014 as regards the reporting of data referred to in Article 19 of Regulation (EU) No 517/2014 in respect of hydrofluorocarbons placed on the market in the United Kingdom and in the Union of 27 Member States
67	COUNCIL REGULATION (EU) 2019/529 of 28 March 2019 amending Regulation (EU) 2019/124 as regards certain fishing opportunities.

68	Council Decision (EU) 2019/638 of 15 April 2019 on the position to be taken on behalf of the European Union at the fourteenth meeting of the Conference of the Parties with regard to certain amendments to Annexes II, VIII and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
69	Council Decision (EU) 2019/2119 of 21 November 2019 on the position to be taken, on behalf of the European Union, at the third meeting of the Conference of the Parties to the Minamata Convention on Mercury, as regards the adoption of a Decision establishing thresholds for mercury waste, as referred to in Article 11(2) of that Convention
70	Council Decision (EU) 2019/2135 of 21 November 2019 on the position to be taken, on behalf of the European Union, at the third meeting of the Conference of the Parties to the Minamata Convention on Mercury, as regards the adoption of a Decision on the phasing-out of dental amalgam and amending Annex A to that Convention
71	Commission Implementing Decision (EU) 2020/758 of 4 June 2020 on measures to be taken by the United Kingdom concerning <i>Xylella fastidiosa</i> and <i>Ceratocystis platani</i>
72	Commission Implementing Regulation (EU) 2020/918 of 1 July 2020 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in Canada
73	Commission Implementing Regulation (EU) 2020/1002 of 9 July 2020 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for introduction into the Union of ash wood originating or processed in the United States

SI NOTIFICATION: SUMMARY

Title of Instrument XC/001/R - The Retained EU Law (Revocation and Reform) Act 2023 (Revocation) Regulations 2024
Proposed laying date at Westminster 11 March 2024
Date by which Committee has been asked to respond 8 March 2024
Power(s) under which SI is to be made Section 14(1) of the Retained EU Law (Revocation and Reform) Act 2023
Categorisation under SI Protocol Type 1
Purpose Section 14(1) of the Retained EU Law (Revocation and Reform) Act 2023 enables both UK and devolved ministers to bring forward secondary legislation in order to revoke secondary assimilated law (which was formerly known as “retained EU law”). Defra have been considering the legislation under their purview in light of this, and have identified a number of instruments which are now considered to be entirely obsolete. This SI is therefore intended to revoke these instruments in order to tidy up the statute book.
Other information Not applicable
SG Policy contact: Joanna Storer (email: [REDACTED])