

Retained EU Law (Revocation and Reform) Bill

Supplementary Delegated Powers Memorandum

Introduction

1. This Memorandum has been prepared by the Department for Business and Trade (“the Department”) to assist with scrutiny of the Retained EU Law (Revocation and Reform) Bill (“the Bill”).
2. This Memorandum describes powers in the Bill which have been modified or removed as result of amendments proposed at Report stage. This Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.
3. There are four delegated powers within the scope of these changes that are affected. The preservation power that is contained within Clause 2 of the Bill as currently drafted, the extension power that is contained within Clause 3 of the Bill as currently drafted, the power to make consequential provision in Clause 20 of the Bill as currently drafted, and the power to make transitional and savings provision in Clause 23 of the Bill as currently drafted.

Amendment to Clause 2

Context and Purpose

4. The preservation power in existing Clause 2 is being changed to reflect the revocation schedule approach that is now being taken in the Bill. The modified preservation power will be included in an amended Clause 1 following this change. This will allow relevant national authorities to remove retained EU law from the revocation schedule.
5. This power is to ensure that if a need is identified for an instrument, or particular provisions, of retained EU law on the revocation schedule to be kept, it can be. This power will also allow for the Devolved Administrations to decide that revocation should not apply to any specified retained EU law, so far as it falls within devolved competence, ensuring that the devolution settlements are fully respected.

Justification for the power

6. The Government believes that this is a legitimate usage of a delegated power for it is a necessary safeguard, and it will ensure that a further Parliamentary procedure and Parliamentary agreement is needed before revocation of legislation specified in the schedule does not apply.
7. This power guards against any potential errors subsequently discovered in the schedule, or a late identification of why legislation may be necessary, ensuring that Government and Parliament can take a proportionate and timely response ahead of the revocation date at the end of the year. It also allows for the Devolved Administrations to take their own approach on UK wide legislation that falls within their competence, without dominating the Devolved legislative agenda.

Justification for the procedure

8. The power can only be exercised via the affirmative procedure, and the power expires on the 31st October 2023.
9. The affirmative procedure is appropriate, as it still ensures that Parliament has an active decision on what retained EU law is not to revoke despite its specification in the schedule as agreed by Parliament in the Bill. The Government must receive the active support of Parliament before any retained EU law listed in the schedule is not revoked.
10. The expiry date for the power - 31 October 2023 - is also appropriate as it ensures no further changes are made to what is revoked under the revocation schedule well in advance of the revocation date, ensuring legal certainty and clarity for business and individuals in good time. Combined, these make this a narrow, time limited power which provides the opportunity to ensure that only appropriate revocations are made and that what has been revoked is legally clear and certain.

Removal of Clause 3

11. The extension power in Clause 3 is being removed from the Bill to reflect the introduction of a revocation schedule, under which only specified retained EU law will be revoked. This is due to there no longer being a default sunset for an unspecified category of REUL, removing the need to extend a sunset date if an active decision had not yet been taken in relation to a particular instrument or description of legislation. All revocation decisions related to Clause 1 now occur on the face of the Bill.

Extension of powers in clauses 20 and 23 or the devolved authorities

12. The powers to make consequential provision (clause 20) and to make transitional, transitory and savings provisions (clause 23) will be extended to the devolved authorities to ensure that they are able to make such provision as appropriate in connection with the Bill. This removes the need for the UK government to make such provisions on behalf of the devolved authorities. The devolved authorities have requested the extension of these powers to them, and given the amount of consequential and transitional provisions that are likely to be required in consequence of the Bill, these powers have been exceptionally extended to them so that the necessary changes to the statute book can be made as efficiently and quickly as possible. The exercise of these powers by the devolved authorities is subject to corresponding scrutiny procedures as their exercise by a Minister of the Crown.