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Simon Hoare MP
Rt Hon Member for North Dorset
Chair, Northern Ireland Affairs Committee
House of Commons
London
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By email

14 December 2022

Dear Simon,

RE: The Retained EU Law (Revocation and Reform) Bill 2022 and implications for Northern Ireland

Thank you for your letter of 29 November regarding the Retained EU Law Bill ("REUL Bill"). We recognise the unique circumstances that Northern Ireland is currently facing and the issues which may arise in the continued absence of a functioning Executive. This letter addresses the questions raised by the Committee in relation to how the REUL Bill relates to Northern Ireland, and the interactions with the Northern Ireland Protocol (NIP) in particular.

a) On Second Reading, the Minister committed the Government to "take the necessary action to safeguard the substance of any retained EU law and legal effects required to operate international obligations within domestic law." Such obligations include those stemming from the EU/UK Withdrawal Agreement and Protocol on Ireland/Northern Ireland. Will amendments be made to the Bill to reflect this commitment in particular?

As committed to in the House of Commons, the Government will ensure that all necessary legislation is in place by the sunset date to provide for the continued implementation of our international obligations, including the Withdrawal Agreement (WA) and the NIP and the Belfast Good Friday Agreement (BGFA).

It is also important to note that the changes made by clauses 4, 5 and 7 of the Bill will be subject to sections 7A to 7C of European Union (Withdrawal) Act (EUWA), as a result of provisions in section 5 EUWA, as amended by the Bill, and section 6 of EUWA. Furthermore, the Bill will not amend sections 7A to 7C of EUWA, which provide

for the application and interpretation of relevant separation agreement law (RSAL), the category of law which implements the WA and the NIP in domestic law. This means that the Bill as drafted will ensure the continued operation of the principle of supremacy, general principles of EU law, and EU case law as required to give effect to the WA and the NIP.

b) What is the Government's current estimate of the amount of retained EU law that is (i) necessary for the proper functioning of the Protocol, and (ii) covered by the Minister's commitment (as above)? How much of that retained EU law which is covered by the Minister's commitment falls within NI's transferred powers and within the powers given to devolved authorities to preserve it?

We recognise the importance of identifying the split of reserved and transferred retained EU law. The Brexit Opportunities Unit (BOU) within BEIS have established regular intergovernmental meetings intended to support devolved counterparts with the identification of which retained EU law is devolved/transferred or reserved, as part of the REUL Reform Programme and wider Whitehall departmental engagement. Departments are continuing to work with their Northern Ireland Civil Service (NICS) counterparts to determine the overall catalogue of retained EU law. My officials will continue this engagement and intend to work closely with devolved counterparts to address any concerns and ensure the Bill works for all parts of the UK.

c) What is the Government's current estimate of the amount of retained EU law applicable in Northern Ireland which falls within the definition of "Northern Ireland legislation" in the Bill and, therefore, does not fall within the scope of the sunset provision?

As outlined above, the assessment of the split of devolved/transferred and reserved retained EU law is an ongoing process. My officials are also continuing to maintain a sustained level of engagement with their devolved counterparts regarding REUL reform and the devolution status of retained EU law.

d) Given the current lack of a functioning Northern Ireland Executive, how does the Government propose to coordinate and work with Northern Ireland counterparts to ensure that the commitment given on Second Reading (as above) is met?

The Government recognises the unique challenge Northern Ireland is facing in the continued absence of a functioning Executive. As set out above, we will put in place a carefully managed process to ensure that the powers in the Bill are exercised in a manner which upholds the UK's international obligations after the sunset, including those within the NIP.

e) Where relevant retained EU law is a transferred matter, will practical steps to preserve that law be delayed until after any forthcoming elections in Northern Ireland;

We are working with NICS to develop an approach that will take account of the political situation in Northern Ireland.

f) Which department will lead on the work required under the Bill to identify and review retained EU law relevant to Northern Ireland; and how will effective cross-departmental coordination be ensured?

It is at the discretion of individual Whitehall departments to engage with devolved counterparts regarding their respective retained EU law. We continue to encourage departments to engage with their devolved counterparts, including NICS officials, as part of their business as usual engagement on the devolution status of retained EU law. We are committed to supporting sustained engagement on this moving forward. Similarly, the devolved governments will be responsible for identifying retained EU law within their respective areas of devolved competence. Although there is no Executive in place at present, we would expect that NICS has also started identifying its retained EU law and now has a firm grip on the programme of work. We are working closely with Whitehall colleagues to explore ways in which we can further support devolved counterparts with this exercise.

g) Will the Government publish a list of the retained EU law that it considers should not be revoked under the sunset clause in the Bill, as a result of the commitment made on Second Reading (as above)?

As you will be aware, the REUL Dashboard was first published on 22 June. This presents an authoritative catalogue rather than an exhaustive list of REUL.

The dashboard will be updated regularly to document the UK Government's progress of amending, repealing or replacing REUL that is not right for the UK to ensure the UK statute book is tailored to suit the UK's needs. This will also include Whitehall departments' plans for REUL reform as the programme progresses. It is only right that the public are able to view where REUL required for international obligations sits on our statute book, and departmental plans for REUL reform regarding this so that the public can scrutinise it.

h) To the extent that retained EU law is not sun-setted in Northern Ireland as a result of the Protocol, will the same approach also be taken in England, Scotland and Wales (subject to considerations of devolved settlements) to avoid divergence in the laws that apply?

The REUL Bill is an enabling Act. The Bill will not alter the devolution settlements and the measures will not in and of themselves create greater intra-UK divergence. Any intra-UK divergence will rest on decisions departments and the devolved governments take regarding their respective retained EU law once the Bill is enacted.

The Government will continue to work closely with the devolved governments to manage intra-UK divergence including through existing mechanisms such as the Common Frameworks programme and the UK Internal Market Act (UKIM) which have been developed with the devolved governments to enable joint working in devolved areas.

BOU will also reinforce the need to manage divergence through internal processes established to manage the REUL Reform Programme.

i) The Explanatory Notes and Human Rights Memorandum accompanying the REUL Bill do not indicate whether the Bill engages rights protected by Article 2 of the Protocol on Ireland/Northern Ireland Protocol. As such, can the Government provide an analysis of the Bill's implications for Article 2 and explain how it intends to ensure that the Bill, and indeed future legislation, complies with Article 2 in all its dimensions?

The UK Government is committed to preserving or restating all retained EU law, including relevant separation agreement law, where it is necessary to uphold the UK's international obligations.

I hope this information proves useful and addresses the questions raised by the Committee regarding the implications of the REUL Bill for Northern Ireland.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Grant Shapps'.

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