



Department for
Energy Security
& Net Zero

Lord Callanan
Parliamentary Under Secretary of
State for Energy Efficiency and
Green Finance

Department for Energy, Security
& Net Zero

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The Baroness Andrews OBE
Chair, Common Frameworks Scrutiny Committee
House of Lords
London
SW1A 0PW

22 May 2023

Dear Lady Andrews,

Retained EU Law (Revocation and Reform) Bill and the Common Frameworks Programme

Thank you for your letter of 16 May regarding the Bill's interaction with the Common Frameworks programme. I have responded to each of your questions in turn. I hope these responses provide the Committee with the clarity they are seeking.

Ministerial powers (Clause 16)

1. a) What plans does the Government have to ensure that clause 16 will not affect the Common Frameworks programme?

Common Frameworks have been developed to ensure a common approach is taken where powers have returned from the EU which intersect with policy areas of devolved competence. The UK Government is committed to candid discussions with the devolved governments to ensure the Common Frameworks programme is successfully managed. The review mechanisms in Frameworks are designed to ensure these sorts of discussions take place with respect to each Framework.

Both the UK Government and the devolved governments agree that where Common Frameworks are operating they are the right mechanisms for discussing retained EU law reform in the areas that they cover. This commitment has been stated publicly and throughout the passage of the Bill.

Our ambition is that UK Government departments and devolved government counterparts will work together to agree their approaches to individual pieces of REUL, and the delegated powers within the Bill could then be used to amend or reform REUL as required via Statutory Instrument. This includes when using the powers to revoke or replace under clause 16.

If the REUL being discussed falls under a Common Framework, then the UK Government expects to use the processes in that Framework to discuss their plans for that REUL with the devolved governments. Officials of the UK Government and devolved governments continue to work on guidance for the implementation of the REUL reform programme within the Common Frameworks programme. We have every confidence that the Common Frameworks are the most appropriate mechanism for managing any issues arising where they apply.

It is also worth mentioning that the powers to revoke or amend REUL is no different in principle to (and therefore in principle poses no more of an issue to Framework operation than) existing powers to revoke or amend other primary or secondary legislation in a policy area covered by a Framework, or to make new primary or secondary legislation in an area covered by a Framework. The UK Government and devolved governments already have the power to amend or revoke any REUL, within their competence, through primary legislation if they so wish. The Scottish Government has taken similar powers in relation to REUL through its Continuity Act. This allows Scottish Ministers to amend REUL within the Scottish Parliament's competence for the purposes of EU alignment.

b) What evidence does the Government have to demonstrate that the powers contained in clause 16 will not be used to reformulate Common Frameworks?

The powers contained in clause 16 enable the revocation and reform of REUL (or assimilated law post-2023). Furthermore, the powers in clause 16 are time limited and no regulations may be made under clause 16 after 23 June 2026. Given the scope of the powers, they can in principle act upon legislation within the scope of the Common Frameworks. However, the Common Frameworks will apply to any possible exercise of these powers in that context and so discussions between the UK Government and the devolved governments about such proposals will occur accordingly.

Common Frameworks are jointly agreed between the UK Government and the devolved governments - they cannot be unilaterally amended and contain a consensual mechanism for amendment: Common Frameworks are specifically designed to be able to accommodate changes to the regulation within their scope, as they are designed to be reviewed and updated where required, either periodically or when a suitably significant issue requires it.

Methodology

2. a) We would be grateful if you could provide a list of all REUL that is within the scope of the Common Frameworks programme that is being disapplied without delay.

The Government does not hold a central list of retained EU law within the scope of Common Frameworks. However, I can say that officials have cross referenced the Schedule against the REUL that appears in the Common Frameworks that fall within the remit of DEFRA where the REUL did not fall under an international obligation, and have only identified so far 3 pieces of REUL in that category that will be included in the Schedule, and this was all inoperable REUL.

b) We request evidence of the methodology that has been used to make decisions on the REUL to be disapplied that is within the scope of Common Frameworks, so that we can further understand how this Bill will impact the programme? This is particularly important given that departments may have taken differing approaches to this process.

As part of the Government's ongoing, detailed review of all REUL, each department generated a list of REUL that was ripe for repeal. Ultimately the final discretion as to which REUL was no longer appropriate for the UK was at the discretion of relevant Secretaries of State.

However, in considering whether to revoke a particular piece of REUL departments first considered whether it continues to be operable. There is a substantive body of REUL which is defunct and unnecessary now that we have left the EU. The Schedule includes a significant number of such items. Removing legacy regulation from our statute book represents good lawmaking.

Secondly, departments considered which pieces of REUL we can now remove which have been designed in a way which was clearly contrary to the needs and requirements of the UK.

Any REUL that falls within scope of a Common Framework which is listed on the Schedule will be drawn from REUL that we anticipate has already been discussed through the requisite Common Framework.

Future REUL reform

3. We would be grateful if you could outline the proposed processes for reviewing REUL that is within the scope of Common Frameworks in the future, including how the Government will update Parliament, what the reporting process will be, what impact statements will be produced, and the anticipated timelines for this process and for updating Common Frameworks documents accordingly.

The UK Government and the devolved governments intend to update individual Common Frameworks to reflect any changes that need to be made to them as a result of REUL reform, whether that be the repeal of REUL that has had a key function in the policy area covered by the Framework, or any changes that need to be made to a Framework as a result of amendment or replacing of REUL. Where a change to REUL has taken place prior to the full implementation of a Framework - which for all Frameworks other than Hazardous Substances (Planning) will be once the Northern Ireland Executive has been restored and can agree full implementation - this will be included at that juncture, otherwise it is likely to take place at the appropriate post-implementation review. If changes are made before full implementation, Committees will be informed in the same letters that update them on which recommendations have been taken forward. If changes are made after full implementation, Committees will be informed as part of the planned regular Framework reporting to legislatures.

Any assessment of the impact of specific REUL reform, and publication of that would be at the discretion of the individual UK Government and devolved governments

departments within whose purview the REUL in question falls. We would expect departmental committees to scrutinise this in the same way that they usually scrutinise departmental activity.

4. What deadline has been set for updating each Common Framework with a standardised annex that sets out all legislation (including REUL) that falls within the scope of the framework?

We appreciate that the Committee has made a recommendation to include this standard annex in Common Frameworks, and this is something that officials will be giving thought to. I cannot confirm whether every Framework will contain this, but it has merit and I will encourage teams, through the central function of Cabinet Office/DLUHC, to take this forward. Where this is taken forward I would expect it to feature in Frameworks when they are updated either prior to, or in the review following, full implementation.

Windsor Framework

5. When will the UK Government publish a list of the legislation that is disapplied by the Windsor Framework that is within the scope of the Common Frameworks programme?

The Northern Ireland Secretary wrote to the European Scrutiny Committee on Monday 15 May setting out a detailed account of the EU law disapplied by the Windsor Framework. As his letter explained, providing a single definitive list of disapplied law is not possible, because the question depends on the specific case at hand. For example, many EU rules are disapplied for goods moving in the 'green lane' to support UK internal trade, but continue, rightly, to apply in the 'red lane' (as was envisaged even by the Northern Ireland Protocol Bill).

Thank you once again for writing. I trust this information will be helpful.

A handwritten signature in blue ink, appearing to read 'Martin Callanan', with a stylized flourish at the end.

Lord Callanan