



Department for
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Lord Jay of Ewelme
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11 September 2023

Dear Lord Jay,

Thank you for your correspondence of 12 July, regarding the Retained EU Law (Revocation and Reform) Bill (now Act) and its interaction with the Windsor Framework. I apologise for the delay in our previous response to the Committee. This was a result of the decision by the Government to amend the Bill during passage to revoke only those measures listed in a Schedule, and interpretive effects of EU law. We wanted to give the most useful information that light, however, I recognise this delay impacted the Committee's ability to scrutinise the Bill during parliamentary passage.

Relevant Separation Agreement Law

The relevant provisions of the EU Withdrawal Act 2018 (EUWA) as amended by the REUL Act already expressly provide that the loss of EU interpretive effects are "subject to relevant separation agreement law" (see section 5(7) and 6(6A) EUWA). Consequently, the rules of interpretation of relevant separation agreement law (RSAL) (section 7C) apply notwithstanding the rules of interpretation for retained EU law. It was therefore assessed that there was already a clear legislative signpost and it was not necessary to amend the face of the REUL Act to further signpost this.

This position is set out in greater detail by the Explanatory Notes of the REUL Act, which more clearly set out the broader interaction with sections 7A and 7C of EUWA. This was judged to be a more appropriate manner to identify and explain the interaction rather than an additional statutory signpost.

The Government notes the Committee's concerns around the time-consuming nature of codifying interpretive effects on a case-by-case basis. However, this exercise will provide legal certainty and clarity in areas of retained EU law where the policy is not intended to immediately change by consolidating, codifying and reproducing more clearly specific effects resulting from EU principles of interpretation.

As outlined in our previous correspondence, any domestic law giving effect to the Withdrawal Agreement - including the Windsor Framework - will continue to be interpreted in line with that Agreement. This will ensure that where EU law is applied by the Withdrawal Agreement and the Windsor Framework, it will have the same effect as it would in the EU (including the application of general principles and the principle of supremacy). It will generally not be necessary for departments to restate interpretive effects to ensure the UK continues to meet Windsor Framework obligations to account for the REUL Act.

Article 2

UK Government departments have been working to compile an authoritative account of where retained EU law sits across policy areas and sectors. This includes identifying where retained EU law falls within scope of Article 2. The Brexit Opportunities Unit's REUL reform programme has a central coordinating function which regularly commissions departments to provide updates on their existing body of retained EU law. This includes on how this legislation interacts with international obligations, including the Windsor Framework and Article 2.

The Brexit Opportunities Unit's central coordination function in this matter is to work with departments to identify the implications of the removal of interpretive effects for the entire body of retained EU law. In doing so, it is working with the Northern Ireland Office to understand the interaction with Article 2 and ensure the Government is meeting its international commitments. The Government does not hold centrally a list of measures which fall within scope of Article 2. In the process of reviewing their retained EU law, individual departments will be considering whether there are any Article 2 interactions on a case-by-case basis.

The Northern Ireland Office meets regularly with the Northern Ireland Human Rights Commission and the Equality Commission of Northern Ireland to discuss the implementation of Article 2 and the Government carefully considers all representations made by the Commissions on Article 2.

Restatement Powers

The powers to restate under sections 11 and 12 of the REUL Act enable the restatement of provisions and principles in secondary retained (or assimilated) EU law (i.e. including the codification of directly effective rights etc. under section 4 of EUWA, retained case law and general principles). The powers ensure that where the current desired policy effect of legislation is dependent on an interpretive effect provided by EUWA, the particular effect can be restated or reproduced in the relevant domestic legislation.

The powers enable the reproduction of specific "effects" of supremacy, retained general principles or retained case law in order to ensure the restatement, or any domestic law that previously relied on such interpretive effects, has the same practical outcome. The intention is that traditional drafting techniques will be used to achieve context-specific effects in respect of particular legislation, rather than recreating these principles in general terms. Once restated, the legislation will no longer be retained EU (or assimilated) law and will not be interpreted in line with the principles of supremacy, general principles or section 4 of EUWA.

The power to restate can also be used to make changes to secondary retained EU (or assimilated) law for the purposes of resolving ambiguities, removing doubts or anomalies and/or to improve the clarity or accessibility of the law. The powers cannot be used to substantively change the policy effect of the legislation nor is it capable of introducing substantive policy change.

While it is for individual departments to restate specific effects, there is cross-Government coordination, led by the Brexit Opportunities Unit, to ensure that the application of these restatements is consistent across the UK Government, and in line with our international obligations.

The Northern Ireland Civil Service is responsible for identifying interpretive effects and deciding where restatement Statutory Instruments (SIs) may be required for retained EU law that is within the competence of Northern Ireland. However, the UK Government recognises the unique challenges the Northern Ireland Civil Service is facing in the continued absence of an Executive and an Assembly and we are working with them to ensure the relevant legislation is in place by the end of the year and that restatement SIs can be made where they are found to be necessary.

In relation to the processes in place to scrutinise the powers, where primary legislation is being amended the power is subject to the affirmative procedure. In other instances, there is a choice between the draft affirmative procedure or the negative procedure, which means that a Minister or devolved authority can choose to use the draft affirmative procedure where they feel this is more appropriate in relevant circumstances.

When a Minister of the Crown is exercising this power, in cases where the negative procedure is chosen, the safeguarding measure of the sifting procedure applies. This is similar to that which applies to the exercise of powers under section 8 EUWA, whereby the Minister must make a statement explaining this choice, and a committee in each of the Houses must give a recommendation on which procedure should be used. This affords additional scrutiny of the use of the power while retaining flexibility to use the negative procedure where there are good reasons for doing so.

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee, Shahnawaz Bhatti, Departmental Scrutiny Coordinator, Department for Business and Trade; and the Secretariat to the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,



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