

European Scrutiny Committee

House of Commons London SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash CH MP

24 January 2024

Rt Hon Kemi Badenoch MP
Secretary of State for Business and Trade
Department for Business and Trade
1 Victoria Street
London SW1H 0ET

Retained EU Law Parliamentary Report June 2023 – December 2023

Dear Kemi

We considered [your report of 22 January on Retained EU Law](#) (‘REUL’) at our meeting today.¹

As you know, we have a close interest in REUL (now assimilated law), having [reported on the Government’s plans for reform in July 2022](#) and, more recently, launching an [inquiry into the progress and mechanics of REUL reform](#). We also heard in evidence from you on REUL on 6 June 2023.²

During the passage of the Retained EU Law (Revocation and Reform) Bill (now ‘the 2023 REUL Act’), the Solicitor General committed to present a report to us on a six-monthly basis on “the progress and plans the Government are making on the repeal of retained EU law.”³ Although this commitment is not referenced in your report, we understand that Minister Hollinrake’s letter to us of 22 January—drawing attention to your report—is intended to fulfil this commitment.⁴ We seek clarity on whether future REUL reports made to the House are also intended to fulfil this specific

¹ Department of Business & Trade, [Retained EU Law Parliamentary Report June 2023 – December 2023](#), 22 January 2024

² European Scrutiny Committee, Oral evidence: Regulating after Brexit, HC 125 (6 June 2023) [Q166-247](#)

³ HC Deb, 24 May 2023, [col 324](#) [Commons Chamber]

⁴ [Letter from Kevin Hollinrake MP to Sir William Cash CH MP](#), dated 22 January 2024

commitment, in addition to the reporting obligation under section 17 of the 2023 REUL Act.

We read your report of 22 January with deep concern. As you rightly note, “the Brexit vote was the beginning of a new chapter for the UK, enabling us to seize our own future and prioritise the best interests of the British people.”⁵ If, however, the most is to be made of our freedoms outside of the European Union, REUL reform must be made a Departmental priority and far greater time and resource directed at reform than is apparent from your report. Failing to make the most of the now shrinking window of opportunity for REUL reform will be viewed as an entirely avoidable failure by colleagues, and the people and businesses that we serve.

In the interests of clarity we have outlined our initial concerns below.

- Change in reasons for REUL reform. Your report states that REUL reform is now being delivered through the Government’s ‘Smarter Regulation Programme’. This programme is directed at minimising regulatory burden, making regulation a last (not first) resort and ensuring the effectiveness of regulators. These are important aims, but the Smarter Regulation Programme was not part of how the 2023 REUL Act or REUL reform was originally framed. Reform was, and should still be, about seizing the opportunities of Brexit; through the substantive reform of key policy areas, in line with British legal and constitutional traditions. The reform of REUL was intended as a broader exercise and approaching it more narrowly risks squandering the opportunities presented by the UK’s withdrawal from the EU.
- Absence of reforms during the June – December reporting period. Significant parts of your report are dedicated to explaining tangentially related issues—such as the Smarter Regulation Programme—and outlining your *future* plans for REUL reform. Of those reforms that have been undertaken during the reporting period, of 26 Statutory Instruments, only two are worthy of note: the first on wine marketing and the second on working time calculations. The remainder relate almost exclusively to the correction of technical errors, consolidations and restatements. For a six-month period, this is simply not good enough. As of yet, there is little hard evidence of the ‘ambitious programme of legislation’ referred to in your report.⁶
- Incomplete picture of policy areas covered. The ‘Forthcoming REUL reforms’ section of your report (pages 23 – 39) trails the same worrying

⁵ Department of Business & Trade (n1), p 5

⁶ *ibid*, p 23

approach outlined above (almost exclusively technical versus substantive policy reforms), but it is also concerning that the Departments it covers are incomplete. As an example, there are no entries for Work & Pensions; Science, Innovation & Technology; or Housing, Levelling Up and Communities (Departments that the ‘REUL Dashboard’ shows as having significant amounts of REUL).⁷ It is a further concern, in the context of the Government’s proposals for the removal of illegal migrants to Rwanda, that your Department has not discussed REUL with either the Home Office or Ministry of Justice.⁸ The importance of this point is clear given the Supreme Court’s Rwanda judgement of 15 November 2023 and the dismissal at paragraph 144 of one of the claims on the grounds that the words in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 were so clear and precise in relation to the repeal of REUL as to lead the Court to dismiss that claim.⁹

- Lack of clarity on the mechanics of REUL reform. We wrote to you on 9 November 2023 requesting a private meeting with your officials to better understand how the REUL reform programme is being undertaken and coordinated from your Department.¹⁰ You declined this request on 20 December, until after the publication of your report.¹¹ Passing mention is made in your report of the Brexit Opportunities Unit, The National Archives and the law firm Hogan Lovells (who were contracted to assist with the REUL reform programme).¹² With regard to Hogan Lovells, we have still not received the terms of reference of their work for your Department, which we requested some time ago. It remains unclear how the REUL reform programme is arranged at official-level and the structures that are in place to ensure effective inter-departmental working. The question of how reform is undertaken is as important as the aims and objectives that underpin it.

We request your appearance before the Committee ahead of the Easter recess to explore these and other related issues. One of which is the content of the next report, which will be the last in this Parliament. It is critically important

⁷ See HM Government, [Retained EU law dashboard](#) [accessed 24 January 2024]

⁸ [UIN 8365](#) [on Undocumented Migrants: Deportation], 11 January 2024

⁹ *R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department* [2023] UKSC 42

¹⁰ Letter from Sir William Cash CH MP to Rt Hon Kemi Badenoch MP, 9 November 2023

¹¹ [Letter from Rt Hon Kemi Badenoch MP to Sir William Cash CH MP](#), 20 December 2023

¹² Department of Business & Trade (n1), p 12

that meaningful reforms are undertaken in this period, not just the technical changes we have seen to date.

We require a response to this letter within five working days.

CHAIR