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7th February 2025

Dear Convener

THIRD BI-ANNUAL SCOTTISH GOVERNMENT REUL ACT UPDATE

Further to the publication on 23 January 2025 of the third UK Government statutory report under section 17 of the Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act") I am pleased to attach the third Scottish Government update on that Act, covering the reporting period from 24 June 2024 to 23 December 2024.

Given the unfortunate history to the REUL Act – an Act affecting a significant proportion of devolved law that was enacted without the consent of the Scottish Parliament – it is most welcome that the latest UK Government report clearly commits UK Ministers to positioning any future reform of assimilated law within the wider context of its commitments to reset relations with Devolved Governments and with the EU.

UK Ministers wrote to me in December 2024 confirming their appetite to work closely with Devolved Governments on REUL Act matters and, in particular, to confirm that they will seek agreement on REUL Act Statutory Instruments including devolved provision. In the Scottish Government's view another key element of respect for devolution will be adherence to common framework principles, and I welcome the UK Government's general commitment to common frameworks as the most important tool for finding shared approaches and managing divergence.

In my view the tenor of the latest UK report gives a greater confidence than has been in place since the Brexit referendum that the Scottish Parliament's custodianship over devolved Scots law is understood, and that when most REUL Act powers expire in June 2026 they will not be extended or re-legislated for in a similar way.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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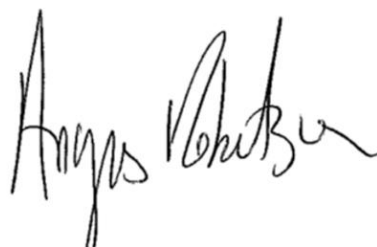
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We will continue to keep the Scottish Parliament apprised on developments through this update series, and other appropriate means.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Angus Robertson'.

ANGUS ROBERTSON

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THIRD BI-ANNUAL SCOTTISH GOVERNMENT REUL ACT UPDATE (FEBRUARY 2025)

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1. Introduction

This is the third Scottish Government update in a bi-annual series of updates that follow the bi-annual UK Government reports published each January and July in 2024, 2025 and 2026. The Scottish Government has agreed with the Scottish Parliament's Constitution, External Affairs and Culture Committee that Scottish updates should be sent each February and September of these years⁽¹⁾.

The third UK Government report on the REUL Act was published on 23 January 2025⁽²⁾. The third Welsh Government update is expected to be published around the time of this Scottish update⁽³⁾. The Scottish and Welsh updates adopt the same reporting periods as the respective UK reports, which for this third update is June to December 2024.

Assimilated law is the new name for the law that was retained from the period of the UK's membership of the European Union ("EU"). Assimilated law gives a 'snapshot' of EU law as it previously applied (with some exceptions, like free movement rights) before the UK ceased to be subject to EU law. Assimilated law is classed as domestic law and can be changed or updated like other devolved laws. In this update, the terminology of "assimilated law" is used consistently in place of "retained EU law" in line with the now prevailing legal position.

The REUL Act was enacted under the previous UK Government without the legislative consent of the Scottish Parliament. The REUL Act gives UK Ministers powers to remove or change laws in devolved areas with no requirement to obtain the consent of the Scottish Ministers or the Scottish Parliament. In the Scottish Government's view, new UK Ministers have in practice limited their use of their powers to amend devolved law and have demonstrated respect for the Statutory Instrument Protocol with the Scottish Parliament as is applicable to REUL Act UK Statutory Instruments⁽⁴⁾.

One particular step taken by new UK Ministers has been to pause the commencement of section 6 (role of the courts) of the REUL Act⁽⁵⁾, by making the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) (Revocation) Regulations 2024 (SI 2024/976)⁽⁶⁾. The Cabinet Secretary for Constitution, External Affairs and Culture wrote to the Scottish Parliament's Constitution, Europe, External

⁽¹⁾ The Scottish Government maintains information about the REUL Act on this webpage, including links to the previous bi-annual update papers: <https://www.gov.scot/policies/europe/retained-eu-law/>.

⁽²⁾ UK Government reports are linked to at this page: <https://www.gov.uk/government/publications/retained-eu-law-reul-parliamentary-report>.

⁽³⁾ Welsh Government updates are linked to at the bottom of this page: <https://www.gov.wales/eu-transition-period-brexite>

⁽⁴⁾ <https://www.parliament.scot/-/media/files/committees/statutory-instrument-protocol.pdf>

⁽⁵⁾ <https://www.legislation.gov.uk/ukpga/2023/28/section/6>

⁽⁶⁾ <https://www.legislation.gov.uk/uksi/2024/976/made>

Affairs and Culture Committee on 4 November highlighting this change and confirming the Scottish Government's view that the Law Officer referral mechanism in section 6, if commenced, does not properly recognise or respect the Lord Advocate's retained functions⁽⁷⁾.

2. Scottish Government policy for future treatment of devolved assimilated law

In the interests of brevity this section is shorter than the equivalent section carried in the previous update papers; the fuller details set out in those papers continue to represent Scottish Government policy.

Scottish Government policy continues to be that there is no intention to revoke or reform assimilated law simply because it is the law that was retained from the period of the UK's membership of the EU. The Scottish Government's "guiding star" in this regard is the alignment policy, which commits Scotland to remaining aligned with EU law where it is possible and meaningful to do so.

From a wider regulatory perspective, a framework setting out how Government and business will work together in the long term has been published, coinciding with the first anniversary of the New Deal for Business. The New Deal for Business Principles⁽⁸⁾ underline government and business' continued commitment to working together to build a strong foundation for economic growth, through a relationship based on mutual respect, meaningful communication, evidence-based decision making, awareness and understanding and consistency.

The Scottish Government remains of the view that any case for reforming devolved assimilated law is best progressed through the ordinary Scottish Parliament legislative processes. The Government recognises that UK Parliament legislative vehicles may from time to time be acceptable, and compatible with the alignment policy, in particular instances where proposals are consented to by the Scottish Government and the Scottish Parliament has due time for policy consideration and scrutiny.

The Scottish Government continues to recognise the value of Common Frameworks as intergovernmental mechanisms for collaboration and co-operation on regulatory policy in a devolved UK, in a manner that respects devolution.

3. REUL Act secondary legislation in reporting period

This Section sets out relevant instruments for the reporting period ending December 2024. Cumulative tables of instruments are set out in the Annex.

There are no updates to communicate on REUL Act Scottish Statutory Instruments ("SSIs") notified in previous reporting periods (none having been made in the second reporting period).

⁽⁷⁾ Illustrative amendments to the REUL Bill to address this issue were published on 10 February 2023 <https://www.gov.scot/publications/retained-eu-law-bill-letter-to-uk-gov-february-2023/>.

⁽⁸⁾ <https://www.gov.scot/publications/new-deal-for-business-principles/>

REUL Act SSIs made in the relevant (third) reporting period

SSI in order made	Detail
(iii) The Public Procurement (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/338) (made 12 November 2024)	Amongst other things, removed redundant references in devolved public procurement regulations to “Retained Treaties” and “retained EU law” in consequence of section 2 of the REUL Act. These provisions were made under REUL Act powers. Other, unrelated provisions of the instrument were made under other enabling powers.
(iv) The Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024 (SSI 2024/349) (made 19 November 2024, having been laid in draft 2 October 2024) This SSI was not made under the REUL Act but relevant provisions were made with the purpose of handling REUL Act changes that took effect on 1 January 2024. Any further such instruments will be reported on in future updates as if REUL Act SSIs.	Amongst other things, updated former retained EU terminology to the correct assimilated law terminology. The instrument clarified that a derogation period concerning egg marketing applies to restrictions adopted under assimilated law, replacing a reference to “retained direct EU legislation”. The consultation for this SSI was referenced in section 5 of the first REUL Act update.

Update on certain REUL Act UK SIs notified in previous reporting periods

SI (xii) (as listed in the Annex) has now been made but it remains the position that SIs (vi) and (xi) have not yet been finally laid. Further details are set out in the Annex.

REUL Act UK Statutory Instruments (“SIs”) notified in the relevant (third) reporting period

SI in order notified	Detail
(xiii) Notification on the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2024 (sent 5 December 2024) The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2025 (SI 2025/82) (made 22 January 2025)	Replaces references to retained EU law terminology with assimilated law terminology in UK SIs, assimilated direct legislation and in a single SSI; the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/451). Also makes consequential amendments to reflect the abolition by the REUL Act of the general principles of EU law.
(ix) Notification on the Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025 (sent 10 December 2024)	Removes the legislative requirement for 10 year renewals of authorisations of certain regulated products, and more widely replaces the legislative authorisation process for all regulated products with an administrative authorisation process.

<u>Draft Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025</u> (laid in draft 29 January 2025) SI has yet to be finally made.	Makes consequential amendments to or revocations of certain SSIs.
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Whilst, generally, the Scottish Ministers will not support SIs modifying Acts of the Scottish Parliament, SSIs or other wholly devolved, Scotland only UK legislation, both listed SIs provide for the amendment of SSIs, and SI (ix) provides for SSI revocations. In the case of SI (xiii), the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 require to be consequentially updated but powers to make and amend that SSI were lost as a result of the previous UK Government's approach to Brexit. In the case of SI (ix), Food Standards Scotland and the Scottish Government were satisfied that a sufficient case had been made for the consequential amendment or revocation of a limited number of SSIs in that particular instance.

Both listed SIs are referenced in the third UK report⁽⁹⁾. The Provisional Food and Feed Safety and Hygiene Common Framework is applicable to SI (ix).

With regards to the section of the third UK report headed "Preservation of Section 4 Rights", the Scottish Government remains of the view that confusion may be caused since the relevant rights were revoked by section 2 of the REUL Act, as part of a package of changes to the status of EU law that took effect on 1 January 2024 as follows:

- the sunset of certain directly effective rights (section 2 of the REUL Act);
- the abolition (inversion) of the supremacy of EU law (section 3 of the REUL Act); and
- the abolition of the general principles of EU law (section 4 of the REUL Act).

SSI (iii) and SI (xiii) are concerned with these changes to the status of EU law but are consequential rather than substantive in nature.

The Scottish Government continues to work with the UK Government and Devolved Governments to ensure that the impacts of the package of changes mentioned is kept under review.

4. Forward look on Scottish Government assimilated law reform proposals

The Scottish Government will continue to carefully consider UK Government proposals on a case-by-case basis under the overarching alignment policy. Scottish Government Directorates and Agencies continue to work with UK Government Departments to better understand proposals listed in the third UK report and establish which proposals engage devolved competence and, in such cases, to what extent they are acceptable in policy terms to the Scottish Government. It is possible therefore that the fourth bi-annual REUL Act update that follows this third February 2025 update will confirm notifications sent for some of the proposals in the UK report.

⁽⁹⁾ The SIs referenced in the UK reports are listed together with other REUL Act SIs at <https://www.gov.uk/government/collections/reul-revocation-and-reform-act-2023-statutory-instruments>.

In terms of proposals for SSIs, the Scottish Government continues to apply a strong policy presumption against using REUL Act powers to alter policy by SSI. Whilst the Act was designed by previous UK Ministers to remove or reduce regulatory standards, the Scottish Ministers do not plan to use powers conferred on them for that purpose.

The Scottish Government can confirm that the following assimilated law reform proposal is currently subject to consultation:

- Consultation on correcting references in the Food Safety Act 1990 and Food Standards Act 1999 (closing 31 March 2025)⁽¹⁰⁾.

The Scottish Government welcomes stakeholder views on this live consultation exercise.

With regards to primary legislation, on 14 November 2024 the Scottish Government published the analysis of responses to consultation on Enabling powers for Scotland's Environmental Impact Assessment regimes and Habitats Regulations⁽¹¹⁾. The Government committed to considering all comments and suggestions from the consultation in the development of Natural Environment Bill which is still proposed to be introduced this parliamentary year.

5. Next Report

The Scottish Government proposes to send the fourth REUL Act update in September 2025 in respect of instruments to June 2025.

⁽¹⁰⁾ <https://www.food.gov.uk/news-alerts/consultations/correcting-references-in-the-food-safety-act-1990-and-food-standards-act-1999>

⁽¹¹⁾ <https://www.gov.scot/publications/enabling-powers-scotlands-environmental-impact-assessment-regimes-habitats-regulations-analysis-consultation-responses/>

Annex: Cumulative tables of instruments

Cumulative list of REUL Act SSIs made

SSI in order made	Detail
<i>First reported on in first February 2024 update</i>	
(i) The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (SSI 2023/374) (made 7 December 2023, having been laid in draft 18 October 2023)	Replaced references to retained EU law terminology with assimilated law terminology in the devolved statute book, and updated one "EU obligation" reference accordingly.
(ii) The Importation of Animals and Related Products (Miscellaneous Amendment and Revocation) (Scotland) Order 2023 (SSI 2023/391) (made 21 December 2023) This SSI was not made under the REUL Act but was made with the primary purpose of directly handling REUL Act changes that took effect on 1 January 2024.	Amended certain orders made or having effect under the Animal Health Act 1981 which prohibit the importation of animals and animal-related products except under the authority of a licence, in order to clarify and restate the pre-2024 application of these orders as they were affected by the abolition (inversion) of supremacy and other REUL Act changes; and made associated revocations.
<i>No REUL Act SSIs were made in the second reporting period. The following SSIs were first reported on in this third February 2025 update</i>	
(iii) The Public Procurement (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/338) (made 12 November 2024)	Amongst other things, removed redundant references in devolved public procurement regulations to "Retained Treaties" and "retained EU law" in consequence of section 2 of the REUL Act. These provisions were made under REUL Act powers. Other, unrelated provisions of the instrument were made under other enabling powers.
(iv) The Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024 (SSI 2024/349) (made 19 November 2024, having been laid in draft 2 October 2024) This SSI was not made under the REUL Act but relevant provisions were made with the purpose of handling REUL Act changes that took effect on 1 January 2024. Any further such instruments will be reported on in future updates as if REUL Act SSIs.	Amongst other things, updated former retained EU terminology to the correct assimilated law terminology. The instrument clarified that a derogation period concerning egg marketing applies to restrictions adopted under assimilated law, replacing a reference to "retained direct EU legislation". The consultation for this SSI was referenced in section 5 of the first REUL Act update.

Cumulative list of REUL Act UK SIs notified

Changes to table entries from previous updates are shown with bold text.

SI in order notified	Detail
<i>First reported on in first February 2024 update</i>	
(i) Notification on the Fluorinated Greenhouse Gases (Amendment) Regulations 2023 Scottish Parliament Website (sent 31 August 2023) The Fluorinated Greenhouse Gases (Amendment) Regulations 2023 (SI 2023/1161) (made 30 October 2023, having been laid in draft on 4 September 2023)	Corrected a technical error in dates in Regulation 517/2014 which required to be corrected by 31 October 2023.
(ii) Notification on the Plant Protection Products (Miscellaneous Amendments) Regulations 2023 (revised version sent 26 September 2023, original notification date having been 4 September 2023) The Plant Protection Products (Miscellaneous Amendments) Regulations 2023 (SSI 2023/1321) (made 6 December 2023, having been laid in draft 25 October 2023)	Revoked and replaced Article 52 of Regulation 1107/2009 in relation to parallel trade permits and modified domestic regulations to extend the maximum period during which treated seeds not authorised for use in GB, but authorised in another EU or EEA state immediately before IP completion day, may be placed on the market from 1 January 2023 to 1 July 2027.
(iii) Notification on the Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023 (sent 5 September 2023) The Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023 (SI 2023/1143) (made 25 October 2023, having been laid in draft 4 September 2023)	Only the preservation (“sunset disapplication”) element engaged devolved competence. Preserved devolved biocidal products instruments but did not preserve devolved air pollution instruments as formally requested by the Scottish Government. The latter instruments were therefore revoked (“sunset”) at the end of 2023 by virtue of schedule 1 of the REUL Act.
(iv) Notification on the Retained EU Law (Revocation and Reform) Act (Consequential Amendment) Regulations 2023 (sent 7 September 2023) The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (SI 2023/1424) (made 19 December 2023)	Replaced references to retained EU law terminology with assimilated law terminology in Acts of the UK Parliament. Also made consequential amendments to UK Acts to reflect the repeal by the REUL Act of section 4 of the European Union (Withdrawal) Act 2018 and the abolition the general principles of EU law.

(v) Notification on the Public Service Obligations in Transport Regulations 2023 (sent 8 September 2023) The Public Service Obligations in Transport Regulations 2023 (SI 2023/1369) (made 11 December 2023, having been laid in draft 16 October 2023)	Revoked and replaced Regulation 1370/2007 on public passenger transport services by rail and by road, reinstating powers to make direct awards of UK rail PSO contracts which were due to expire on 25 December 2023 under a sunset provision in the Regulation.
(vi) Notification on the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023 (sent 18 October 2023) SI has not yet been laid in draft.	Would revoke certain regulations and make minor amendments in consequence. The Regulations would have no immediate practical impact given that there are no devolved tolls or charges currently in place in Scotland. Following EU exit, the UK is no longer part of the trans-European road network.
(vii) Notification on the Civil Jurisdiction and Judgments Saving Provision Regulations 2023 (sent 9 November 2023) The Civil Jurisdiction and Judgments (Saving Provision) Regulations 2023 (SI 2023/1395) (made 14 December 2023)	Re-saved saving provision made at EU Exit to ensure that the 2007 Lugano Convention on jurisdiction and enforcement of judgments in civil and commercial matters, a private international law agreement, can continue to apply to certain legacy cases.
(viii) Notification on the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) (No. 2) Regulations 2023 (sent 12 December 2023) The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (SI 2024/80) (made 23 January 2024, laid 24 January 2024)	Amended or revoked UK SIs to reflect the repeal by the REUL Act of section 4 of the European Union (Withdrawal) Act 2018, and replaced references to retained EU law terminology with assimilated law terminology in some of the SIs being amended.
<i>First reported on in second September 2024 update</i>	
(ix) Notification on the Official Controls (Fees and Charges) (Amendment) Regulations 2024 (sent 19 January 2024) The Official Controls (Fees and Charges) (Amendment) Regulations 2024 (SI 2024/547) (made 22 April 2024, having been laid in draft 26 February 2024)	Amended the Official Controls Regulation (Regulation (EU) 2017/625) to enable fees and charges for official controls to reflect changes to the sanitary and phytosanitary (“SPS”) border official controls regime as set out in the Border Target Operating Model (“BTOM”) as published by the UK Government in August 2023.
(x) Notification to RAI Committee on the Retained EU Law (Revocation and Reform) Act 2023 (Revocation) Regulations 2024; Notification to NZET Committee on the Retained EU Law (Revocation and Reform)	Revoked 73 obsolete instruments in the policy areas of marine, agriculture and the environment. The Scottish Government considers an instrument to be obsolete if it can be

Act 2023 (Revocation) Regulations 2024 (both sent 30 January 2024) The Retained EU Law (Revocation and Reform) Act 2023 (Environment, Food and Rural Affairs) (Revocation) Regulations 2024 (SI 2024/513) (made 15 April 2024, having been initially laid under Westminster proposed negative (sift) procedure 13 March 2024)	determined with confidence that it is redundant in Scotland and, additionally, that there will be no adverse effect if it is revoked.
(xi) Notification on the Health Claims (Revocation) Regulations 2024 Scottish Parliament Website (sent 19 March 2024) SI was initially laid under Westminster proposed negative (sift) procedure 19 March 2024 but has not yet been finally laid	Would revoke 60 obsolete instruments of assimilated direct legislation concerning the authorisation of the use of, or refusal to authorise the use of, health claims in respect of food. The instruments proposed to be revoked have no ongoing legal purpose, as the health claims which have been authorised have already taken effect in law and the health claims rejected have no effect in law.
(xii) Notification on the Official Controls (Amendment) Regulations 2024 (sent 20 May 2024) The Official Controls (Amendment) Regulations 2025 (SI 2025/102) (made 30 January 2025, having been laid in draft 19 November 2024)	This SI's principal aim is to protect biosecurity and support trade between Great Britain and third countries by ensuring that Sanitary and Phytosanitary (SPS) controls can be applied to goods entering GB, in response to changing levels of risk to plant, animal and public health through further SSIs or SIs. Forming part of the UK Government's BTOM implementation, the SI focusses on making amendments to official controls on animals and goods entering GB in Chapter 5 of Title 2 of the Official Controls Regulation and other direct assimilated law governing the import conditions for animals and animal products entering GB.
<i>First reported on in this third February 2025 update</i>	
(xiii) Notification on the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2024 (sent 5 December 2024) The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2025 (SI 2025/82) (made 22 January 2025)	Replaces references to retained EU law terminology with assimilated law terminology in UK SIs, assimilated direct legislation and in a single SSI; the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/451). Also makes consequential amendments to reflect the abolition by the REUL Act of the general principles of EU law.

(ix) <u>Notification on the Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025</u> (sent 10 December 2024) <u>Draft Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025</u> (laid in draft 29 January 2025) SI has yet to be finally made.	Removes the legislative requirement for 10 year renewals of authorisations of certain regulated products, and more widely replaces the legislative authorisation process for all regulated products with an administrative authorisation process. Makes consequential amendments to or revocations of certain SSIs.
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