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Constitution, Europe, External Affairs and Culture Committee

Subordinate Legislation: Report on the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 [draft]

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Constitution, Europe, External Affairs and Culture Committee

"To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the Scottish Government's EU and external affairs policy;
- (b) policy in relation to the UK's exit from the EU;
- (c) the international activities of the Scottish Administration, including international development; and
- (d) any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture and any matter relating to inter-governmental relations within the responsibility of the Deputy First Minister.
- (e) matters falling within the responsibility of the Minister for Independence.



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Introduction

1. [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \[draft\]](#) were laid on 18 October 2023 and are subject to the affirmative procedure. The draft instrument was referred to the Constitution, Europe, External Affairs and Culture Committee for consideration.
2. It is for the Constitution, Europe, External Affairs and Culture Committee to recommend to the Scottish Parliament whether the draft Regulations should be approved. The Cabinet Secretary for the Constitution, External Affairs and Culture, Angus Robertson MSP, ('the Cabinet Secretary'), lodged motion [S6M-10876](#) which proposed that the Committee recommends the draft Regulations be approved.
3. This report details the Committee's consideration of the instrument at its meeting on 16 November 2023.

Purpose of the regulations

4. As set out in the policy note, the purpose of the draft instrument is to make consequential changes to fully devolved Scottish legislation to update the terminology of “Retained EU law” and associated expressions to “Assimilated law” and associated expressions, in consequence of section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (the “REUL Act”).¹

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on [7 November 2023](#).
6. In its report, the DPLR Committee drew the instrument to the attention of the Parliament on reporting ground (e), in that there appears to be a doubt whether paragraph 3 of schedule 1 is *intra vires*.²
7. Paragraph 3 of schedule 1 of the instrument would amend the Freedom of Information (Scotland) Act 2002 (“FOI(S)A”) by changing “EU obligation” to “assimilated obligation” in two places: in FOI(S)A sections 26 and 45. This would change the references straight from “EU obligation” to “assimilated obligation”, skipping the step of amending them to “retained EU obligation”.²
8. In the DPLR Committee’s report, it outlined that it appears that “the provision in question may be addressing a failure to have updated these sections in consequence of the [European Union (Withdrawal) Act 2018], rather than making provision that is properly in consequence of the 2023 Act”. The Committee said that “there appears to be room for doubt that the provision in question is envisaged by and within the limits of the enabling power”.²

Constitution, Europe, External Affairs and Culture Committee Consideration

9. At its meeting on 16 November 2023, the Committee took evidence from the Cabinet Secretary and Scottish Government officials.
10. In his opening statement, the Cabinet Secretary noted the position of the DPLR Committee, but said he remained “of the view that all aspects of the SSI are within the enabling powers, and are good law”. He added that “where out-of-date EU terminology stands on the statute book, it is appropriate that such cases are remedied and, here, an appropriate legislative vehicle was to hand.”³
11. The Committee questioned why the issue had arisen, and whether it had been an oversight that these sections in FOI(S)A had not previously been updated. Scottish Government officials responded that “given the scale of the statute book and the challenge of EU exit, it is unsurprising that there may have been missed references in the statute book.” Officials further highlighted that “in quite a large instrument”, “there is an issue with just one line”.³
12. Officials outlined that “the instrument and its provision are making sure that the right label will attach to the obligations in question. That is why we remain comfortable that we are able to introduce the instrument within the powers of the REUL Act.”³
13. Following the evidence session, the Cabinet Secretary moved motion [S6M-10876](#)—That the Constitution, Europe, External Affairs and Culture Committee recommends that the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 [draft] be approved. The motion was agreed to.

Conclusion

- 14. The Constitution, Europe, External Affairs and Culture Committee recommends that the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 [draft] be approved.**

- [1] Draft policy note accompanying the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023. (2023). Retrieved from <https://www.legislation.gov.uk/sdsi/2023/9780111058299/policy-note/contents>
- [2] Scottish Parliament Delegated Powers and Law Reform Committee. (2023, November 8). Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 7 November 2023. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/11/8/ff38c00b-cee3-4ca3-ad89-8e834c3264de#0e2be8bd-e3aa-4096-95af-a750b183e336.dita>
- [3] Scottish Parliament. (2023, November 16). Official Report of the Constitution, Europe, External Affairs and Culture Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15555>

Constitution, Europe, External Affairs and Culture Committee

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