

Cabinet Secretary for Constitution, External Affairs and
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Convener of Constitution, Europe, External
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The Scottish Parliament
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21 September 2023

Dear Clare,

SCHEDULE 1 OF THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023 - FINAL SCOTTISH GOVERNMENT ANALYSIS

I write further to my [letter of 8 August 2023 on the Supplementary Legislative Consent Memorandum](#) for the Bill for the Retained EU Law (Revocation and Reform) Act 2023 and the UK Statutory Instrument notification sent on 5 September 2023 by the Cabinet Secretary for Transport, Net Zero and Just Transition to the Net Zero, Energy and Transport Committee on the [Retained EU Law \(Revocation and Reform\) Act 2023 \(Revocation and Sunset Disapplication\) Regulations 2023](#).

The Scottish Government's recent Programme for Government includes a commitment to challenge where we can, given our limited powers, attempts by the UK Government to use the REUL Act to legislate for lower standards, and to provide the Scottish Parliament with a full picture of progress. In this regard I was disappointed to note [Minister of State Nusrat Ghani's Written Statement of 4 September 2023](#) describing the whole body of retained EU law as an 'aberration'. It is the view of the Scottish Government that retained EU law very often protects the vital safeguards and high standards Scotland benefitted from as part of membership of the European Union.

I can confirm that the Scottish Government's analysis of instruments within Schedule 1 of the REUL Act has now concluded and no sunset disapplication Scottish Statutory Instrument is expected to be brought forward under section 1(4) of the REUL Act. Had Ministerial colleagues and I wished to bring forward such an SSI, we would have sought to have laid it on 4 September so as to allow full parliamentary scrutiny ahead of the expiry of the power on 31 October 2023, by virtue of section 1(5) of the REUL Act. Our reasons for not bringing forward a "preservation" SSI are as follows.

As at my 8 August update the only devolved competence instruments on Schedule 1 where there was a continuing question of preservation were the following six:

- Two instruments concerning certain uses of biocidal products containing copper (Decisions 2014/85/EU and 2014/395/EU);
- Two instruments concerning air quality (Decision 2018/1522 and S.I. 2018/129); and
- Two instruments concerning genetically modified organisms (Decisions 2002/812/EC and 2002/813/EC).

The draft Sunset Disapplication Regulations are proposed to be made as a UK Statutory Instrument under section 1(4) of the REUL Act; they would preserve the two biocidal products instruments in accordance with Scottish Government wishes but would not, unfortunately, preserve the two air quality instruments. Further details are to be found in the Cabinet Secretary for Transport, Net Zero and Just Transition's notification document referred to above, including that it is not possible to use Scottish Statutory Instrument powers to preserve the air quality instruments.

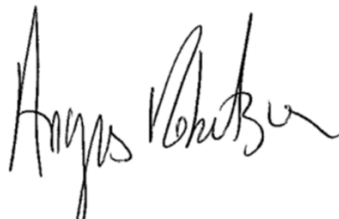
On genetically modified organisms, I can confirm that the Scottish Government is now satisfied that the two instruments can be revoked at the end of this year without practical issue.

In summary, UK Ministers' Sunset Disapplication Regulations adequately secure Scottish Government policy for biocidal products instruments; the only remaining case where preservation is sought is for air quality instruments but unfortunately SSI powers are not an effective solution in that area.

The air quality instruments, alone, would therefore remain on what was Annex B of the Supplementary Legislative Consent Memorandum of May 2023 (List of Schedule instruments considered by the SG to contain at least some devolved provisions applicable in Scotland, and that the SG is not satisfied are obsolete). All other aspects of Schedule 1 analysis as communicated on 8 August remain and I look forward to hearing the Net Zero, Energy and Transport Committee's views on UK Ministers' Sunset Disapplication Regulations in the days ahead.

I am copying this letter to the Conveners of the Delegated Powers and Law Reform Committee, the Net Zero, Energy and Transport Committee, and the Rural Affairs and Islands Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Angus Robertson', written in a cursive style.

ANGUS ROBERTSON