



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

Agenda

5th Meeting, 2023 (Session 6) Wednesday 31 May 2023

The group will meet at 12.30pm in Committee Room 2.

1. **Minutes**
2. **Gender Sensitive Audit** – Consideration of the Conveners Group recommendations from the Gender Sensitive Audit. The Group will hear from:
 - Susan Duffy, Group Head of Engagement & Communications
 - Dr Meryl Kenny, Senior Lecturer in Gender and Politics, University of Edinburgh
3. **Post-EU scrutiny** – progress on CG Session 6 Strategic Priority: Group to consider its post-EU strategy.

Next meeting – Wednesday 21 June

The papers for this meeting are as follows –

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| 1. Minutes of last meeting | CG/S6/23/4/M |
| 2. Report of the Parliament's Gender Sensitive Audit | CG/S6/23/5/1 |
| 3. Post-EU strategy | CG/S6/23/5/2 |

Committee debates this Parliamentary year

1	22/09/2022	Standards, Procedures & Public Appointments Committee	Debate its report on future procedures and practices
2	01/11/2022	Social Justice and Social Security Committee	Robbing Peter to pay Paul: Low income and the debt trap
3	10/11/2022	Health, Social Care & Sport Committee	Inquiry into alternative pathways to primary care
4	17/11/2022	Constitution, Europe, External Affairs & Culture Committee	The impact of Brexit on devolution
5	14/12/2022	Health, Social Care & Sport Committee	Debate on its health inequalities inquiry
6	17/01/2022	Citizen Participation & Public Petitions Committee	petition PE:1865 Suspend all surgical mesh and fixation devices
7	28/02/2023	Economy & Fair Work Committee	Debate on its inquiry report on Retail and Town Centres in Scotland
8	14/03/2023	Net Zero, Energy & Transport Committee	The role of local government and its cross-sectoral partners in financing and delivering a net-zero Scotland
9	25/05/2023	Rural Affairs, Islands & Natural Environment Committee	Debate on future agriculture policy in Scotland
10	08/06/2023	Public Audit Committee	New Vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802
11	13/06/2023	Education, Children and Young People Committee	Debate on its report colleges regionalisation
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The Scottish Parliament
Pàrlamaid na h-Alba

Conveners group

Minutes

4th Meeting, 2023 (Session 6) Wednesday 26 April 2023

Present:

Liam McArthur MSP, Convener
 Claire Baker MSP - Economy & Fair Work Committee
 Ariane Burgess MSP - Local Government, Housing & Planning Committee
 Jackson Carlaw MSP - Citizen Participation & Public Petitions Committee
 Finlay Carson MSP - Rural Affairs and Islands
 Jim Fairlie MSP - COVID-19 Recovery Committee
 Kenneth Gibson MSP – Finance & Public Administration Committee
 Clare Haughey MSP - Health, Social Care & Sport Committee (V)
 Richard Leonard MSP - Public Audit Committee
 Edward Mountain MSP - Net Zero, Energy & Transport Committee
 Audrey Nicoll MSP - Criminal Justice Committee
 Kaukab Stewart MSP - Equalities, Human Rights & Civil Justice Committee
 Sue Webber - Education, Children and Young People Committee
 Martin Whitfield MSP - Standards, Procedures & Public Appointments Committee

Apologies were received from:

Clare Adamson MSP, Constitution, Europe, External Affairs and Culture Committee
 Stuart McMillan MSP - Delegated Powers and Law Reform Committee
 Social Justice and Social Security Committee¹

1. **Minutes:** The Conveners Group agreed the minutes of the last meeting.
2. **Conveners Group work programme and strategic priorities:** The Group discussed its work programme and agreed steps to continue its focus on the strategic priorities of:
 - Cross-committee working
 - Participation, diversity and inclusion
 - Post-legislative scrutiny

¹ No Convener appointed to the Committee at the time of this meeting

- Supporting members as parliamentarians
- 3. Cross-committee scrutiny: approach to scrutiny of National Performance Framework:** The Group noted that the Scottish Government consultation on the National Outcomes is now underway and that each relevant committee will be asked to consider, in due course, the arrangements for joint scrutiny of the draft National Outcomes to be laid in Parliament.
 - 4. Cross-committee scrutiny: update on Post-EU Scrutiny:** The Group received an update on post-EU issues and agreed to discuss in more detail at its meeting on 31 May.

Date of Next Meeting: 31 May 2023

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Conveners Group

5th Meeting, 2023 (Session 6), Wednesday 31 May 2023

Report of the Parliament's Gender Sensitive Audit: Recommendations referred to Conveners Group

Introduction

1. In February 2022, The Presiding Officer commissioned a 'Gender Sensitive Audit' to look at how the structures, operations and policies within the Parliament can help promote women's equality in representation and participation. The Presiding Officer set up a Board, comprising Members from each party in the Parliament, external experts and senior parliamentary officials to consider its findings from the Audit. The Board published its [report](#) in March 2023.
2. The report makes a package of recommendations and identifies the appropriate body/bodies to take forward. The purpose of this paper is to discuss the recommendations that Conveners Group has been asked to consider.

Background

3. The report makes clear that having a 'gender sensitive parliament' is about more than making sure there is gender equality in the Parliament, it is about making sure women can participate equally and that gender equality is mainstreamed into the work of the Parliament. All these elements are required to ensure better outcomes for women.
4. For committees, this means mainstreaming what is known as 'gender sensitive scrutiny'. The aim of this is to increase gender equality by making decisions that address different needs. It does this through examining issues to see whether there are any discriminatory (direct or indirect) practices or rules, identifying opportunities to enhance equality and effectiveness or ensuring that inequalities are not perpetuated or made worse.
5. Women can have different experiences and needs. If these aren't understood, there is an assumption that decisions will affect everyone in the same way. This can lead to unintended consequences. As research for the Institute for Democracy and Electoral Assistance (IDEA) puts it 'laws, policies, programmes and budgets that assume that 'one size fits all' often result in discriminatory or ineffective outcomes because the 'one size' is often subject to gender bias'.
6. This is even more acute when taking into account protected characteristics under the Equality Act and factors such as socio-economic status and geographical location and how disadvantage is compounded when these characteristics intersect.

7. The Gender Sensitive Audit report recommends that Conveners Group take the lead on monitoring and progressing the mainstreaming of gender scrutiny as part of its Participation, Diversity and Inclusion strategic priority. This is because increasing participation and increasing the diversity of the people committees engage with is an integral part of gender sensitive scrutiny.
8. The report also recommends, to support this, that the Conveners Group draws up some best practice guidance on how to undertake gender sensitive scrutiny and revises and expands on the information that is already in the Guidance on Committees on equalities and scrutiny.

What does ‘Gender-Sensitive Scrutiny’ look like in practice?

9. The principles behind this are the same principles that underpin effective scrutiny. It is about asking the right questions, using the best available evidence and examining the assumptions on which decisions are based. The fundamental aim is to answer three questions:
 - Is the legislation, policy or budget affecting or likely to affect women and men in different ways?
 - Was gender a consideration in the decision-making process?
 - Is the legislation, policy or budget likely to enhance or reduce equality, or keep it the same and are there opportunities to increase equality?
10. Annex A is an extract from the IDEA guide that sets out a useful framework for conducting gender-sensitive scrutiny.
11. Annex B also includes extracts from the IDEA guide with 3 examples illustrating (1) how unintended consequences might arise (2) how gender issues can be taken into account in an inquiry and (3) the difference between ‘gender-blind’ and ‘gender-sensitive’ questions.

Next steps

12. If Conveners Group is content to include this work as part of its Participation, Diversity and Inclusion Strategic Priority, officials can work on ways in which this could be taken forward. This would involve looking at how best to integrate this work into what already exists (such as the Sustainable Development Impact Assessment Tool) and producing guidance that is practical, using the type of information and examples shown in the Annexes.
13. The Conveners Group is due to consider its Participation, Diversity and Inclusion Strategy at its meeting on 21 June. Consideration of the GSA will form part of this.

Recommendation

14. The Conveners Group is invited to note this paper and agree that the recommendations of the GSA will form part of its Participation, Diversity and Inclusion Strategic Priority.

Extract from the Report of the Parliament's Gender Sensitive Audit

Gender Equality Mainstreaming

A gender sensitive parliament is not just about who participates, but also how they participate and with what outcomes. We have made recommendations designed to embed gender mainstreaming throughout the work of the Parliament. These should only be seen as the start of this process and there is a lot more work to do.

Recommendation 32

That the Conveners Group takes responsibility for progressing, regularly reviewing and revising and improving as appropriate, the mainstreaming agenda as part of its Participation, Diversity and Inclusion strategic priority.

Recommendation 33

That the Conveners Group, working with gender experts external to the Parliament, provides a set of principles and 'best practice' guide/s for gender equality policy making, budgeting and scrutiny (drawing on international best practice), and makes this available to all MSPs and clerks of committees, and revises the Guidance on Committees to extend information and best practice guidelines on gender mainstreaming and gender budgeting. This could be supplemented by training on these specific issues as core competencies for Committees. Such guidance should encourage Committees to use existing powers to appoint experts to support their work.

ANNEX A¹

Figure 1. A five-step model for conducting gender-sensitive scrutiny



1. Embed gender from the beginning	This means including gender in terms of reference, calls for evidence and consultation questions. It also means requesting evidence from organizations and people that specialize in gender issues, and ensuring that any citizen engagement actively seeks out the views of both men and women.
2. Understand the situation by gathering evidence	Parliamentarians should find out: <ul style="list-style-type: none"> • Who is/will be/has been affected by the law, policy or programme? Is this information available disaggregated by sex/gender? What assumptions have been made about these people? What gaps are there in the data? • Will women and men be differently affected because of their age, ethnic origin, disability, sexual orientation, religion, socio-economic status or geographic location? • Is there evidence to show that one gender is more likely to be affected than another? Is it more likely that men or women will benefit from the law, policy, programme or budget, or will they benefit equally? • Are there existing inequalities between men and women in this area, and are they increasing or decreasing? • What are the individual experiences of women and men? • What are the gaps in evidence?
3. Ask the right questions	It is important that gender-sensitive questions are asked of stakeholders, experts, ministers and government officials. Some examples are outlined in Sections 3 and 4. It is also important to find out whether, or to what extent, gender has been considered during the decision-making process. This means finding out whether gender

¹ Institute for Democracy and Electoral Assistance: Gender-Sensitive Scrutiny: A Guide to More Effective Law-Making and Oversight, 2022

	analyses/gender impact assessments have been carried out, and who was consulted.
4. Inspire change	<p>If it is discovered that the law/policy/programme/budget discriminates against women or men, or will not address existing inequalities, parliamentarians can:</p> <ul style="list-style-type: none"> • publish a report on their findings, highlighting the areas of concern; • make recommendations on changes to the law, budgets, policies or programmes; • propose amendments to bills or existing laws; • propose motions or resolutions in parliament; • schedule a debate or make a speech in parliament, or • publicize their findings through the media and stakeholders.
5. Monitor the outcome	<p>The aim of gender-sensitive scrutiny is to increase gender equality in practice, and this must be monitored. Scrutinizing the implementation of laws, policies and budgets is not a one-off event but an ongoing process throughout the parliamentary, legislative and budgetary cycles. Post-legislative scrutiny, follow-ups of recommendations made during oversight inquiries and financial scrutiny are all important tools for checking whether promises on gender equality are being delivered.</p>

ANNEX B

Example 1²:

Unintentional and unexpected discrimination

A government introduces a grant for all business owners. Eligibility for the grant is based on the amount the business earned in the previous year. The grant scheme appears to be non-discriminatory as it does not exclude women business owners. Scrutinizing this scheme in a gender-sensitive way would involve seeking out the views of women and men business owners, and asking questions such as, ‘Can women and men access these funds equally in practice?’

An issue that may arise from this scrutiny concerns female business owners who took maternity leave in the past year. They would receive a smaller grant than male business owners. This was not an intentional policy design, but a result of decisions being made without consideration of different experiences.

In the context of pay inequality between men and women, and the small proportion of businesses owned by women, Members scrutinizing this scheme might decide that this is unfair and an opportunity to increase equality.

As a result of this gender-sensitive scrutiny, Members could recommend that the government introduce an exemption for maternity leave to reflect the distinct experiences of women and ensure they are not disadvantaged for having children, or that eligibility for the grant be calculated in a different way, such as a business’s average turnover over the past five years.

Members might also ask the government to provide statistics on the number of male and female business owners who have received the grant after 12 months, and monitor the distribution of funds in practice, ensuring that everyone has equal access.

² Institute for Democracy and Electoral Assistance: Gender-Sensitive Scrutiny: A Guide to More Effective Law-Making and Oversight, 2022

Example 2: Putting gender on the agenda³

A parliamentary committee is exploring the effectiveness of a government’s teacher training programme. The scope of the inquiry is defined by the terms of reference, which are to look at:

- whether the programme is achieving its aim of improving the quality of teaching and encouraging more people to become teachers;
- whether it provides value for money; and
- how well the programme is working in practice.

A member of the committee highlights data that male teachers are paid on average 30 per cent more than female teachers. They request the inclusion of ‘opportunities to increase gender equality, and the experiences of women and men in the teacher training programme’ in the terms of reference.

To gather evidence on this specific issue, the committee secretariat conducts research on existing gender inequalities in the teaching sector, approaches women’s teaching bodies for evidence, and conducts a survey of women and men who have undertaken the teacher training programme.

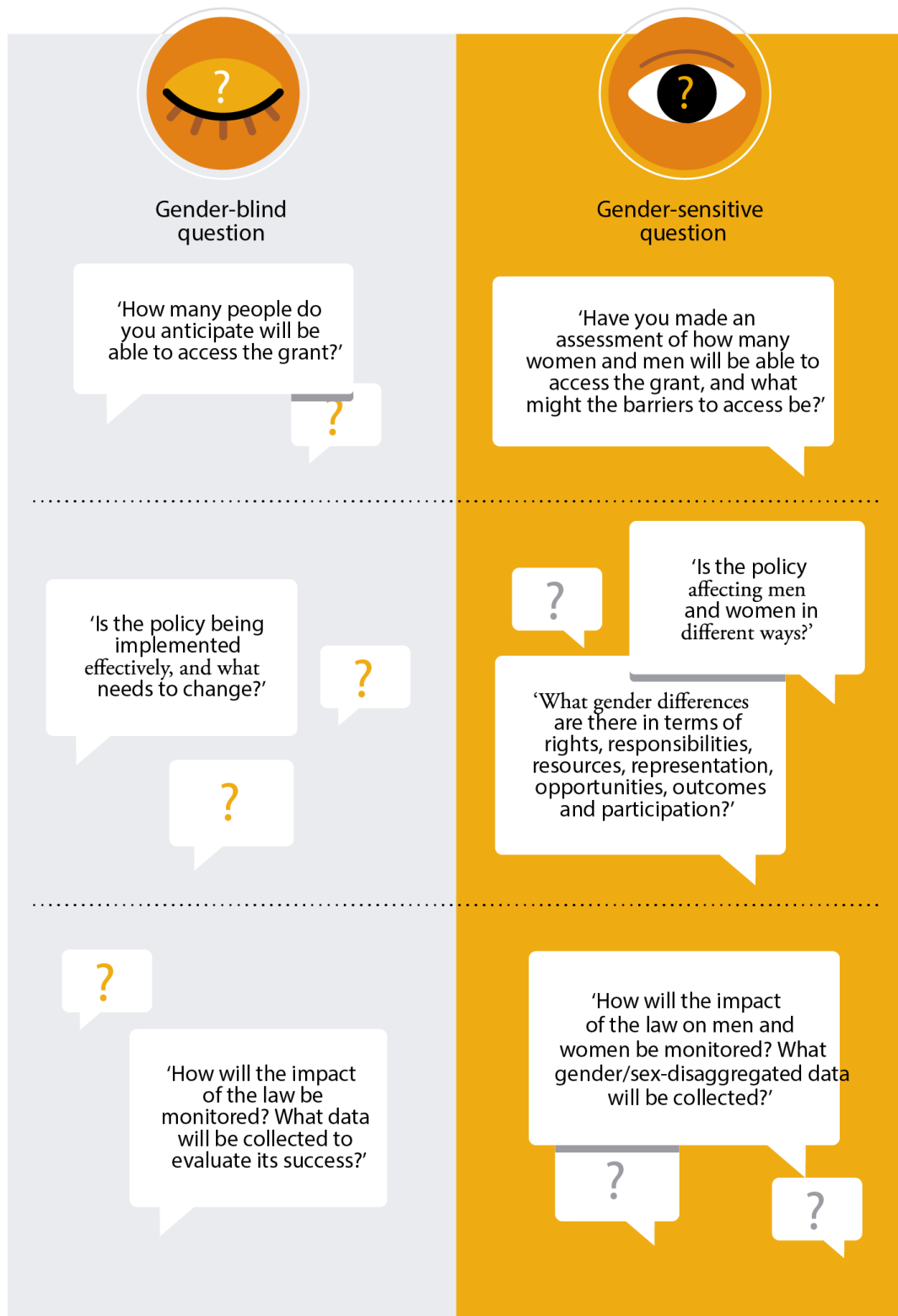
The research shows that while 70 per cent of all teachers are women, only 15 per cent of better paid, senior teaching roles are filled by women. The evidence gathered by the committee shows that the optional leadership module of the teacher training programme is only available to students who are approved by a board. The board is made up entirely of men, who approve men for the programme more than women by a factor of 5:1, even when students have equivalent qualifications. The committee also hears evidence that trainers on the programme discourage women students from applying to take the module.

As a result of the inclusion of gender in the terms of reference, the committee now has a range of evidence, data and information on which to make informed recommendations for improvements to the programme. These recommendations include: requiring 50 per cent of board members to be women, that board members and trainers undertake training on bias and discrimination, and that the eligibility criteria for the leadership module be made more transparent.

The committee decides to review the situation in 12 months to assess whether improvements have been made, and whether these have increased the number of women in senior, better paid teaching roles.

³ Institute for Democracy and Electoral Assistance: Gender-Sensitive Scrutiny: A Guide to More Effective Law-Making and Oversight, 2022

Figure 4. Gender-blind and gender-sensitive questions



⁴ Institute for Democracy and Electoral Assistance: Gender-Sensitive Scrutiny: A Guide to More Effective Law-Making and Oversight, 2022

Conveners Group

5th Meeting, 2023 (Session 6), Wednesday 31 May 2023

Cross-committee working: Post-EU scrutiny

Introduction

1. The purpose of this paper is to invite the Conveners Group to consider its strategic priority on post-EU scrutiny.

Current Developments and Next Steps

2. Post-EU scrutiny is a particularly complex area of work which impacts on the remits of most committees as the new devolved landscape develops.
3. The Group identified this scrutiny area as one of its strategic priorities this session, recognising the challenges presented by the complexity of the issues involved. This includes consideration of its leadership role and what support it can provide for committees to strengthen their approach to this work.
4. CEEAC clearly has a lead role here and has been driving forward the work in this area. As an initial approach, the Group agreed that it would maintain a watching brief on these issues while progress is made. It has received regular updates on progress from the CEEAC Convener.
5. A number of work strands have been on-going in relation to how devolution is now working outside the EU. In particular, the potential impact of the Retained EU Law (Revocation and Reform) Bill currently being considered at Westminster and the impact of the Scottish Government's commitment to align, where appropriate with EU law.
6. This paper sets out developments in these and other areas, which will enable the Group to take stock of where things have reached and consider these issues as a whole.
7. As a next step, the Group is now invited to develop an action plan which will allow it to keep progress being made under review, similar to its approach to its other strategic priorities.
8. As with other workstreams the Group is invited to consider this action plan in the context of the respective roles of the lead committee, other committees, and the Conveners Group/Parliament.

Retained EU Law (Revocation and Reform) Bill

9. Retained EU law (“REUL”) is domestic law applicable in the UK at present. It began as a copy of the EU law and rights that applied when the UK was a member of the EU (at the end of the implementation period on 31 December 2020).
10. Ministers across the UK have had the ability to change REUL since 31 December 2020. In some cases changes have been made albeit these are, in general, reasonably small and technical changes.
11. The Group is aware of the Retained EU Law (Revocation and Reform) Bill (“the Bill”) being considered by the UK Parliament.
12. The Bill was introduced in the House of Commons on 22 September 2022. The Bill has now been considered by both Houses and on Wednesday 24 May 2023, the Commons considered Lords amendments. The Lords is scheduled to consider Commons amendments on 6 June 2023.
13. As introduced the Bill put a 'sunset' (an expiry date) of 31 December 2023 on the majority of REUL. This meant that most REUL would be revoked (removed from the statute book) at the end of the year. There was an option of extending the expiry date beyond the end of the year, but the power to do so was given only to UK Ministers.
14. At report stage in the House of Lords, the UK Government tabled amendments, which their Lordships agreed, that changed the Bill’s approach to the sunset significantly.
15. On 24 May 2023 the Scottish Government tabled a [supplementary Legislative Consent Memorandum](#) (LCM) on the Bill. The LCM states that in “advance of House of Lords Report stage, the UKG tabled amendments which are a significant change to the Bill. These amendments were accepted in to the Bill on 15 May. The SG has lodged this Memorandum to enable the Scottish Parliament to express its view on these amendments.”
16. The sunset of 31 December 2023 for the majority of REUL was removed. Instead, only the REUL specified in a schedule (Schedule 1) attached to the Bill will be revoked at the end of the year. REUL not specified in Schedule 1 will remain on the statute book. In other words, the default position that all REUL would be revoked except pieces which were expressly saved has changed to a default position that all REUL remains on the statute book unless it is on the specified list of REUL that will be revoked.
17. Schedule 1 to the Bill lists the REUL which will be removed from the UK statute book at the end of this year. The [UK Government published information on the REUL contained in Schedule 1.](#)

18. In the Bill as introduced, Ministers of both the UK Government and devolved authorities in Scotland, Wales and Northern Ireland were given a power to preserve specific pieces of REUL. This meant that Ministers could make secondary legislation to save certain pieces of REUL from sunset on 31 December 2023.
19. Given the change in approach put in place by the House of Lords amendments (the sunset for all REUL being removed as explained above), now Ministers do not need to specify in secondary legislation REUL which they want to preserve.
20. The Bill as amended does still grant UK Ministers and Ministers in Scotland, Wales and Northern Ireland, a time-limited (until 31 October 2023) preservation power. It is intended only to be used where Ministers realise after Royal Assent that something listed in Schedule 1 and therefore set to revoke on 31 December 2023 should, in fact, remain in force. The power can be used by UK Ministers or (within devolved competence) by the Scottish Ministers. It would be exercised by the Ministers making regulations which are laid in the relevant legislature.
21. The Bill also gives powers to UK Ministers and Scottish Ministers to enable them to restate, revoke, replace and update pieces of REUL (to be known as 'assimilated law' after 31 December 2023). In the Bill as amended, all powers are granted to UK Ministers and devolved Ministers concurrently and jointly¹.
22. These powers generally allow Ministers to change REUL or assimilated law by secondary legislation and are available until 23 June 2026. The exception is the power to "update", which does not have an expiry date.
23. In practice, these powers mean that Ministers can continue to make changes to REUL (or assimilated law after 31 December 2023) for some time.
24. The Bill provides three ways in which these powers can be exercised to change REUL (or assimilated law after 31 December 2023) within Scottish devolved competence.
25. First, where Scottish Ministers wish to use one of these powers on their own, they must do so by laying a Scottish Statutory Instrument in the Scottish Parliament in the usual way.
26. Second, Scottish Ministers and UK Ministers could exercise the powers jointly. This would involve the Statutory Instrument being laid in, and subject to approval or annulment by, both the Scottish Parliament and the UK Parliament.

¹ 'Concurrently' means that they can be used either by a UK Minister or a devolved administration independently of each other in devolved areas. 'Jointly' means a UK Minister and a devolved administration acting together.

27. Third, UK Ministers could use the powers to change REUL (or assimilated law) in devolved areas. Where UK Ministers wish to do this, there is no statutory consent or consultation requirement. This means that UK Ministers could use the powers given to them in the Bill to change the law in devolved areas in Scotland without the consent of, and without consulting, Scottish Ministers or the Scottish Parliament.

28. Once the Bill receives Royal Assent, Ministers may use the powers given to them in the Bill. This means that Committees of the Scottish Parliament may need to consider:

a. Scottish Statutory Instruments

- Any Scottish Statutory Instruments where Scottish Ministers want to exercise the power to preserve REUL within devolved competence that is listed for revocation in Schedule 1 before the end of October 2023.
- Any Scottish Statutory Instruments where Scottish Government Ministers want to use the powers given to them in the Bill to make changes to REUL (assimilated law after 31 December 2023) within devolved competence.

b. Statutory Instrument notifications

- Any statutory instrument notifications where Scottish Ministers agree to UK Ministers using the power to preserve REUL within devolved competence that is listed for revocation in Schedule 1 before the end of October 2023.
- Any statutory instrument notifications where Scottish Ministers agree to UK Ministers making changes to REUL (assimilated law after 31 December 2023) in devolved areas.

29. Scottish Parliament and Scottish Government officials continue to work together to consider the likely impact of the amended Bill on parliamentary scrutiny and Scottish Parliament officials will provide an update on this work at the Group's meeting on 31 May.

Alignment with EU Law

30. The Statement of Policy by the Scottish Ministers in exercise of the power in Section 1 of the UK Withdrawal from the EU (Continuity) (Scotland) Act 2021 states that –

“Scotland will seek to align with the EU where appropriate and in a manner that contributes towards maintaining and advancing standards across a range of policy areas.”²

31. The Statement of Policy notes that this will be achieved in a range of different ways, legislative and non-legislative and that this commitment is implemented primarily through the existing policy development process. It notes that there will be instances where primary legislation is more appropriate than secondary legislation to maintain alignment. It also notes that where secondary legislation is appropriate, in some cases, it may be possible to align with EU law using specific domestic powers that cover the subject matter of the EU legislation rather than using the ‘keeping pace power’. Specific domestic powers should be preferred, unless there is good reason for not using these powers.
32. Scottish Parliament and Scottish Government officials have been progressing work to consider the information provided by the Scottish Government when introducing legislation and its impact on the Scottish Government’s commitment to align with EU law where appropriate.
33. Ministers have agreed to provide information on the impact of the Scottish Government’s commitment to align with EU law, which is “the default position of Scottish Ministers”, noting that there will be circumstances as set out in the policy statement approved by Scottish Parliament where alignment is not pursued.³ This applies to primary and secondary legislation and Legislative Consent Memorandums (LCMs)
34. Scottish Government officials are required to consider if legislative proposals are likely to impact on the Scottish Government’s policy to maintain alignment with the EU, and if so if this will assist further alignment or result in divergence, and the reasons why. The conclusions reached will be shared in the relevant Policy Memorandum, Policy Note or LCM.
35. Where relevant and appropriate, this information should include –
 - details of which EU legislation, is relevant to the legislative proposals, and, where relevant, how the legislation will impact on the Scottish Government’s commitment to align with EU law;
 - details of whether and how proposals would result in divergence from EU law;
 - the impact on access to EU markets for people, goods, and services;
 - whether the market access principles in the UK Internal Market Act 2020 may impact on the policy objectives of the legislative proposal⁴,

² [eu-alignment--draft-policy-statement-continuity-act.pdf \(parliament.scot\)](#)

³ [eu-alignment--draft-policy-statement-continuity-act.pdf \(parliament.scot\)](#)

⁴ Given the market access provisions in UKIMA extend to many devolved policy areas this should include legislative proposals which may not impact on EU alignment.

whether consideration has been given to seeking an exclusion and, if so, provide details;

- whether and how common framework agreements may impact on the policy objectives of the legislative proposal and, if so, provide details;
- whether the Trade and Co-Operation Agreement with the EU may impact on the policy objectives of the legislative proposal and if so provide details;
- whether other obligations (e. g. international law) act as constraints on alignment.

36. Officials will also consider how the above approach might be relevant to ongoing work to review the UK Statutory Instruments Protocol 2.

37. The CEEAC Committee agreed the above approach at its meeting on 25 May and the Convener will write to other Committees confirming the agreement. The scrutiny toolkit, discussed below, will reflect this agreement.

Annual Report

38. The Scottish Government is required to lodge a draft report on its use of the keeping pace power under Section 11 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

39. The CEEAC Committee has raised concerns that that there is not sufficient transparency with regards to the Scottish Ministers' decision-making process on EU alignment especially where decisions are taken not to align and the reasons for that.

40. In response to these concerns the Cabinet Secretary for the Constitution, External Affairs and Culture has stated that alongside the next Annual report he intends to -

“include a submission from the Scottish Government setting out our policy priorities for the EU over the next year, reflecting upon the European Commission’s strategic priorities and their current annual work programme. This will include our high-level alignment priorities for the year ahead, in addition to the information provided on intended uses of the Continuity Act, which will further aim to support work on legislative scrutiny.”

41. He also writes that he will “provide additional information detailing how alignment has been implemented through legislation over the reporting year alongside our statutory annual report under the Continuity Act.”

42. Scottish Parliament and Scottish Government officials continue to work constructively together in considering the appropriate and

proportionate levels of information to be provided to the Parliament as part of the annual reporting on the policy commitment to align with EU law.

EU Law Tracker

43. At the Conveners Group meeting on [30 November](#) the CEEAC Committee Convener noted that the Committee had agreed to commission an external body to provide the Parliament with an EU Law tracker. The primary purpose of the tracker is to provide transparency and allow the Parliamentary Committees, stakeholders including business and the public to track relevant developments in EU law. This will allow business and civil society in Scotland to continue to be aware of EU legislative developments which may affect them.
44. Following a procurement exercise, the Parliament has commissioned Dr Whitten, Queens University Belfast, to produce the tracker. This will be based on the baseline previously produced by Dr Whitten for “the monitoring of the extent of continuity of Scottish Government policy and law with areas of EU policy and law that are, at least potentially, within the scope of the alignment commitment”⁵.
45. Dr Whitten will present two reports a year to the CEEAC Committee. These reports will include a number of case studies outlining changes to EU law and will be published and made available to the relevant subject committees. The first report will be presented to the Committee and published in September 2023.

Inter-Governmental Relations Written Agreement

46. The IGR Written Agreement represents the agreed position of the Scottish Parliament and Scottish Government on the information that the Scottish Government will, where appropriate, provide to the Scottish Parliament with regard to its own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding.
47. The Scottish Government recognises the Scottish Parliament’s primary purpose of scrutinising the activity of the Scottish Government within formal inter-governmental structures. The Scottish Parliament also recognises and respects the need for a shared, private space for inter-governmental discussion between the administrations within the United Kingdom, such as, in situations where negotiations are on-going.
48. The Written Agreement has not been reviewed since the review of inter-governmental relations by the UK and devolved governments established new structures and ways of working. Neither has it been reviewed since

⁵ [research-by-dr-whitten-on-alignment-with-eu-law.pdf \(parliament.scot\)](#)

Common Frameworks and other inter-governmental structures were introduced following the UK's departure from the EU.

49. For example, the newly established Interministerial Standing Committee has responsibility for the oversight of the Common Frameworks programme and its governance arrangements. Individual frameworks will also be considered in the relevant Interministerial Group as necessary.
50. The CEEAC Committee has made a number of recommendations with regards to the transparency of inter-governmental relations including the operation of Common Frameworks and the operation of the Trade and Co-Operation Committee (TCA).
- 51. Scottish Parliament and Scottish Government officials are currently discussing how to approach a review of the Written Agreement and the levels of information to be provided by the Scottish Government on the operation of Common Frameworks, the exclusions process for requesting and agreeing exclusions to the market access principles established by the UK Internal Market Act 2020, and the operation of the governance arrangements in the Trade and Cooperation Agreement with the EU.**

Review of the Standing Orders

52. There are a number of rules within the Standing Orders which need to be reviewed now that the UK is no longer an EU Member State. Some of these such as Chapter 10A on proposals for European Union legislation are moribund. However, others may require updating depending on the level of scrutiny which the Parliament may consider to be proportionate and appropriate in relation to the Scottish Government's policy commitment to align with EU law.
- 53. The CEEAC Committee has agreed to carry out a review of EU related Standing Orders before reporting to the Standards, Procedures and Public Appointments Committee.**

Mainstreaming Post-EU constitutional issues

54. At the Group's meeting on 30 November the CEEAC Committee Convener invited colleagues to consider how post-EU constitutional issues could be mainstreamed into existing policy and legislative scrutiny. Following discussion the Group agreed to invite officials to develop a toolkit and guidance which will support Members and the Committees in addressing these issues as appropriate in carrying out regular scrutiny.
- 55. Work on developing the toolkit is progressing well and it is expected that a draft will be available for consideration by the CEEAC Committee and then the Conveners' Group before the end of June.**

- 56. The Group may wish to note that there is a SPICe breakfast seminar on retained EU law on Wednesday 31 May 2023.**
- 57. The Group may also wish to give initial consideration to any additional CPD support which Committees and Members may find useful in supporting the mainstreaming of these issues.**

Conclusion

58. It is clear that actions are being taken forward in this area and that progress is being made. An action plan is set out below.
59. It is proposed that the Group receives regular updates on this work using this action plan to frame its consideration.

Recommendation

- 60. The Conveners Group is invited to consider this action plan as a package of proposals to give effect to the Group's decision to prioritise post-EU scrutiny as part of its Session 6 strategic priorities.**

**Conveners Group clerking team
May 2023**

Action plan

Proposed action plan to cover the following issues:

	Post EU area	Action
1	Retained EU Law (Revocation and Reform) Bill	<p>Scottish Parliament and Scottish Government officials continue to work together to consider the likely impact of the amended REUL Bill on parliamentary scrutiny and Scottish Parliament officials will provide an update on this work at the Group's meeting on 31 May</p>
2	Alignment with EU Law	<p>The CEEAC Committee have agreed with Scottish Ministers the level of information to be provided on the impact of the Scottish Government's commitment to align with EU law when introducing legislation. This applies to primary and secondary legislation and Legislative Consent Memorandums (LCMs) .</p> <p>Scottish Parliament and Scottish Government officials also continue to work constructively together in considering the appropriate and proportionate levels of information to be provided to the Parliament as part of the annual reporting on the policy commitment to align with EU law.</p> <p>An update will be provided in due course.</p> <p>It is expected that a draft scrutiny toolkit will be available for consideration by the CEEAC Committee and then the Conveners' Group before the end of June. The CEEAC Convener will then write to subject committees with an update setting out the new scrutiny arrangements.</p>

		SPICe breakfast seminar on retained EU law on Wednesday 31 May 2023.
3	EU Law Tracker	Two reports a year to be made to the CEEAC Committee. These reports will include a number of case studies outlining changes to EU law and will be published and made available to the relevant subject committees. The first report will be presented to the CEEAC Committee and published in September 2023
4	Inter-Governmental Relations Written Agreement	<p>Scottish Parliament and Scottish Government officials are currently discussing how to approach a review of the Written Agreement and the levels of information to be provided by the Scottish Government on the operation of Common Frameworks, the exclusions process for requesting and agreeing exclusions to the market access principles established by the UK Internal Market Act 2020, and the operation of the governance arrangements in the Trade and Cooperation Agreement with the EU</p> <p>An update will be provided in due course.</p>
5	Review of the Standing Orders	<p>The CEEAC Committee has agreed to carry out a review of EU related Standing Orders before reporting to the Standards, Procedures and Public Appointments Committee.</p> <p>An update will be provided in due course.</p>
6	CPD support	The Group is invited to give initial consideration to any additional CPD support which Committees and Members may find useful in supporting the mainstreaming of these issues