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Ìrean Àrainneachdail na h-Alba

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Clare Adamson MSP
Convener
Constitution, Europe, External Affairs and Culture Committee
Scottish Parliament
Edinburgh
EH99 1SP

By email

5 June 2023

Dear Ms Adamson,

Retained EU Law (Revocation and Reform) Bill – Supplementary Legislative Consent Memorandum (LCM)

1. Environmental Standards Scotland (ESS) notes the Committee’s consideration of the supplementary legislative consent memorandum for the Retained EU Law (Revocation and Reform) Bill (“the REUL Bill”).
2. ESS is a non-ministerial office directly accountable to the Scottish Parliament. Since 1 October 2021, it has been part of the system of environmental governance in Scotland following the UK’s exit from the European Union and the end of oversight of implementation of European Union environmental law by the European Commission and the European Court of Justice. ESS’ remit is to:
 - ensure public authorities, including the Scottish Government, public bodies and local authorities, comply with environmental law

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- monitor and take action to improve the effectiveness of environmental law and its implementation
3. We focus on two issues, one specific and one general:
- the proposals in the REUL Bill to revoke National Emissions Ceilings Regulations (NECR) (Regulations 9 and 10); and
 - the ongoing implications of the REUL Bill more generally

Proposed amendments to the National Emissions Ceilings Regulations (NECR)

4. We are concerned about the proposal to revoke National Emissions Ceilings Regulations (NECR) (Regulations 9 and 10) (S.I. 2018/129). This concern is based on some of our current analytical work on air quality standards and targets in Scotland.
5. We are not aware of any legislation that supports Defra's view that these regulations are duplicative in the case of Scotland. Despite potential for improvement in informing the effectiveness of country-level plans, we find no direct comparison, either statutory or non-statutory, for the National Air Pollution Control Programme (NAPCP). Without the NAPCP, there will be loss of public accountability on current and future emissions targets and emissions projections in Scotland.
6. The UK has, according to the February 2023 assessment, failed to meet its Emission Reduction Commitment for fine particulate matter (PM_{2.5}) under both the NECR and the Gothenburg Protocol. Scotland makes a proportionate contribution to the UK's PM_{2.5} emissions and the reductions achieved to date.
7. The most recent (2023) projections reported under this legislation suggest four out of five reportable pollutants (oxides of nitrogen, ammonia, sulphur dioxide and fine

particulate matter) will fail to meet 2030 Emission Reduction Commitments¹. This has triggered the need to review the NAPCP within 18 months of this assessment under Regulation 9. This recent trigger emphasises the importance of this regulation.

8. If Regulation 9 is revoked without replacement, Scotland would have no national programme on long-term air quality targets for the NECR relevant pollutants. It would not be possible for public authorities to have regard to such a programme in planning to reduce emissions from significant sources. Regulation 10 makes provision for public consultation on their plans. Revocation without replacement of Regulation 10 could therefore reduce the opportunity for scrutiny.
9. Any replacement of the NAPCP would need time to be properly considered, to be robust, allow international comparison, and facilitate public scrutiny of plans, policy and progress against targets. The Scottish Government will need time and resource to develop its own modelling to inform a proportionate contribution to these targets.

The Retained EU Law (Revocation and Reform) Bill

10. ESS has previously written to the Committee about the Bill in November 2022. Whilst UK Government amendments to the Bill have removed the sunset clause and significantly reduced the list of legislation for revocation by the end of 2023, there remain areas of concern.
11. The Bill is intended to remove the supremacy of EU law, EU interpretative principles and directly effective EU rights on 31 December 2023. In previous iterations of the Bill, only the Supreme Court would be able to depart from EU law. However, the current form potentially allows any court to do so. UK Government will also have a permanent

¹ Report: UK Informative Inventory Report (1990 to 2021), https://uk-air.defra.gov.uk/library/reports?report_id=1109, Published 15 March 2023.

power to amend retained EU law without a commitment to consult or to ensure parliamentary scrutiny.

12. There are currently an estimated 5000 pieces of retained EU law. The schedule of retained EU law that will be revoked or sunset by 31 December 2023 currently includes 587 pieces of legislation. The UK Government has not published details of its full interpretative risk assessment for this list of legislation, only providing a limited rationale. Any retained legislation will be assimilated into domestic law, with UK and Scottish Ministers given powers to amend, repeal and replace retained EU law and assimilated law more easily.
13. There may be scope if the Bill is further amended to strengthen environmental law to secure better environmental outcomes, but this would need to be done in a careful and considered manner with appropriate scrutiny. The current provisions of the Bill may lead to conflicts with Scottish Ministers' ambition and capacity to maintain alignment with European Union environmental legislation and standards. In addition, the Bill gives greater powers to UK Ministers, rather than the UK Parliament, to change the legal and regulatory framework across the UK.

I hope this information is useful in the Committee's considerations.

Yours sincerely,

Mark Roberts
Chief Executive