EXPLANATORY MEMORANDUM TO

THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023 (CONSEQUENTIAL AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make amendments that are needed in consequence of the Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act").

2.2 This instrument removes references to retained EU law ("REUL") throughout primary legislation and replaces the term with "assimilated law", so that the text of primary legislation is amended. This reflects section 5 of the REUL Act, which provides that REUL (and related terms, such as "retained EU case law") that remains in force will be known as "assimilated law" (and related terms, such as "assimilated EU case law") at all times after the end of 2023.

2.3 "Assimilated law" will be domestic law, which was previously REUL, but without the application of the EU law interpretive features applied to REUL by the European Union (Withdrawal) Act 2018 ("EUWA"), namely supremacy, general principles of EU law and rights retained under section 4 of EUWA.

2.4 This instrument removes references to rights recognised and available in domestic law by virtue of section 4 of EUWA and terms such as "retained general principles of EU law" as a result of the changes made by the REUL Act to remove the EU law interpretive features applied to REUL, after the end of 2023. These amendments will tidy up the statute book and help make the law more accessible and easier to understand.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This will be the first time that the power in section 19(1) of the REUL Act has been exercised. This is the power conferred on a Minister of the Crown, a devolved authority, or a Minister of the Crown and a devolved authority acting together, to make such provision as is considered appropriate in consequence of the REUL Act. Under subsection (2), the power in section 19(1) can be used to amend primary legislation, and under section 5(6) it can be used to make the textual amendments made by this instrument to substitute "assimilated law" (and related terms) for references to "REUL" (and related terms).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is as follows.

- The amendment or repeal of an enactment or provision of an enactment has the same extent as the enactment or provision of an enactment amended or repealed, unless otherwise specified.
- The remainder of this instrument extends UK-wide.

4.2 The territorial application of the provisions in this instrument (that is, where the instrument produces a practical effect) is the same as its territorial extent.

5. European Convention on Human Rights

5.1 Nusrat Ghani, the Minister of State for the Department for Business and Trade has made the following statement regarding Human Rights:

"In my view the provisions of the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 To maintain legal certainty after the UK had left the EU, EUWA provided for the retention of most EU law as it applied in the UK legal system on 31 December 2020 (at the end of the Transition Period). EUWA incorporated that EU law onto the UK statute book as a new category of law called "REUL".

6.2 The REUL Act renames "REUL" so that after 2023, any REUL remaining in force will be known as "assimilated law". This is because the changes made by the REUL Act abolishing the principle of EU law supremacy, repealing section 4 of EUWA and abolishing general principles of EU law as an aid to interpretation fundamentally changes the nature of REUL. It was therefore appropriate to create a new category of law to reflect the loss of these EU interpretive effects after the end of December 2023.

6.3 This instrument utilises the power conferred by section 19(1) of the REUL Act to make appropriate provision that is needed in consequence of these changes made by the REUL Act.

7. Policy background

What is being done and why?

7.1 This instrument does not result in any change in policy effect, but rather provides clarity to users of legislation that the specific changes made by the REUL Act have taken effect—thereby helping to further modernise our statute book and improve its clarity and accessibility for businesses and consumers alike.

7.2 This instrument makes textual amendments to references to "REUL" and related terms (such as, "retained direct EU legislation") contained in primary legislation so that from the end of 2023, these will be changed to "assimilated law" and related terms (such as "assimilated direct legislation"). For example, this instrument will amend section 5(6) of the Financial Services Act 2021 so that a reference to "retained EU law" becomes "assimilated law" and a reference in section 47 of that Act to "retained direct EU legislation" becomes "assimilated direct legislation". These

amendments are being made to implement the renaming of "REUL" by section 5 of the REUL Act.

7.3 This instrument removes references in primary legislation to rights recognised pursuant to section 4 of EUWA. Section 4 is repealed at the end of 2023 by section 2 of the REUL Act, so nothing which is REUL as a result of that section is recognised, available or enforceable in UK law from that date. Section 4 provides that any remaining EU rights and obligations which do not fall within sections 2 or 3 of EUWA, but which previously had effect in the UK legal system through section 2(1) of the European Communities Act 1972, continue to be recognised and available in domestic law at the end of the Transition Period on 31 December 2020, after the UK's exit from the European Union. This includes directly effective rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law. As section 4 of EUWA is repealed by the REUL Act at the end of 2023, references to section 4 and to anything retained by section 4 are being removed from the UK statute book. This will provide greater legal certainty, clarity and accessibility.

7.4 Furthermore, this instrument removes references to general principles of EU law. General principles of EU law have been developed by the CJEU in its case law. The case law provides that they may be used as an aid to the interpretation of the EU Treaties and EU legislation, and may be relied upon directly by individuals against EU institutions or national authorities acting incompatibly with them. Under EUWA, general principles were incorporated into UK law, but with some restrictions, so that they may only be used as an aid to the interpretation of REUL. Section 4 of the REUL Act abolishes these general principles in UK law after the end of 2023. As such, this instrument removes references to general principles in primary legislation to reflect this change and to help ensure that the UK statute book is clear and comprehensive.

7.5 The UK Government is not, under this instrument, amending Acts of the Scottish Parliament, Scottish SIs, or wholly devolved Acts and SIs which extend to Scotland only. Similarly, the instrument will not make changes to Acts of Senedd Cymru or Welsh Statutory Instruments. The regulations make consequential amendments to Acts of Parliament where competence is reserved to the UK government and in some containing areas of devolved competence. The regulations will also make consequential amendments to Northern Ireland primary legislation (and certain Northern Ireland Orders in Council that are equivalent to primary legislation) given the current lack of an Executive. As part of this, the instrument is updating a reference to a provision of the Direct Payments to Farmers (Legislative Continuity) Act 2020 contained in a Northern Ireland Order in Council; the relevant provision of the Direct Payments to Farmers (Legislative Continuity) Act 2020 is being renumbered by paragraph 10 of Schedule 2 to the REUL Act. As explained above, such amendments are purely consequential in nature and do not have a broader policy impact.

8. European Union Withdrawal and Future Relationship, and associated Legislative REUL Reform

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under EUWA.

8.2 This instrument does relate to the reform of REUL because it is made using the power contained in section 19(1) of the REUL Act to make consequential amendments.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The United Kingdom Government indicated to the Devolved Administrations that it would ask them to provide their consent to this consequential Statutory Instrument, and therefore the UK Government has decided to seek their formal agreement for laying these regulations.

10.2 These regulations will make consequential amendments where competence is devolved to Northern Ireland, including certain amendments to legislation that was made in Northern Ireland, given the lack of an Executive and Assembly. The Northern Ireland Civil Service has been given the opportunity to provide references to "REUL" that should be amended, and the Northern Ireland Civil Service and Legislative Counsel for Northern Ireland have been given the opportunity to consider and provide comments on these regulations.

10.3 UKG has offered to amend references to "REUL" to "assimilated law" contained in legislation made in Scotland on behalf of the Scottish Government, and contained in legislation made in Wales on behalf of the Welsh Government. The Scottish Government and the Welsh Government have both confirmed that they are planning to make their own legislation to address these changes, and therefore do not require UKG to make these amendments on their behalf.

10.4 The Scottish Government and the Welsh Government have been given an opportunity to consider and provide comments on these regulations.

11. Guidance

11.1 No guidance is necessary in relation to these regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the instrument only makes consequential amendments.

13. Regulating small business

13.1 This legislation does not impact on the activities that are undertaken by small businesses, as the Instrument makes only consequential amendments to primary legislation, none of which will result in a change of policy.

14. Monitoring & review

14.1 The approach to monitoring this legislation is that the pieces of legislation being amended by this SI will be reviewed in line with the approach already in place for these instruments.

14.2 As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023 a statutory review clause is not required.

15. Contact

15.1 Emma Cotterill at the Department for Business and Trade: Telephone: 07531814971 or email: emma.cotterill@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Harrison, Deputy Director for the Brexit Opportunities Unit at the Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nusrat Ghani, the Minister of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.