# EXPLANATORY MEMORANDUM TO

# THE RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023 (REVOCATION AND SUNSET DISAPPLICATION) 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 preserve specified instruments from the revocation of Retained EU Law (REUL) under Schedule 1 to the Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act"), and revoke further specified REUL instruments at the end of 2023.

2.2 Schedule 1 to the REUL Act provides a list of 587 pieces of retained EU law which will be repealed on 31 December 2023. This legislation is being revoked because it is no longer operable, or suitable for purpose in the UK. A detailed explainer on the Schedule to the REUL Act can be found at https://www.gov.uk/government/publications/schedule-of-retained-eu-law

2.3 Since the legislation specified in Schedule 1 of these Regulations was included in the REUL Act further analysis has been conducted and it has been identified that those instruments listed for preservation are not obsolete and therefore need to be preserved. These Regulations ensure those instruments will not be revoked at the end of 2023. Some of the instruments will be preserved for Northern Ireland only as the Northern Ireland Civil Service has asked the UK Government to do so on their behalf given the current absence of an Executive and sitting Assembly in Northern Ireland.

2.4 These Regulations also revoke further obsolete and inoperable pieces of legislation listed in Schedule 2 of this instrument, helping to further modernise our statute book and improve its clarity for businesses and consumers alike.

## 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 these powers in the REUL Act have been exercised. The powers being exercised are those conferred to disapply the sunset, in section 1(4), and to revoke REUL, in section 14(1).

3.2 The power in section 1 of the Act enables a relevant national authority (i.e. a Minister of the Crown, a devolved authority, or a Minister of the Crown acting jointly with one or more devolved authorities) to specify in regulations those instruments listed in Schedule 1 of the Act to which the sunset (revocation of specified retained EU law at the end of 31 December 2023) should not apply. Legislation listed on the Schedule which is specified in regulations made under the power will not be revoked at the end

of 31 December 2023 (or in the case of those instruments listed in Part 3 of Schedule 1) will not be revoked to the extent that they extend to Northern Ireland).

3.3 The preservation power was only intended to be used if absolutely necessary. However, following further analysis the government has identified that four pieces of legislation on the Act's revocation schedule are not obsolete and are required to maintain the current policy position in the UK. The Northern Ireland Civil Service has identified three pieces of legislation which must be preserved for Northern Ireland only. All three pieces relate to information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries. These must be preserved only for Northern Ireland because their revocation represents a policy change which would require agreement by Ministers in the Northern Ireland Executive which cannot be granted in the ongoing absence of that Executive t. The preservation power was explicitly included in the Act for this purpose and will expire on 31st October 2023.

## 4. Extent and Territorial Application

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

4.2 The revocation of an instrument or a provision of an instrument by this instrument has the same extent as the instrument or provision to which the revocation applies.

4.3 The disapplication of the sunset has the same extent as the instrument to which it applies, other than for those instruments listed in Part 3 of Schedule 1 of the SI, which are preserved only to the extent they apply to Northern Ireland.

4.4 The remainder of this internment extends UK-wide.

4.5 The territorial application of 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 The Secretary of State 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 (Revocation and Sunset Disapplication) Regulations 2023 are compatible with the Convention rights."

## 6. Legislative Context

6.1 To maintain legal certainty as the UK ended the Transition Period, the European Union (Withdrawal) Act 2018 ("EUWA") provided for the retention of most EU law, as it applied in the UK legal system on 31 December 2020. EUWA incorporated EU law that applied to the UK onto the statute book as "retained EU law" (REUL).

6.2 The REUL Act facilitates the amendment, restatement or revocation and replacement of REUL, and assimilates REUL remaining in force after the end of 2023 by removing the special EU law features attached to it, such as supremacy, interpretive effects and Section 4 rights. The REUL Act contains, in Schedule 1, a list of 587 instruments which will be revoked at the end of 31 December 2023.

6.3 This SI utilises powers conferred by the REUL Act to correct issues identified with Schedule 1 of the REUL Act following further analysis, and to revoke further REUL instruments which are no longer necessary to the functioning of the statute book.

## 7. Policy background

***What is being done and why?***

7.1 This SI utilises powers conferred by the REUL Act. The Act's purpose is to enable the amendment of retained EU law (REUL) and to remove the special features it has in the UK legal system. This SI builds on the 587 instruments revoked in Schedule 1 of the REUL Act, preserving certain pieces of legislation on this Schedule from revocation and revoking further legislation where appropriate.

7.2 The preservation provisions of the SI will prevent the revocation of instruments which further analysis has indicated should not have been included in the REUL Act's revocation Schedule. Since their inclusion on the revocation Schedule, the UK Government has identified that four pieces of legislation need to be retained to maintain the current policy effect. Further rationale on each is below:

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| Commission Decision of 13 February 2014 concerning the placing on the market for essential use of biocidal products containing copper (2014/85/EU). | This legislation must be preserved to enable the Health and Safety Executive to continue approving the use of copper under these provisions. |
| Commission Decision of 24 June 2014 concerning the placing on the market for essential use of biocidal products containing copper (2014/395/EU). | |
| Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council. | This piece of legislation will be required beyond 31 December 2023 to enable the SI planned to reform The Merchant Shipping (Accident Reporting and Investigation Regulations 2012 (S.I. 2012/1743) to be prepared and laid. |
| Road Vehicles (Testing) (Disclosure of Information) (Great Britain) Regulations 2002 (S.I. 2002/2426). | These provisions provide the legal vires to inform counterparts in Northern Ireland and Gibraltar of the outcome of roadworthiness inspections. This legislation must be preserved to ensure this arrangement is maintained. |

7.3 Furthermore, the Northern Ireland Civil Service has identified three pieces of legislation which must be preserved for Northern Ireland only. All three pieces relate to information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries. These must be preserved only for Northern Ireland because their revocation represents a policy change which would require agreement by Ministers in the Northern Ireland Executive which cannot be granted in the ongoing absence of that Executive and because Northern Ireland has derived significant economic benefit from the export programmes underpinned by this legislation in the past. This instrument uses the power in section 1(4) of the Act to disapply the revocation in cases such as these to avoid these recently identified consequences.

7.4 The revocation provisions in this instrument will revoke 93 pieces of REUL, using the power conferred in section 14(1) of the REUL Act to revoke pieces of legislation which are redundant, have been superseded or no longer have any legal effect in the UK following our exit from the EU. While we would not expect anyone to be directly affected by these changes in the law (as the legislation we are revoking no longer has any practical effect) by tidying up the statute book revocation will make the law more accessible and make it easier for businesses and consumers to understand what legislation applies to them.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to the withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

8.2 This instrument does, however, relate to the reform of REUL as it is made under sections 1(4) and 14(1) of the REUL Act to disapply the sunset of REUL to specified instruments and revoke specified REUL.

## 9. Consolidation

9.1 No consolidation is necessary for this instrument.

## 10. Consultation outcome

10.1 Consultations with external stakeholders were not considered necessary for this SI as revocations are being carried out only in areas where legislation is obsolete or inoperable and thus there is no significant policy change.

10.2 The Northern Ireland Civil Service was consulted on the pieces of legislation to be preserved in Northern Ireland. Agreement was reached via an exchange of letters at Permanent Secretary level between UKG and the Northern Ireland Civil Service in the absence of Northern Ireland Ministers. All other pieces of legislation to be preserved or revoked are in reserved areas. Nevertheless, the DAs were engaged on the purpose and contents of this instrument.

## 11. Guidance

11.1 No guidance is necessary.

## 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 line-by-line explainer document is being published on gov.uk alongside this SI. This will provide more information on each piece of legislation being revoked and confirm why each piece is obsolete or inoperable and is therefore suitable for revocation.

12.4 A full impact assessment has not been produced because there will be little to no impact of the revocations. Impacts are therefore expected to be de-minimis in relation to the existing Better Regulation Framework.

## 13. Regulating small business

13.1 The legislation does not have an impact on activities that are undertaken by small businesses because the legislation being revoked is obsolete or inoperable.

## 14. Monitoring & review

14.1 The approach to monitoring this legislation is that the pieces of legislation being preserved 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 Elizabeth Davidson at the Department of Business and Trade, Telephone: 07871990888 or email: Elizabeth.davidson@cabinetoffice.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 of Business and Trade, has confirmed that this Explanatory Memorandum meets the required standard.

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