

## Retained EU Law (Revocation and Reform) Bill: briefing for Public Bill Committee line by line scrutiny

November 2022

### Introduction

The Retained EU Law (Revocation and Reform) Bill (the REUL Bill) puts at risk thousands of laws that are crucial not only to conserving, and restoring the natural environment, but also to protecting public health, and creating a sustainable economy. It represents an attempt to deliver the single biggest modification of environmental law in the UK in recent history and will also have major implications for laws that protect our rights as citizens, consumers and workers.

The government's costly and bureaucratic REUL plans are highly questionable, especially during a cost of living and economic crisis. They will also derail urgent action to tackle the nature and climate crisis and render the manifesto commitment for the most ambitious environmental programme on earth redundant.

Environmental action and priorities are already delayed. For example, on 31 October the government missed [a legal deadline](#) to publish environmental targets. The government should therefore prioritise its environmental commitments in the Environment Act 2021 and 25 year environment plan, including the actions and policies necessary to deliver nature's recovery by 2030 and withdraw the REUL Bill.

We have no objection to a sensible, consultative process that examines, updates and improves environmental laws, but that is not what this bill offers.

Below we offer commentary on some of the amendments that have been tabled for discussion in Committee. We hope that the Committee can raise concerns about the serious impacts of the bill, including the proposed sunset, lack of parliamentary scrutiny, deregulatory nature and impacts on legal certainty, as well as the environmental impacts we refer to above and below. We are concerned that the Regulatory Policy Committee [considered](#) the government's [impact assessment](#) of the bill is not fit for purpose and has given it a red rating (the lowest possible).

### Amendments 74 and 77 – exempting listed environmental regulations

Under the bill, crucial environmental protections face the prospect of being revoked without replacement, or being replaced by weaker regulations due to the extremely limited time available for drafting workable replacements before the sunset clause applies and lack of parliamentary oversight and public consultation.

Selecting key environmental legislation for exclusion from the most crucial and damaging provisions in the bill is helpful in underlining how central to environmental protection and environmental progress the laws in question are.

The examples demonstrate the wide range of such legislation. Some are concerned with topics that may not automatically be classified as environmental, such as the regulation of pesticides, but are nevertheless of critical importance for the environment and for the health of workers and wider public.

However, these lists are only illustrative. There are hundreds of items of retained environmental law in a complex web, some with significant case law attached to them.

**Amendments 74 and 77** therefore should be seen as a non exhaustive list of the key examples of law which it will be vital to retain to maintain standards. The regulations listed in these amendments represent some of the most prominent environmental protections, but many potentially vital but not always easily identifiable protections would of course remain at risk. A definitive list of environmentally important measures does not exist.

We note that similar amendments have also been tabled to exempt key workers' rights and consumer protections from the scope of Clause 1. Taken jointly, these amendments demonstrate the breadth of existing REUL underpinning vital protections, but this approach also risks simply shifting the potential impacts of the imminent sunset onto other policy areas without a similar provision (for example transport), or other parts of environmental and social policy which are not featured in these illustrative lists. Even if protection from the sunset was complete, these important laws would still be subject to review under Clause 15 – which, without amendment, would allow for replacement legislation to change both the content and the objectives of the law without adequate scrutiny and consultation.

**We set out in the annex some of the real world impacts that could result from a decision not to protect the regulations listed in amendments 74 and 77.**

### **Amendments 85 and 92 – Clause 15 improvements**

**We strongly support amendments 85 and 92.** Amendment 85 would remove the restriction on the replacement of EU law that states it must not add to the regulatory burden. Amendment 92 would introduce a duty to consult the relevant national environmental authority, publish their advice, and state the reasoning for any divergence from their recommendations. Until such consultation has taken place, no provision under this section would be able to be made. Amendment 92 would also require the UK government to publish its Environment Act targets before making provision under this section and to publish a statement setting out how the provision is compatible with the delivery of these targets.

Clause 15 of the bill has been described by some [commentators](#) as a “do whatever you like” provision. It gives ministers extremely wide powers to revoke or replace REUL and to lay replacement legislation either with “such provision as the relevant national authority considers to be appropriate to achieve the same or similar objectives” or with “such alternative provision as the relevant national authority considers appropriate”. This subjective judgement of appropriateness, accompanied by such a limited link to the objectives of the original legislation, leaves clear potential for sensible, longstanding protections to be replaced by regulations with entirely divergent aims and outcomes.

The regulatory burden is defined as a financial cost, an administrative inconvenience and an obstacle to trade, innovation, efficiency, productivity or profitability. **The direction of travel that this bill promotes is therefore abundantly clear – deregulatory.**

The government should adapt its vision for this bill and commit to review laws in such a way as to make them fit for purpose, and to improve them, not to remove them for the sake of deregulation.

Decisions on the merit of increasing regulatory burden, if appropriate, should be taken through Parliament, and where reductions in burden can be found, these should be subject to a clear non regression commitment to prevent trade-offs between health, the environment, people and economic development.

Ministers have [suggested](#) that the bill will not weaken the UK's environmental protections. **Amendment 92** would simply put into the bill the [government's stated intention](#) that any review of environmental regulation will need to support the goals of the Environment Act 2021 and the legally binding target to halt nature's decline by 2030.

Furthermore, will the government expedite the publication of the much delayed environmental principles policy statement which would inform ministerial policy making on REUL? And how will the government ensure that the UK's [international commitments](#) are delivered, many of which are interwoven within REUL and depend on the regulatory prompts and steers within it?

### **Other amendments of interest**

#### **Government amendment 7**

This amendment risks introducing a whole potential patchwork of sunsets, if that is how ministers choose to use it. By allowing for transitional, transitory and saving provision to be made in relation to legislation subject to the overall sunset of 31 December 2023, this amendment risks creating a barrage of sunset dates across 2024 and 2025 as transitory provisions are introduced or extended. With a further potential 2026 sunset described in the bill, this resulting patchwork of sunset deadlines would be very confusing and cause much uncertainty.

#### **Amendment 72**

This amendment would provide devolved assemblies with the power to delay the sunset of legislation, and not just a Minister of the Crown. We strongly support this.

#### **Amendment 79**

We support this amendment which would add further conditions for higher courts to regard when deciding to diverge from retained EU case law.

#### **Amendment 80 to 84, 87 to 89, NC8, NC9**

In addition to the scrutiny challenges presented by Clause 15, Clause 16 provides an ongoing power for REUL, and legislation brought in to replace REUL, to be amended in light of changes to science and technological understanding, but provides no clarity as to the expertise, objectivity or scrutiny of such judgements.

We support these amendments which would add helpful transparency and scrutiny and represent a sensible and considered approach to engaging stakeholders, including parliamentarians and the devolved nations.

#### **Amendments 90, 91 and NS1**

Due to the sheer number of REUL instruments, there is a serious risk that important laws will fall automatically at the end of 2023, simply because they have not been identified and/or restated or amended in time. This could lead to significant gaps in our environmental law framework that could have knock-on effects on other domestic and assimilated laws because they depend on each other.

As the minister indicated in [her letter](#) to the Committee, the additional legislation that the National Archives is [reported](#) to have identified is yet to be verified by the government and therefore numbers and detail of REUL remain highly uncertain.

These amendments would introduce the concept of a definitive list for revocation. A definitive list would seek to address the concern of the unintended loss of REUL, and require the government to positively identify what REUL it wants to revoke. This would help mitigate the risk of unidentified REUL falling.

The processes that these amendments would put in place to ensure there is a full explanation of revocation and consultation on revocation are useful, but the amendments also demonstrate the impossibility of the 2023 sunset provision. It is an irresponsible approach to law making: a legislative sledgehammer instead of an evidence driven, targeted and cost effective process.

### **NC10, NC11, NC12**

These new clauses would add helpful requirements for the kind of impact assessment we would expect from new laws. This would be important in fulfilling the government's stated aim of reviewing REUL to ensure that it works for the domestic context. This package represents a sensible and considered approach to impact assessment.

### **For more information, please contact:**

Ruth Chambers, senior fellow, Greener UK

e: [rchambers@green-alliance.org.uk](mailto:rchambers@green-alliance.org.uk)

t: 020 7630 4524

## **Real world impacts that could result from a decision not to protect the regulations listed in amendments 74 and 77**

### Chemicals

*The REACH Regulation and the REACH Enforcement Regulations 2008*

These regulations provide a comprehensive legal framework to regulate the use of chemicals, enabling assessment of the risks posed by different products and the implementation of control measures. If REACH is weakened, controls on the use of harmful chemicals could be loosened. More products that contain chemicals that are [linked to cancer or cause effects on intellectual development](#) will reach the market, from sofas and paint to cosmetics and toys.

### Habitats Regulations

*The Conservation of Habitats and Species Regulations 2017*

*The Conservation of Offshore Marine Habitats and Species Regulations 2017*

These regulations include a crucial provision preventing any development that could adversely affect the integrity of our most precious nature sites (those designated as Special Areas of Conservation and/or Special Protected Areas). Any weakening of this language through hasty redrafting could allow unsustainable developments to go ahead on or around important nature sites, even when they would cause damage to them. This damage could include more pollution reaching water habitats, and terrestrial habitats shrinking. Nationally and internationally important nature sites on land and at sea in England, including the Ashdown Forest, Braunton Burrows, and Dogger Bank, [will become more vulnerable](#).

### Water

*The Urban Waste Water Treatment (England and Wales) Regulations 1994*

*The Bathing Waters Regulations 2013*

*Water Environment (Water Framework Directive) (England and Wales) Regulations 2017*

*The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010*

*The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (also known as the Farming Rules for Water)*

These regulations provide the legislative underpinning for efforts to protect and clean up our rivers.

Weakening the Urban Wastewater Treatment (England & Wales) Regulations would reduce the pressure on water companies and developers to provide primary wastewater infrastructure sufficient to meet the needs of urban areas, especially when they are growing. This increases the risk of insufficiently treated wastewater from urban areas spreading pollution across the freshwater network.

Weakening the Water Framework Directive and the Bathing Waters Regulations would undercut measures that effectively drive holistic action to improve water quality across frontline organisations (including water companies). The lessening of this central impetus could see progress towards cleaning up our rivers stall, with individual improvement measures becoming siloed.

Weakening the Agricultural Diffuse Pollution and Control of Pollution regulations would allow increased levels of agricultural pollutants in our rivers. These pollutants are [devastating to freshwater wildlife](#), reducing oxygen levels and even killing fish outright in areas of particular concentration.

### Marine

*The Marine Strategy Regulations 2010*

*The Marine Works (Environmental Impact Assessment) Regulations 2007*

*The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017*

The Marine Strategy regulations places obligations on the UK government to take steps towards achieving Good Environmental Status (GES), and to monitor and report on this [urgently needed](#) progress. Weakening these regulations would mean reducing the obligation on government to make further progress towards GES, and to monitor and report on that progress. The policy imperative to recover ocean health would slacken.

Weakening the two Environmental Impact Assessment regulations could loosen the requirements on those progressing marine projects to provide evidence of environmental impact, to inform decision making, and reduce the mitigation measures should a project go ahead. This would increase harmful impacts from development upon marine species and habitats.

### Pesticides

*The Plant Protection Products Regulations 1107/2009*

*The Sustainable Use Directive Regulation (EC) 396/2005*

Weakening of the Plant Protection Products Regulations would lead to less stringent tests for pesticides before they are authorised for use in the UK, opening the door to more dangerous products in our fields, and ultimately our food.

Weakening of the Sustainable Use Directive and Regulation (EC) 396/2005 would undercut efforts to curb pesticide harms and encourage the use of pesticide alternatives.

Altering these regulations could also undermine decisions previously made under them. Decisions such as the 2018 banning of non-emergency use of neonicotinoids (due to their impacts on pollinator populations) were made under the EU regulations, their amendment leaves the legal status of decisions made under them open to question. Banned pesticides could become legal to use once again, with adverse outcomes for [human health](#) and [biodiversity](#).

### Air pollution

*The National Emission Ceilings Regulations 2018*

These regulations drive policy analysis and interventions to meet the emissions caps set within them. The slackening of that drive, through a weakening of the regulations, would likely reduce the pace and ambition of air pollution policies in the UK.

The [National Air Pollution Control Programme](#) provides an illustrative example. This document is currently built around the National Emission Ceilings, reporting progress towards meeting them and setting out policy options to enable further progress. A weakening of the National Emission Ceilings regulations would inhibit this catalyst for increasing ambition on air pollution policy, leading to ongoing air pollution and associated [poor health outcomes](#).

## Invasive species

### *Invasive Alien Species (Enforcement and Permitting) Order 2019*

The Invasive Alien Species (Enforcement and Permitting) Order is the only piece of current legislation that works to prevent the introduction of invasive species. Other pieces of legislation regarding invasive species work only to prevent their spread, and do not contain powers to stop their introduction in the first place. The weakening of the order would open a breach in the UK's defences against invasive species, and the significant [ecological and economic damage](#) they cause.

## Animal welfare

### *Directive 2010/63 on the protection of animals used for scientific purposes*

### *Directive 1999/74 laying down minimum standards for the protection of laying hens*

### *Regulation 139/2013 laying down animal health conditions for imports of certain birds into the Union and the quarantine conditions thereof*

### *The Welfare of Animals (Transport) (England) Order 2006*

Weakening Directive 2010/63 could see standards for the accommodation and care of animals used for research weakened, leading to increased suffering amongst laboratory animals. For example, article 14 of the Directive requires, where possible, for animal experiments to be carried out under general or local anaesthesia. The removal of this requirement could greatly increase the scale of animal suffering in experiments.

Directive 1999/74 banned the use of barren cages for laying hens. Weakening it could change acceptable cage standards for laying hens, allowing the expansion of battery chicken farming through the back door.

Regulation 139/2013 stops the importation of wild caught birds for the pet trade, its introduction across the EU in 2005 reduced the volume of wild bird trading to about [10% of its former level](#). Weakening the regulation could breathe new life into the trade in wild-caught birds, with renewed UK demand provoking further despoilation of wild bird populations in South America, Africa and Asia.

The Welfare of Animals (Transport) (England) Order 2006 sets basic welfare conditions for the live transportation of animals. Weakening the Order could see UK welfare standards for animal transportation fall below that of our neighbours in the EU. It would also mark the complete reversal of the UK government's plans to increase welfare standards in transportation following Brexit, already stalled through the [halting](#) of the Kept Animals Bill.

# GREENER UK

---



ClientEarth®



GREENPEACE

