

# Retained EU Law (Revocation and Reform) Bill: briefing for Report stage

January 2023

## Introduction

The Retained EU Law (Revocation and Reform) 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 bill has attracted major criticism from [academics](#), [trade unions](#), [legal groups](#) and civil society groups.

The UK government's costly and bureaucratic REUL plans are highly questionable, especially during a cost of living crisis. They will also derail urgent action to tackle the nature and climate crisis.

## We would be grateful if MPs would use the opportunity of Report stage to:

- **Urge the government to 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.
- **Reassert Parliament's role on the oversight, scrutiny and passing of legislation**, with transparency on what laws are in scope of the bill (**amendment 36**).
- **Support the introduction of environmental safeguards** to ensure the powers in the bill produce progressive and not regressive environmental law (**NC5**).
- **Insist the government instead prioritises its environmental commitments** in the Environment Act 2021, including the actions and policies necessary to deliver nature's recovery by 2030, and enable the devolved governments to do likewise.
- **Call for authorities to opt for a 'transparency first' approach to reviewing retained EU law**, with public consultation and seeking advice from experts.

## Priority amendments

### 1. Amendment 36 – parliamentary sovereignty

**There are serious legal and policy risks from a bill which would allow ministers to remove or weaken complex, technical laws at will, and potential unintended consequences if legal requirements are revoked by oversight. It is also deeply undemocratic.**

**Amendment 36** seeks to counter this by requiring the government to set out in law within the bill what is in scope, clearly defining to which laws this bill applies. It is the foundation of parliamentary sovereignty for MPs – and the electorate – to know the extent and impact of the legislation before them.

We note this amendment has strong cross party support with MPs from seven parties [writing](#) to the Observer on 15 January 2023 and **we strongly urge MPs to support it**.

### **No clarity on which laws are covered by the bill**

It is extraordinary that MPs are being asked to consider this bill at the last major Commons stage without knowing the full scope of the laws included. The government's [retained EU law dashboard](#) sets out a fraction of the laws in scope of the bill. For example, Defra's REUL programme is of unconfirmed size but comprises "about 1,100 pieces" ([response](#) from the Secretary of State to Q90 from Geraint Davies), the largest amount of REUL in Whitehall, although only 570 are listed in the dashboard. Of these 570, 437 regulations are unchanged (so are yet to be tackled), 70 have been amended and 63 repealed.

Critical regulations such as the [Conservation of Habitats and Species Regulations 2017](#) and the [Marine Strategy Regulations 2010](#) are not yet included in the dashboard. There is no clarity on what else might be missing but we understand it is a substantial number of pieces of legislation, as the Secretary of State has indicated.

This letter from Housing Minister [Felicity Buchan](#) to the House of Lords Common Frameworks Committee claimed that the dashboard was updated on 15 November 2022:

"BEIS has commissioned departments to provide analysis of where REUL operates in areas of devolved competence on a quarterly basis. The most recent version of the dashboard, published Tuesday 15th November, shows the territorial extent of the pieces of REUL that it includes."

This, however, is not correct as the dashboard itself still describes the data as "the first iteration", the number of pieces of REUL listed has not changed and there is no detail on territorial extent. The Committee [followed up](#) on 14 December 2022, with no response from the government yet available. On 12 January 2023, BEIS minister Nusrat Ghani gave a [non-committal response](#) that the dashboard would be updated "in due course".

### **Unknown costs and impacts of implementing the bill**

We note that the impact assessment for the bill was given a red rating (the lowest possible) by the Regulatory Policy Committee, which [judged](#) it was "not fit for purpose". The BEIS Committee [asked](#) the Business Secretary to respond to the Regulatory Policy Committee's findings. The Business Secretary's [response](#) admits that there is limited information available at this stage to quantify potential impacts around how the enabling powers in the bill will be used, meaning Parliament is being asked to grant ministers extraordinarily wide powers for which the impact on businesses, the public and the environment is not known.

It is of great concern that information on the impacts of the bill on businesses, large and small, has not been made available. Environmental regulations play a key role in driving investment, job creation, skills, and innovation, as explained by engineering firm [Buro Happold](#). In addition, industry is committed to improving the environment through corporate social responsibility (CSR); not achieving CSR goals will impact on investment and public perception of industry. More widely, REUL covers a variety of consumer protection, public health and workers rights requirements, all of which require levels of business compliance. Whether these regulations are to be deleted, amended or retained post 2023 will therefore have a significant impact on business activities which will require adequate anticipation and preparation.

The bill will not provide a stable operating environment for businesses because of the [“endless uncertainty”](#) that will ensue. **With no clarity about whether regulations will be replaced and if so by what, instead of reducing “burdens”, the government’s REUL plans would have a severe chilling effect on business activity and investment.**

### **Major impact on civil service capacity and focus**

To date, [only three FTE officials](#) have been working on co-ordinating REUL at Defra. With the prospect of further departmental [“efficiency savings”](#), the challenge of competently carrying out the work required by the REUL bill in this context appears insurmountable.

The REUL programme is significantly bigger than the EU Exit Statutory Instrument programme which dominated Defra’s activity and focus in 2018/19. This [civil service blog](#) explains the herculean efforts that the department had to make to lay 122 statutory instruments over a period of seven months. Even these relatively modest changes to domesticate EU law dominated departmental time and focus. The REUL programme comprises at least ten times this. It is also significantly more demanding because of the added complexity of losing an intricate web of interpretative effects, a matter which has barely featured in government discourse to date.

The drain on civil service capacity is also affecting the quality of departmental engagement with Parliament. For example, between October and December 2022, the House of Lords Common Frameworks Scrutiny Committee sent five letters to Defra and did not receive any responses. This “unacceptable delay” prompted it to [state](#):

“This lack of departmental engagement has seriously impinged on our ability to undertake parliamentary scrutiny of the common frameworks programme and raises the issue of how much priority is being given to this extremely important programme which impacts on the Devolved Administrations across the UK.”

**It is clear therefore that the government lacks the necessary legal and technical policy capacity to manage the scale of the planned REUL review and potential reforms.** As Minister Spencer concedes in this [written answer](#), the government is committed to a project that compromises vital protections without any idea of how much it will cost or how many staff it will need.

### **The risk of losing laws by default**

A major concern is that Clause 1 of the bill contains a sunset provision which would mean that, unless other action is taken to retain, replace or amend REUL, it would automatically be revoked on 31 December 2023.

While there is scope for some laws to be subject to a later sunset of 2026, this power is only available to Ministers of the Crown and not to devolved administrations, and there is no clarity on how this would be decided. **This ‘cliff edge’ constitutes irresponsible law making: a legislative sledgehammer instead of an evidence driven, targeted and cost effective process.**

Moreover, due to the sheer number of REUL instruments, there is a real practical danger 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.

### **Impact on devolved environmental law and priorities**

The UK government has [not provided](#) clarity as to the geographic extent and devolved implications of REUL, nor have devolved administrations yet been able to confirm how many pieces of country specific regulations are covered by this bill.

The Scottish government is concerned that it will be “consumed with unnecessary work to save important legislative provisions from being lost, when it should be acting to address pressing issues such as the cost-of-living and energy crisis” with the Welsh government similarly [warning](#) of the “overwhelming impact upon the ability... to take forward our own legislative programmes”.

The amount of REUL that affects each country is not known. For example, in Northern Ireland officials are developing a list of REUL in scope of the bill: approximately [500 pieces](#) of REUL have so far been identified on roads, transport, railways, water and drainage and planning and [initial estimates](#) by the Department of Agriculture, Environment and Rural Affairs are that over 600 separate pieces of legislation could be affected by the bill.

### **A deficit of public engagement and consultation**

The government’s approach to reviewing REUL has been cloaked in secrecy. There has been no consultation with expert stakeholders or the public on the work that is being undertaken to identify or categorise individual pieces of REUL for retention, replacement or revocation. The REUL dashboard has been [described](#) by the government as “interactive” and [part](#) of the Prime Minister’s promise to “empower the public to scrutinise EU-derived law”. However, the tool does not offer feedback opportunities and it is unclear how many, if any, public comments have been received on the dashboard, beyond those provided through evidence to the Public Bill Committee. **Amendment 36** would provide a welcome opportunity for public engagement and parliamentary scrutiny of the sifting process.

There is a significant public interest in environmental laws, yet no obvious or confirmed vehicle for this to be expressed. Ministers are proposing “star chambers” ([response](#) to question 89) but give no detail on timing, composition or engagement options for these.

**Continuing to exclude experts and the public will lead to missed opportunities to identify where REUL could be improved and a likely underestimate of the impacts or consequences of reform. It will also exacerbate concerns about the democratic deficit that this bill will create, and which amendment 36 seeks to avoid.**

## **2. NC5 – safeguarding the environment from damaging deregulation**

The bill presents the potential to remove or reimagine wide swathes of law, including environmental, social and health protections. Its potential impacts must also be seen in a wider context. In the case of the environment, this includes proposed changes to the planning system such as the replacement of tools to assess the environmental impact of plans and projects, longstanding government [plans](#) to weaken the habitats regulations and the political turmoil and policy shifts that can occur when governments and their environmental commitments change. For example, in the autumn of 2021, the then government published a [Growth Plan](#) and made other announcements which sought a different direction of travel on the environment.

Laws which protect important habitats and species are a visible example of REUL. They have been scapegoated in previous red tape challenges for blocking developments such as house building, a myth which continues to circulate (the architect of the bill, Jacob Rees Mogg, recently [lay blame](#) at the regulations’ door for the housing crisis).

However, in every case, reviews have concluded that any problem lies in the implementation of the laws and [not their drafting](#). Despite this consistent evidence, these regulations are often singled out by ministers and others as being one of the “burdens” holding back growth.

For these reasons, it is important that the bill includes a safeguard to prevent damaging deregulation undermining national and international commitments to environmental protection and improvement.

**The Defra body of REUL contains many regulations of significant public interest, which aim to protect every element of our natural environment and many aspects of people’s health, by setting requirements on issues such as [water quality](#) and [bathing waters](#).** Removing or changing regulations from other departments will also have an environmental impact, for example those from DLUHC relating to planning.

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.

When replacing REUL, ministers must also not increase the regulatory burden, which 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.**

Defra ministers have set out their intended approach to reviewing retained EU law in answers to written parliamentary questions.

On 7 November 2022, Defra minister Trudy Harrison [said](#):

“In reviewing our retained EU law, we want to ensure that environmental law is fit for purpose for the UK’s unique environment, enabling us to drive improved environmental outcomes and deliver on our commitment to halt nature’s decline by 2030, whilst ensuring regulators can deliver efficiently. Any changes to environmental regulations will be driven with those goals in mind.”

On 9 November 2022, Defra minister Trudy Harrison [said](#):

“Any changes to environmental regulation following the review of REUL will need to support the continued delivery of our environmental and international commitments, including those with the EU.”

On 5 December 2022, Defra minister Trudy Harrison [said](#):

“Defra’s aim is to ensure that environmental law is fit for purpose, able to drive improved environmental outcomes whilst providing a UK regulatory framework that is appropriate and tailored to the UK.”

**These aims are welcome and important, but they are not included in the bill, and it is difficult to see how they could be achieved in practice given the edict in Clause 15 that the overall effect of the changes made by ministers on a particular subject area must not increase the regulatory burden.** Does that mean for example if Defra were to make changes to one nature regulation which increased one of the regulatory burdens specified in the non-exhaustive list in Clause 5(10), that it would have to bring forward changes to another nature regulation which decreased those burdens to ‘balance the books’?

**We encourage MPs to thoroughly interrogate how high level ministerial assurances on the environment will be delivered given the deregulatory thrust of the bill and the long list of “burdens” that must be taken into account.**

If it proceeds with this bill, the government should 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. **It should strike out Clause 15(5) and (10) and include NC5, which we strongly support.** NC5 creates additional conditions to be satisfied before the powers set out in Clause 15 can be exercised where the subject matter is environmental law, namely:

- The provision must contribute to a significant improvement in environmental protection (subsection 2). [Section 7](#) of the Environment Act 2021 sets a significant improvement test for the government to meet through its statutory and policy targets. This subsection would provide an important link to that test and ensure that the review of retained EU law would contribute to rather than undermine it.
- Ministers must have regard to international environmental protection legislation and international best practice on environmental protection, ensuring compliance with the requirements and objectives of the Aarhus, Bonn, Bern, Ramsar, OSPAR and Biodiversity Conventions (subsection 3). This will ensure that the government’s [intention](#) that the review of REUL supports the continued delivery of environmental and international commitments is mandated and not optional.
- Compliance with environmental principles and the policy statement on environmental principles (subsection 3). The government has [said](#) that the purpose of the policy statement is to embed environmental protections in policy making. However, the legal duty on ministers to have due regard to the policy statement has not yet been commenced and the timetable for this has not been confirmed, so it is essential for this link to environmental principles to be made in the bill.
- Seeking and taking account of advice from independent experts and environmental governance bodies such as the Office for Environmental Protection or Environmental Standards Scotland (subsection 4). This will help avoid mistakes and ensure that the review of REUL includes expert advice from outside government. [Section 27](#) of the Environment Act 2021 requires UK government ministers to co-operate with the Office for Environmental Protection; this subsection would ensure this takes place on REUL.

The approach in NC5 could helpfully be replicated for other areas of law, citing relevant experts and legal commitments to be included.

### **3. Amendment 21 – excluding key environmental legislation from the sunset**

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

**Selecting key environmental legislation for exclusion from the sunset provision in the bill is helpful in underlining how central to environmental protection and environmental progress the laws in question are.**

The regulations listed in subsections (a) to (s) of **amendment 21** demonstrate the wide range of environmental protection legislation within scope of the bill. Some regulations are concerned with topics that may not automatically be perceived as environmental, such as the regulation of pesticides, but are nevertheless of critical importance for the environment as well as for the health of workers and wider public.

However, this list is only illustrative. There are several hundred of items of retained environmental law in a complex web, some with significant case law attached to them.

**Amendment 21** should therefore be seen as a non exhaustive list of the key examples of law which are vital to retain to maintain high standards. The regulations listed in this amendment represent some of the most prominent environmental protections, however many important 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 parallel amendments 19 and 24 have been tabled to exempt key workers' rights and consumer protections from the scope of the sunset provision in Clause 1. Taken jointly, these amendments demonstrate the breadth of existing REUL underpinning vital protections. However, care should be taken to avoid shifting the potential impacts of the imminent sunset onto other policy areas without a similar provision (for example transport), or onto other parts of environmental and social policy which are not featured in these illustrative lists. Furthermore, even if protection from the sunset was provided, 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 and is designed to further deregulation (as the Secretary of State [explained](#) to the EFRA Committee – Q89).

### **Commentary on other amendments**

#### **Amendments 28, 29, 30, 31, 32, 33, 37, 38, 39**

We welcome the principle behind these amendments which remove the UK wide sunset and provide additional democratic safeguards in relation to devolution. **The bill will have major implications for environmental law and legal certainty across the UK.** Concerns have been raised by devolved governments, legislatures and stakeholders. For example, the [Scottish Government](#) sees the bill as a rush to impose a deregulated, race to the bottom, putting high standards at risk. The [Welsh Government](#) agrees and says that the bill "...risks the reduction of standards in important areas including employment, health and the environment." This Senedd Cymru [research briefing](#) contains more details, and expert academics Dr Viviane Gravey from Queen's University Belfast and Professor Colin Reid from the University of Dundee have [highlighted](#) the "...sheer uncertainty of the process. It is difficult, if not impossible, to fully gauge what the impact of the Bill will be on devolved competences as the scope of Retained EU Law itself is unclear". This [policy brief](#) explains the uncertainty surrounding Northern Ireland.

### **The government should prioritise nature and climate ambition over REUL**

Important environmental action is already being delayed or abandoned even before activity to review REUL commandeers departmental budgets and time.

For example, the government missed its legal deadline to present improvement targets for air, water, nature and waste to Parliament by 31 October 2022 under the Environment Act 2021. In this instance, interventions from the [Office for Environmental Protection](#) and a formal [civil society complaint](#) resulted in the legal breach being addressed.

Delay has beset many other government environmental programmes. For example, the government missed its 2020 target to achieve a 50 per cent recycling rate for household waste. A promised deposit return scheme for plastic bottles will not be in place in England until late 2024 [at the earliest](#) – six years after it was announced by the government. The schedule for tackling pollution in waterways has already been [delayed by 36 years](#).

The government's [environmental principles policy statement](#), first promised to Parliament in 2017, is yet to be finalised. The adoption of River Basin Management Plans was [delayed](#). The Office for Environmental Protection has [highlighted](#) the “slow progress” in implementing the 25 year environment plan. Government action to implement the recommendations of the Glover review of national landscapes is long overdue. Just [0.22 per cent more land](#) has been protected for nature since the government committed to protecting 30 per cent by 2030. The government's response to the consultation on forest risk commodities implementation is also delayed.

The Environmental Audit Committee has [warned](#) that “delay is at risk of becoming the default culture in Defra”. The bill will only add to its in-tray, further entrench this behaviour and distract from the proper business of the department. Furthermore, the department's work programme is far from static with major new additions, including the delivery of the 2030 species recovery and other Environment Act targets, design of a new land use framework and urgent action to address the recommendations of the Net Zero Review and to deliver the outcomes of COP15, the 2022 United Nations Biodiversity Conference.

There can be no doubt that a REUL review programme of the scale envisaged by this bill will cause a huge administrative burden for Defra and will inevitably displace other priorities as it scrambles to meet the challenge of reviewing thousands of pieces of technical and complex legislation. The Observer [reports](#) that civil servants are likely to spend “tens of millions” reviewing retained EU law, with the real cost unknown as answers to parliamentary questions and the impact assessment dodge the important matter of costs. **The government therefore has a clear choice: does it want to focus its efforts on action to tackle the nature and climate crisis or would it prefer it to divert resources to a bureaucratic REUL review, which has unproven benefits and unknown costs.**

**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

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