

# Retained EU Law (Revocation and Reform) Bill

## Briefing for Lords Committee on clause 1

February 2023

### Introduction

The Retained EU Law (Revocation and Reform) Bill puts at risk thousands of laws that are crucial not only to protecting and restoring the environment, but also to safeguarding 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 [running total](#) for retained EU law (REUL) that falls within Defra's remit is 1,781, by far the largest share of any Whitehall department, highlighting the hugely significant implications of this bill for environmental law making.

We have no objection to an evidence based, consultative process that examines, updates and improves environmental laws over a sensible timeframe, but that is not what this bill offers. Instead, it seeks to sideline Parliament, businesses and the public from decisions on the fate of laws which underpin protections for matters of great public interest, ranging from levels of pesticides in food to water quality to protections for much loved species such as otters and dolphins. **We continue to urge the government to rethink its course on REUL.** This briefing sets out our views on amendments proposed on clause 1.

### Legal opinion of Sir Jeffrey Jowell KCMG KC & Jack Williams on the bill

ClientEarth, the RSPB and WWF instructed [Sir Jeffrey Jowell KC](#) (Blackstone Chambers) and [Jack Williams](#) (Monckton Chambers), to give an [opinion](#) on the likely constitutional, legal and practical effects of the bill. Counsels' findings are damning. They conclude that the bill threatens vast swathes of protections and risks undermining fundamental principles of the UK's constitution, the rule of law and the supremacy of Parliament, with the overriding conclusion being that this bill would, if passed in its current form, violate those significant principles. A summary of the opinion is available [here](#).

Counsel also conclude that the bill is exceptional in relinquishing Parliament's key responsibility by virtue of: (i) the scale of the retained EU law affected, over which the Executive is conferred the power to retain, revoke or amend, within an unreasonable timeframe, thousands of existing laws and principles governing important areas of public and private life; and (ii) the procedures for review and appeal or modification of retained EU law which threaten to subvert the constitutional balance between Parliament and the UK government and between the devolved administrations and Westminster.

The ministerial powers in clauses 15 and 16 permit (largely unfettered) discretion for major substantive policy changes. Clause 15, in particular, essentially gives free license for modifications, save that they cannot increase the overall burden, impose taxation or establish a public authority. No non-regression clauses are provided. The bill itself is silent as to the standards to be applied in the exercise of the discretion.

The bill also threatens non-compliance with the UK's international obligations, with clauses 1 to 3, 15 and 16 putting those obligations at risk. Various UK government ministers have committed to ensure the operation of the bill does not jeopardise the UK's international and environmental commitments. As a matter of law, however, these statements provide no assurances or protections.

## Clause 1 – exceptions from the sunset

Many amendments have been tabled to exempt key environmental, worker 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.

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. However, in discussions on exemptions to the sunset, care should be taken to avoid shifting the potential impacts onto other policies which do not feature in these illustrative lists. The context set by the unfettered, deregulatory powers to restate and replace law provided for within this bill must also be considered.

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 human 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 the Department for Levelling Up, Housing and Communities relating to the environmental assessment of projects.

Under the bill, important environmental protections face the prospect of being revoked without replacement, or being replaced by weaker or less effective regulations. The extremely limited time available for drafting workable replacements for any legislation not explicitly saved before the sunset will hinder parliamentary oversight and public consultation, potentially presenting parliamentarians and the public with a choice between ineffective or non-existent protections.

**Furthermore, even if protection from the sunset was provided, these important laws would still be subject to review under clauses 15 and 16.** Without amendment, this 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 Defra Secretary of State [explained](#) to the EFRA Committee – Q89).

**‘Carve outs’ from the sunset should only be considered in the context of a fundamental rethink on the whole bill, especially the powers to replace or revoke REUL in clauses 15 and 16.**

### **Exemption of environmental protection laws (amendment 37)**

**Amendment 37** sets out a list of some of the most significant environmental laws that the bill currently covers. The regulations listed in subsections (a) to (u) demonstrate the wide range of environmental protection legislation within scope of the bill. Some of these 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 the wider public.

There are several hundreds of items of retained environmental law in a complex web, some with significant case law attached to them.

Amendment 37 should therefore be seen as a non exhaustive list of the key examples of law which are vital to maintain high standards. The regulations listed in this amendment represent some of the most prominent environmental protections, however many important but less well known protections would remain at risk.

A definitive list of environmentally important measures does not exist, another reason why the bill is so harmful, because of the risk of important environmental protections being revoked by mistake.

Amendment 37 would ensure that the important laws it lists do not accidentally fall at the end of 2023. For example, the REACH 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. This includes [chemicals](#) linked to cancer or other adverse health effects, found in products from sofas and paint to cosmetics and toys.

The Marine Strategy regulations places obligations on the UK government to take steps towards achieving Good Environmental Status, and to monitor and report on this [urgently needed](#) progress. Environmental Impact Assessment regulations require those progressing development projects to provide evidence of environmental impact, to inform decision making, and mitigate harmful effects, including harm to people.

The animal welfare regulations set standards for the accommodation and care of animals used for research, stipulate basic welfare conditions for the live transportation of animals and outlaw the importation of wild caught birds for the pet trade.

**The regulations listed in amendment 37 must not be sunsetted at the end of 2023. Instead, they should be preserved in full. Any future reform must not be pursued through the powers of the REUL bill because of its deregulatory intent.**

Other amendments propose the exclusion of specific significant environmental REUL from the sunset. While many of these are covered by amendment 37, these offer a further opportunity to highlight the significance of key protections.

### **Protection of water quality (amendments 11 and 12)**

Laws to protect our rivers and other water bodies are of huge significance. There is strong – and growing – public interest in ensuring that the dire state of our rivers is tackled with urgency and vigour. These important regulations must not be allowed to fall at the end of 2023 under the arbitrary sunset deadline, which **amendments 11 and 12** would prevent.

The Water Framework Directive Regulations provide a holistic approach to tackling the damage caused to our water environment and the pressures it faces today. The importance of the water environment to society was recognised by the government in its setting of four water targets under the Environment Act 2021. Without this framework approach, any investment in meeting these targets will risk being undermined, and improvements undone, by the suite of remaining pressures which are not the focus of the targets.

The Bathing Water Regulations concern the quality of waters used by bathers, and how their status is assessed and communicated in order to protect bathers' health. The increased use of the water environment, particularly over the course of the Covid-19 pandemic, has seen growing interest in inland bathing waters and in the state of our rivers and seas more generally. Ongoing concerns about sewage will certainly not be allayed by the removal of regulations designed to protect against sewage-derived harm.

## **Protection of important wildlife habitats and species (amendment 10)**

**Amendment 10** would exclude laws which protect important habitats and species from the sunset. These important regulations must not be allowed to fall at the end of 2023 under the arbitrary sunset deadline. The habitats regulations are at particular risk as 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, with no evidence to support this claim).

However, previous government reviews have repeatedly concluded that any problem lies in other areas such as housebuilders' build-out rate, which in turn is driven by land banking ([not the drafting of the laws](#)). Despite this consistent evidence, these regulations are often singled out by ministers and others as being one of the "burdens" holding back growth.

These regulations include a crucial provision preventing any development that could adversely affect the integrity of our most precious nature sites (those designated as Specials Areas of Conservation and/or Special Protected Areas). They also protect much loved species ranging from otters to dolphins to dormice. 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](#) if these regulations are not retained in full.

## **Safeguarding people and the environment from harmful pesticides (amendment 22)**

**Amendment 22** highlights the importance of regulations that safeguard human health and the environment from harmful pesticides. These regulations govern the placing of pesticides or "plant protection products" on the market, including the approval of active substances, the setting of maximum levels of pesticides residues allowed in food and feed, and the placing of biocides on the market. Biocides are products used to protect humans, animals or materials or against harmful organisms like pests or bacteria.

If these laws fall away on the sunset date of 31 December 2023, this could include a reversal of all existing bans on specific pesticides, including the current restrictions on neonicotinoids. Neonicotinoids are 'systemic' insecticides that are particularly harmful to bees and other pollinators. It could also include the herbicide [paraquat](#) that was banned in the UK in 2007, due to various health concerns including its acute toxicity which continues to cause human fatalities in countries where it remains in use.

If regulations are not retained, it would result in decisions on whether to approve the use of pesticides, such as neonicotinoids and other currently banned substances, being placed solely in the hands of the current Defra Minister. There would, in effect, be no checks and balances on the approval of pesticides in the UK. Since leaving the EU, the UK has to date failed to establish a transparent or robust regulatory process or body that can deal with pesticide approvals as was previously done at EU level. There are no clear plans for what will replace the EU approval system and placing decisions solely in the hands of a government minister will result in even weaker protections from pesticide-related harms.

## **Safeguards for food safety and standards (amendments 30, 38, 39)**

These amendments highlight the importance of protecting the environment, human health and animal welfare by safeguarding rules around use of medicines, monitoring and transparency, and food and feed safety.

## Clause 1 – extension of sunset (amendments 27 and 28)

We note that **amendments 27 and 28** seek to extend the Clause 1 sunset until 2028. We are concerned that the timetable and approach in the bill will impose considerable burdens on government departments and devolved administrations, and will lead to a significant opportunity cost through the diversion and delay of other important policy priorities.

Important environmental action is already being delayed even before activity to review REUL commandeers departmental budgets and time. For example, a promised [deposit return scheme](#) for plastic bottles will not be in place in England until October 2025, six years after it was announced by the government, [breaking](#) a manifesto pledge.

The adoption of River Basin Management Plans was [delayed](#). 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 new regime for forest risk commodities under the Environment Act has suffered continued delay.

The Office for Environmental Protection has [highlighted](#) the “slow progress” in implementing the 25 year environment plan, while the Environmental Audit Committee recently [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.

To her credit, the Defra Secretary of State has [pledged](#) to “get a grip” on the delivery of the government’s environmental pledges. There can be no doubt, however, that a REUL review programme of the scale envisaged by this bill will cause a huge administrative burden for Defra and will inevitably dislodge other priorities as officials scramble to meet the challenge of reviewing such a large swathe of technical and complex legislation.

The Cabinet Office [Retained EU Law dashboard](#) confirms that Defra has by far the largest amount of REUL across Whitehall at 1,781 pieces, 1,453 of which are listed as “unamended”, highlighting the substantive impact of the bill on its work.

Notwithstanding these concerns, extending the sunset to allow ministers five years to exercise the extremely broad powers elsewhere in the bill with little constraint or guidance on their application is no quick fix for the problems the bill presents. **Any extension of the sunset should therefore only be considered in the context of a fundamental rethink on the whole bill, especially the powers to replace or revoke REUL in clauses 15 and 16.**

## Clause 1 – removal of devolved legislation from the sunset (amendment 29)

**Amendment 29** would restrict the automatic revocation or “sunsetting” of EU-derived subordinate legislation and retained direct EU legislation under clause 1 so that it does not apply to legislation within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly or Executive. This would support the devolution settlements and better align the bill with concerns raised by the devolved administrations.

### Clause 1 – improved clarity and scrutiny arrangements (amendment 32)

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.

We **strongly support amendment 32** which would require the government to set out in advance what it proposes will happen to each instrument covered by the sunset clause, giving Parliament the ability to scrutinise these decisions. It would also allow Parliament to overrule the Executive and choose to retain specified instruments if both Houses agree.

### Clause 1 – protection of important Northern Ireland laws (amendment 33)

We support **amendment 33** which would prevent the automatic revocation or “sunsetting” of EU-derived subordinate legislation and retained direct EU legislation that relates to human rights, equality and environmental protection in Northern Ireland.

There is no clarity on how the bill will work in Northern Ireland, or how the Northern Ireland Executive would execute the powers in the bill in the continued absence of a functioning government, including arrangements for publishing and consulting on REUL changes.

### Clause 1 – common frameworks and REUL (amendments 34, 35, 36)

**Amendments 34, 35 and 36** seek to probe the application of common frameworks to REUL or to exempt them from the sunset. Thus far, this important issue has been neglected by the government. During the second reading of the bill, Baroness Andrews, Chair of the House of Lords Commons Framework Scrutiny Committee, [described](#) the value of common frameworks.

“They are the positive and practical expression of how the union is building co-operation as the four countries work together across the internal market, enabling each country to make different choices without disruption. They affect everyday life, for everything from environmental safety to public health. They are underpinned by a cat’s cradle of hundreds if not thousands of complicated, interrelated SIs.”

She asked the minister to exempt common frameworks from the bill. The minister [responded](#) that common frameworks would be used to engage with the devolved governments but did not commit to their exemption.

On 2 February 2023, in the debate on the Common Frameworks Scrutiny Committee’s report [Common frameworks: an unfulfilled opportunity?](#), Baroness Andrews [drew attention](#) to the “existential threat to the survival of the common frameworks” and “direct and unacceptable risk to the programme” presented by the bill, asking “How can the Bill’s intentions be reconciled with the Government’s assertion to us that they are committed to the proper use of common frameworks?”.

She highlighted the number, range and interrelationships of the statutory instruments which form the scaffolding of the common frameworks, which cross agriculture, the environment, health and safety, air quality, carbon emissions, blood products, agricultural processes, plant health, transport of radioactive substances, professional qualifications, waste and resources, and much more.

## Clause 1 – objectives-based approach to reviewing REUL (amendment 42)

**Amendment 42** proposes an alternative approach to reviewing REUL, based on a series of objectives to consider whether the legislation in question is (not) fit for purpose and whether, amongst other things, alternative regulation would provide greater benefits to consumers, workers and the environment, as well as greater legal certainty.

This is to be commended as it would turn the current ‘deregulation for the sake of it’ approach of the bill on its head, instead requiring ministers to consider the fitness of existing legislation and whether replacement legislation would bring greater benefits to society.

We note the Director General of the CBI has [called for](#) the government to adopt a more sensible and proportionate approach on REUL:

“Instead, let’s review, retain, reform and – where appropriate – repeal EU law the Vallance way. Smartly. Not the Retained EU Law Bill’s way. Foolishly.”

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. In the seven months between the two versions of the retained EU law dashboard, the government found an additional 1,211 pieces of Defra REUL – how many more might be found in the ten months until the sunset provision bites?

The bill’s approach could lead to significant gaps in our environmental law framework that would have knock-on effects on other domestic and assimilated laws because they depend on each other, as well as causing real world harm.

**Amendment 42** would give legal substance to the voluntary objectives that Defra ministers are [indicating](#) they would use to inform their review of REUL. These include ensuring that environmental law is fit for purpose and able to drive improved environmental outcomes. Defra ministers have also [stated](#) to Parliament that 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, and will not have the effect of reducing the levels of environmental protection. As a matter of law, however, these statements provide no assurances or protections. Furthermore, non-statutory discretionary commitments, however welcome, are vulnerable to changing political priorities and cannot bind the hands of future ministers.

**Embedding an approach in the bill which requires ministers to explicitly consider whether replacement legislation would bring greater benefits to society is a welcome alternative approach which we would support.**

## Clause 1 – retention by default (amendment 43)

We **strongly support amendment 43** which would ensure that REUL would, by default, remain on the statute books, rather than disappearing, so that only legislation identified and approved by Parliament is revoked.

The Defra Secretary of State [told](#) the House of Lords Environment and Climate Change Committee on 30 November 2022 that “My default will be that we do not drop the ball and we retain stuff.” (Response to Q8).

In [her speech](#) on 31 January 2023 launching the government's new Environmental Improvement Plan, the Defra Secretary of State said on REUL, "A lot of the legislation is absolutely key to what we do which is why we will be keeping it" and "We will remove legislation superfluous to the UK, review the effectiveness of EU regulation in achieving environmental outcomes and we will retain, by default, environmental legislation for the UK to achieve existing environmental outcomes."

Also on 31 January 2023, in a [debate](#) on Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022, Defra minister Lord Benyon reiterated that Defra's "default position is to retain" as "In no way can we hit our targets for reversing the declines of species, or meet our international commitments and our determination to see our seas and oceans recover to health and many other commitments to support nature and biodiversity, if we just dump regulations that we need."

While these ministerial aims are welcome and important, they are not included in the bill, and it is difficult to see how they could be achieved in practice given the demands of the sunset and 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.

This 'retain by default' approach is welcome but is at Defra ministers' discretion, carries no guarantee of replication by future ministers and may not be delivered if the arbitrary sunset leads to errors of omission. Furthermore, there is currently no clarity on what will be retained or revoked or what might be replaced and the process that will be conducted to inform these important decisions.

**We therefore strongly support amendment 43** would ensure that the approach that Defra ministers have indicated they want to follow will be achieved in practice.

### **After Clause 1 – exceptions to sunset for law relating to financial services and the environment (amendments 45, 46, 47)**

**Government amendment 45** would exempt law relating to financial services from the sunset provision. **Amendments 46 and 47** would add "relevant environmental law" to this list of exceptions.

By exempting law relating to financial services from the sunset, the government is effectively acknowledging that, for some areas of law, an alternative approach to reviewing REUL should be followed. The [Financial Services and Markets Bill](#) offers a more appropriate template for reviewing and reforming law: much more specific powers, lists of matters to consider when rules are made, and provision for engagement with the Financial Conduct Authority and other regulators in the making of rules, and no sunset.

Schedule 1 to the Financial Services and Markets Bill provides a detailed list of REUL relating to financial services that will be revoked. In the [explanatory notes](#) to the bill, the government states that it does not expect to commence the revocation of individual parts of Schedule 1 unless the regulators have drafted and consulted on rules that are ready to be enforced, where it is appropriate that these provisions are replaced.

Contrast that with the approach in the REUL Bill, which risks important protections in wide swathes of law 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, the inability to increase any regulatory burden and the lack of parliamentary oversight and public consultation.

On environmental law, we note that the Secretary of State has [implied](#) to the EFRA Committee (response to Q89) that the bill would not be the first choice power for Defra when seeking to improve REUL.

**Government amendment 45** therefore begs a number of questions:

- Why is the government adopting a more considered and sensible approach for law relating to financial services and not for other areas which are of equal importance to the public and the economy, for example on environmental and consumer protections, trading standards and worker rights?
- What is the government’s rationale for mandating consultation and specificity on the revocation of laws relating to financial services but not for other areas of law, for example on environmental and consumer protections, trading standards and worker rights?
- Given that several powers to amend environmental REUL already exist in primary legislation, why does the government need additional powers in the REUL Bill? For example, the government recently sought – and was granted – powers to amend the REACH regulation under [Schedule 21](#) of the Environment Act 2021.

### **After Clause 1 – consultation and reporting (amendment 48)**

**We welcome amendment 48** which would ensure that no EU-derived subordinate legislation or retained direct EU legislation can be repealed at the end of 2023 unless there is consultation on the proposed revocation and a report has been laid before Parliament or the appropriate devolved legislature detailing the consequences of the proposed revocation.

To date, 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 sunset/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 dashboard does not offer feedback opportunities and is riddled with inconsistencies, for example, on how Defra REUL is being recorded.

Dashboard edition	Defra REUL amended	Defra REUL repealed
June 2022	70	63
1 February 2023	11	5
21 February 2023	181	147

There is no clarity on why the numbers for amended/repealed Defra REUL changed between the different versions of the dashboard. We can only assume these were due to inputting or cataloguing errors. Elsewhere, some rules appear to have been identified separately by different departments, leaving it unclear which will lead, for example Regulation (EC) No 641/2004 identified by both Defra and DHSC. Much of the REUL in the dashboard still has no territorial extent associated with it, and lists of devolved REUL are yet to be added. There is therefore low confidence in the dashboard’s accuracy and utility.

There is a significant public interest in the fate of 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.

Further, the government's international law duties require it to consult on changes to environmental law in any event, under Articles 7 and 8 of the Aarhus Convention. While the government has stated it has no intention of using the REUL bill powers to undermine its international commitments, it remains unclear how it plans to exercise the powers in the bill in compliance with this overarching international environmental law duty.

**Continuing to exclude experts, Parliament and the public will lead to missed opportunities to identify where REUL could be improved and a likely underestimate of the consequences of reform. It will also exacerbate concerns about the democratic deficit that this bill will create. Amendment 48 would help to address these concerns.**

### After clause 1 – devolved authorities' identification of REUL (amendment 49)

**Amendment 49** is intended to probe the progress being made in identifying EU-derived subordinate legislation and retained direct EU legislation that has been incorporated into law by the devolved administrations.

**We welcome this amendment** which highlights an extremely important issue. The total 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 (DAERA) are that over 600 separate pieces of legislation in total could be affected by the bill. Defra appears to have identified 705 UK wide pieces of REUL plus a further 11 that are NI/England NI, so over 100 more than DAERA had identified. The latest version of the dashboard provides more detail on territorial application, but much of the REUL in the dashboard still has no territorial extent associated with it.

#### 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

**On behalf of Greener UK and Wildlife & Countryside Link**

## GREENER UK

---



ClientEarth®



GREENPEACE

