

Retained EU Law (Revocation and Reform) Bill: briefing for Lords second reading

February 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](#), [businesses](#) and civil society groups. In this briefing we set out our concerns about its impact on the environment. **We urge the government to listen to this broad consensus of concern and rethink its course on Retained EU Law (REUL).** These 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 Peers would use the opportunity of second reading to:

- **Urge the government to adopt a different approach to reviewing REUL** – 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**, so that amendments to or removal of REUL take place under established Parliamentary procedures, with transparency on what laws are in scope of the bill.
- **Support the introduction of safeguards** to ensure the powers in the bill produce progressive and not regressive environmental law.
- **Insist the government instead prioritises its environmental commitments** in the Environment Act 2021 and new [Environmental Improvement Plan](#), 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.

Our main concerns about the REUL Bill

1. The bill would give ministers ‘carte blanche’ powers to remove or weaken laws

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.

The government should be required to set out what is in scope, clearly defining to which laws this bill applies. It is the foundation of parliamentary sovereignty for Parliament – and the electorate – to know the extent and impact of the legislation before them.

We note a cross party amendment proposed by MPs at Report stage, covered in [the Observer](#) on 15 January 2023, sought to tackle these issues.

Lack of clarity on which laws are covered by the bill

It is extraordinary that MPs were asked to approve this bill without knowing the full scope of the laws it covered. The version of the government's [retained EU law dashboard](#) available to MPs at the time of Report stage and Third Reading set out a fraction of the laws in scope of the bill. The dashboard, subsequently updated on 30 January, reveals that Defra's running total of REUL increased from 570 pieces to 1,781 pieces, a threefold increase making this by far the largest amount of REUL in Whitehall. There is no clarity on whether this list is complete or, if not, what might be missing.

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. In his [response](#) he 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.

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."

The bill will destabilise the operating environment for businesses because of the ["endless uncertainty"](#) that will ensue. **With no clarity about whether regulations will be revoked or 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.**

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. 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 eleven months until the sunset provision bites?

This approach 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.

2. There are major delivery challenges for Defra

The Defra 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 more than fourteen 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.

As of 30 January 2023, Defra's running total of REUL is at least 1,781 pieces, according to the Cabinet Office [dashboard of retained EU law](#). The previous version of the dashboard (published in June 2022) stated that 70 pieces of Defra REUL had been amended and 63 repealed, but the current version of the dashboard (as of 1 February) states that only 11 pieces have been amended and 5 repealed. **There is no clarity on whether 1,781 is the final total, what else might be missing, whether all the devolved administrations have now added in their REUL or why the numbers for amended or repealed Defra REUL have decreased between the different versions of the dashboard.**

The dashboard is being presented as a tool to promote transparency, scrutiny and engagement, but the data within it is internally inconsistent, rendering it of little use, either as a guide to the volume of law in scope of the bill or to Defra's progress on REUL. We are also mindful that the work needed to fill these gaps and address the inconsistencies to provide Parliament with more accurate data as it considers this bill will further impact Defra capacity.

It appears that [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 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.

3. The bill will have a major impact on environmental protection and devolved priorities across the UK

The bill will have major implications for environmental law and legal certainty in Northern Ireland, Scotland and Wales. 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 detailed [policy brief](#) explains the uncertainty surrounding Northern Ireland. There is an extra element of risk for Northern Ireland because of the current democratic deficit due to a non-functioning Northern Ireland Assembly and the limited bandwidth for civil service decision making.

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 could be affected by the bill, while 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.

There are also concerns about the impact on the delivery of devolved legislative and policy priorities. 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 new independent environmental oversight bodies have also [expressed concern](#) about the impacts of REUL. The Chair of Environmental Standards Scotland highlighted the “great dangers” of the bill for the organisation’s ability to carry out its functions. The Interim Environmental Protection Assessor for Wales is expected to publish a report shortly on the implications of the bill for the functioning of environmental law in Wales.

4. 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.

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.

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.

5. Putting the environment at risk of damaging deregulation

The risks of a deregulatory approach

The bill presents the potential to remove or reimagine wide swathes of law, including those relating to environmental protections. Its potential impacts must also be seen in a wider context, which includes proposed changes to the planning system such as the replacement of tools to assess the environmental impact of plans and projects and longstanding government [plans](#) to weaken the habitats regulations. Given its highly discretionary bent, consideration of the bill should not be divorced from the political turmoil and policy shifts that can occur when governments and their environmental commitments change. For example, in the autumn of 2022, 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.

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 the Department for Levelling Up, Housing and Communities 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 ministerial statements

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.”

In [her speech](#) on 31 January launching the government’s new Environmental Improvement Plan, the 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” but she also indicated that “...a lot of that legislation is actually superfluous to our needs”. Her “retain by default” approach is welcome but is at her 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 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.

In conclusion, while Defra ministers’ 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.

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'?

The government is committed to delivering the [Kunming-Montreal Global Biodiversity Framework](#). The 2030 vision in the Montreal Framework (halting and reversing biodiversity loss by 2030) will not be met if key protections are stripped away. Thus, far from senseless deregulation, what is required is further, rapid and effective steps from the government to deliver on these international commitments.

We encourage Peers 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.

Environmental safeguards

It is important, therefore, that the bill includes safeguards to prevent damaging deregulation undermining national and international commitments to environmental protection and improvement. Many of the UK's [international commitments](#) are interwoven within REUL and depend on the regulatory requirements within it.

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, for example, strike out Clause 15(5) and (10) and include requirements along the lines suggested below.** Before the powers set out in Clause 15 can be exercised where the subject matter is environmental law, the following conditions should be satisfied:

- The provision must contribute to a **significant improvement in environmental protection**. [Section 7](#) of the Environment Act 2021 sets a [significant improvement test](#) for the government to meet through its statutory and policy targets. The review of retained EU law must contribute to, rather than undermine this statutory test.
- 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. 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.** 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 will not be commenced until 1 November 2023, so it is essential for a link to environmental principles to be made in the bill. Furthermore, once commenced, the 'due regard' duty will apply to all legislation going through Parliament. This needs to be anticipated in delivery of this bill, including through an explicit link.
- **Seeking and taking account of advice from independent experts** and environmental governance bodies such as the Office for Environmental Protection and Environmental Standards Scotland. 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, including on REUL.

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

As this [open letter](#) from over 50 fellows of the Chartered Institute of Ecology and Environmental Management makes abundantly clear, **global leadership depends on robust and sustained domestic action; it is not commensurate with a downward spiral of environmental protection and ambition, which an unfettered Clause 15 heralds.**

As we highlight in this briefing, there is a risk under the bill that 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, the inability to increase any regulatory burden and the lack of parliamentary oversight and public consultation.

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, but this discretionary approach is not mandated by the bill or guaranteed to endure.

Finally, while environmental REUL exists in a complex web, often with significant case law attached, we suggest **there may be merit in considering whether certain key environmental legislation should be excluded from the bill.**

6. The government should prioritise nature and climate ambition over the review of 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 October 2025, six years after it was announced by the government, [breaking](#) a manifesto pledge.

The government's [environmental principles policy statement](#), first promised to Parliament in 2017, was eventually published on 31 January 2023. 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 [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 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 displace other priorities as it scrambles 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, meaning that the bill will have a much more substantive impact on it than other departments.

The Observer [reported](#) 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. It is known, however, that in a two month period BEIS [spent £600k](#) on REUL preparation.

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.

Case studies

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

Transposing regulations: <https://www.legislation.gov.uk/ukxi/2017/407/contents>

For Northern Ireland: <https://www.legislation.gov.uk/nisr/2017/81/contents>

For Scotland: <https://www.legislation.gov.uk/ssi/2013/323/contents>

The original directive: <https://www.legislation.gov.uk/eudr/2000/60/introduction>

Purpose

Recognised by the UK government as the key piece of legislation to protect and improve the UK's water environment.

The regulation in practice

The wide ranging Water Framework Directive ensures that impacts on water quality are considered by authorities granting certain licenses and permits. It also sets out rules for the classification of water quality, the establishment and updating of environmental objectives and plans for how organisations, stakeholders and communities will work together to improve the water environment.

Risk to the public/environment if the level of protection is removed/weakened

Approaches to determining quality across a range of indicators (known as one out, all out) could be removed, leading to a much more fragmented system where overall water quality does not improve. This would undermine the government's legally binding targets in the Environment Act 2021 to improve water quality by getting rid of protections that already exist.

Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs

Retained legislation: <https://www.legislation.gov.uk/eur/2006/1881/contents>

Purpose

To protect human health and the environment from harmful contaminants in food.

The regulation in practice

This regulation keeps the levels of toxins, metals and chemicals in food below a certain level, to make sure it is grown safely and does not harm human health.

Risk to the public/environment if the level of protection is removed/weakened

Not only would consumers be exposed to less safe, more highly contaminated food, but food producers would be free to contaminate and pollute their land, with negative consequences for the environment.

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015

Retained legislation: <https://www.legislation.gov.uk/uksi/2015/787/contents>

Purpose

To protect human and animal health and the environment from the adverse effects associated with the use of hormones, and unlicensed and prohibited substances.

The regulation in practice

This regulation ensures that animals bred for food are not treated with hormones, or unlicensed or prohibited substances, which have been linked to negative environmental and health impacts.

Risk to the public/environment if the level of protection is removed/weakened

If it becomes legal to feed animals hormones, or unlicensed or prohibited substances, this would dramatically lower animal welfare standards in the UK. It could also lead to these harmful substances entering water and soils, increasing pollution. Allowing these substances in the food we import and eat could also impact human health.

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