

Retained EU Law (Revocation and Reform) Bill Briefing on amendment 48

May 2023

Introduction

Clauses 13, 14, 16 and 17 of the bill would give ministers extremely wide powers to revoke or replace retained EU law (REUL), creating a risk that sensible, important protections could be removed or replaced by weaker, less effective regulations with little opportunity for parliamentary scrutiny and public consultation.

This legal [opinion](#) on the likely constitutional, legal and practical effects of the bill from [Sir Jeffrey Jowell KC](#) (Blackstone Chambers) and [Jack Williams](#) (Monckton Chambers) (summary [here](#)) finds that the ministerial powers in clauses 16 and 17 permit largely unfettered discretion for substantive policy changes. Clause 16, in particular, essentially gives free license for modifications, and the bill is silent as to the standards to be applied in the exercise of the discretion.

We strongly support amendment 48 which would ensure that the bill's powers cannot be used to weaken environmental and food safety standards.

The amendment has three interlinked elements:

- Enshrining the government's commitment to **maintain existing levels of environmental protection** and consumer protection on food safety. We note the wording is modelled on the Environment Act 2021, which introduced a similar commitment for an amending power to the Habitats Regulations in [s.112\(6\)](#).
- Supporting the delivery of **international environmental agreements** to which the UK is party. This will ensure that the government's [intention](#) that changes to REUL support the continued delivery of our international commitments is realised.
- Seeking **expert input** from the Office for Environmental Protection, Food Standards Agency and equivalent bodies in Scotland and Wales and publishing a report on how this advice has been considered. This would increase transparency and ensure that reviews of REUL are informed by external expert advice. This would help to avoid the [accidental errors](#) encountered during previous major technical legislation programmes and provide additional capacity to support and review civil servants' analysis.

The [running total](#) for REUL that falls within Defra's remit is 1,696, by far the largest share of any Whitehall department, which, combined with food related REUL, accounts for around half of the total REUL, highlighting the hugely significant implications of this bill for environmental and food safety law making.

This 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. These laws are bound together in a complex web, many with significant case law attached to them.

Support for an environmental non-regression principle

The Office for Environmental Protection

The Office for Environmental Protection stated in [its evidence](#) to the Public Bill Committee:

“We are also concerned by the absence of a requirement in the Bill to maintain or improve existing levels of environmental protection and meet the UK’s international environmental law obligations. We recommend adding an environmental non-regression safeguard to the Bill as a minimum measure. In line with governments’ ambitions to improve the natural environment, and given such pressing need, we would urge UK and devolved governments going further than this minimum to achieve an overall improvement in the level of environmental protection.”

The Climate Change Committee

In its 2023 report to Parliament, the Climate Change Committee [recommended](#) that the bill be strengthened through the addition of an environmental non regression safeguard:

“The Retained EU Law Bill (REUL) should be strengthened by including an environmental non regression safeguard. Implementation of the REUL programme should be supported by thorough and meaningful engagement and consultation with key stakeholders and technical experts across the UK.”

The Interim Environmental Protection Assessor for Wales

The Interim Assessor [“fully supports”](#) an environmental non-regression principle in the bill to ensure that changes to environmental law do not weaken environmental protection.

Giving legal substance to ministerial statements

Amendment 48 would give legal substance to the voluntary objectives of government ministers. For example, during [Day 2](#) of Committee, Lord Benyon said the current government remained committed to maintaining high environmental standards and wanted to see standards improve in the future. Minister 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.

As a matter of law, however, these statements provide no assurances or protections and, however welcome, are vulnerable to changing political priorities and cannot bind the hands of future ministers.

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