

## Retained EU Law (Revocation and Reform) Bill Briefing on Lords amendments

24 May 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 will have major implications for laws that protect our rights as citizens, consumers and workers.

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, dormice and dolphins.

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.

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.

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 the bill permit largely unfettered discretion for substantive policy changes. Clause 14, 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.

**It is therefore very disappointing that the government has opted to reject the package of sensible amendments agreed by the House of Lords at Report stage.**

**The government has missed this opportunity to strengthen parliamentary scrutiny, improve transparency and embed safeguards for environmental and food standards.**

### Amendment 15

**We strongly support amendment 15 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.

- Supporting the delivery of **international environmental agreements** to which the UK is party. This will ensure that the government's [intention](#) to uphold international commitments when changing REUL 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 REUL reviews are informed by 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 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.

It is concerning therefore that the government [sees](#) amendment 15 which would add a commitment to maintaining existing levels of environmental protection as "burdensome".

## 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.

### The Scottish government

The Scottish government is [supportive](#) of amendment 15 and [remains](#) concerned that "...standards for water and air quality, and providing protection for our natural habitats and wildlife are at risk from this deregulatory programme".

## The Food and Drink Federation

The Food and Drink Federation represents the UK's largest manufacturing sector and has more than 1,000 members ranging from global brands to innovative start-ups. It is [supportive](#) of the food parts of this amendment.

## Giving legal substance to ministerial statements

Amendment 15 would give legal substance to the voluntary objectives of government ministers. For example, during [Day 2](#) of Lords Committee, Defra minister 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.**

## Amendments 6 and 42

**Amendments 6 and 42 are essential.** They would strengthen parliamentary scrutiny and oversight and would reinstate the role of MPs to the law-making process.

Amendment 6 would enable Parliament and the devolved legislatures, not the Executive, to have the final decision as to whether or not rights, powers, liabilities etc. retained by section 4 of the EU (Withdrawal) Act 2018 should be revoked at the end of 2023.

With much focus being given to the sunset during the parliamentary passage of the bill. In contrast, the potential impact of Clause 2 has been somewhat overshadowed. The task of identifying REUL which would be deleted by Clause 2 is difficult, as it requires detailed research into the case law and decisions of the UK and EU courts to identify which EU Treaty or Directive Articles have been found to contain directly enforceable EU rights.

The bill does not allow the Clause 2 deadline to be extended, putting many rights and remedies at risk of deletion by accident due to the rushed timetable to conduct the necessary analysis. The retained EU law dashboard only lists 28 rights, powers etc caught by the Clause 2 sunset, suggesting this identification exercise has hardly begun.

A crucial aspect of the rule of law, as explained by Lord Bingham, is that "the law must be accessible and, so far as possible, intelligible, clear and predictable". Legal certainty is important so that people and businesses can plan with relative certainty about the law and its possible consequences in terms of penalties and enforcement. This clause does not meet this central feature of the rule of law.

These important rights may include obligations arising from EU directives which were not transposed into domestic law but are capable of being directly applied. This is far from an academic point as the recent *Harris v Environment Agency* [2022] EWHC 2264 (Admin), [89]-[94] illustrates. In this case, the Court held that Article 6(2) of the Habitats Directive 92/43/EEC is part of domestic law and was breached.

**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

# GREENER UK

---

