

## Retained EU Law (Revocation and Reform) Bill Consideration of Commons amendments

5 June 2023

### Introduction

The Retained EU Law (Revocation and Reform) Bill has been discussed at length during its passage through Parliament. While a great many concerns and questions have been raised, two important, interlinked matters – parliamentary scrutiny and environmental protection – have been recurring themes. It is little surprise, therefore, that they are the subject of the three remaining amendments that are now proposed in lieu of earlier Lords amendments that were agreed at Report stage.

**We strongly support the three proposed amendments in lieu 6, 15 and 42**, and are grateful for the continued efforts of Peers from across the House in working to ensure that there is strengthened parliamentary scrutiny of the Clause 15 power to revoke or replace retained EU law (REUL), and that the bill contains an environmental safeguard.

### Amendment 6 (Lord Anderson of Ipswich)

Replacement amendment 6 would require the REUL dashboard to specify the rights, liabilities, etc referred to in section 3 of the Act. This would provide welcome transparency on technical parts of retained EU law which, if not listed in the dashboard, are at risk of being overlooked and potentially removed without any oversight.

The task of identifying REUL which would be deleted by Clause 3 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 retained EU law dashboard only lists 28 rights, powers etc, suggesting this identification exercise is far from complete.

As the government has already accepted the principle of Lords amendment 16 to update the REUL dashboard, accepting this replacement version of amendment 6 would be both logical and hopefully uncontentious.

Lord Callanan [recognised](#) the value of the dashboard as a scrutiny and transparency tool during Third Reading:

“However, it is crucial that Parliament and the public are able to hold the Government’s feet to the fire and ensure that our momentum continues with regard to the retained EU law reform programme. I am therefore delighted to support Amendments 1, 2 and 3, tabled by my noble friend Lady Noakes, to which I have added my name. These amendments insert a new clause into the Bill requiring the Secretary of State to update the retained EU law dashboard and to report on the revocation and reform of retained EU law in periods up to 23 June 2026, at which point, of course, the main powers in the Bill will sunset, and the vast majority of retained EU law reform will have been completed [...] These amendments will hold the Government to account in providing the additional transparency both Parliament and the public need to scrutinise the Government’s progress and future plans on retained EU law reform.”

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.

**Requiring dashboard updates to include the matters identified in replacement amendment 6 would increase accessibility, clarity and transparency, thus helping to support the rule of law.**

### **Amendment 15 (Lord Krebs)**

**We strongly support the replacement amendment 15 which would ensure that the bill’s powers cannot be used to weaken existing levels of environmental protection.**

The amendment has three interlinked elements, which we note have been adapted to address the government’s comments:

- The scope has narrowed to focus on enshrining a legal commitment to **maintain existing levels of environmental protection**.
- **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. Lord Benyon had [said](#) this list of international agreements was “far from comprehensive”. The amendment now recognises that the list in subsection 3 is indicative and not exhaustive.
- The consultation requirement in subsection 2 has been streamlined giving ministers more discretion on who they consult but still requiring them to seek **advice from independent experts**. This would help to avoid the [accidental errors](#) encountered during previous major technical legislation programmes. This consultation requirement is consistent with other statutory commitments, for example in s.4(1), of the Environment Act 2021 on consultation on legally binding targets.

The [running total](#) for REUL that falls within Defra’s remit is 1,696, by far the largest share of any Whitehall department, highlighting the hugely significant implications of this bill for environmental law making. This contains many regulations of significant public interest, which protect every element of our natural environment and many aspects of human health, bound together in a complex web.

It is concerning therefore that the government has continued to [perceive](#) amendment 15 to add a commitment to maintaining existing levels of environmental protection as “burdensome”.

### **Support for an environmental non-regression principle**

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.”

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 [“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 is [supportive](#) of the principles underpinning 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”.

### **Giving legal substance to ministerial statements**

Replacement 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. We need only to revisit autumn of 2022 for a reminder of how quickly ministerial priorities can change.**

### **Precedent for including a non-regression safeguard in law**

The government has repeatedly cited the existence of the Environment Act 2021 as reason why this amendment is not necessary. However, this is an ‘apples and pears’ approach to legislating, as the Environment Act does not directly bite on how ministers may choose to apply the powers in the REUL Bill.

It is however instructive to look at how some of the powers in the Environment Act are constructed. For example, it includes a non-regression commitment in respect of one piece of REUL, the habitats regulations. This is set out in [s. 112](#) and s.113 and empowers the Secretary of State to make regulations to amend parts of the Habitats Regulations only if they are satisfied that the regulations do not reduce the level of environmental protection provided for by the Regulations.

In parliamentary debates on this power, the government explained why it had opted to include this non-regression safeguard in law, which has much resonance to the debate on replacement amendment 15.

Then Defra minister Lord Goldsmith [explained](#) that the clause “includes a number of safeguards that are designed to retain our existing protections”, recognising the importance of underpinning commitments in law.

Ministers have to be satisfied and explain to Parliament that any change would not reduce existing environmental protections, which the government said was “a high bar”. Parliament will have a vote on any use of the powers, consultation on any proposals will be comprehensive and there will be a full impact assessment of any regulations made under the powers when bringing them forward.

**Why therefore is the government unwilling to make a similar non-regression commitment on maintaining existing levels of environmental protection in law in the REUL Bill, as it did in the Environment Act?**

### **Amendment 42 (Lord Anderson of Ipswich)**

**Amendment 42 is essential and would strengthen parliamentary scrutiny and oversight so that ministers cannot just chop and change important protections at will.**

Clause 15 will give ministers extremely wide powers to revoke or replace retained EU law, 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.

Replacement amendment 42 would require parliamentary scrutiny of clause 15 regulations, including via a House of Commons Committee. Regulations which are deemed to be of ‘special attention’ must be debated on the floor of each House and amendments can be made if agreed by both Houses. This would act as a useful incentive to ministers to use their wide powers wisely, helping to promote progressive and positive policy making.

**Given that over 4,000 laws remain in scope of these unfettered powers, passing this amendment would be in the public interest.**

**For more information, please contact:**

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