

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

October 2022

Introduction

The [REUL 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](#), and civil society groups. In this briefing we set out our concerns about its impact on the environment. **We urge the government to rethink its course on Retained EU Law (REUL).**

The government's costly and bureaucratic REUL plans are highly questionable, especially during a cost of living and economic crisis. They will also derail urgent action to tackle the nature and climate crisis and render the [manifesto](#) commitment for the most ambitious environmental programme on earth redundant.

We would be grateful if MPs would use the opportunity of second reading to:

- **Urge the government to withdraw the REUL Bill** – 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 conventional Parliamentary procedures.
- **Insist the government instead prioritises its environmental commitments** in the Environment Act 2021, including the actions and policies necessary to deliver nature's recovery by 2030.

Our main concerns about the REUL Bill

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

There are serious unintended consequences and legal and policy risks from a bill which would allow ministers to remove or weaken environmental protections at will. Ordinarily, concern about the use of such powers would be focused on the unknown intent of future ministers. However, recent events have created significant uncertainty about the government's commitment to maintaining a positive direction of travel on the environment, thus concern about the granting of such unfettered powers is unfortunately not out of place.

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. This 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.

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.** Clause 16 provides an ongoing power for REUL, and legislation brought in to replace REUL, to be amended in light of changes to science and technological understanding, but provides no clarity as to the expertise, objectivity or scrutiny of such judgements.

Ministers have [suggested](#) that the bill will not weaken the UK's environmental protections. **We encourage MPs to thoroughly interrogate how such high level assurances will be delivered given the deregulatory thrust of this bill and wider government policy.**

For example, will the government expedite the publication of the much delayed environmental principles policy statement which would inform ministerial policy making on REUL? And how will the government ensure that the UK's [international commitments](#) are delivered, many of which are interwoven within REUL and depend on the regulatory prompts and steers within it?

2. The bill is [one element](#) of the UK government's plans to deregulate

The REUL bill presents the potential to remove or reimagine a wide swathe of law, covering environmental, social and health protections. However, the potential impacts of these changes can only be understood in the wider context of government policy. In the case of the environment, this includes wide ranging changes to the planning system such as the replacement of tools to assess the environmental impact of plans and projects, [concerns](#) about the removal of environmental protections in areas identified as Investment Zones and longstanding government [plans](#) to weaken the habitats regulations.

Laws which aim to 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. 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 have been singled out by ministers as being one of the “burdens” the government wants to remove as part of its [Growth Plan](#). **The Defra body of REUL contains many regulations of similarly 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 DLUHC relating to planning.

3. There are major delivery challenges for government departments such as Defra

The 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 minor and modest changes to domesticate EU law dominated departmental time and focus.

Defra’s REUL programme is of unconfirmed size but comprises at least 570 pieces, the largest amount of REUL in Whitehall according to this Cabinet Office [dashboard](#). Of these, 437 regulations are unchanged (so are yet to be tackled), 70 have been amended and 63 repealed. Critical regulations such as the [Conservation of Habitats and Species Regulations 2017](#) and the [Marine Strategy Regulations 2010](#) are not yet included in the dashboard. There is no clarity on what else might be missing but we understand it is a substantial number of pieces of legislation.

The UK government has [not yet provided](#) clarity as to the geographic extent and devolved implications of these REUL, nor have devolved administrations had a chance to confirm how many pieces of country specific regulations are covered by this bill.

To date, [only three FTE officials](#) have been working on REUL at Defra. Departments are being [told](#) to ready themselves for significant cuts as the new Chancellor has instructed them to find “[efficiency savings](#)”. The challenge of competently carrying out the work required by the REUL bill in this context appears insurmountable.

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. We note bodies such as the Food Standards Agency have [highlighted](#) the inevitable trade-off between speed and effective reform.

4. The REUL bill will derail the UK government’s nature and climate ambitions

Important delivery activity is already being delayed or abandoned even before activity to review REUL commandeers departmental budgets and time. For example, the government is legally bound to present improvement targets for air, water, nature and waste to Parliament by 31 October under its flagship Environment Act. However, there is no sign of the statutory instruments that will bring these targets into law.

Delay has already beset many 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 late 2024 [at the earliest](#) – six years after it was announced by the government.

The government's [environmental principles policy statement](#), first promised to Parliament in 2017, is yet to be finalised. There have been [delays](#) to the adoption of River Basin Management Plans. 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. It appears that delay is at risk of becoming the new business as usual for Defra. The bill will only add to its in-tray and further entrench this behaviour and distract from the proper business of the department.

A REUL review programme of the scale envisaged by this bill will cause a huge administrative burden for departments and will inevitably displace other priorities as they scramble to meet the challenge of reviewing thousands of pieces of technical and complex legislation. **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 to divert resources to its bureaucratic REUL review, which has unproven benefits and unknown costs?** We note that the impact assessment for the bill is yet to be made available, despite parliamentarians [requesting](#) it.

5. The bill will have a major impact on environmental protection and devolved powers 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 [policy brief](#) explains the uncertainty surrounding Northern Ireland.

The 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 alone.

6. The bill will undermine the UK's efforts for global leadership

In December, the prime minister is expected to attend the Cop15 biodiversity summit in Canada. Strong leadership at Cop15 will help set us on the road to halting and reversing the decline in biodiversity. But, 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 not commensurate with a downward spiral of environmental protection and ambition.**

7. Businesses need certainty and legal clarity

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.

The REUL Bill will not provide a stable operating and planning environment for businesses because of the “[endless uncertainty](#)” that will ensue from this bill. **With no clarity about whether regulations will be replaced and if so by what, instead of reducing red tape, the government’s REUL plans would have a severe chilling effect on business activity and investment.**

What is REUL?

Retained EU Law (REUL) is a category of domestic law created at the end of the transition period by the European Union (Withdrawal) Act 2018. It includes Acts of Parliament and secondary legislation made to give effect to the UK’s EU obligations as well as direct EU legislation such as EU regulations and decisions which were transposed into domestic law on a vast range of subjects including air and water quality, species and habitats protection and pesticides and chemicals levels in food and water.

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 being developed under 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.

For more information, please contact:

Ruth Chambers, senior fellow, Greener UK
e: rchambers@green-alliance.org.uk
t: 020 7630 4524

GREENER UK



ClientEarth[®]



GREENPEACE

