

Retained EU Law (Revocation and Reform) Bill

Public Bill Committee: NFU Submission

About the NFU

1. The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life. Our purpose is to champion British agriculture and horticulture, to campaign for a stable and sustainable future for British farmers, creating the right conditions for a thriving British farming sector includes promoting the health, safety, and wellbeing of our members.

Introduction

2. The Retained EU Law (Revocation and Reform) Bill, which was presented to the House of Commons for its first reading on Thursday 22 September 2022, overhauls the body of UK domestic law known as “retained EU law” (REUL), which came into existence after the post-Brexit transition period at the end of 2020.
 - 2.1. The National Farmers Union of England and Wales supports a review of regulation in light of the UK’s departure from the EU to ensure the regulatory framework within which farmers operate is fit for purpose, that it is proportionate in its impact on farm businesses and that it best achieves its intended outcomes. However, the NFU is concerned that the process and approach established by this Bill for doing so could create uncertainty for businesses and reduce Parliamentary oversight of important agricultural, environmental and business regulations.

Principles for better post-Brexit Regulation

3. The NFU recognise the value of regulation, for instance in protecting the environment, human and animal health and the needs of consumers. Good regulation should strike a balance between managing risk and harm, economic or otherwise, while maximising the societal and economic benefit of any particular activity.
 - 3.1. The NFU supports a policy ecosystem that keeps regulation under regular review. Having left the EU, there are opportunities to review regulation of the agricultural sector, to ensure farmers can continue to provide a safe, sustainable, high quality and affordable supply of British food and other products while protecting and enhancing the farmed environment in which they operate.
 - 3.2. There have been a number of EU derived regulations and laws that the NFU has historically considered poorly designed and in need of reform, which can lead to uncertainty for farming and growing businesses and in some instances complex and costly litigation. Brexit provides an opportunity to consider different policy approaches, including regulation, in these areas – primarily governed by the desire for better regulation rather than de-regulation, where regulations are more targeted to achieve their intended outcomes while minimising their burden and impact on businesses. In addition to this, the interrelationship between regulation and international trade must be taken into account as part of any regulatory review process, to avoid imposing unnecessary barriers to trade for agri-food products.

Key aspects of the REUL (Revocation and Reform) Bill.

4. In summary, the main effects of the Bill will be to repeal a large volume of what is currently retained EU law, and re-label anything which is retained beyond the end of 2023 as “assimilated law”. It will make it easier for EU legislation to be restated, amended or repealed through the use of secondary legislation, and it will reduce the weight given to EU derived law, so that courts will have to interpret REUL in a manner which is compatible with domestic law so far as possible. Among the key provisions introduced by the Bill will be the “sunsetting”, or automatic repeal, of the majority of REUL at the end of 2023. Ministers will be able to extend this sunset to a later time, up to 23 June 2026.
- 4.1. The Bill will make it easier for the courts to depart from retained EU case law, creating a new power for the courts to make Incompatibility Orders where this is not possible, and it will create new powers for Ministers and devolved authorities to restate or revoke (with or without replacement) retained EU law by Regulation.
- 4.2. There is currently a large volume of retained EU law in force in the UK (approximately 1,500 pieces of legislation in total), covering a very wide range of areas. Defra has been reported as having the largest amount of retained EU law within its remit, with nearly 600 pieces of legislation, much of which will impact UK farmers. Additionally, non-Defra regulation will impact farm businesses alongside businesses in other sectors of the UK economy, including areas such as employment law, company law, taxation and data protection.

NFU concerns with the Bill

5. While the NFU supports a comprehensive review of EU derived regulation and legislation, and believes there is a much merit in creating a systematic process for doing so, we have significant concerns about the approach established by the Bill:
 - 5.1. Timeframes
 - 5.1.1. The sunset deadline of the end of 2023 will put considerable resource strain on all Whitehall departments, particularly those responsible for a large amount of REUL such as Defra. It would be prudent to ensure that no single piece of regulation is discarded without a proper assessment, including stakeholder consultation, of whether it needs to be retained or amended instead, or whether an alternative approach (e.g. an entirely new regulation or regulatory approach) would be desirable. On average, Defra will need to assess around 10 entire regulations every week to meet the end of 2023 deadline. There must be considerable doubt that this process can be undertaken with due care and attention, while properly involving stakeholders, in such a small timeframe.
 - 5.1.2. If the process is not undertaken properly, not only is there is a risk that important regulatory protections will be lost, but also that the opportunity to design and develop better regulatory approaches in some areas will be overlooked. Where regulations are automatically repealed without due attention to the impact, this may also lead to rushed remedial action to fill lacunas in the law, which is inherently damaging for business confidence and certainty. Finally, we are concerned that departmental resources will be re-directed away from other important policy areas, something that may be exacerbated in light of potential public spending restraint.

5.1.3. The NFU believes the government should consider either extending the sunseting deadline beyond the end of 2023, or alternatively removing the legislative cliff edge altogether. The government should continue to instigate a review of REUL with the possibility of restatement, amendment or repeal, without repeal being automatic. Consideration should be given to including a duty in the Bill to prepare and publish a plan on an annual basis to include targets for reviewing REUL. This will better ensure considered and comprehensive oversight with a focus on better regulation, while avoiding the risk that the process stalls.

5.2. Parliamentary oversight

5.2.1. There are significant concerns about the Bill's transfer of considerable legislative powers to Ministers to modify or revoke regulations, potentially reducing the degree of scrutiny that new legislation will receive. This could result in substantial policy changes being rushed through without proper Parliamentary scrutiny or engagement with stakeholders. This increases the risk of unintended consequences and adverse impacts on businesses and minimises accountability for important policy decisions.

5.2.2. Given the extremely tight deadlines for reviewing regulations under the Bill's sunseting provisions, it is perhaps not surprising that such sweeping powers are needed by Ministers to modify or revoke relevant regulations. However, such powers undermine principles of Parliamentary scrutiny and prudent policy-making, and add to our concerns over the knock-on effects of the sunseting provisions. The NFU supports proper Parliamentary oversight and scrutiny of regulatory changes, especially where they have the potential to have significant impact on farm businesses. The NFU believes the additional scrutiny protections provided by the EU (Withdrawal) Act 2018 that govern the modification of REUL, such as the requirement for mandatory explanatory statements and periods of parliamentary scrutiny, as well as wide usage of the draft affirmative procedure, should be retained for amending or revoking REUL.

5.3. Stakeholder involvement

5.3.1. Given the huge potential impact on farming of so many regulatory instruments that fall under the purview of the Bill, the NFU will need to undertake an extensive internal exercise reviewing the full roster of REUL, allowing us to liaise with Defra and other government departments as they undertake their own assessments. Indeed, it is likely that government Departments will rely heavily on stakeholder organisations like the NFU to do some of the "heavy lifting" under the REUL Bill if they are to meet the incredibly tight deadlines highlighted above.

5.3.2. This is likely to be hugely resource intensive and is likely to divert resources away from other work that is important to NFU members. Ultimately that will mean the work we undertake will have to be prioritised, weakening the important role stakeholder organisations like the NFU can play. By extending the timeframes, or removing the "sunseting" provisions altogether, organisations like the NFU can ensure sufficient resource over a more manageable timeframe to properly work with government on post-Brexit regulatory reform.