

Retained EU Law (Revocation and Reform) Bill

Written evidence for HC Public Bills Committee

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Key Points

1. The Retained EU Law (Revocation and Reform) Bill 2022 ('REUL Bill') will introduce uncertainty and disorder to the UK statute book due to the default of the sunset. Business and public authorities need legal certainty to operate effectively. The Bill as it stands is not the best way to realise genuine potential benefits from Brexit while minimising the risks from changes.
2. The government has not indicated how it will ensure that all pieces of retained EU legislation have been identified in the [Retained EU Law Dashboard](#). There is a serious risk of mistakes ie retained EU law which has not been identified in the dashboard but which will be subject to sunseting.
3. The government has not indicated which areas may be retained nor does it establish a process by which ministers will take decisions to 'save' retained EU law using the wide powers in the legislation.
4. The government has not outlined any process for consultation on legislation that is to be subject to the sunset clause, nor any process for considering what any revised legislation might look like.
5. Ministers and civil servants, and in particular devolved administrations, do not have the time or resources to give sufficient scrutiny to each piece of legislation that falls within the scope of the Bill. Nor is spending a huge amount of time "saving" uncontroversial legislation a good use of stretched resource.
6. If the Bill is passed unamended, immense pressure will be placed on scarce resources to make fast decisions without clear reasoning or wider consultation. This will incentivise time-saving shortcuts rather than careful consideration of the merits of the law. Pieces of legislation do not exist discretely and autonomously, but more often than not, interrelate to other legislation. Sunseting such legislation without consideration will create confusion and uncertainty for public authorities, businesses and individuals subject to the law.

A. Practical issues with the Bill

Sunsetting and legal uncertainty

7. This written evidence will focus on the issue of legal uncertainty generated by the sunset provisions.
8. At the heart of the bill is a default position to sunset all secondary retained EU law in a very short time frame. The Retained EU Law Dashboard lists 2,417 pieces of retained EU law across 300 policy areas. This, for example, includes, 588 pieces of legislation related to the environment; 493 pieces of legislation related to agriculture, forestry and fishing; 482 related to transportation and storage; and 347 related to manufacturing; and 58 related to health and safety. Since 2018 when this legislation became retained EU law, only 196 pieces have been repealed and 182 amended. This shows the time it takes to reform the law to achieve post-Brexit policy goals without disordering the statute book. This retained EU law covers issues as sensitive as gas and food safety (see fig.1). Simply removing these rules will lead to significant holes on the statute book and leave consumers and other stakeholders unprotected
9. The sunset of provisions without due scrutiny, and uncertainty over the consequences and range of legislation subject to the law, **undermines UK's international reputation as a stable system for investment and in which to settle legal disputes**, at a time when the country is focusing on growth.
10. Ongoing legal uncertainty as to which areas will be subject to sunset means that **businesses will be uncertain as to which regulatory regime they will need to comply with**, particularly where regimes may quickly change through default sunset, or retention. This may place them in a position of risking either failing to comply with UK law or failing to comply with international law (i.e. an obligation under the Northern Ireland Protocol or the Trade and Cooperation Agreement).
11. On the floor of the [House](#), the government committed that it would continue to respect its international obligations, including those under the Trade and Cooperation Agreement (TCA). This is of particular relevance for the UK's commitment under the level playing provisions (LPF) which apply, in particular to environmental and employment legislation. Yet how this is to be delivered is far from clear and the government has not always respected its international obligations. Non-compliance with LPF obligations could eventually trigger a dispute with the EU and could lead to tariffs.

Risk of error

12. While 2,417 pieces of retained EU law have been catalogued, there is **no certainty that all pieces of retained EU law have been identified**. This point is confirmed by recent [newspaper reports](#) suggesting that there may be as many as 3800 pieces of retained EU law. Failing to account for currently unidentified retained EU law is problematic, as it is unknown whether other legislation has been missed. These unknown unknowns will be subject to the default sunset in Clause 1. This could create gaps in domestic law that the EU (Withdrawal) Act 2018 was designed to avoid.

Lack of departmental capacity

13. Government departments **do not have time, resources, or capacity adequately to review** each individual piece of legislation on their merits to determine whether they should be retained. For example, in legislation related to the 'environment' ([588 identified, shared across six departments](#)), ministers and civil servants would have to examine one piece of legislation every day (including weekends and bank holidays) until the deadline and decide whether to propose to Ministers to save, rewrite or allow to lapse the regulation and still have over 100 pieces of legislation left to review. The Financial Times [reported on 27 October](#) that BEIS, with 300 pieces of EU law for which it is responsible, would need 400 staff to review its body of retained EU law.

14. Many of the **regulations are in areas of devolved competence**, and those governments have commensurately less capacity than their UK government counterparts. Devolved governments may also adopt different positions to their UK government counterparts, particularly where there is **uncertainty over such competence, and cause divergence within the UK**. This raises issues for the application of the UK Internal Market Act 2020.

Excessive use of delegated powers

15. The Bill will give significant powers to UK and devolved executives to change law. If changes are subject to only negative resolution, then **wide areas of law could be significantly altered without adequate parliament scrutiny**, and without a consultation process inviting relevant stakeholders and affected parties to raise issues that may not have been considered under such a short time frame. There is no process for how to examine how the changes to law, or the sunset of provisions, will relate to other provisions of UK law or assimilated law.

Risk of haste

16. Without adequate capacity, resources or time for review, the restricted timeline **increases the likelihood of mistakes**, for example, by not understanding how a piece of legislation underpins or relates to other legislation, especially the UK Internal Market Act 2020 and the Northern Ireland Protocol. This will cause problems for business, individuals, courts and administrative

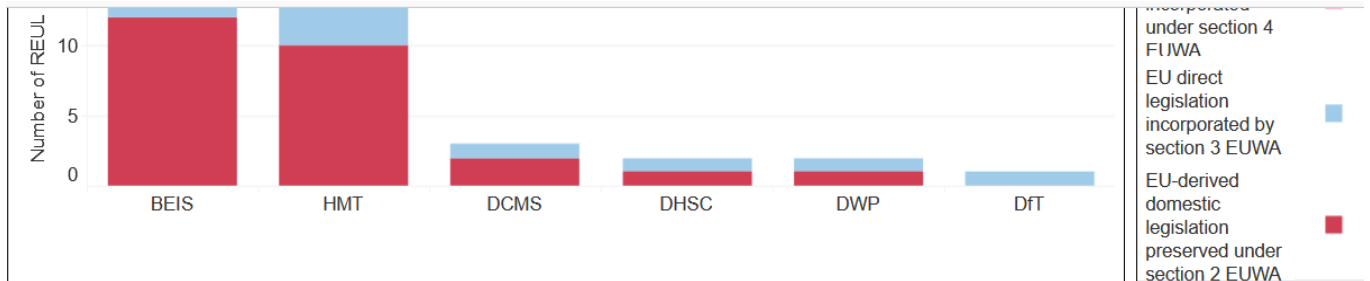
systems where they are not sure which law to apply, and where there are conflicting interpretations of law.

17. Better law is made when time is given to evaluate it on its merits. Further, **major regulatory reform should be done through Parliament and by primary legislation**. The REUL Bill will not give Parliament opportunity to review legislation on its merits, and craft policy fit for capitalising on the opportunities given by Brexit. Other legislation, such as the [Finance and Markets Bill](#) provides a far better model for addressing retained EU law. It contains provisions to remove retained EU law but it also makes provision for an extensive new regime which has already been subject to considerable consultation.

B. Going Forward: Reducing Uncertainty

18. **This Bill is unnecessary**. As the Finance and Markets Bill shows, it is possible to make sweeping changes through primary law. Primary legislation in key areas can be properly scrutinised and consulted on.
19. If the government is determined to go ahead with this Bill, then it should be aware of the consequences. The Bill introduces disorder to the UK statute book. The current timeline, even were it to be extended to 23 June 2026, either using the powers under Clause 2 or through an amendment to Clause 1, makes uncertainty the only certain consequence of the Bill.
20. It is far from clear the extent in practice of the changes envisaged by the government – or whether the real aim of the bill is simply to “assimilate” most Retained EU law to avoid it remaining as a concept in UK law.
21. There are some minimum changes Parliament should consider if it wants to begin to reduce uncertainty:
 - a. **Make it clear which pieces of legislation are subject to sunseting**. If the Retained EU Law Dashboard is considered by government to be the definitive list, then attach this as an Annex, and do not apply the default to any other retained EU law identified after the Bill comes into force. This would reduce the risk of error.
 - b. **Reduce the scope of the Bill by exempting certain policy areas**. Areas such as environmental and social policy, estimated at more than 588 pieces of legislation could be exempted from the scope of the Bill, particularly since they are subject to the LPF commitments under the TCA. The 2019 manifesto also committed to maintaining or raising areas subject to level playing field provisions. Removing retained EU law under these policy areas would reduce risk of unintentionally undermining the EU-UK relationship.

- c. Impose an obligation on government departments to engage in meaningful and timely consultation with stakeholders before the sunset is applied or new legislation is proposed.



Department	REUL Name	Legislation Description	Sector	Type of REUL under EUWA	Status
Department for Transport	Establishment of a Community list of air carriers subject to an operating ban within the Community and on	On safety grounds. It also provides certain rights for consumers in respect of tickets booked in the UK	air and storage	EUWA	
Department for Work and Pensions	Commission Delegated Regulation (EU) 2020/11 of 29 October 2019 (NB: this Delegated Regulation amends Annex VIII of the CLP Regulation. Annex VIII concerns poison centres that are DHSC policy. The overall	Postponed the applicability of Annex VIII to consumer use until 1 January 2021 and replaced the text of CLP Article 25 (7) and inserted Article 29 (4a) into CLP.	Manufacturing	EU direct legislation incorporated by section 3 EUWA	Unchanged
Department for Work and Pensions	Gas Safety (Installation and Use) Regulations 1998 (S.I. 1998/2451).	The Regulations protect the public and ensure consumer safety when having gas appliances fitted or serviced in their homes and commercial premises. These regulations focus on gas safety,	Construction	EU-derived domestic legislation preserved under section 2 EUWA	Unchanged
Department of Health and Social Care	Regulation (EC) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers - Articles 29-35	Implements requirements for food and drink labelling	Manufacturing	EU direct legislation incorporated by section 3 EUWA	Unchanged
Department of Health and Social Care	The General Food Regulations 2004/3279	These Regulations provide for the enforcement of certain provisions of Regulation (EC) No. 178/2002 and prohibits the placing of unsafe food on the market, prohibits misleading information to consumers and	Manufacturing	EU-derived domestic legislation preserved under section 2 EUWA	Unchanged

Fig 1 Screenshot of examples of REUL taken from the Dashboard.

* UK in a Changing Europe is an independent network of academics based at King's College London