

WRITTEN EVIDENCE SUBMITTED BY WILLIAM WILSON, BARRISTER, WYESIDE CONSULTING LTD (REULB33)

Public Bill Committee
House of Commons

RETAINED EU LAW (REVOCATION AND REFORM) BILL

I am a barrister and environmental and energy lawyer. I am not a member of any political party, but I am interested in how environmental laws work, and I believe that they should.

In my first post in June 2022 on what was then the **Brexit Freedoms Bill** introduced by Prime Minister Boris Johnson, I pointed out the likely impact of the proposed legislation on environmental laws, which would be at risk of being amended or repealed without significant scrutiny by Parliament –

<https://www.wyesideconsulting.com/news/brexit-freedoms-bill-parliament-and-a-bonfire-of-environmental-laws>

In a later post on 5 October 2022 I pointed out how the Bill as introduced would involve the revocation, or re-enactment in any way that seems appropriate to Ministers and with almost no participation by Parliament, of 570 environmental laws affecting every single area from drinking water, chemicals, habitats, air quality, waste and so on –

<https://www.wyesideconsulting.com/news/uk-government-proposes-revocation-of-570-environmental-laws>

In a further post on 7 November 2022 I set out in further details on how this Bill will result in the potential revocation of up to 570 environmental laws, deficiencies in UK government and Parliamentary scrutiny of EU legislation, and the way these issues were debated during the Bill's Second Reading –

<https://www.wyesideconsulting.com/news/retained-eu-law-revocation-and-reform-bill-passes-second-reading>

The following are just some of the environmental laws that could be revoked without further scrutiny by Parliament, listed in the “Dashboard” of 2,400 laws published by the government –

Urban Waste Water Treatment
Waste
Water Framework Directive
Mining waste
Genetically Modified Organisms
Rules of origin for pig, sheep, goat, poultry
Agriculture
Fisheries
Plant health and phytosanitary conditions
Persistent Organic Pollutants
Hazardous Waste
Minamata Convention on Mercury
Sewage Sludge in Agriculture
Reduction and Prevention of Agriculture Diffuse Pollution
Bathing Waters
Detergents Regulation
Drinking Water
End of Life Vehicles
Landfill
Nitrate Pollution
Packaging
Private Water Supplies.

At the conclusion of the Second Reading debate, the Minister winding up for the government declared that the Bill would result in environmental protections being 'enhanced and not diminished'.

This appears to be inconsistent with Clause 15(5) of the Bill, and the Second Reading debate gave absolutely no idea how that could be consistent with the revocation or replacement of any or all of the above examples, as we were given no idea at all of what is planned to revoke, re-enact or replace them.

On 8 November 2022, after the Second Reading debate, it was reported by the *Guardian* that the government had found a further 1,400 laws that would be subject to revocation or re-writing or reform under the Bill. This adds to the Alice in Wonderland characteristics of this legislation, and as I have suggested, the idea that Ministers should be able to re-write laws in whatever ways they deem appropriate is like letting Humpty Dumpty loose on the Statute Book –

“When I make a law, it will mean whatever I want it to mean, nothing more and nothing less.”

The legislation in its current form is profoundly undemocratic, and has been described by George Peretz K.C as allowing the government to “take back control – from Parliament.”

Recommendations

1. At the end of the third post listed above, I refer to the Public Law Project second briefing on the Retained EU Law (Revocation and Reform) Bill, written by Samuel Willis, Research Fellow, and this states that the Public Law Project considers the Bill to be “constitutionally inappropriate, practically unfeasible and potentially deeply harmful.”

Its Recommendations (*which I believe would make a good start*) are that –

- (i) The Bill should not transfer broad and unconstrained legislative powers to ministers. The clauses that would transfer such powers should be removed or at least made much more narrow;
- (ii) The Bill should include provision for meaningful consultation and debate (over) proposed exercise of ministerial powers;
- (iii) The Bill should limit the power of UK ministers to legislate in areas of devolved competence without the consent of devolved authorities (e.g the creation of a consent mechanism);
- (iv) The Bill should not allow EU-derived legislation that is equivalent to Acts of Parliament in substantive content and importance - such as GDPR – to be amended as if it were a statutory instrument;
- (v) There should be a power to extend all the sunset provisions in the Bill;
- (vi) There should be clear limits to the types of provision that can disappear at the sunset;
- (vii) Nothing should be allowed to disappear at the sunset without consultation, impact reports, and either a Parliamentary vote in

favour or the opportunity for Parliament to remove items from a list of what the government wishes to repeal;

- (viii) Insert a provision requiring that courts have regard to legal certainty, and the principle that significant changes to the law should be made by Parliament, before departing from retained EU case law.
2. In some ways the fundamental problems with the Bill are the completely impractical timetable, and the denial of proper Parliamentary scrutiny or any public participation.
 3. In addition, promises have now been made by Government Ministers that, despite all appearances to the contrary, the Bill will enhance environmental protections and not diminish them. The Government therefore needs to deliver on those promises, and to exclude from the scope of the Bill legislation delivering environmental protections unless and until it is in a position to bring forward in each case a worked out alternative that delivers environmental enhancement, and provides a means for public participation and Parliamentary scrutiny to ensure that.

William Wilson
8 November 2022