

Written evidence submitted by the Institute for European Environmental Policy UK (IEEP UK) (REULB43).

To the Retained EU Law (Revocation and Reform) public bill committee.

Introduction

1. This submission is concerned with those parts of the Bill that have implications for environmental law and policy in the UK and not with other provisions, for example those concerned with the supremacy of EU law in the UK on which we do not take a view.

The place of environmental law within REUL

2. The REUL Bill has implications for a very large range of legislation and some associated case law, covering topics as diverse as fisheries policy, workers' rights and animal health. However, the effect on environmental law would be particularly great as so much of this law has been introduced since the 1970s during the era of EU membership. Hundreds of pieces of legislation could be affected.
3. For historical reasons, a large proportion of environmental law in the UK is in the form of retained EU law, given both EU competence in this area at the time that it was adopted and the advantages of having a common approach, including the adoption of many common standards on a European scale. This retained law is interlaced with domestic law to form a fabric that has been developed in an integrated way and is now being taken forward by a combination of legislatures within the UK, including the devolved administrations, in a rather complex matrix. In some cases, retained environmental law relates to the UK's international obligations, since international agreements have shaped a range of legislation adopted by the EU and which has subsequently found a place in REUL. Whilst REUL is a category of its own, it is perhaps more helpful to see it as part of a dynamic matrix of legislation operating in the UK and devolved nations, which is one reason why it is not necessarily easy to identify all the legal instruments within this category.

The principle and process of legislative review

4. The principle of reviewing law and ensuring it is fit for purpose is reasonable.
5. However, the task of reviewing, potentially amending, replacing or deleting the whole of this particular body of legislation in an orderly way is both very substantial and unprecedented. It requires an appreciation of the legislative fabric as a whole and how specific measures interact as well as considering the merits of individual pieces of legislation in their own right.
6. For this reason, we have strong **concerns about both the process and timetable** for review introduced by the Bill (notably in Clauses 1 and 2). There is no rationale provided or apparent for the extremely short timetable imposed by the Bill, particularly with regard to the Sunset provisions (Clause 1) and the government has not offered any credible explanation of how such an exercise could be undertaken with due regard to necessary and desirable process within the timetable imposed. The lack of a published impact assessment compounds our concerns.

Scope of the Bill

7. No complete inventory of retained EU law is available and it is unclear exactly when it might become available. The list presented in the current Cabinet Office “[Dashboard](#)” is not definitive, but already contains a sizeable share which is the responsibility of Defra. The total number of items of legislation, including that which relates to the environment, is certain to be larger, as suggested in recent [newspaper articles](#). So, at present, the full **scope** of the REUL Bill and its unprecedented review and sunset process in relation to environmental law is has yet to be revealed, despite the fact that the Bill is already in Parliament. This is unsatisfactory as the full implications of the Bill cannot be assessed.

Intersections with devolved powers

8. Furthermore, it is unclear how many environmental laws in the REUL category intersect with the devolved competences in Northern Ireland, Scotland and Wales. Northern Irish officials for example have been reported as identifying approximately 500 pieces of REUL so far related to roads, transport, railways, water and drainage and planning alone.¹ If there is a definitive list that exists within government it does not appear to have been published or made available to Parliament. In some cases, there may be differences in view as to whether an item of legislation does intersect with devolved competences or not and so establishing this may not be straightforward or easy to achieve within a short period. This compounds the risk of errors in the process and avoidable tensions and conflicts and further underlines the need to remove the unnecessary and unrealistic timetable.
9. Clause 1 (2) gives the power to devolved Ministers and UK Ministers to keep pieces of REUL, ‘in regulations made by a relevant national authority’. This is necessary and it is likely that different administrations will exercise their powers to make different choices with regard to which items of legislation to retain, modify, replace or delete. The Scottish Government’s stated aim in the *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021* to align with EU law is one of many factors that will influence the outcome. The evolution of a greater diversity of legislation on the environment within the UK of course flows from devolution and is entirely legitimate. However, it is not a process to be artificially accelerated, especially by a Bill that does not have the support of the devolved administrations and places obligations on them to review legislation on a timetable that they have indicated that they do not have the capacity to comply with, especially when seeking to address their own priorities at the same time.²
10. Divergence is less likely to be associated with negative overflows and conflicts, for example in relation to compliance with the Internal Market Act and the negotiation of Common Frameworks (which are particularly numerous in the Defra domain), if it is undertaken in an orderly and cooperative fashion within a process that is acceptable to all the key actors and interests (outside government as well as in) and on a sensible timetable.

¹ <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=381306>

² Both the Scottish and Welsh governments have recommended to their respective Parliaments that they should withhold their consent for the REUL Bill. See <https://gov.wales/written-statement-retained-eu-law-revocation-and-reform-bill> and <https://www.gov.scot/publications/retained-eu-law-bill-letter-to-the-uk-government-november-2022/>

11. Clause 2 (1) gives the power to UK Ministers only to extend the sunset deadline up to 23 June 2026. This power is not extended to devolved Ministers. The rationale for this is unclear and appears unreasonable. Amongst other things it raises serious questions about whether the devolved administrations have sufficient resource and capacity to, a) identify which REUL is applicable to them, and b) either restate, revoke or replace their REUL, by the end of 2023. It commits devolved administrations to this exercise without their consent.

Practicalities of the proposals

12. The scale of the task involved in reviewing the many hundreds of pieces of legislation that are within scope and relate to the environment raises questions about the feasibility and practicality of carrying this out within the timeframes proposed by the Bill. The fact that some form of active decision by Ministers is required before the end of 2023 for every piece of this legislation if it is not to fall off the statute book at this point is particularly concerning. It is clear that government departments do not have sufficient capacity to carry out the thorough review of each piece of legislation and associated consultation to determine whether or not they should be restated, revoked or replaced. To date, no impact assessment has been made available showing how much time and effort this is predicted to take and how this would differ by department. And no assessment is available to show what the implications of this would be for their capacity to deliver on other policy work e.g., the publication of the already delayed environmental targets required under the Environment Act.
13. There are real practical risks that, without sufficient capacity to carry out a thorough review of all relevant legislation, and not by design but by accident, errors will be made, details missed and that gaps in the legislative matrix could appear, as could errors in cross-referencing legislation.
14. Equally, opportunities to come forward with beneficial revisions to legislation may be missed in the rush to meet an artificial deadline, thereby stifling the benefits of any replacement measures arising from the exercise.

Process for review of environmental law

15. Environmental law, like other areas of legislation, is not untouchable.
16. The essential idea of reviewing legislation, including environmental law, and taking account of changing circumstances, including Brexit, in order to create better regulation is unobjectionable. Indeed, improvements will be required to meet new and in principle more ambitious English environmental targets, such as those that were due at the end of October under the terms of the Environment Act. At a UK scale there is a case for improving UK REACH, the domestic legislation adopted post Brexit to regulate chemicals, for example.
17. However, the REUL Bill in its current form does not provide for review to be undertaken in an orderly, evidence-based and accountable framework, following appropriate processes, as has been advocated by UK governments for many years. Good practice requires thorough internal assessment of the issues concerned, including scientific evidence, full stakeholder engagement, due consultation and cooperation with the other three administrations within the UK and a

credible impact assessment. It should be based on a workable timescale for the review and the development of new approaches, where required. Sufficient resources need to be secured within the government departments responsible for a large and highly inter-locking exercise, assuming there are other urgent demands on officials - as indeed there are in the case of Defra. Defra is already behind in meeting many of its commitments, including the previously mentioned new set of long-term environmental targets.

18. Furthermore, reviews should be planned in a coherent, structured way looking at regulatory impacts in the round and giving stakeholders notice of what to expect. This is critical for reducing regulatory uncertainty and also maintaining the incentive to invest. From a coherence perspective, reviewing environmental laws in a structured way, and in thematic batches dealing with one topic at a time, e.g., the control of water pollution, has much to recommend it. The next Defra five-year Environmental Improvement Plan, due in 2023, would provide an opportunity to review priorities in the light of fresh objectives.

19. In contrast, the REUL Bill advances a process that:

- a) Provides for the automatic removal of all legislation in scope by the end of December 2023 via a sweeping sunset provision with an inexplicably short and unrealistic timetable. This seems designed to create a strong bias in the exercise towards speed rather than effective reform, with considerable risk of legislation falling off the statute book, with or without assessment. It militates against a systematic approach with a proper role for stakeholders, unless the option to extend to 2026 is widely used, in which case the 2023 sunset deadline simply increases uncertainty and should be removed from the start.
- b) In setting this timetable, brings the practicality and credibility of the exercise into serious question given the other pressures on Defra, the administrations in the other UK countries and amongst stakeholders. It strongly suggests that there will be little time to prepare and present impact assessments or opportunity to assess proposed amendments to legislation giving due regard to detail. A requirement to consult on any proposed revisions to legislation and provide evidence on their impact should be added if this Bill goes forward.
- c) Grants sweeping powers to ministers rather than Parliament to remove, amend and replace legislation classified as REUL, particularly under Clause 15, rather than increasing Parliamentary scrutiny, as might be expected when 'domesticating' EU law.
- d) Stipulates in Sub-section 5 of Clause 15 an extremely restrictive list of conditions that any replacement legislation should meet, including that there should be absolutely no additional administrative burdens and no impact on profitability. It will not be easy to design measures that address higher environmental ambitions effectively but can be shown to be compatible with such criteria, let alone do so in the timescales required.
- e) As noted, requires the devolved administrations to engage in a very large review exercise of unknown dimensions to unnecessary deadlines at the expense of other priorities.
- f) Only considers Retained *EU* law [emphasis added] rather than all relevant environmental legislation in force, on the basis that at present the origins of current legislation seem of greater concern than its content or coherence.
- g) Provides no indication of the approach to be adopted. For example, is it intended to employ a Star Chamber, Departmental decision, cabinet scrutiny committee or some other process? This is a matter of great importance for stakeholders.

20. In summary, as currently drafted, the REUL Bill looks set to create an approach that is counter to good practice in relation to long-established processes for thorough, systematic and consultative legislative review. Instead, it amplifies the powers and discretion of ministers while curtailing the

role of parliamentarians, devolved authorities and external stakeholders. At the same time, it creates unreasonable pressures on Defra and its counterparts in the other nations of the UK to conduct an exercise that needs to be undertaken steadily, systematically and with an eye to meeting future goals. It steers the review process towards a de-regulatory rather than an evidence-based approach.

21. For these reasons, the REUL Bill, as drafted currently seems far from the most appropriate way to live up to the aim stated in the “Benefits of Brexit” report, which inspired the Bill, that “The UK will use its regulatory freedoms to become the best regulated advanced economy in the world”. Nor does it seem to be compatible with assertions that it will not lead to a weakening of environmental protections³. In light of the concerns identified above, the risk that these assurances could be undermined seems high.

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³ ‘[we] will not undermine our obligation to the environment in pursuit of growth’, Ranil Jayawardena, Twitter, 27 September