

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 2, page 2, line 5

leave out “A Minister of the Crown” and
insert “A relevant national authority”

Effect

This amendment ensures that any relevant national authority (as defined in clause 21(1)) can extend the sunset referred to in clause 1.

Reason

The bill currently provides in clause 2 that only a Minister of the Crown can make regulations to extend the period of the sunset. It is inappropriate that Ministers in the devolved administrations cannot carry out the same function in respect of REUL which applies in their respective devolved competences.

This amendment provides the devolved Ministers with the power to extend the sunset deadline.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 2, page 2, line 8

leave out “the end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

This is an amendment consequential upon the previous amendment to clause 1.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 2, Page 2, line 10

leave out subsection (3)

Effect

This amendment deletes clause 2(3).

Reason

Clause 2 provides that a Minister of the Crown may by regulations provide that the reference in section 1(1) to the end of 2023 should specify a “later time”.

Clause 2(3) provides that the “later time” cannot be later than the end of 23 June 2026. This is the tenth anniversary of the date in June 2016 on which the referendum on UK membership of the European Union was held. Government policy in relation to the applicability of Retained EU law should not be made on the basis of symbolism. The choice of date should be made on the application of good legislative practice including consideration and analysis of the legislation involved and consultation with those who will be affected by the variation or revocation proposed by the regulations in question.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 3, Page 2, line 15

leave out “the end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

Consequential amendment which provides clarity about the time the sunset provisions under clause 3 come into effect.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 3, page 2, line 18 add at end

“(3) A relevant national authority may by regulations provide that subsection (1) has effect as if the reference to the end of 2023 were a reference to a later specified time”

Effect

This amendment provides that the sunset of retained EU rights, powers and liabilities etc can be extended to a later time by a relevant national authority.

Reason

As presently drafted clause 3 provides for a sunset of retained EU rights, powers and liabilities etc at the end of 2023. There is no provision to extend this sunset such as applies in relation to clause 1. This amendment makes provision for a relevant national authority to be able to make regulations to provide for such an extension.

RETAINED EU LAW (REVOCATION AND REFORM) BILL EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 4, page 2, line 25

leave out “the end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

This is a consequential amendment which provides clarity about the time the sunset of the principle of the supremacy of EU law comes into effect.

Reason

The principle of the supremacy of EU law was developed by the CJEU and provides that where there is a conflict between national law and EU law, EU law will prevail. It is key to the EU legal order and ensures consistent application across the EU. Duh and Rao in *Retained EU Law - A Practical Guide*, comment on the application of the principle. They note the comment by the House of Lords Constitution Committee that it is impossible “to see in what sense “the principle of the supremacy of EU law” could meaningfully apply in the UK once it has left the EU” and then explain that the reason it is retained is because one of the stated aims of the EUWA is to incorporate EU law into domestic law. To incorporate EU law into the domestic statute book while retaining the principle would imbalance the statute book. It is logically consistent therefore that when retained EU is being abolished the principle should be disapplied also.

However, we question whether the abolition of this principle will not affect the interpretation of EU law when it becomes assimilated and is this not a factor to be taken into account in considering how to assimilate that law?

Providing for a later sunset date will allow for a thorough analysis of the consequences of removal of the principle in relation to the interpretation of assimilated law.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 5, page 3, line 11

leave out clause 5

Effect

This amendment deletes clause 5 from the bill.

Reason

Clause 5 amends various sections of the EUWA, so that retained general principles of EU law are no longer part of UK law from the end of 2023.

This clause will achieve the Government's policy of removing retained general principles of EU law. However, will not the abolition of these general principles affect the interpretation of EU law when it becomes assimilated and is this not a factor to be taken into account in considering how to assimilate that law? The Government should justify the necessity for clause 5.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 6, page 3, line 38

leave out “the end of 2023” and insert
“11:59pm on 31 December 2026”

Effect

Consequential amendment which provides clarity about precisely when retained EU law will be known as assimilated law.

Reason

The reference to the “end of 2023” in clause 6, subsection (1) is vague. We suggest that this reference should be changed and defined with greater precision in clause as “11.59 p.m. on 31 December 2026” following the precedent of the definition of “IP completion day” found in section 39(1) the European Union (Withdrawal Agreement) Act 2020.

The additional time should be used for a more thoughtful approach to amending by way of renaming REUL. The choice of date should be made on the application of good legislative practice including consideration and analysis of the legislation involved and consultation with those who will be affected by the variation proposed by the regulations under clause 19. This later date will allow for that process to be completed.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 7, page 4, line 25

leave out “must” and insert “may”

Effect

This amendment restores discretion to the higher court.

Reason

As currently drafted, clause 7(3) which introduces a new subsection (5) into section 6 of the EUWA, requires the judiciary in a higher court ie. the UK Supreme Court, the High Court of Justiciary and a relevant appeal court (as defined in clause 7(7)) to have regard to certain factors when deciding to depart from any retained EU case law.

We believe that the courts must be able to exercise discretion when deciding such matters and that a statutory obligation to consider these matters is an unjustifiable intrusion on judicial independence.

RETAINED EU LAW (REVOCATION AND REFORM) BILL EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 7, page 6, line 32

leave out new section 6B.

Effect

This amendment deletes new section 6B which is inserted in the EUWA by clause 7(8).

Reason

New Section 6B which clause 7(8) proposes to insert into the EUWA provides that UK or devolved Law Officers can make a reference to the Supreme Court, the High Court of Justiciary or to the appropriate relevant appeal court (as defined by section 6A):

- (a) where proceedings before a court or tribunal (other than a higher court) have concluded,
- (b) no reference was made under section 6A in relation to the proceedings, and
- (c) either— (i) there has been no appeal, or (ii) any appeal has been finally dealt with otherwise than by a higher court.

Even although section 6B(7) provides that “[any decision by the court to which reference is made] does not affect the outcome of the proceedings...”, we consider it contrary to the interests of justice that the Law Officers can be empowered to make a reference in a civil case which has been concluded and where there has been either no appeal or the appeal itself has been concluded. This contravention of the principle of finality and interference by the State in civil litigation needs to be explained and justified by the Government.

Moreover, this innovation would apply only on a point of law “on retained case law”, thus diluting the unity of the civil law. Further, any such power of reference would not be comparable, for instance, to the role of the Attorney General or the Lord Advocate in criminal proceedings. There, such Law Officers have a direct interest and an integral role to play in all such proceedings, including instituting appeals or references on points of law. Law Officers do not currently have that role in civil proceedings, and it remains to be seen why they should have it in respect of one particular category of civil case law.

In relation to new section 6B(2) we also have some observations. This new subsection identifies the Law Officers who can make a reference.

The Lord Advocate’s power to make a reference is limited to where the point of law relates to the meaning or effect of relevant Scotland legislation. There is no corresponding restraint on the powers of any UK Law Officer to either the law of England and Wales or a matter of law on reserved matters. Is it appropriate that any UK Law Officer (other than the Advocate General for Scotland) should be able to make a reference to the High Court of Justiciary or a relevant appeal court which is a Scottish court on a matter of Scottish legislation see *Taylor Clark Leisure PLC v The Commissioners for Her Majesty’s Revenue* [2015] CSIH 32?

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 12, page 14, line 39

add at end — “(2) before making regulations under subsection (1) a relevant national authority must consult with any person who may be affected by the proposed regulations.

(3) If a Minister of the Crown proposes to make regulations under subsection (1) which concern devolved matters the Minister must, before making the regulations, consult with the relevant national authority.

(4) A relevant national authority, and where subsection (3) applies a Minister of the Crown, must publish the results of any consultation conducted under this section.”

Effect

This amendment requires a relevant national authority or a Minister of the Crown to consult with those who may be affected by regulations before making them. All relevant national authorities are required to publish the results of the consultation.

Reason

Under clause 12 a relevant national authority may by regulations restate, to any extent, any secondary retained EU law.

Under clause 14 a restatement may use words or concepts that are different from those used

in the law being restated and may make any change which

- (a) resolves ambiguities;
- (b) removes doubts or anomalies;
- (c) facilitates improvement in the clarity or accessibility of the law.

We take the view that such changes, which may be considerable, require to be consulted upon. This amendment achieves that objective.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 12, page 15, line 13

leave out “the end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

This amendment extends the statutory deadline within which a restatement of any secondary retained EU law may be made.

Reason

The deadline within which a restatement of any secondary retained EU law may be made is currently the end of 2023. This means that there are at the time of writing only 13 months in which the Government or any devolved administration can consult, analyse the results of such a consultation, prepare legislation and for Parliament or the devolved legislatures to consider and pass the legislation. By the time the bill receives the Royal Assent there could be fewer than 11 or 10 months in which to carry out such an exercise. The deadline needs to be extended to allow time for proper legislative practice to be completed.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 13, page 15, line 23

add at end “(2) Before making regulations under subsection (1) a relevant national authority must consult with any person who may be affected by the proposed regulations.

(3) If a Minister of the Crown proposes to make regulations under subsection (1) which concern devolved matters the Minister must, before making the regulations, consult with the relevant national authority.

(4) A relevant national authority, and where subsection (3) applies a Minister of the Crown, must publish the results of any consultation conducted under this section.”

Effect

This amendment requires a relevant national authority or a Minister of the Crown to consult with those who may be affected by regulations before making them. All relevant national authorities are required to publish the results of the consultation.

Reason

Under clause 13 a relevant national authority may by regulations restate, to any extent, any secondary assimilated law.

Under clause 14 a restatement may use words or concepts that are different from those used

in the law being restated and may make any change which

- (a) resolves ambiguities;
- (b) removes doubts or anomalies;
- (c) facilitates improvement in the clarity or accessibility of the law.

We take the view that such changes (which may be considerable) require to be consulted upon. This amendment achieves that objective.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 13, page 16, line 8

add at end “(9) Before making regulations under subsection (8) a relevant national authority must consult with any person who may be affected by the proposed regulations.

(10) If a Minister of the Crown proposes to make regulations under subsection (1) which concern devolved matters the Minister must before making the regulations consult with the relevant national authority.

(11) A relevant national authority and where subsection (10) applies a Minister of the Crown, must publish the results of any consultation conducted under subsection (9).

Effect

This amendment requires a relevant national authority or a Minister of the Crown to consult with those who may be affected by regulations under subsection 13(8) before making them. All relevant national authorities are required to publish the results of the consultation.

Reason

Under Clause 13 (8) “A relevant national authority may by regulations reproduce, to any extent, the effect that anything which was retained EU law by virtue of section 4 or 6(3) or (6) of the European Union (Withdrawal) Act 2018 would have, but for sections 3 to 5 of this Act.” This is a significant regulation making power which could affect a large number of individuals and businesses. It is important that the UK Government and the devolved administrations consult before making the regulations envisaged in this clause. A Minister of the Crown is obliged to consult a devolved administration before making regulations which concern devolved matters.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 13, page 16, line 9

leave out “23 June 2026” and insert
“11:59 pm on 31 December 2026”

Effect

This amendment extends the statutory deadline within which a restatement of assimilated law or reproduction of sunsetted retained EU rights, powers, liabilities may be made.

Reason

The deadline within which a restatement of assimilated law or reproduction of sunsetted retained EU rights, powers, liabilities may be made is currently 23 June 2026. The preparation of any restatement or reproduction could be a considerable undertaking. At the time of writing there are only four years in which the Government or any devolved administration are able to consult, analyse the results of such a consultation, prepare legislation and for Parliament or the devolved legislatures to consider and pass the legislation. The deadline needs to be extended to allow sufficient time for such an exercise to be completed. This amendment provides some additional time and a proper legislative approach to setting the deadline.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 13, page 16, line 16

leave out “end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

This amendment is consequential upon the preceding amendment.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 14, page 16, line 32

leave out subsection (5)

Effect

This amendment deletes clause 14(5).

Reason

Clause 14(5) currently provides “The provision that may be made by regulations under section 12 or 13 may be made by modifying any enactment.” This is a very broad Henry VIII power to empower Ministers to amend “*any enactment*”. The Government should explain why such a broad power is necessary.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 15, page 17, line 5

add at end “ (2) Before making regulations under subsection (1) a relevant national authority must consult with any person who may be affected by the proposed regulations.

(3) If a Minister of the Crown proposes to make regulations under subsection (1) which concern devolved matters the Minister must, before making the regulations, consult with the relevant national authority.

(4) A relevant national authority and where subsection (3) applies, a Minister of the Crown must publish the results of any consultation conducted under subsection (1).”

Effect

This amendment requires a relevant national authority or a Minister of the Crown to consult with those who may be affected by regulations under subsection 15(1) before making them. All relevant national authorities are required to publish the results of the consultation.

Reason

Under Clause 15(1) “A relevant national authority may by regulations revoke any secondary retained EU law without replacing it”. This is a significant regulation making power which could affect a large number of individuals and businesses. It is important that the UK Government and the devolved administrations consult before making the regulations envisaged in this clause. A Minister of the Crown is obliged to consult a devolved administration before making regulations which concern devolved matters.

RETAINED EU LAW (REVOCATION AND REFORM) BILL EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 15, page 17, line 8

add at end “(3) Before making regulations under subsection (2) a relevant national authority must consult with any person who may be affected by the proposed regulations.

(4) If a Minister of the Crown proposes to make regulations under subsection (2) which concern devolved matters the Minister must, before making the regulations, consult with the relevant national authority.

(5) A relevant national authority and a Minister of the Crown must publish the results of any consultation conducted under this section.”

Effect

This amendment requires a relevant national authority or a Minister of the Crown to consult with those who may be affected by regulations under subsection 15(2) before making them. All relevant national authorities are required to publish the results of the consultation.

Reason

Under Clause 15(2) a “relevant national authority may by regulations revoke any secondary retained EU law and replace it with such provision as the relevant national authority considers to be appropriate and to achieve the same or similar objectives”.

This is a very wide regulation making power which could affect a large number of individuals and businesses. It is important that the UK Government and the devolved administrations consult before making the regulations envisaged in this clause. A Minister of the Crown is obliged to consult a devolved administration before making regulations which concern devolved matters.

RETAINED EU LAW (REVOCATION AND REFORM) BILL EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 15, page 17, line 11

add at end “ (4) Before making regulations under subsection (3) a relevant national authority must consult with any person who may be affected by the proposed regulations.

(5) If a Minister of the Crown proposes to make regulations under subsection (3) which concern devolved matters the Minister must, before making the regulations, consult with the relevant national authority.

(6) A relevant national authority and a Minister of the Crown must publish the results of any consultation conducted under this section.”

(5) A relevant national authority must publish the results of any consultation conducted under subsection (3).”

Effect

This amendment requires a relevant national authority or a Minister of the Crown to consult with those who may be affected by regulations under subsection 15(3) before making them. All relevant national authorities are required to publish the results of the consultation.

Reason

Under clause 15(3) “ a relevant national authority may by regulations revoke any secondary retained EU law and make such alternative provision as the relevant national authority considers appropriate”.

This is a very wide regulation making power which could affect a large number of individuals and businesses. It is important that the UK Government and the devolved administrations consult before making the regulations envisaged in this clause. A Minister of the Crown is obliged to consult a devolved administration before making regulations which concern devolved matters.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 15, page 17, line 41

leave out “23 June 2026” and insert
“11:59 pm on 31 December 2026”

Effect

This amendment extends the statutory deadline within which the powers to revoke or replace may be made.

Reason

The deadline within which a restatement of assimilated law or reproduction of sunsetted retained EU rights, powers, liabilities may be made is currently 23 June 2026. The preparation of any restatement or reproduction could be a considerable undertaking. At the time of writing there are only four years in which the Government or any devolved administration are able to consult, analyse the results of such a consultation, prepare legislation and for Parliament or the devolved legislatures to consider and pass the legislation. The deadline needs to be extended to allow sufficient time for such an exercise to be completed. This amendment provides some additional time and a more appropriate legislative approach to setting the deadline.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 15, page 18, line 15

leave out “the end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

Consequential amendment.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 15, page 18, line 18

leave out “the end of 2023” and insert
“11:59 pm on 31 December 2026”

Effect

Consequential amendment.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 16, page 18, line 19

leave out clause 16.

Effect

This amendment deletes clause 16.

Reason

Clause 16 provides that the national authority will have the given power to update by regulations any secondary retained EU law, or any provision made under clauses 12, 13 or 15 to take account of (a) changes in technology, or (b) developments in scientific understanding.

The reasons for updating regulations should also reflect other conditions such as changes in society or economics. The rationale for making amendments in clause 16 is unduly narrow. We believe the Government should consult on this clause and rethink this provision to reflect the wide scope of changes which would necessitate amendment in the law in the future.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 19, page 20, line 4 leave out “appropriate” and insert “necessary”

Effect

This amendment deletes “appropriate” and replaces it with “necessary”

Reason

Clause 19 (1) provides that a “Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act.” Given that subsection (2) allows such regulations to amend any act including the REUL (Revocation and Reform) bill we believe that the Minister should only be permitted to amend those regulations where it is necessary to do so. This applies a more objective standard to the amendment of the regulations.

**RETAINED EU LAW (REVOCATION AND REFORM) BILL
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 19, page 20, line 6

add at end “(3) before making regulations under subsection (1) a Minister of the Crown must consult with the other relevant national authorities and any other person who may be affected by the proposed regulations.

(4) A Minister of the Crown must publish the results of any consultation conducted under subsection (1).”

Effect

This amendment requires a Minister of the Crown to consult with the other relevant national authorities and interested persons before making regulations under clause 19.

Reason

Clause 19 (1) provides a Henry VIII power that empowers a “Minister of the Crown” by regulations to make such provision as the Minister considers appropriate in consequence of this Act.” Given that subsection (2) allows such regulations to amend any act including the REUL (Revocation and Reform) bill we believe that the Minister should be required to consult the bodies mentioned above.

November 2022