RETAINED EU LAW (REVOCATION AND REFORM) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Retained EU Law (Revocation and Reform) Bill as brought from the House of Commons on 19 January 2023 (HL Bill 89).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill/Act	**3**
Policy background	**3**
Sunset of EU legislation	4
Assimilation of retained EU law	5
Interpretation and effect of retained EU law	6
Modification of retained EU law	7
Powers contained in this Bill	7
Business Impact Target	8
Devolved Administrations	8
Legal background	**9**
Territorial extent and application	**9**
Commentary on provisions of Bill/Act	**10**
Sunset of EU-derived legislation	10
Clause 1: Sunset of EU-derived domestic subordinate legislation and retained direct EU legislation	10
Clause 2: Extension of sunset under section 1	11
Clause 3: Sunset of retained EU rights, powers, liabilities etc	11
Assimilation of retained EU law	12
Clause 4: Abolition of Supremacy of EU law	12
Clause 5: Abolition of general principles of EU law	13
Clause 6: Assimilated law	13
Interpretation and effect of retained EU Law	14
Clause 7: Role of courts	14
Clause 8: Compatibility	19
Clause 9: Incompatibility orders	19
Modification of retained EU law	20
Clause 10: Scope of Powers	20
Clause 11: Procedural requirements	21
Powers relating to retained EU law	21
Clause 12: Power to restate retained EU law	21
Clause 13: Power to restate assimilated law or reproduce sunsetted EU rights, powers, liabilities etc	22
Clause 14: Powers to restate: general	23
Clause 15: Powers to revoke or replace	24
Clause 16: Power to update	26
Clause 17: Power to remove or reduce burdens	26
Business Impact Target	26
Clause 18: Abolition of Business Impact Target	26
Final provisions	27
Clause 19: Consequential Provision	27
Clause 20: Regulations: general	27

Clause 21: Interpretation 27
Clause 22: Commencement, transitional and savings 27
Clause 23: Extent and short title 28

Schedules 28

Schedule 1: "Assimilated Law": Consequential Amendments 28
European Union (Withdrawal) Act 2018 28
This Act 28
Schedule 2: Amendment of Certain Retained EU Law 28
Part 1 - Change of parliamentary procedure 28
Part 2 - Consequential amendments 29
Schedule 3 - Regulations: Restrictions on Powers of Devolved Authorities 29
Introductory 29
No power to make provision outside devolved competence 29
Requirement for consent where it would otherwise be required 30
Requirement for joint exercise where it would otherwise be required 31
Requirement for consultation where it would otherwise be required 31
Schedule 4: Regulations - Procedure 32
Part 1: General 32
Making of regulations by statutory instrument etc 32
Combining provisions 33
Hybrid Instruments 33
Part 2: Powers of Minister of the Crown Alone 33
Part 3: Powers of Relevant National Authority: Separate Exercise 34
Introductory 34
Separate exercise by a Minister of the Crown 34
Separate exercise by Scottish Ministers 36
Separate exercise by Welsh Ministers 36
Separate exercise by Northern Ireland department 37
Part 4: Powers of Relevant National Authority - Joint Exercise 38
Parliamentary procedure 38
Joint exercise with Scottish Ministers 38
Joint exercise with Welsh Ministers 39
Joint exercise with Northern Ireland department 39
Effect of annulment resolution 39

Commencement 41

Financial implications of the Bill 41

Parliamentary approval for financial costs or for charges imposed 41

Compatibility with the European Convention on Human Rights 42

Annex A – Territorial extent and application in the United Kingdom 43

Overview of the Bill/Act

1 The purpose of the Retained EU Law (Revocation and Reform) Bill is to provide the Government with all the required provisions that allow for the amendment of retained EU law (REUL) and remove the special features it has in the UK legal system. These reforms were announced in the Queen's speech in May 2022.

2 The Bill will give effect to policies that were set out in the Benefits of Brexit Report published in January 2022 and the Government's announcement of the review into the substance and status of REUL in September 2021.

3 To achieve this, the Bill will:

a. Repeal or assimilate REUL, within a defined scope, by the end of 2023

b. Repeal the principle of supremacy of EU law from UK law by the end of 2023;

c. Facilitate domestic courts departing from retained case law;

d. Provide a mechanism for UK Government and devolved administration law officers to intervene in cases regarding retained case law, or refer them to an appeal court, where relevant;

e. Repeal directly effective EU law rights and obligations in UK law by the end of 2023;

f. Abolish general principles of EU law in UK law by the end of 2023;

g. Establish a new priority rule requiring retained direct E U legislation (RDEUL) to be interpreted and applied consistently with domestic legislation;

h. Downgrade the status of RDEUL for the purpose of amending it more easily;

i. Create a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or amended to reduce burdens.

4 The Bill also repeals the Business Impact Target (BIT) contained in the Small Business, Enterprise and Employment Act 2015. This is an outcome of the Benefits of Brexit Paper published by the Government in January 2022, in response to the 'Reforming Better Regulation Framework' consultation.

5 The Bill contains 23 clauses and 3 Schedules, addressing a range of regulatory and constitutional issues and changes. The Bill will amend the European Union (Withdrawal) Act 2018 (EUWA) and make minor and consequential amendments to some other Acts.

Policy background

6 On 23 June 2016, more than 17 million citizens of the UK and Gibraltar voted for the UK to leave the European Union (EU). Since then, the UK has pushed forward with building a framework for the future relationship between the UK and the EU through a series of pieces of legislation.

7 The first step was to process the UK's departure through the EU (Notification of Withdrawal) Act 2017. This was followed by the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020.

8 On 31 January 2020, the UK left the European Union. Pursuant to the Withdrawal Agreement, at the end of the Transition Period at 11pm on 31 December 2020, the UK recovered its full economic and political independence. As such, the UK is no longer part of the EU Single

Market or the EU Customs Union, and is therefore no longer bound by its laws and regulations.

9 The UK and EU signed a Trade and Cooperation Agreement on 30 December 2020 on the terms of their future relationship. This was implemented in the European Union (Future Relationship) Act 2020.

10 To maintain legal certainty as the UK ended the Transition Period, the European Union (Withdrawal) Act 2018 (EUWA) allowed for the retention of most EU law, as it applied in the UK legal system on 31 December 2020. EUWA incorporated EU law that applied to the UK onto the statute book as "retained EU law" (REUL), creating a new category of domestic law possessing most of the special features of EU law.

11 REUL consists of a combination of EU regulations, decisions and tertiary legislation, domestic legislation passed to implement EU directives, general principles of EU law, directly effective rights and obligations developed in relevant case law of the Court of Justice of the European Union (CJEU), and other principles developed in that case law.

12 EUWA defined REUL by reference to three categories:

a. Section 2 preserved EU-derived domestic legislation. This (typically) covers any primary or secondary legislation implementing one or more EU obligations, including those under EU directives.

b. Section 3 preserved direct EU legislation. This is defined as all EU regulations, decisions or tertiary legislation that had direct application in the UK, including certain parts of the EEA agreement.

c. Section 4 preserved any directly effective rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law.

13 The retained case law and retained general principles of EU law applied to the interpretation of REUL, under section 6 of EUWA. The REUL framework established by EUWA, however, was not intended to be maintained indefinitely on the UK statute book and now the Government is in the position to ensure REUL can be revoked, replaced, restated, updated and removed or amended to reduce burdens.

14 The Retained EU Law (Revocation and Reform) Bill facilitates the amendment, repeal and replacement of REUL by the end of 2023, and assimilates REUL remaining in force after that date by removing the special EU law features attached to it.

15 To achieve this, the Bill includes provisions outlined below.

Sunset of EU legislation

Sunset of EU-derived subordinate legislation and retained direct EU legislation

16 This Bill facilitates planned reforms to over 3,200 pieces of REUL. To ensure REUL comes to an end in the near future, a sunset of REUL by the end of 2023 has been included in the Bill.

17 The sunset will accelerate reform and planning for future regulatory changes, which the Government believes will benefit both UK business and consumers sooner.

18 The sunset will also increase business certainty by setting the date by which a new domestic statute book, tailored to the UK's needs and regulatory regimes, will come into effect.

Extension of sunset under section 1

19 A power to provide for an extension to the sunset has been included in the Bill, ensuring the efficiency of the REUL revocation process should a lack of parliamentary time, or external factors, hinder progress towards reform of retained EU law prior to the 2023 sunset date.

Sunset of Section 4 EUWA Rights

20 This Bill will repeal all directly effective rights developed in EU case law. These rights were retained under section 4 of EUWA and by application of the principle of EU law supremacy.

21 In order to provide legal continuity and ensure these provisions could be relied upon in legal proceedings after the UK left the EU, section 4 incorporated into domestic law any directly effective rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law, which previously had effect through section 2(1) of the European Communities Act 1972.

22 This also allowed the continuation of legal effects of domestic legislation related to EU obligations that remained in force once the UK left the EU.

23 This Bill repeals these rights in order to ensure that it is no longer possible for EU case law to override domestic legislation.

24 This Bill will provide powers to legislate to codify these rights and obligations.

Assimilation of retained EU law

Abolition of Supremacy of EU law

25 The principle of the supremacy of EU law is a concept developed by the Court of Justice of the European Union (CJEU). The principle provides that, where the domestic law of a Member State conflicts with EU law, the latter takes priority.

26 Under EUWA, this principle was incorporated on to the UK statute book, so that the supremacy principle still applied in relation to domestic legislation that was made prior to the UK's exit from the EU. This ensured that domestic legislation related to EU obligations that remained in force after the UK left the EU continued to produce the same legal effects as before the UK's departure. The principle does not apply to domestic legislation made after the UK left the EU.

27 This Bill abolishes the principle of supremacy of EU law in UK law by the end of 2023 so that it no longer applies to any domestic legislation, whenever it was made.

Abolition of general principles of EU law

28 General principles of EU law have been developed by the CJEU in its case law. The case law provides that they may be used as an aid to the interpretation of the EU Treaties and EU legislation, and may be relied upon directly by individuals against EU institutions or national authorities acting incompatibly with them. There is no definitive list of general principles recognised in the CJEU case law, but examples include the protection of fundamental rights, and the equality principle.

29 Under EUWA, general principles were incorporated on to the UK statute book, but with some restrictions, so that they may only be used as an aid to the interpretation of REUL.

30 This Bill abolishes these general principles in UK law by the end of 2023, so that they no longer influence the interpretation of legislation on the UK statute book.

Assimilated law

31 This Bill is removing the interpretive effects of EU law on the UK statute book through the sunset of section 4 EUWA rights, the abolition of supremacy and the abolition of general principles of EU law.

32 This Bill will rename REUL as "assimilated law" to reflect that these interpretive effects of EU law will no longer apply to this body of law once these changes have taken place.

Interpretation and effect of retained EU law

Role of UK Courts

33 The EUWA provided that UK domestic courts should remain bound by relevant CJEU judgments made on or before 31 December 2020. This provided legal certainty upon the UK's exit from the EU and prevented the risk of considerable uncertainty for business over how EU law would operate.

34 This has however contributed to establishing legal provisions with different rules of interpretation, meaning that EU case law has continued to influence the interpretation and application of REUL in the UK after the UK's exit from the EU.

35 The Government considers that the UK courts should have greater freedom to develop case law on REUL that remains in force in ways that are not unduly constrained by the continuing influence of previous EU case law. This Bill addresses this by facilitating domestic courts departing from retained EU case law.

36 This Bill also gives the Attorney General and other Law Officers in the UK and devolved administrations the power to intervene in and refer cases to the higher courts, so that they may be invited to exercise their new discretion to depart from retained EU case law.

37 In practice, interventions and references may not always lead to courts departing from retained case law. However, they will ensure that courts give full consideration to the appropriate influence of retained case law in the continuing development of domestic case law.

Compatibility

38 Following the repeal of the principle of EU law supremacy, this Bill establishes a new priority rule for retained direct EU legislation (RDEUL) to be interpreted and applied subject to domestic legislation.

39 This Bill also establishes the power to specify the legislative hierarchy between specified pieces of domestic legislation and specified provisions of RDEUL, including that which is assimilated after 2023.

40 By exercising this power, the Government will be able to give priority to certain individual pieces of RDEUL which the Government has explicitly decided to preserve using the preservation power. The power will sunset on 23 June 2026.

Incompatibility Orders

41 This Bill requires a court to make an "incompatibility order" where it concludes that a provision of RDEUL is incompatible with any domestic enactment, or vice versa where the power described above has been exercised.

42 Where the court considers it relevant, the order could set out the effect of the incompatible provision in that particular case, delay the coming into force of the order, or remove or limit the effect of the operation of the relevant provision in other ways before the incompatibility order comes into force.

Modification of retained EU law

Scope of powers

43 This Bill will modify powers in other statutes, to facilitate their use to amend retained direct EU legislation (RDEUL) in the same way that they can be used to amend domestic secondary legislation. In effect this will ensure RDEUL has a more appropriate status in UK law, downgrading it from primary to secondary status for the purposes of amendment.

44 Currently, Schedule 8 of EUWA limits the use of such powers by treating Retained Direct Principal EU Legislation as equivalent in status to an Act of Parliament, however this legislation has not undergone the same detailed democratic scrutiny by the UK Parliament.

45 This Bill simplifies the status of RDEUL, ensuring that all RDEUL is treated as equivalent to domestic secondary legislation, thus clarifying that it may be amended in a similar way.

Procedural Requirements

46 This Bill removes the additional parliamentary scrutiny requirements that apply to the exercise of powers to make amendments to secondary legislation that was made under section 2(2) of the European Communities Act 1972.

Powers contained in this Bill

47 EU law evolved in order to meet the various needs of 28 countries, with differing economic and legal requirements. These laws no longer accurately meet the needs of the UK moving forward as an independent sovereign nation.

48 This Bill will ensure that only those regulations that are appropriate for the UK will remain on the statute book, by creating a suite of powers that allow retained EU law to be revoked or replaced, restated or updated and removed or amended to reduce burdens.

Powers to restate

49 This Bill establishes a power to restate retained EU law. This power will enable UK Ministers and devolved authorities to clarify, consolidate and restate any secondary REUL to preserve the effect of the current law whilst removing it from the category of REUL.

50 This Bill also provides for the codification of the effects of retained case law and EU-derived principles of interpretation where necessary to maintain the existing policy effect. The power does not allow the function or substance of the legislation to change nor introduce substantive policy change.

51 This Bill also establishes a power to restate assimilated law or reproduce sunsetted EU rights, powers liabilities etc (clause 13). This power achieves a similar policy effect as clause 12,

except that it acts on any assimilated secondary law and can operate after the sunset date up to 23 June 2026.

52 This power will ensure legal certainty in areas of REUL where policy is not intended to immediately change and mitigate any unintended consequences associated with the sunset and the end of the special status of REUL on 31 December 2023.

Powers to revoke or replace

53 This Bill establishes powers to revoke or replace any secondary REUL. These powers give the UK Government and the devolved authorities the ability to revoke secondary REUL (or assimilated secondary law after the sunset date in 2023), and to replace it if they wish to do so. The replacement can achieve the same or similar objectives (under subsection 2) or implement new provisions with different objectives as the Minister (or devolved authority) considers appropriate (under subsection 3).

Power to update

54 This Bill establishes a power to update. This power enables UK Ministers and devolved authorities to amend 'any secondary REUL' or 'secondary assimilated law' (i.e. including the codification of retained case law) following the sunset, as well as regulations made under the powers to restate and powers to revoke or replace within clauses 12, 13 and 15 in this Bill, to take account of changes in technology or developments in scientific understanding. The power is not intended to make significant policy changes, but is only intended to make relevant technical updates to REUL for these specific purposes. The power is designed so that it can be used more than once, so that it can continue to be used multiple times on the same piece of legislation as advances in science and technology take place over time.

Power to remove or reduce burdens

55 This Bill facilitates a small and targeted reform to the Legislative and Regulatory Reform Act (2006) (LRRA) to confirm that the existing parliamentary framework of Legislative Reform Orders (LROs) extends to retained direct EU legislation (RDEUL) and enables primary RDEUL to be amended within the current procedures and scope of the LRO process.

Business Impact Target

56 This Bill repeals the Business Impact Target (BIT) contained in the Small Business, Enterprise and Employment Act 2015, in order to make use of the UK's increased regulatory autonomy now that we have left the EU, to ensure that regulation is fit for the UK economy, business and households.

57 The repeal of the Business Impact Target (BIT) forms part of the Governments' response to the 'Better Regulation Framework' consultation, as set out in the Benefits of Brexit Policy paper. It was determined that the BIT is not fit for purpose, as it limits the way in which regulation can be scrutinised.

Devolved Administrations

58 The approach to engaging with the Devolved Administrations as part of this Bill, is consistent with other EU Exit Bills, including the European Union (Withdrawal Agreement) Act 2020 and the Future Relationship Act 2020 (FRA).

59 The Government has proactively engaged with the Devolved Administrations in order to ensure the Bill works for all four nations and is seeking legislative consent in principle from all devolved legislatures.

60 The Government also remains committed to respecting the devolution settlements and the Sewel Convention, and has ensured that the Bill will not alter the devolution settlements and will not intrinsically create greater intra-UK divergence.

61 The measures created by this Bill are UK wide. This approach is consistent with other EU Exit legislation and will enable the Devolved Administrations to make provisions for REUL in areas of devolved competence. To achieve this, the Bill will provide the Devolved Administrations with the tools to amend, repeal and replace their REUL to enable further opportunities of Brexit to be seized.

Legal background

62 The relevant legal background is explained in the policy background section of these notes. Further information on the EUWA provisions amended by this Act is also contained in the commentary on the individual clauses of the Bill.

Territorial extent and application

63 Clause 23 sets out the territorial extent of the Bill, that is the jurisdiction which the Bill forms part of the law.

64 The Bill extends to the whole of the UK and grants substantive powers to the Devolved Administrations, for instance the powers to restate REUL and the powers to revoke or replace REUL as set out in clause 12, 13 and 15 respectively.

65 In addition, repeals and amendments made by this Bill have the same territorial extent as the legislation that they are amending or repealing. For example, clause 4 amends section 5 of EUWA and inserts new text that ends the application of the principle of supremacy. That section has a UK wide extent, and so do the amendments made by this Bill.

66 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the UK Government to seek the consent of the devolved legislatures for provisions which would alter the competence of those legislatures or the devolved administrations in Scotland, Wales and Northern Ireland.

67 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill/Act

Sunset of EU-derived legislation

Clause 1: Sunset of EU-derived domestic subordinate legislation and retained direct EU legislation

68 This clause sets out the aspects of the sunset mechanism, which will ensure that EU-derived subordinate legislation and retained direct EU legislation (RDEUL) ceases to exist on the domestic statute book by 31 December 2023.

69 Subsection (1) states that EU-derived subordinate legislation and RDEUL will be revoked on 31 December 2023.

70 Subsection (2) states that a relevant national authority (i.e. a Minister of the Crown and respective devolved authorities) may exempt specified domestic subordinate legislation and RDEUL, or particular provisions of such instruments, from the sunset and thereby preserve it.

71 Subsection (3) clarifies that amendments made by EU-derived subordinate legislation and RDEUL to any other enactment are not within scope of the sunset in subsection (1). For example, where an instrument or a provision made under section 2(2) ECA 1972[1] is repealed by the sunset, but had prior to that amended primary legislation, the amendment in the primary legislation will be unaffected.

72 Subsection (4) sets out which EU-derived subordinate legislation is in scope of the sunset. This is as follows:

a. Domestic subordinate legislation made under section 2(2)[2] of, or paragraph 1A of Schedule 2[3] to, the European Communities Act 1972, or

b. Domestic subordinate legislation made, or operating immediately, before the completion of the Implementation Period (31 December 2020), for a purpose mentioned in section 2(2)(a)[4] of that Act.

73 Where domestic subordinate legislation has been modified by enactment, it will be sunset as modified.

74 Subsection (5) defines the meaning of the term "domestic subordinate legislation" for the purpose of the sunset. Domestic subordinate legislation is defined as any instrument made under primary legislation, and includes devolved subordinate legislation made by the devolved administrations. Primary legislation is not within scope of the sunset, whether made by the UK Parliament, Scottish Parliament, Senedd or the Northern Ireland Assembly. Subsection (5) sets out that domestic subordinate legislation does not include "Northern Ireland legislation" (as defined under Schedule 1 to the Interpretation Act 1978). This excludes some Orders in Council from the scope of the sunset in the same way as if they were primary legislation. Subordinate legislation falling outside of the Interpretation Act definition of

[1] Section 2(2) of the European Communities Act 1972 was power to make provision by subordinate legislation to implement EU law, or make provision related to the UK's obligations as a member of the EU.

[2] Ibid

[3] Paragraph 1A of Schedule 2 the European Communities Act 1972 exempts the power to make any provision imposing or increasing taxation from Section 2(2).

[4] Section 2(2)(a) of the European Communities Act 1972 enabled His Majesty by Order in Council, and any designated Minister or department to make provision for the purpose of implementing any EU obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised.

"Northern Ireland legislation" and applying in Northern Ireland will be within scope of the sunset where the criteria set out in subsection (1) are met.

75 Subsection (6) clarifies that where an instrument is specified in regulations to be preserved under subsection (2), any amendments made to that instrument before the sunset date will also be preserved. In effect, the instrument will be preserved as it exists immediately before the sunset. This ensures that any modifications to a piece of REUL made after it has been specified in regulations under subsection (2), but before the sunset date, would not be subject to the sunset.

Clause 2: Extension of sunset under section 1

76 This clause lays out an extension mechanism for the sunset date, beyond 31 December 2023.

77 Subsection (1) states that a Minister of the Crown may amend by regulation what is currently clause (1) of this Bill, in order to extend the sunset date to a time later than 31 December 2023, in respect only of a specified instrument or a specified description of legislation within section 1(1)(a) or (b).

78 Subsection (2) clarifies that "Specified" means specified in the regulations. In effect, this clause means that a sunset extension would only apply to specific REUL, or a specific description of REUL (e.g. any REUL that is "relevant separation agreement law"). Any REUL that is not specified, or does not fall within the general description or category of REUL set out in such regulations will be revoked on the original sunset date of 31 December 2023.

79 Subsection (3) clarifies that regulations under subsection (1) that specify an instrument or description of legislation are to be read as referring to the instrument or description as it has effect immediately before the time when the sunset would otherwise apply in relation to it. This ensures that the extension of the sunset will apply to any modifications to a piece of REUL made after regulations under subsection (1) have been made.

80 Subsection (4) clarifies that any extension to the sunset date cannot result in the deadline being any later than the 23 June 2026.

Clause 3: Sunset of retained EU rights, powers, liabilities etc

81 This clause repeals section 4 of EUWA 2018 on 31 December 2023, so that nothing which is REUL as a result of that section is recognised, available or enforceable in UK law from that date.

82 Section 4 has provided that any remaining EU rights and obligations which do not fall within sections 2 and 3 of EUWA 2018, but which previously had effect in the UK legal system through section 2(1) of the European Communities Act 1972, continued to be recognised and available in domestic law after the UK's exit from the European Union.

83 This consists largely of rights, obligations and remedies developed in case law of the CJEU which have applied directly in domestic law, in accordance with that case law. It includes, for example, directly effective rights contained within the EU treaties and in EU directives. EU Treaties and EU directives do not generally apply directly in the domestic law of EU member states. However, directly effective rights are those provisions which are sufficiently clear, precise and unconditional as to confer rights directly on individuals and which could be relied on in national law without the need for implementing measures, where national law does not give full effect to them (Case 43/75 Defrenne II EU:C:1976:56).

84 When relied upon in proceedings before domestic courts as an element of the principle of EU law supremacy, the effect of sections 4 and 5 of EUWA has been that these rights and

obligations may override and lead to the disapplication of domestic legislation. This clause repeals section 4, and clause 4 abolishes the principle of EU law supremacy in section 5.

85 The powers in clauses 12 and 13 enable secondary legislation to be made by codifying elements of retained EU law. This may include codifying rights and obligations that would otherwise be removed from domestic law as a result of the repeal of section 4 of EUWA.

86 Clause 22(6) provides that the changes given effect by this clause do not apply in relation to events or acts occurring before the end of 2023. Accordingly, they do not affect legal proceedings after that date that relate to acts or events before that date.

Assimilation of retained EU law

Clause 4: Abolition of Supremacy of EU law

87 This clause makes amendments to section 5 of EUWA 2018 which currently applies the principle of the supremacy of EU law in relation to any domestic legislation made on or before 31 December 2020. The clause repeals the principle at the end of 2023 in relation to any domestic legislation, whenever made.

88 Subsections (1) and (3) effect the repeal of the supremacy principle by replacing subsections (1) to (3) of section 5 of EUWA with new subsections (A1) to (A3).

89 Subsection (A1) ends the principle of supremacy by the end of 2023 in relation to all domestic legislation, whenever made. This also has the effect of removing at the same time the principle of consistent interpretation in relation to all domestic legislation, and the conflict rule requiring domestic legislation to give way to RDEUL where a consistent interpretation is not possible.

90 Subsection (A2) establishes a new priority rule following the repeal of the supremacy principle, requiring RDEUL to be read and given effect in a way which is compatible with standard domestic legislation and, where the two conflict, for domestic legislation to take priority over RDEUL.

91 Subsection (A3) makes the new priority rule set out in subsection (A2) subject to section 183A and 186 of the Data Protection Act 2018, which makes more specific provision as to the relationship of priority between various provisions of data protection legislation contained in RDEUL and domestic legislation.

92 Subsection (A3) also provides that the new priority rule set out in subsection (A2) is subject to any provision to the contrary made in exercise of the power in clause 8(1). That power enables secondary legislation to be made that specifies that domestic legislation, or specified provisions of that legislation, should be read and given effect in a way which is compatible with specified pieces of RDEUL, or specified provisions within that RDEUL, and that the relevant piece or provision of RDEUL should take priority where it conflicts with the relevant piece of domestic legislation.

93 Subsection (3) also: (a) amends section 5(7) of EUWA so that the provisions of section 5 of EUWA as amended by the Bill remain subject to relevant separation agreement law as defined in section 7C of EUWA. "Relevant separation agreement law" is defined in section 7C(3) of EUWA 2018 and includes REUL required to implement the Withdrawal Agreement, EEA-EFTA separation agreement and Swiss citizens' rights agreement. (b) makes a consequential amendment to section 7(5)(a) of EUWA, in respect of its cross-reference to section 5 of EUWA, and (c) repeals paragraph 5(2) of Schedule 1 of EUWA 2018. That paragraph clarifies how the principle of supremacy applies in the context of REUL, and will no longer be relevant following the repeal of the principle of supremacy.

94 Subsection (2) defines in section 5 of EUWA a "domestic enactment" as an enactment, other than one consisting of RDEUL.

95 Clause 22(6) provides that the changes given effect by this clause do not apply in relation to events or acts occurring before the end of 2023. Accordingly, they do not affect legal proceedings after that date that relate to acts or events before that date.

Clause 5: Abolition of general principles of EU law

96 This clause amends EUWA 2018, so that general principles of EU law are no longer part of UK law from the end of 2023.

97 Clause 5 will remove the remaining effects of general principles of EU law in domestic law, which are not already limited by these EUWA provisions.

98 Subsection (2) will amend section 5 of EUWA by inserting a new subsection (A4) which ends the effects of general principles of EU law in domestic law from the end of 2023. It will also repeal section 5(5) of EUWA, which provides for fundamental rights and principles contained in general principles of EU law or section 4 EUWA rights to continue to apply, notwithstanding that section 5(4) of EUWA excludes from domestic law the Charter of Fundamental Rights.

99 Subsection (3) makes a consequential amendment to section 6(3) of EUWA so that REUL is no longer required to be interpreted consistently with general principles by the courts.

100 Subsections (4) and (5) make consequential amendments to sections 7 and 21 of EUWA, where they refer to general principles.

101 Subsection (6) makes consequential amendments to Schedule 1 of EUWA to remove the restrictions on general principles in paragraphs 2 and 3 which are rendered unnecessary by subsection (2) of this clause.

102 Subsection (7) makes consequential amendments to the transitional provisions in paragraph 39 of Schedule 8 of EUWA, to remove the references to paragraphs 2 and 3 of Schedule 1 of EUWA.

103 Clause 17(3) provides that the changes given effect by this clause do not apply in relation to events or acts occurring before the end of 2023. Accordingly, they do not affect legal proceedings after that date that relate to acts or events before that date.

104 The amendments to sections 5 and 6 of EUWA made by clause 5 are subject to sections 5(7) and 6(6A) of EUWA. This means that the abolition of general principles of EU law remain subject to relevant separation agreement law, so that these principles will continue to apply in so far as the application of EU law is required to implement the Withdrawal Agreement, EEA-EFTA separation agreement and Swiss citizens' rights agreement.

Clause 6: Assimilated law

105 Clause 6 establishes "assimilated law" as a new body of law. At all times after the end of 2023, REUL that remains in force will be known as "assimilated law". New subsection (1) sets out that retained EU law and related terms (for example, retained direct EU legislation and retained case law), will be known as assimilated law and related terms after the end of 2023 as set out in the table below. Subsection (2) clarifies that the name retained EU law and related terms will continue to apply up until the end of 2023.

At or before the end of 2023	After the end of 2023
Retained EU law	Assimilated law
Retained case law	Assimilated case law
Retained direct EU legislation	Assimilated direct legislation
Retained direct minor EU legislation	Assimilated direct minor legislation
Retained direct principal EU legislation	Assimilated direct principal legislation
Retained domestic case law	Assimilated domestic case law
Retained EU case law	Assimilated EU case law
Retained EU obligation	Assimilated obligation

106 Subsection (3) highlights that the schedule to this Bill, '"Assimilated law": consequential amendments', will make consequential amendments to other relevant enactments that are required as a result of the renaming of retained EU law and related terms, as assimilated law and related terms.

107 Subsection (4) clarifies that a reference to retained EU law or related terms, as set out in the table in subsection (1) of this clause, is to be read as assimilated law or related terms after the end of 2023.

108 Subsection (5) clarifies that the renaming of retained EU law or related terms to assimilated law or related terms after the end of 2023 does not apply to the titles of enactments or references to those titles.

109 Subsection (6) provides that the provision a Minister of the Crown may make using the power conferred by clause 19 of this Bill (power to make consequential provision) includes the ability to (a) add new entries to the table in subsection (1) of this clause to rename related terms of retained EU law to similar terms of assimilated law, and add definitions for those things to subsection (7); and (b) change other enactments as a consequence of changes made by subsection (1) so that references to REUL and related terms may be changed to assimilated law and related terms. Under section 19 other enactments may also be amended in consequence of the renaming of REUL.

110 Subsection (7) sets out definitions for the terms listed in subsection (1).

Interpretation and effect of retained EU Law

Clause 7: Role of courts

111 This clause amends section 6 of EUWA and inserts new sections 6A, 6B and 6C in relation to the application of retained case law by domestic courts interpreting and applying REUL.

112 Clause 7 modifies section 6 as follows. Subsections (2), (3) and (4) insert amended provisions into section 6 of EUWA as regards the test to be applied by higher courts when considering whether to depart from retained EU case law or retained domestic case law. Retained EU case law and retained domestic case law continue to be defined in section 6(7) of EUWA.

113 Subsection (3) establishes a new test to be applied by higher courts when considering whether to depart from retained EU case law, replacing the test in section 6(5) of EUWA. The new test sets out a non-exhaustive list of three factors for the higher court to consider, so that it must (among other things) have regard to:

a. the fact that decisions of a foreign court are not usually binding,

b. any changes of circumstances which are relevant to the retained EU case law, and

c. the extent to which the retained EU case law restricts the proper development of domestic law.

114 These reflect some of the factors which the Court of Appeal in England and Wales took into account in deciding whether to depart from retained EU case law in the case of TuneIn Inc v Warner Music UK Ltd & Anor [2021] EWCA Civ 441.

115 Subsection (4) establishes a new test to be applied by higher courts when considering whether to depart from their own retained domestic case law, by inserting a new paragraph (5ZA) into section 6 of EUWA. This also sets out a non-exhaustive list of three factors for the higher court to consider:

a. The extent to which the retained domestic case law is determined or influenced by retained EU case law from which the court has departed or would depart,

b. Any changes or circumstances which are relevant to the retained domestic case law, and

c. The extent to which the retained domestic case law restricts the proper development of domestic law.

116 This list of factors in relation to retained domestic case law is similar to the list of factors in relation to retained EU case law. They differ on the first factor, as regards the relevance of the decisions of foreign courts as a factor according to whether EU or domestic case law is under consideration. The second and third factors are the same in each test.

117 Subsection (5) repeals the powers in subsections (5A) to (5D) of section 6 of EUWA, and the European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 ("the 2020 Regulations") made under them. Subsection (6) inserts a new subsection (6B) into section 6 of EUWA with definitions for "compatibility issue", "devolution issue", "relevant appeal court" and "relevant domestic case law", and subsection (7) inserts a definition of "higher court" into section 6(7) of EUWA. The provisions in the bill on the role of the courts maintain the position under section 6 of EUWA and the 2020 Regulations that only courts (in England & Wales, Scotland and Northern Ireland) equivalent in authority, or higher than, the Court of Appeal, have the discretion to depart from retained case law.

118 Section 6(4)(b)(i) of EUWA sets out that the High Court of Justiciary is not bound by retained EU case law when it is sitting as a court of appeal otherwise than in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998). Subsection (2) of clause 7 of the Bill amends section 6(4)(b)(i), together with section 6(4)(ba) of EUWA. This codifies and clarifies in section 6 that the High Court of Justiciary is not bound by any retained EU case law in these instances, or when it is sitting as a court of appeal in relation to a compatibility issue or devolution issue. *I.e.,* the High Court of Justiciary can depart from retained EU case law across the whole of its jurisdiction, where there is no relevant domestic case law which modifies or applies the retained EU case law which is binding on the court. This represents no change from the current position.

119 Clause 7 does not disturb section 6(6A) of EUWA, which makes clear that the provisions in section 6 of EUWA about the interpretation of retained EU law are subject to "relevant separation agreement law". Section 7C of EUWA directs courts to interpret that law in accordance with the Withdrawal Agreement, the EEA EFTA separation agreement and the Swiss Citizens' Rights Agreement (so far as they are applicable). Therefore the measures taken by this Bill to introduce new tests for the higher courts to depart from retained EU case law will also be subject to relevant separation agreement law.

New Section 6A EUWA – References on retained case law by lowers courts or tribunals

120 Clause 7(8) will insert a new section 6A into EUWA. It establishes a new reference procedure enabling a lower court which is bound by retained case law under section 6 of EUWA to refer a point of law to a higher court (which is not so bound) to decide.

121 New section 6A(1) provides that the lower court or tribunal may, at its discretion, refer one or more points of law which arise on retained case law, if they are relevant to the proceedings of the case before it. The court or tribunal must:

a. be bound by the retained case law on the point of law concerned, and

b. consider that the point or points of law are of general public importance.

122 The test of 'general public importance' is similar to that set out in section 12 of the Administration of Justice Act 1969, in relation to 'leapfrog' appeals that may be made directly from the High Court in England and Wales to the Supreme Court.

123 New section 6A(2) provides that references may be initiated by the court or tribunal of its own motion, or following an application by any party to the proceedings.

124 New section 6A(3) provides that a reference must be made to the appropriate appeal court, but must be made to the Supreme Court if it concerns the retained case law of that court. The appeal court is defined in new section 6A(9) as the court listed in subsection (10) to which an appeal would lie in the case.

125 New section 6A(4) and (5) provides that the higher court must accept a validly made reference if, like the lower court or tribunal, it considers that the point of law referred is relevant to the proceedings and is of general public importance. New section 6A(6) provides that, after accepting a reference, the higher court must decide the point(s) of law concerned. The case will then return to the lower court or tribunal, which must follow and apply the decision so far as relevant to the proceedings.

126 New section 6A(7) provides that the decisions on whether or not to make a reference, or to accept one, are decisions for the court concerned alone; no appeal may be made against such a decision. New section 6A(8) provides that, where an appeal court has accepted a reference and made a decision on the point(s) of law concerned, an appeal may lie against that decision to the Supreme Court, subject to obtaining permission to appeal.

New section 6B EUWA: References on retained case law by law officers

127 Clause 7(8) will insert a new section 6B into EUWA, which establishes a new procedure for a law officer of the UK Government or the devolved administrations to refer a point of retained case law to a higher court.

128 Law officers may exercise the reference power on behalf of their respective Governments in cases where other ministers have a particular view as to the meaning and effect of a relevant piece of REUL. It is expected that law officers and ministers would agree this approach in the usual way, as they would for other legal proceedings their government participates in. For

example, in a case concerning English legislation in the area of fisheries or agriculture, the Attorney General might consult the relevant Secretary of State on the Government's view of the relative merits of referring a point of law to the higher court. The power will allow the law officers to then bring the point of law before a higher court to consider in light of the new tests for departure from retained EU case law, for the court to give a decision on the correct interpretation of relevant retained EU law.

129 The law officers are listed in new section 6B(2) and (8) as the Lord Advocate, the Counsel General for Wales, the Attorney General for Northern Ireland, the Attorney General for England and Wales, the Advocate General for Scotland, and the Advocate General for Northern Ireland.

130 New section 6B(1) provides that the new reference procedure applies where proceedings have concluded in a court or tribunal which was required by section 6 of EUWA to follow retained case law. This applies where:

a. proceedings have been brought and concluded before a lower court or tribunal that was bound by retained case law under section 6 of EUWA,

b. no reference was made by the lower court in the case to a higher court, under new section 6A (as described above), and

c. either there has been no appeal, or any appeal has been concluded or dismissed without it being heard by a higher court.

131 New section 6B(2) provides that a law officer of the UK Government or devolved administrations may refer points of law which arise on retained case law in the case to a higher court. A law officer of a devolved administration may only make a reference on a point of law that relates to the meaning or effect of relevant Scotland, Wales or Northern Ireland legislation (as the case may be), as defined in new section 6B(8). Under section 6 of EUWA, the higher court is not bound by retained case law, and may decide whether or not to depart from retained case law on the point of law referred

132 New section 6B(3) requires the reference to be made within six months of the last day on which an appeal in the case could have been made, or within six months of the day on which any appeal was finally dealt with. New section 6B(9) provides that the possibility of an appeal out of time is not relevant for the purpose of calculating this period.

133 New subsection 6B(4) provides that a reference must be made to the appropriate appeal court, but must be made to the Supreme Court if it concerns the retained case law of that court. "Appeal court" is defined in new section 6A(9). The list of courts set out in section 6A(10) applies in this context.

134 New section 6B(5) requires the higher court to accept a validly made reference.

135 New section 6B(6) provides that the decision of the higher court on the point of law referred has no effect on the outcome of the proceedings which concluded before the lower court or tribunal. However, in accordance with the doctrine of precedent, the decision on the point of law will be binding on lower courts or tribunals in future proceedings where the same point of law arises.

136 New section 6B(7) provides that, where the appropriate appeal court has made a decision on the point(s) of law concerned, an appeal may lie against that decision to the Supreme Court, subject to obtaining permission to appeal.

137 New section 6B(8) defines relevant Scotland, Wales or Northern Ireland legislation for the purpose of references made by a law officer of a devolved administration as:

a. an Act or measure passed by a devolved legislature;

b. subordinate legislation made by a devolved administration;

c. provisions inserted by such an Act, measure or subordinate legislation into any other legislation; or

d. any other provision that:

   i. would be within the legislative competence of a devolved legislature if it were contained in an Act or measure passed by that devolved legislature, or

   ii. a provision which could be made in subordinate legislation made by a devolved administration acting alone.

138 Appeal courts have discretionary case management powers which they may exercise in references under new section 6B. For example, in the event of multiple references from different law officers, a court may choose to join references for a single hearing where appropriate. Or in the event of a reference by one law officer, it may choose to permit an intervention from another law officer or other interested party.

New section 6C EUWA: Interventions on retained case law by law officers

139 Clause 7(8) will insert a new section 6C into EUWA, which confers on the law officers of the UK Government and devolved administrations a right to intervene in proceedings before a higher court. It applies the same definitions of law officers as new section 6B. New section 6B(1) provides for the right to intervene to apply where a higher court is considering any arguments that the court depart from retained case law.

140 In a similar way to the reference power in new section 6B, law officers may exercise the intervention power on behalf of their respective Governments in cases where other ministers have a particular view as to the meaning and effect of a relevant piece of REUL, and it is expected that law officers and ministers would agree this approach in the usual way.

141 New section 6C(2) and (3) require that the law officers are given notice of such proceedings and, on giving notice to the court, are entitled to be joined as a party to the proceedings. Under new section 6C(3), the intervention rights of law officers of the devolved administrations apply only where the relevant arguments relate to the meaning or effect of relevant Scotland, Wales or Northern Ireland legislation. New section 6C(5) applies the definition of such legislation set out in new section 6B.

142 New section 6C(4) provides that notice of an intention to join the proceedings may be provided to the court by a law officer at any time during the proceedings.

143 Subsection (9) of clause 7 adds an entry to the Table in EUWA in section 21(1) (index of defined expressions), to include "Higher court". This reflects the definition of "higher court" inserted into section 6(7) of EUWA by clause 7(7).

144 Subsection (10) of clause 7 inserts a new subsection (10) into section 60A of the Competition Act 1998. Section 60A makes provision permitting courts, tribunals and other authorities to depart from retained case law and principles of EU law when exercising their competition law functions, and sets out the factors to be taken into consideration when doing so. The new subsection (10) provides that the provisions of section 6(2) to (6) of EUWA (as modified by clause 7) on courts and tribunals following or departing from retained case law do not apply in place of the more specific provisions in section 60A.

Clause 8: Compatibility

145 Subsection (1) provides that a national authority (a UK government or devolved government minister) may make regulations providing that subsection (2) applies to the relationship between –

a. specified standard domestic legislation or specified provisions of any standard domestic legislation, and

b. (b) specified retained direct EU legislation (RDEUL) or specified provisions of any RDEUL.

146 Where subsection (2) applies, it gives priority to RDEUL, so that the specified standard domestic legislation (or specified provisions of this legislation) –

a. must, as far as possible, be read and given effect in a way which is compatible with the specified RDEUL (or specified provisions of this legislation), and

b. (b) is subject to that RDEUL (or those provisions) so far as it is incompatible with it.

147 Where subsection (2) applies, the relationship between standard domestic legislation and RDEUL specified by the new section 5(A2) of EUWA, which is inserted by clause 4, does not apply. (That provision gives priority to standard domestic legislation over RDEUL.)

148 Clause 9 makes provision about the remedy of an incompatibility order that a court or tribunal must grant if it decides, under subsection (2), that provisions of standard domestic legislation are subject to provisions of RDEUL that they are incompatible with.

149 Subsection (3) establishes that the provision that can be made by regulations under this section can be made by making modifications to any enactment.

150 Subsection (4) provides that no regulations may be made under this section after 23 June 2026.

151 Subsection (5) defines "domestic enactment" consistently with the meaning it has in section 5 of EUWA (as inserted by clause 4(2) of this Bill).

Clause 9: Incompatibility orders

152 This clause inserts a new section 6D into EUWA 2018, making provision as to the remedies which the courts may grant following the repeal of the supremacy principle. These apply in cases where the courts are applying the new priority rule for domestic legislation over RDEUL inserted in section 5(A2) of EUWA by clause 4(1), or the contrary priority rule applied by secondary legislation made under the power in clause 8(1).

153 New section 6D (1) and (2) require a court to make an "incompatibility order" where it concludes that provisions of domestic legislation and RDEUL cannot be interpreted consistently with one another.

154 New section 6D(3) provides that a court may adapt the terms and effect of an incompatibility order according to the case before it. The order may:

a. set out the effect in the case concerned of one provision taking priority over another;

b. give courts the power to delay the coming into force of the order, or

c. to remove or limit the effect of the operation of the relevant provision in other ways before the incompatibility order comes into force, for example, where this might give rise to unfairness to individuals or other effects contrary to the public interest.

155 New section 6D(4) allows the court to make an incompatibility order subject to conditions.

156 New section 6D(5) defines "domestic enactment" consistently with its meaning elsewhere in EUWA as added by the REUL Bill. It also defines "the relevant provision" by reference to other provisions.

Modification of retained EU law

Clause 10: Scope of Powers

157 Clause 10 provides for amendments to Schedule 8 of EUWA. Paragraphs 3 to 12 of Schedule 8 modify powers in other statutes to make secondary legislation, with regard to their use to amend retained direct EU legislation (RDEUL) or section 4 EUWA rights.

158 These modifications of other powers are subject to a number of restrictions on their use, which are set out in Paragraphs 3 to 12 of Schedule 8 of EUWA. There are currently greater restrictions for amendments to retained direct principal EU legislation (defined in 7(6) of EUWA) and section 4 EUWA rights than for amendments to retained direct minor legislation (also defined in 7(6) of EUWA). Clause 10 removes some of these restrictions to ensure all RDEUL and section 4 EUWA rights can be amended using powers to make secondary legislation.

159 Subsection (2) repeals sub-paragraph (1)(b)and sub-paragraph (2) in paragraph 3 of EUWA 2018. This removes the restriction that some existing powers may only be used to amend retained direct principal EU legislation or section 4 EUWA rights if they are also capable of amending domestic primary legislation.

160 Subsection (3) makes amendments to paragraph 4 of Schedule 8 to EUWA. It provides that the parliamentary scrutiny procedure applied to the use of an existing power amending RDEUL or section 4 EUWA rights, is the same as the procedure applying to the use of that power when amending domestic secondary legislation. This applies to scrutiny procedures for secondary legislation in Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly. This removes the restriction that, where an existing power is exercised to amend retained direct principal EU legislation or section 4 EUWA rights, the scrutiny procedure that applies to amending domestic primary legislation must be applied.

161 Subsection (4) repeals paragraphs 5 and 6 of Schedule 8 to EUWA. This removes the restriction that powers not capable of amending primary legislation may only be used to amend retained direct EU legislation in ways that are consistent with retained direct principal EU legislation or section 4 EUWA rights.

162 Subsections (5) remove paragraphs 10 and 11 of Schedule 8 to EUWA.

163 Subsection (6) replaces these with new paragraphs 11A and 11B. These modify how powers conferred in legislation passed after EUWA may be used. They remove the restriction that some powers may only be used to amend retained direct principal EU legislation or section 4 EUWA rights if they are also capable of being exercised to amend domestic primary legislation. This also removes the restriction that powers not capable of amending primary legislation may only be used to amend retained direct EU legislation in ways that are consistent with retained direct principal EU legislation or section 4 EUWA rights.

164 Subsection (7) amends paragraph 12 of Schedule 8 to EUWA. It provides that the replacement of paragraph 11 with paragraph 11A in Schedule 8 to EUWA, affected by subsection (7), does not affect the question of whether the context of a power permits or requires it to be read as capable of amending RDEUL or section 4 EUWA rights.

165 Subsections (8) and (9) introduce Schedule 2 to the Bill, which makes amendments related to the exercise of certain powers to make secondary legislation amending RDEUL

Clause 11: Procedural requirements

166 Clause 11 repeals the parliamentary scrutiny requirements set out in paragraphs 13 to 15 of Schedule 8 to EUWA, which apply to the amendment or revocation of "subordinate legislation made under section 2(2) of the European Communities Act 1972". Paragraph 13(8) makes specific provision about what that means, but essentially it refers to provisions that were made under section 2(2) of that Act, whether they appeared in a statutory instrument by amendment or otherwise.

167 Subsections (1) (a)-(c) repeals paragraphs 13 to 15 of Schedule 8 to EUWA. These repeals mean that it will no longer be a requirement to:

a. follow the affirmative procedure in relation to certain statutory instruments made on or after IP completion day, which would otherwise be subject to a lesser parliamentary procedure (pursuant to paragraph 13);

b. follow an enhanced scrutiny procedure in relation to certain statutory instruments made on or after IP completion day (pursuant to paragraph 14); and

c. make certain explanatory statements in relation to a statutory instrument which amends or revokes subordinate legislation made under section 2(2) ECA (pursuant to paragraph 15).

168 Subsection (2) makes amendments to EUWA which are consequential on the repeals in sub-paragraph (1).

169 Subsection (3) makes transitional provision relating to the repeals in sub-paragraph (1). It provides for what happens to existing statutory instruments and existing draft statutory instruments that are already subject to the procedural requirements of paragraphs 13 to 15 of Schedule 8 when these provisions are repealed.

Powers relating to retained EU law

Clause 12: Power to restate retained EU law

170 Clause 12 establishes the power to restate provisions of "secondary REUL", (i.e. including the codification of directly effective rights etc. under section 4 of EUWA, retained case law and general principles). Such restatements, however, will not be REUL, and retained general principles, retained case law or the principle of supremacy will not apply for the purposes of interpreting that restatement. The power does, however, enable the effects of those things to be reproduced. This will enable the same policy outcome to be achieved as the policy outcome produced by the REUL being restated. This power will be capable of making limited amendments to both domestic primary and secondary legislation.

171 Subsection (1) sets out that a relevant national authority (a UK government or devolved government minister) may, by regulations, restate any "secondary retained EU law", defined by subsection (2) as any retained EU law that is not primary legislation, or any retained EU law that is primary legislation, but only to the extent that it has been amended by subordinate legislation. This means that amendments made to primary legislation by subordinate legislation may be restated under the power in subsection (1).

172 Clause 12 is supplemented by clause 14, which establishes further general parameters of what a restatement can do and how (see below).

173 Subsection (3) states that any provision made by this power will no longer be REUL. Amongst other things, this means that section 6 of EUWA (application of retained case law) will no longer apply.

174 Subsections (4) and (5) establish that the interpretive effects associated with REUL will cease to have effect for the purposes of interpreting restatement provisions. In particular, the principle of supremacy will cease to have effect, retained general principles will cease to be read into the law, and anything that is REUL by virtue of section 4 (retained directly effective rights) or 6(3) or (6) of EUWA (application of retained case law) will cease to have effect.

175 Subsection (6) establishes that a relevant authority may, as part of any restatement, reproduce into domestic legislation an effect that is equivalent to that produced by those interpretive effects that have ceased to apply under subsections (4) and (5). This enables relevant authorities to achieve the same policy outcome as the REUL being restated, where considered appropriate.

176 Subsection (7) establishes that no regulations may be made under this section after the end of 2023

Clause 13: Power to restate assimilated law or reproduce sunsetted EU rights, powers, liabilities etc

177 Clause 13 operates in a similar way to clause 12, and is intended to have the same scope as clause 12 (i.e. restate or reproduce the same things) but to operate post-2023, when clauses 3 to 6 have taken effect.

178 Clause 13 establishes a power to restate provisions of "secondary assimilated law". The restatement provided for by clause 13 will expressly not be assimilated law and any residual interpretive effects of section 6 of EUWA (application of retained case law) will be disapplied for the purposes of any restatement.

179 Other interpretive principles - such as the application of the principle of supremacy, retained general principles and directly effective EU rights under section 4 of EUWA - will have been disapplied under clauses 3 to 5 of this Bill at the end of 2023. Nonetheless, the power enables the individual "effects" of those things to be reproduced. The purpose of this is to enable the same policy or practical outcome to be achieved as the law would have achieved had such interpretive effects continued to apply. This power will be capable of making limited amendments to both domestic primary and secondary legislation.

180 Subsection (1) sets out that a relevant national authority (a UK government or devolved government minister) may, by regulations, restate any "secondary assimilated law". This will apply to the body of law that will be referred to as "assimilated law" after 2023 (see clause 6). Subsection (2) sets out the definition of secondary assimilated law. In consequence, the power to restate is limited to restating assimilated law that is not primary legislation, or assimilated law that is primary legislation, but only to the extent that it has been amended by subordinate legislation. 1

181 Subsection (3) states that any provision made by this power will no longer be assimilated law.

182 Subsections (4) establishes that the application of retained case law by virtue of 6(3) or (6) of EUWA, will not have effect for the purposes of interpreting restatement provisions. Without this provision, any restatement may be interpreted in line with retained case law to the extent set out in section 6 of EUWA (i.e. to the extent that the assimilated law being restated was).

183 Subsection (5) establishes that a relevant authority may, as part of any restatement, reproduce into domestic legislation an effect that is equivalent to that produced by those interpretive effects that ceased to apply under subsections (4). In other words, the effects of the retained case law may be reproduced. This enables relevant authorities to achieve the same policy outcome produced by the assimilated law that is being restated, where considered appropriate.

184 Subsection (6) and (7), enables a relevant national authority as part of any restatement, where considered appropriate, to reproduce an effect equivalent to the interpretive effects of supremacy, general principles or anything that was REUL by virtue of section 4 (retained directly effective rights). This applies to those effects as they would have continued to have effect on assimilated law were it not for the disapplication of those things by clauses 3 to 5 of this Bill at the end of 2023. So far as the "effects" of supremacy may be reproduced, this is limited by subsection (4) of clause 14 to setting out the relationship between restated legislation and a specified enactment.

185 Whereas subsections (6) and (7) enable the reproduction of interpretive effects as part of a "restatement", subsection (8) allows the reproduction of the effects of retained general principles and directly effective rights under section 4 of EUWA (as they would have applied were it not for sections 3 to 5) on their own. This reflects the ability in clause 12 to codify these aspects of REUL. This enables the effects of retained general principles and directly effective rights to be rewritten back into legislation to which such things were relevant before the end of 2023. That includes reproducing the effects of general principles or section 4 rights etc. into relevant primary legislation. The effects of supremacy may not be capable of being reproduced.

186 Subsection (9) establishes that no regulations may be made under this section after 23rd June 2026.

Clause 14: Powers to restate: general

187 Clause 14 establishes the general parameters of what a restatement under clauses 12 and 13 can do and how it should be conducted.

188 Subsection (2) establishes that a restatement can use different words or concepts from those used in the secondary retained EU law that is being restated.

189 Subsection (3) sets out that the relevant national authority may make changes which it considers appropriate for one or more of the below purposes -

a. resolving ambiguities;

b. removing doubts or anomalies; and

c. facilitating improvement in the clarity or accessibility of the law.

190 Subsection (4) places limitations on the powers, preventing a broader reinstatement of the principle of supremacy. So far as clauses 12 and 13 may reproduce the effects of supremacy as part of a restatement, subsection (4) establishes that provisions made by regulations under clauses 12 and 13 may include provisions about the relationship between the restated legislation and any other specified enactment, but it may not, however, specify the relationship between the restated legislation and *all* enactments.

191 Subsection (5) clarifies that the powers under section 12 or 13 may not be used to codify or reproduce the principle of supremacy of EU law or a retained general principle of EU law.

192 Subsection (6) establishes that nothing in subsection (5) prevents regulations under section 12 or 13 from codifying or reproducing for a particular enactment an effect that is equivalent to an effect which is produced by virtue of the principle of supremacy of EU law or retained general principles of EU law, or an effect that would be produced were it not for sections 3 to 5 in this Act. Subsection (6) also outlines that this also applies where codifying and reproducing anything which is or was retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018.

193 Subsection (7) establishes that the provision that can be made by regulations under this section can be made by making modifications to any enactment. Whilst only secondary REUL or secondary assimilated law may be restated under the respective powers in clauses 12 and 13, this subsection will allow the restatement to be made in primary legislation, for example. As set out above, that enables the codification or reproduction of case law or general principles to sit alongside related primary legislation, or for the consolidation of any REUL/assimilated law to be placed in primary legislation if appropriate.

194 Subsection (8) clarifies that the restatements under clauses 12 and 13 may maintain a particular policy effect by express provision or otherwise.

195 *S*ubsection (9) ensures the ability to set out the relationship between a relevant enactment and a restatement does not overlap with the power in clause 8. Where an authority wishes to set out the relationship between retained direct EU legislation (RDEUL) and a restatement that is not contained in RDEUL, then the power under clause 8 will be available to set out the relationship between the RDEUL and the restatement.

196 Subsection (10) clarifies that references to "retained general principles of EU law" in subsections (5) and (6) have the same meaning as that set out in section 12 or 13 of this Act.

197 Subsection (11) clarifies that in section 14 a reference to "restatement" (a) in relation to section 12, has the same meaning as in that section, and (b) in relation to section 13, has the same meaning as in that section but also includes reproduction. Amongst other things this ensures that "restatement" also includes codification.

Clause 15: Powers to revoke or replace

198 Clause 15 establishes the powers to revoke or replace secondary retained EU law (or assimilated secondary law after the end of 2023), and the parameters in which this can be conducted. The powers are constrained to revocation or replacement law that a relevant national authority considers does not add to the overall regulatory burden.

199 Subsections (1) to (3) set out the ways in which a relevant national authority (a UK government or devolved government minister) may use the powers to revoke or replace secondary retained EU law. "Secondary retained EU law" has the same meaning as that set out in clause 12.

200 Subsection (1) sets out that a relevant national authority may revoke any secondary retained EU law without replacing it with any alternative domestic legislation.

201 Subsection (2) provides that a relevant national authority may revoke any secondary retained EU law and replace it with a provision that is considered by the relevant national authority to be appropriate and achieves the same or similar objectives.

202 Subsection (3) states that a relevant national authority may revoke any secondary retained EU law and make an alternative provision that they consider is appropriate.

203 Subsection (4) states that regulations under subsection (2) or (3) –

a. may confer a power to make subordinate legislation that corresponds or is similar to a power to make subordinate legislation conferred by secondary retained EU law that is revoked by the regulations (and may not otherwise confer a power to make subordinate legislation);

b. subject to that, may confer functions (including discretions) on any person;

c. may create a criminal offence that corresponds or is similar to a criminal offence that was created by the secondary retained EU law that is revoked by the regulations, and may not otherwise create any criminal offence;

d. may provide for the imposition of monetary penalties in cases that correspond or are similar to cases in which secondary retained EU law revoked by the regulations enables monetary penalties to be imposed, and may not otherwise impose monetary penalties;

e. may not provide for the charging of fees;

f. may not –

   i. impose taxation; or

   ii. establish a public authority.

204 Subsection (5) sets out that no provision may be made under this section in relation to a particular subject area unless the relevant national authority considers that the overall effect of the changes made by it under this section, including those changes made previously, do not increase the regulatory burden on that particular subject area. This means that the aggregate regulatory burden cannot be added to.

205 Subsection (6) sets out that for the purposes of subsection (5), the creation of a voluntary scheme is not to be regarded as increasing the regulatory burden.

206 Subsection (7) sets out that a provision can be made under this section by making modifications to any secondary retained EU law.

207 Subsection (8) specifies that any provision made by this power will not be retained EU law. Amongst other things, this means that section 6 of EUWA will no longer apply.

208 Subsection (9) states that no regulations can be made under this power after 23 June 2026.

209 Subsection (10) sets out a non-exhaustive list of things that would be considered a "burden" for the purposes of an authority's consideration as to whether the exercise of the powers under this clause might add to the overall regulatory burden in any particular subject area. This includes, among other things, any of the following considerations:

a. a financial cost;

b. an administrative inconvenience;

c. an obstacle to trade or innovation;

d. an obstacle to efficiency, productivity or profitability;

e. a sanction (criminal or otherwise) which affects the carrying out of any lawful activity.

210 Subsection (10) also sets out that for the purpose of this section "revoke"-

a. includes repeal, and

b. in relation to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, means that it is not recognised or available in domestic law and, accordingly, is therefore not to be enforced, allowed or followed.

211 Subsection (10) further states that references to "secondary retained EU law" should be read after the end of 2023 as references to secondary assimilated law. This means that the revoke or

replace powers will be able to operate on secondary assimilated law after the sunset date up to 23 June 2026.

212 Subsection (11) sets out that in subsection (8) the reference to retained EU law is to be read after the end of 2023 as a reference to assimilated law (i.e. so any provisions made after 2023 will not be assimilated law).

Clause 16: Power to update

213 Clause 16(1) establishes that a relevant national authority (a UK government or devolved government minister) may make regulations to modify any secondary REUL or any provision made under clauses 12, 13 or 15 of this Bill, as considered appropriate, in order to take account of –

a. (a) changes in technology, or

b. (b) developments in scientific understanding

214 Clause 16(2) states that the reference to secondary REUL in subsection (1) is to be read as a reference to secondary assimilated law after the end of 2023.

Clause 17: Power to remove or reduce burdens

215 This clause amends Part 1 of the Legislative and Regulatory Reform Act 2006 (LRRA) to allow Legislative Reform Orders (LROs) to be used to amend any retained direct EU legislation (RDEUL).

216 Subsection (2) inserts a new paragraph into section 1(6) of the LRRA to amend the definition of "legislation" in the LRRA to explicitly include "any retained direct EU legislation". This will enable the use of LROs to reform RDEUL.

217 Subsection (3) inserts a new subsection to section 12 of the LRRA. This subsection amends the LRRA to disapply the procedural requirements in paragraph 4 of Schedule 8 to the European Union (Withdrawal) Act 2018 for existing powers to create subordinate legislation (including LROs) that may operate on RDEUL or REUL by virtue of section 4. This disapplies the requirement for relevant LROs to be subject to the same scrutiny procedure before Parliament as for amending primary legislation.

218 The relevant LROs would still be required to follow the standard procedure, including consultation, committee reports and would be subject to either the negative, affirmative or super affirmative procedure (with both negative and affirmative subject to scrutiny route being increased) as set out in the LRRA.

Business Impact Target

Clause 18: Abolition of Business Impact Target

219 Clause 18 amends multiple sections of the 'Small Business, Enterprise and Employment' Act 2015 in order to repeal the Business Impact Target.

220 As set out in subsection (1), this amendment repeals sections 21-27 of the 'Small Business, Enterprise and Employment' Act 2015 (SBEE). The impact of this change will be to abolish the Government duty to publish the annual BIT report.

221 Subsection (2) covers minor and consequential amendments including:

a. moves relevant definitions from section 27 of the SBEE Act into subsection 29(5)

b. replaces the definition of undertaking in 33(6) using the amendment in subsection (2)(a)

c. removing BIT previously contained in sections 21 to 27 of the SBEE from the commencement provisions of other acts.

Final provisions

Clause 19: Consequential Provision

222 Subsection (1) provides that a Minister of the Crown may by regulations make such provision as considered appropriate in consequence of this Bill. Subsection (2) clarifies that the power to make consequential provision includes the ability to modify any enactment (including the provisions of this Bill).

Clause 20: Regulations: general

223 This clause makes general provision about regulations that may be made under delegated powers conferred by the Bill.

224 Subsection (1) provides that powers under this Bill may be used to make different provision for different purposes or areas, and may also make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision modifying any enactment, including the provisions of this Bill).

225 Subsections (2) and (3) introduce Schedules 2 and 3, which make provision on the exercise of powers by devolved authorities and on procedures for making regulations, respectively.

226 Subsection (4) clarifies that a prohibition in the Bill on making regulations after a particular time does not affect the continuation in force of regulations made before that time. For example, regulations made under the power to restate retained EU law under clause 12 may only be made before the end of 2023. However, any regulations made under that power will continue to operate after the end of 2023.

227 Subsection (5) disapplies section 28 of the Small Business, Enterprise and Employment Act 2015 in relation to any power to make regulations under this Bill. Section 28 provided duties upon Ministers of the Crown to make provision for the review of regulatory provisions under regulations.

Clause 21: Interpretation

228 This clause sets out the meaning of terms used throughout the Bill.

Clause 22: Commencement, transitional and savings

229 Subsections (1) and (2) set out which provisions of this Bill come into force upon Royal Assent and 2 months after Royal Assent respectively. In respect of all other provisions, subsection (3) allows a Minister of the Crown to make regulations setting the days such provisions come into force.

230 Subsection (4) allows a Minister of the Crown to make transitional, transitory or saving provisions as the Minister considers appropriate in connection with-

a. any provision in this Bill coming into force,

b. the revocation of anything by section 1, or

c. anything ceasing to be recognised or available in domestic law (and, accordingly, ceasing to be enforced, allowed, or followed) as a result of section 3.

231 Subsection (5) provides that clause 1 (sunset of EU-derived subordinate legislation and retained direct EU legislation) does not apply to certain financial services legislation.

232 Subsection (6) is a saving provision that provides that clauses 3, 4 and 5 (assimilation of retained EU law) and the Schedule ("Assimilated law": consequential amendments) do not apply in relation to anything occurring before the end of 2023. The principle of supremacy, retained general principles and the references to "retained EU law" etc. will continue to apply to things occurring before that date, and to any legal proceedings relating to them after that date.

Clause 23: Extent and short title

233 This clause confirms the extent of this legislation.

234 Subsection (1) provides that the legislation extends to England and Wales, Scotland and Northern Ireland.

235 Subsection (2) states that the short title of the legislation upon Royal Assent will be the Retained EU Law (Revocation and Reform) Act 2022.

Schedules

Schedule 1: "Assimilated Law": Consequential Amendments

European Union (Withdrawal) Act 2018

236 Paragraph 1 makes consequential amendments to the European Union (Withdrawal) Act 2018 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms) to reflect the changes made by clause 6.

237 Paragraph 1, subsection (3)(e) also updates the names of defined terms in section 6 (interpretation of retained EU law) to reflect the updated terms set out in the right hand column of the table at clause 6(1). For example, the name of the defined term "retained case law" is replaced with "assimilated case law".

238 Paragraph 1, subsection (9) also updates the names of defined terms in section 20 ('Interpretation') to reflect the updated terms set out in the right hand column of the table at clause 6(1). For example, the name of the defined term "retained direct EU legislation" is updated so that it is replaced with "assimilated direct legislation".

This Act

239 Paragraph 2 makes consequential amendments to this Bill to replace references to "retained EU law" (and similar terms) with "assimilated law" (and similar terms) to reflect the changes made by clause 6.

Schedule 2: Amendment of Certain Retained EU Law

Part 1 - Change of parliamentary procedure

240 Part 1 of Schedule 2 provides for amendments that alter parliamentary scrutiny procedure for certain powers. These are powers to make secondary legislation that were conferred by EUWA, or in other statutes after EUWA was passed, and which may be used to amend retained direct EU legislation (RDEUL) and Section 4 EUWA rights. The amendments in Part 1 of Schedule 2 reflect the removal of restrictions on such powers that are made by clause 10. In particular, they remove restrictions requiring the use of the affirmative parliamentary scrutiny procedure where powers are exercised to amend retained direct principal EU

legislation or section 4 EUWA rights. The powers amended by Part 1 Schedule 2 are contained in the following legislation:

a. Environmental Protection Act 1990,

b. Waste and Contaminated Land (Northern Ireland) Order 1997,

c. European Union (Withdrawal) Act 2018,

d. European Union (Withdrawal Agreement) Act 2020,

e. European Union (Future Relationship) Act 2020,

f. Financial Services Act 2021,

g. Environment Act 2021,

h. Public Service Pensions and Judicial Offices Act 2022,

i. Professional Qualifications Act 2022,

j. Subsidy Control Act 2022,

k. Building Safety Act 2022, and

l. Nationality and Borders Act 2022.

Part 2 - Consequential amendments

241 Part 2 of Schedule 2 makes consequential amendments to section 7 of EUWA and to the Direct Payments to Farmers (Legislative Continuity) Act 2020. The amendments modify references to the provisions of Schedule 8 to EUWA that are amended by clause 10.

Schedule 3 - Regulations: Restrictions on Powers of Devolved Authorities

Introductory

242 Paragraph 1 sets out that this Schedule applies to regulations under this Bill where the power to make the regulations is conferred on a relevant national authority (a UK government or devolved government minister) - power to preserve (clause 1), compatibility power (clause 8), powers to restate (clauses 12 and 13), powers to revoke or replace (clause 15), and the power to update (clause 16).

No power to make provision outside devolved competence

243 Paragraph 2(1) sets out that a provision may be made in regulations to which this Schedule applies by a devolved authority acting alone only if the provision is within the devolved competence of the devolved authority.

244 Paragraph 2(2) sets out that a provision is within the devolved competence of the Scottish Ministers for the purposes of this paragraph if –

a. it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of Scottish Parliament, or

b. it is a provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone.

245 Paragraph 2(3) sets out that provision is within the devolved competence of the Welsh Ministers for the purposes of this paragraph if –

a. it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006), or

b. it is a provision that could be made in other subordinate legislation by Welsh Ministers acting alone.

246 Paragraph 2(4) sets out that a provision is within the devolved competence of a Northern Ireland department for the purposes of this paragraph if –

a. the provision would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and if contained in a Bill in the Northern Ireland Assembly, the provision would not result in the Bill requiring consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, or

b. the provision could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone.

Requirement for consent where it would otherwise be required

247 Paragraph 3(1) sets out that consent from a Minister of the Crown will be required before any provision is made in regulations to which this Schedule applies by the Welsh Ministers acting alone where the provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown.

248 Paragraph 3(2) sets out that consent from the Secretary of State will be required before any provision is made in regulations to which this Schedule applies by a Northern Ireland department acting alone so far as that provision, if contained in a Bill of the Northern Ireland Assembly, would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

249 Paragraph 3(3) sets out that sub-paragraph (1) or (2) does not apply if –

a. the provision could be contained in subordinate legislation made other than by using the powers in this Act by the Welsh Ministers or a Northern Ireland devolved authority acting alone, and

b. no consent would be required in that case.

250 Paragraph 3(4) sets out that consent must be sought from a Minister of the Crown before any provision is made in regulations to which this Schedule applies by a devolved authority acting alone so far as that provision would require consent from a Minister of the Crown if it were contained in –

a. subordinate legislation made other than using the powers under in this Bill by the devolved authority, or

b. subordinate legislation not falling within paragraph (a) and made other than using the powers in this Bill by the First Minister or Lord Advocate of Scotland or a Northern Ireland devolved authority of Northern Ireland acting alone.

251 Paragraph 3(5) sets out that sub-paragraph (4) does not apply if-

a. the provision could be contained within –

   i. an Act of the Scottish Parliament, an Act of Senedd Cymru or an Act of the Northern Ireland Assembly, or

ii. different subordinate legislation as referenced in sub-paragraph 4(a) or 4(b) and of a devolved authority acting alone or another person acting alone, and

b. where no consent would be required in that instance.

Requirement for joint exercise where it would otherwise be required

252 Paragraph 4(1) provides that no regulations to which this Schedule applies may be made by a Scottish Minister so far as they contain provision which relates to a matter where a power to make subordinate legislation other than using the powers in this Bill is exercisable by –

a. the Scottish Minister acting jointly with the Minister of the Crown, or

b. the First Minister or Lord Advocate acting jointly with a Minister of the Crown, unless the regulations are to that extent being made jointly with the Minister of the Crown.

253 Paragraph 4(2) sets out that no regulations to which this Schedule applies may be made by the Welsh Ministers so far as they contain provision which relates to a matter where a power to make subordinate legislation other than by using the powers in this Bill is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown unless the regulations are to that extent made jointly with the Minister of the Crown.

254 Paragraph 4(3) sets out that no regulations may be made by a Northern Ireland department where the regulations contain provision which relates to a matter where a power to make subordinate legislation outside of this Bill is exercisable by –

a. a Northern Ireland department acting jointly with a Minister of the Crown, or

b. another Northern Ireland devolved authority acting jointly with a Minister of the Crown, unless the regulations are to that extent being made jointly with the Minister of the Crown.

255 Paragraph 4(4) sets out that sub-paragraphs (1), (2) or (3) do not apply if the provision could be contained in –

a. an Act of the Scottish Parliament, an Act of Senedd Cymru or an Act of the Northern Ireland Assembly where consent from a Minister of the Crown is not required, or

b. different subordinate legislation made other than by using the powers in this Bill by any of the following devolved authorities where they are acting alone-

i. the Scottish Ministers, the First Minister or the Lord Advocate,

ii. the Welsh Ministers,

iii. or a Northern Ireland devolved authority.

Requirement for consultation where it would otherwise be required

256 Paragraph 5(1) sets out that no regulations to which this Schedule applies may be made by the Welsh Ministers acting alone so far as they contain provisions which, if contained in an Act of Senedd Cymru, would require consultation with a Minister of the Crown. This does not apply where the regulations are, to that extent, made after consulting with the Minister of the Crown.

257 Paragraph 5(2) sets out that no regulations to which this Schedule applies may be made by the Scottish Ministers acting alone so far as they contain provision which relates to a matter where a power to make subordinate legislation other than by using powers in this Bill is only exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after consulting

with a Minister of the Crown. This does not apply where the regulations are, to that extent, made after consulting with the Minister of the Crown.

258 Paragraph 5(3) sets out that no regulations to which this Schedule applies can be made by the Welsh Ministers acting alone so far as they contain provision which relates to a matter where a power to make subordinate legislation other than by using powers under this Bill is only exercisable by the Welsh Ministers after consulting with a Minister of the Crown. This does not apply where the regulations are, to that extent, made after consulting with the Minister of the Crown.

259 Paragraph 5(4) sets out that no regulations to which this Schedule applies can be made by a Northern Ireland department acting alone so far as they contain a provision which relates to a matter where a power to make subordinate legislation other than by using powers under this Bill is only exercisable by a Northern Ireland department after consulting with a Minister of the Crown. This does not apply where the regulations are, to that extent, made after consulting with the Minister of the Crown.

260 Paragraph 5(5) states that sub-paragraphs (2) to (4) do not apply if –

a. the provision could be contained in an Act of the Scottish Parliament, an Act of Senedd Cymru or an Act of the Northern Ireland Assembly, and

b. consent or consultation with a Minister of the Crown would not be required in that instance.

261 Paragraph 5(6) states that sub-paragraphs (2) to (4) do not apply if –

a. the provision could be contained in different subordinate legislation other than by using powers under this Bill by the following devolved authorities acting alone –

   i. the Scottish Ministers, the First Minister or the Lord Advocate,

   ii. the Welsh Ministers, or

   iii. a Northern Ireland devolved authority, and

b. consent or consultation with a Minister of the Crown would not be required in that instance.

Schedule 4: Regulations - Procedure

Part 1: General

Making of regulations by statutory instrument etc

262 Paragraph 1(1) sets out that a power to make regulations under any of sections 1-19 of this Bill-

a. where it is exercised by a Minister of the Crown acting alone, the Welsh Ministers acting alone, or by a Minister of the Crown and a devolved authority acting jointly, is exercisable by statutory instrument;

b. where it is exercisable by a Northern Ireland department (other than where acting jointly with a Minister of the Crown) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

263 Paragraph 1(2) sets out that section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 should be referred to for regulations made under this Bill by the Scottish Ministers.

Combining provisions

264 Paragraph 2 allows for regulations under this Act subject to the draft affirmative procedure to be combined with regulations made under other powers in this Bill or other enactments that are not subject to that procedure. Where regulations have been combined in this way the statutory instrument will be subject to the draft affirmative procedure.

265 Paragraph 2(1) clarifies that sub-paragraph (2) applies to any statutory instrument containing regulations under this Act which is subject to the draft affirmative procedure.

266 Paragraph 2(2) sets out that the statutory instrument may also include regulations under this Act or other enactments which are made by a statutory instrument that is not subject to the draft affirmative procedure, irrespective of whether it is subject to any other procedure before Parliament.

267 Paragraph 2(3) establishes that where regulations that are referenced in sub-paragraph (2) are included, the statutory instrument is subject to the draft affirmative procedure.

268 Paragraph 2(4) sets out that sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which are subject to a procedure before the Senedd Cymru in the same way they apply to a statutory instrument containing regulations under this Act which are subject to a procedure before Parliament.

269 Paragraph 2(5) sets out that sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument, but as though references to Parliament were references to the Northern Ireland Assembly.

270 Paragraph 2(6) sets out that sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which are subject to a procedure before a devolved legislature and Parliament in the same way that they apply to a statutory instrument containing regulations under this Act which are subject to a procedure before Parliament, but as though references to Parliament were references to Parliament and the devolved legislature.

271 Paragraph 2(7) clarifies that the term "devolved legislature" in sub-paragraph (6) means the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

272 Paragraph 2(8) establishes that nothing in paragraph 2 prevents the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act.

Hybrid Instruments

273 Paragraph 3 provides that if an instrument, or draft instrument, that contains regulations under this Bill would otherwise be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it should proceed in that House as if it were not a hybrid instrument.

Part 2: Powers of Minister of the Crown Alone

274 Paragraph 4 sets out that this Part of Schedule 4 applies in relation to regulations under section 2 or 19 of this Bill.

275 Paragraph 5(1) sets out that a statutory instrument containing regulations under section 19 which amend, repeal or revoke primary legislation are subject to the draft affirmative procedure.

276 Paragraph 5(2) sets out that any other statutory instrument containing regulations to which this Part of Schedule 4 applies is subject to the negative procedure.

Part 3: Powers of Relevant National Authority: Separate Exercise

Introductory

277 Paragraph 6 sets out that this Part of Schedule 4 applies to regulations under this Bill where –

a. the power to make the regulations is conferred on a relevant national authority (i.e. a Minister of the Crown and devolved authorities), and

b. the regulations are made by one relevant national authority acting alone.

Separate exercise by a Minister of the Crown

278 Paragraph 7(1) sets out that a Minister of the Crown may not make a statutory instrument containing regulations to which this Part of this Schedule applies and that fall within sub-paragraph (2) unless the instrument has been subject to the draft affirmative procedure.

279 Paragraph 7(2) sets out that the regulations falling within this sub-paragraph are:

a. regulations under clause 8 (compatibility power) which amend, repeal or revoke primary legislation;

b. regulations under clause 12 (power to restate retained EU law) and clause 13 (power to restate assimilated law or reproduce sunsetted EU rights, powers, liabilities etc) which amend, repeal or revoke primary legislation;

c. regulations under clause 15(2) (power to revoke and replace REUL with provision achieving same or similar objectives) which confer a power to make subordinate legislation or create a criminal offence;

d. regulations under clause 15(3) (power to revoke and replace REUL with any alternative provision).

280 Paragraph 7(3) sets out that any other statutory instrument made by a Minister of the Crown which contains principal regulations to which this Part of Schedule 4 applies is subject to the draft affirmative or negative procedure in Parliament.

281 Paragraph 7(4) sets out that the following regulations are within this sub-paragraph-

a. regulations under section 1 (power to preserve);

b. regulations under section 8 (compatibility power) which are not within sub-paragraph (2)(a);

c. regulations under section 16 (power to update).

282 Paragraph 7(5) sets out that a statutory instrument made by a Minister of the Crown containing regulations which this Part of Schedule 4 applies and to which neither sub-paragraphs (1) nor sub-paragraphs (3) applies is subject to either the draft affirmative or the negative procedure.

283 Paragraph 8 sets out the requirements for the sifting mechanism which applies to any statutory instrument where it contains regulations under section 12 (power to restate retained EU law), section 13 (power to restate assimilated law or sunsetted EU rights, powers, liabilities etc) or section 15 (powers to revoke or replace).

284 Paragraph 8(1) sets out that sub-paragraph (3) applies where-

a. a Minister of the Crown who is acting alone makes a statutory instrument containing regulations under section 12, 13 or 15,

b. paragraph 7(5) applies to the regulations, and

c. the Minister is of the opinion that the appropriate procedure for the instrument is for it to be subject to the negative procedure

285 Paragraph 8(2) sets out that a Minister may not make the instrument to that it is subject to the negative procedure unless-

a. condition 1 is met, and

b. either condition 2 or 3 is met.

286 Paragraph 8(3) outlines condition 1. Condition 1 is where a Minister of the Crown:

a. has produced a written statement that states that in the Minister's opinion the instrument should be subject to the negative procedure, and

b. has laid before each House of Parliament:

i. a draft of the instrument, and

ii. a memorandum setting out the statement and the reasons for the Minister's opinion.

287 Paragraph 8(4) outlines condition 2. Condition 2 is that committees of both the House of Commons and House of Lords, who have been given the authority to do so, each make a recommendation on the appropriate procedure for the instrument within the relevant timeframe.

288 Paragraph 8(5) outlines condition 3. Condition 3 is that the relevant time frame has ended without condition 2 being met.

289 Paragraph 8(6) sets out that sub-paragraph (7) applies where:

a. a committee (of the House of Lords or the House of Commons) makes a recommendation (as set out in sub-paragraph (4)) within the appropriate time frame,

b. the recommendation states that the appropriate procedure for the instrument is for it to be subject to the draft affirmative procedure, and

c. the Minister that is making the instrument is of the view that the appropriate procedure for the instrument is for it to be subject to the negative procedure.

290 Paragraph 8(7) sets out that prior to the instrument being made, the Minister must make a statement explaining why the Minister does not agree with the committee's recommendation.

291 Paragraph 8(8) states that if the Minister fails to make the required statement before the instrument is made, then a Minister of the Crown must make a statement explaining why the Minister has failed to do so.

292 Paragraph 8(9) sets out that statements under sub-paragraph (7) or (8) must be in writing and published in a way that the Minister making the statement decides is appropriate.

293 Paragraph 8(10) sets out that in this context the use of "the relevant period" should be understood as the period –

a. starting with the first day on which both Houses of Parliament are sitting following the day the draft instrument was laid before each house, and

b. ending with whichever comes last of the following:

i. the end of the period of 10 Commons sitting days beginning with that first day, and

ii. the end of the period of 10 Lords sitting days beginning with that first day.

294 Paragraph 8(11) explains that in relation to sub-paragraph (10):

a. where a draft of an instrument is laid before each House of Parliament on different days, the later day should be understood as the day it is laid before both Houses,

b. a "Commons sitting day" means a day on which the House of Commons is sitting, and

c. a "Lords sitting day" means a day on which the House of Lords is sitting,

295 Paragraph 8(11) also sets out that for the purposes of sub-paragraph (10) a "day" can only be considered a day where the House of Commons or the House of Lords is sitting if the House starts to sit on that day.

296 Paragraph 8(12) sets out that nothing in this paragraph would prevent a Minister of the Crown from deciding, at any time before a statutory instrument containing regulations under section 12, 13 or 15 is made, that another procedure should apply to the instrument.

297 Paragraph 8(13) sets out that section 6(1)[5] of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply to any statutory instrument to which this paragraph applies.

Separate exercise by Scottish Ministers

298 Paragraph 9(1) sets out that the principal regulations of the Scottish Ministers to which this Part of Schedule 4 applies and that fall within paragraph 6(2) are subject to the affirmative procedure.

299 Paragraph 9(2) sets out that regulations made by the Scottish Ministers to which this Part of Schedule 4 applies and which are within paragraph 6(4) are subject to the negative procedure.

300 Paragraph 9(3) sets out that regulations made by the Scottish Ministers to which this Part of Schedule 4 applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies are subject to either the draft affirmative or negative procedure.

301 Paragraph 9(4) sets out that sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 should be referred to for the negative and affirmative procedure for Scotland.

Separate exercise by Welsh Ministers

302 Paragraph 10(1) sets out that Welsh Ministers may not make a statutory instrument containing regulations to which this Part of Schedule 4 applies and that fall within paragraph 6(2) unless they have been subject to the draft affirmative procedure in the Senedd Cymru.

303 Paragraph 10(2) sets out that a statutory instrument made by the Welsh Ministers containing regulations to which this Part of Schedule 4 applies and which are within paragraph 6(4) are subject to the negative procedure.

304 Paragraph 10(3) sets out that statutory instrument made by the Welsh Ministers containing regulations to which this Part of Schedule 4 applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or the negative procedure in the Senedd Cymru.

[5] https://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/6

305 Paragraph 11(1) sets out that sub-paragraph (2) applies if-

a. the Welsh Ministers acting alone make a statutory instrument containing regulations under section 12, 13 or 15,

b. the paragraph 10(3) applies to the instrument, and

c. the Welsh Ministers are of the opinion that the appropriate procedure for the instrument is for it to be subject to the negative procedure in the Senedd Cymru.

306 Paragraph 11(2) sets out that the Welsh Ministers may not make the instrument so that it is subject to the negative procedure unless condition 1 is met, and either condition 2 or 3 is met. These conditions are outlined in sub-paragraphs (3) to (5).

307 Paragraph 11(3) sets out condition 1. Condition 1 is that the Welsh Ministers –

a. have made a written statement that in their opinion the instrument should be subject to the negative procedure in the Senedd Cymru, and

b. have laid before the Senedd Cymru both –

i. a draft of the instrument, and

ii. a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.

308 Paragraph 11(4) sets out condition 2. Condition 2 is that a committee of Senedd, who has been given the authority to do so, has made a recommendation on the appropriate procedure for the instrument.

309 Paragraph 11(5) sets out condition 3. Condition 3 is that the period of 14 days, starting with the first day after the day the instrument was laid before the Senedd (as mentioned in sub-paragraph (3)(b)(i)), has ended without any recommendation being made as outlined in sub-paragraph (4).

310 Paragraph 11(6) sets out that the period of 14 days should be calculated without including any periods where the Senedd is dissolved or in recess for more than four days.

311 Paragraph 11(7) states that nothing in this paragraph prevents Welsh Ministers from deciding, at any time before a statutory instrument containing regulations under section 12, 13 or 15 is made, that another procedure should apply to the instrument.

312 Paragraph 11(8) states that section 6(1) of the Statutory Instruments Act 1946 as applied by section 11A[6] of the Act (alternative procedure for certain instruments laid in draft before Senedd Cymru) does not apply in relation to any statutory instrument to which this paragraph applies.

Separate exercise by Northern Ireland department

313 Paragraph 12(1) sets out that a Northern Ireland department may not make regulations to which this Part of Schedule 4 applies and that fall within paragraph 6(2) unless they have been subject to the draft affirmative procedure in the Northern Ireland Assembly.

314 Paragraph 12(2) sets out that regulations made by a Northern Ireland department to which this Part of Schedule 4 applies and which are within paragraph 6(4) are subject to negative resolution.

[6] https://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/11A

315 Paragraph 12(3) sets out that regulations made by a Northern Ireland department to which this Part of Schedule 4 applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or negative procedures.

316 Paragraph 12(4) sets out that in this paragraph the "subject to the negative resolution" has the same meaning as set out in section 41(6) of the Interpretation Act (Northern Ireland) 1954 and as if the regulations were a statutory instrument within the meaning of that Act[7].

Part 4: Powers of Relevant National Authority - Joint Exercise

Parliamentary procedure

317 Paragraph 13(1) sets out that a statutory instrument containing regulations that are made by a Minister of the Crown jointly with a devolved authority and that fall within paragraph 6(2) may not be made unless they are subject to the draft affirmative procedure.

318 Paragraph 13(2) sets out that a statutory instrument containing regulations within paragraph 6(4) made by a Minister of the Crown jointly with a devolved authority is subject to the negative procedure.

319 Paragraph 13(3) sets out that a statutory instrument containing regulations that are made by a Minister of the Crown jointly with a devolved authority and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or the negative procedure.

320 Paragraph 13(4) sets out that the procedure provided for by this paragraph is in addition to any other procedure provided for by this Part of Schedule 4.

Joint exercise with Scottish Ministers

321 Paragraph 14(1) sets out that regulations that are made jointly with Scottish Ministers and that fall within paragraph 6(2) are subject to the affirmative procedure in the Scottish Parliament.

322 Paragraph 14(2) sets out that regulations that are made jointly with Scottish Ministers and that fall within paragraph 6(4) are subject to the negative procedure in the Scottish Parliament.

323 Paragraph 14(3) sets out that regulations made jointly with the Scottish Ministers and to which neither subject to sub-paragraph (1) or sub-paragraph (2) applies may be subject to either the affirmative or the negative procedure.

324 Paragraph 15 sets out the provisions for Scottish Ministers making any procedure in Holyrood (detailed in the Interpretation and Legislative Reform (Scotland) Act 2010) and applies these procedures under the powers in the Bill for the negative and affirmative procedure.

325 Paragraph 15(1) sets out that this paragraph applies in relation to regulations to which paragraph 13 applies.

326 Paragraph 15(2) sets out that if the regulations are subject to the affirmative procedure, section 29 of the Interpretation and Legislative Reform (Scotland) Act 2020 applies in the same way that it applies to devolved subordinate legislation (which is defined in Part 2 of that Act) which is subject to the affirmative procedures. Paragraph 15(2) further sets out that any references to a Scottish statutory instrument should be read as though they were references to a statutory instrument.

[7] https://www.legislation.gov.uk/apni/1954/33/section/41

327 Paragraph 15(3) sets out that if the regulations are subject to the negative procedure, sections 28(2), (3), (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2020 applies in the same way that they apply to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure. As above, paragraph 15(3) further sets out that references to a Scottish statutory instrument should be read as though they were references to a statutory instrument.

328 Paragraph 15(4) sets out that section 32 of the Interpretation and Legislative Reform (Scotland) Act 2020 (laying) applies in relation to laying a statutory instrument containing the regulations before the Scottish Parliament in the same way that it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act).

Joint exercise with Welsh Ministers

329 Paragraph 16(1) sets out that a statutory instrument containing regulations that fall within paragraph 6(2) may not be made jointly with Welsh Ministers unless they are subject to the draft affirmative procedure in the Senedd Cymru.

330 Paragraph 16(2) sets out that a statutory instrument made jointly with the Welsh Ministers containing regulations within paragraph 6(4) is subject to the negative procedure.

331 Paragraph 16(3) sets out that a statutory instrument made jointly with the Welsh Ministers which contains regulations and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or negative procedure in the Senedd Cymru.

Joint exercise with Northern Ireland department

332 Paragraph 17(1) sets out that regulations that fall within paragraph 6(2) may not be made by a Minister of the Crown jointly with a Northern Ireland department unless they have been subject to the draft affirmative procedure in the Northern Ireland Assembly.

333 Paragraph 17(2) sets out that regulations within paragraph 6(4) that are made jointly with a Northern Ireland department are subject to the negative resolution.

334 Paragraph 17(3) sets out that regulations that are made jointly with a Northern Ireland department and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or negative procedure in the Northern Ireland Assembly.

335 Paragraph 17(4) further states that the "negative resolution" should be interpreted as set out in section 41(6) of the Interpretation Act (Northern Ireland) 1954 and as if the regulations were a statutory instrument within the meaning of that Act.

Effect of annulment resolution

336 Paragraph 18(1) sets out that if in accordance with this Part of Schedule 4 -

a. either House of Parliament concludes that an address should be presented to His Majesty setting out that the instrument should be annulled, or

b. a relevant devolved legislature concludes that an instrument should be annulled,

no further action should be taken under the instrument after the date that such a resolution is made and His Majesty may decide to revoke the instrument by Order in Council.

337 Paragraph 18(2) sets out that the use of "relevant devolved legislature" in sub-paragraph (1) should be understood to mean –

a. the Scottish Parliament, in cases where regulations are made jointly with Scottish Ministers;

b. Senedd Cymru, in cases where regulations are made jointly with Welsh Ministers;

c. the Northern Ireland Assembly, in cases where regulations are made jointly with a Northern Ireland department.

338 Paragraph 18(3) sets out that sub-paragraph (1) does not –

a. impact the validity of anything previously done under that instrument, or

b. prevent a new instrument from being made.

339 Paragraph 18(4) sets out that this paragraph applies in the place of any other provision being made by another enactment about the effect of such a resolution.

Commencement

340 Clause 22 makes provision as to the commencement of the Bill's provisions.

Financial implications of the Bill

341 The exercise of a number of powers to make subordinate legislation which are conferred or extended by the Bill has the potential to give rise to expenditure. These are as follows:

a. clause 10 extends powers to make, confirm or approve subordinate legislation so that they are capable of being exercised to modify (or result in the modification of) retained direct EU legislation or anything which is retained EU law by virtue of section 4 of the EU (Withdrawal) Act 2018;

b. clause 13(2) and (3) confers on a relevant national authority the power to revoke any secondary retained EU law and replace it with such provision as the authority considers to be appropriate and to achieve the same or similar objectives or make such alternative provision as the authority considers appropriate;

c. clause 14 confers on a relevant national authority the power to modify secondary retained EU law, or provision made by virtue of clause 12 or 13, to take account of changes in technology or developments in scientific understanding;

d. clause 15 extends the power in section 1 of the Legislative and Regulatory Reform Act 2006 to remove or reduce any burden, or the overall burden, resulting from legislation so that it applies in relation to burdens resulting from retained direct EU legislation.

342 It is not possible at this stage to provide an estimate of likely expenditure under these powers but the accompanying explanatory memorandums to the statutory instruments will set out the details in full.

343 Additionally, the powers to make, confirm or approve subordinate legislation extended by clause 10 might include powers which may potentially be exercised to impose taxation or other similar charges on the people.

Parliamentary approval for financial costs or for charges imposed

344 A money resolution was passed for the Bill on 25 October 2022 because it may give rise to charges on the public revenue. The money resolution is required to cover the potential expenditure outlined above in the 'Financial implications of the Bill' section.

345 A ways and means resolution was passed for the Bill on 25 October 2022 because it may give rise to new taxation or other similar charges on the people. The ways and means resolution is required to cover the potential new taxation or other similar charges on the people outlined above in the 'Financial implications of the Bill' section.

Compatibility with the European Convention on Human Rights

346 The Government considers that the Retained EU Law (Revocation and Reform) Bill is compatible with the European Convention on Human Rights ("Convention"). Accordingly, Lord Callanan, the Minister for Business, Energy and Corporate Responsibility has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

347 The Government's Convention analysis can be found in the memorandum to the Joint Committee on Human Rights.

Annex A – Territorial extent and application in the United Kingdom

348 This Bill extends and applies to the whole of the UK. Repeals and amendments made by the Bill have the same territorial extent and application as the legislation that they are amending. The Bill does not extend to any Overseas Territories or Crown dependencies.

349 Regulations made under powers in the Bill may have extraterritorial effect where they are being used to amend legislation which already produces a practical effect outside the UK.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 1 Sunset of EU-derived subordinate legislation and retained direct EU legislation	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 2 Extension of sunset under section 1	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 3 Sunset of retained EU rights, powers, liabilities etc	Yes	Yes	No	Yes	No	Yes	Yes
Clause 4 Abolition of supremacy of EU law	Yes	Yes	No	Yes	No	Yes	Yes
Clause 5 Abolition of general principles of EU law	Yes	Yes	No	Yes	No	Yes	Yes
Clause 6 “Assimilated law”	Yes	Yes	No	Yes	No	Yes	No
Clause 7 Role of courts	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 8 Compatibility	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 9 Incompatibility orders	Yes	Yes	No	Yes	No	Yes	Yes
Clause 10 Scope of powers	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 11 Procedural requirements	Yes	Yes	No	Yes	No	Yes	No
Clauses 12-14 Power to restate	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 15 Power to revoke or replace	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 16 Power to update	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 17 Power to remove or reduce burdens under retained direct EU legislation	Yes	Yes	Yes	Yes	No	Yes	No
Clause 18 Abolition of business impact target	Yes	Yes	No	Yes	No	Yes	No
Clause 19 Consequential provision	Yes	Yes	No	Yes	No	Yes	No
Clause 20 Regulations general	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 21 Interpretation	Yes	Yes	No	Yes	No	Yes	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 22 Commencement, transitional and savings	Yes	Yes	No	Yes	No	Yes	No
Clause 23 Extent, and short title	Yes	Yes	No	Yes	No	Yes	No
Schedule 1 Amendment of certain retained EU law	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Schedule 2 Regulations: restrictions on powers of devolved authorities	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Schedule 3 Regulations: procedure	Yes	Yes	Yes	Yes	Yes	Yes	Yes

RETAINED EU LAW (REVOCATION AND REFORM) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Retained EU Law (Revocation and Reform) Bill as brought from the House of Commons on 19 January 2023 (HL Bill 89).

Ordered by the House of Lords to be printed, 19 January 2023.

© Parliamentary copyright 2023

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS