



Retained EU Law (Revocation and Reform) Bill

Second Reading 25 October 2022: Civil Society Alliance Briefing

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Summary

This [Civil Society Alliance](#) briefing recommends that MPs oppose the Retained EU Law (Revocation and Reform) Bill ('The REUL Bill') at second reading.

We believe this Bill should be withdrawn as we have deep concerns that it will:

- Cause significant legal and regulatory uncertainty at a time when more than ever businesses and the whole nation is crying out for stability and certainty.
- Further destabilise the devolution arrangements at a time when tensions between devolved and central authorities are more challenging than ever.
- Undermine the UK's democracy and constitution and the role of devolved and central parliaments. In its current form, it gives staggeringly broad delegated powers to repeal and replace parliamentary laws with policy that is subject to little or no democratic scrutiny, introduced at an alarming pace. In so doing it risks missing the opportunities for Brexit benefits by removing or weakening, rather than raising rights and regulatory standards.
- Frustrate efforts to reach a constructive solution with the EU around the Northern Ireland Protocol by introducing unnecessary tensions around the level playing field and non-regression provisions of the Trade and Cooperation Agreement.

1. The Bill will cause significant legal and regulatory uncertainty

1.1 The rationale for converting EU law into Retained EU Law on the UK statute book in the Withdrawal Act 2018 was to deliver a functioning statute book and essential legal and regulatory certainty. **The need for this has not changed.** On the contrary, given the current policy and financial instability and the costs and challenges for people and businesses **it is more needed than ever.**

1.2 If enacted the REUL Bill will introduce many layers of unnecessary uncertainty. The 2023 sunset headlined in clause 1 risks removing (or changing at pace) entire bodies of law from the UK statute book. This will create an unprecedented capacity pressure on the civil service, legislatures, and civil society. It will be impossible to meaningfully and effectively consider and scrutinise thousands of pieces of legislation and potential changes in under 14 months. It may not even be possible to identify and preserve from or to extend the sunset in all cases where this might be required. **This risks policy change by inaction, either intentionally or by accident.**

1.3 Even if the sunset were to be extended in many cases, this would prolong entirely unnecessary policy and regulatory uncertainty for years at a time when businesses, organisations and people are crying out for certainty and stability.

1.4 The Bill adds further layers of uncertainty by giving incredibly broad powers to ministers to change the law by regulation (clauses 12, 13 and 15) and by facilitating departure from settled case law (clause 7), opening the possibility for re-defining key notions and rights through strategic litigation.

1.5 Businesses are clear that legal and regulatory uncertainty increase costs – especially at a time when households and businesses are struggling more than ever.

2. The Bill will further unsettle the UK's devolution arrangements at a time of unprecedented tension between devolved and central authorities

2.1 This Bill creates several new powers which are available to both devolved and central ministers:

- to preserve from sunset (clause 1);
- to ensure compatibility (clause 8);
- to restate REUL (clause 12);
- to restate assimilated law (clause 13);
- to revoke or replace (clause 15); and
- to update (clause 16).

2.2 These powers are held concurrently and **do not require UK Government ministers to seek devolved consent** – thereby granting them incredibly broad unilateral law-making powers in areas of devolved competence.

2.3 It is equally inappropriate that the power to extend the sunset in clause 2 is only available to UK Government ministers when clause 1 will sunset legislation in areas of devolved competence.

2.4 The capacity problems highlighted above are compounded in devolved areas, as there is currently no comprehensive understanding of all retained EU law that falls within the sphere of devolved competencies. This analysis alone will require considerable time and resource to complete. In the context of the 2023 sunset, it will further increase the risks of omissions, legislative accidents and rushed law making.

2.5 The extremely complicated implications for devolution of this Bill have not been sufficiently considered. The very limited impact assessment notes merely that the UK Internal Market Act (2020) will manage the resulting regulatory divergences. The Internal Market Act is a highly contentious and untested piece of legislation, with only those areas covered by Common Frameworks being subject to regulatory cooperation. The REUL Bill risks creating intra-UK divergence which far exceeds this scope, including around the application of the principle of supremacy and general principles of EU Law (which could be subject to differentiated re-introduction in different parts of the UK), different uses of the power to preserve from sunset and through different use of the inappropriately broad powers to replace retained EU Law.

3 – Constitutional concerns and threats to rights and standards

3.1 The REUL Bill goes to the heart of the UK's democracy and constitution. It represents a fundamental reconsideration of parliamentary sovereignty that gives the Executive sweeping powers to make changes to existing legislation without detailed scrutiny of Parliament. By the end of 2023 this could result in significant changes to policy and law. Yet there is no substantive indication of what these changes will be and there will be next to no parliamentary scrutiny. At best, the affirmative procedure will be used for statutory instruments introduced under clause 15(3). The Bill even gives the Government the option to introduce significant change by inaction, making scrutiny and challenges extremely difficult. **The Bill, unless amended, means that Parliament will give Ministers cliff edge powers without knowing what is going to be thrown off the cliff at sunset.**

3.2 This Bill proposes to reverse the ordinary separation of powers in the UK. The default position will be that rules drop off the statute book by virtue of the sunset, unless the executive steps in to save parliamentary laws. Given the 2023 deadline it will be likely that even where delegated legislation is considered, the choice would be to either accept the change or risk legislation disappearing – an entirely artificial and inappropriate law-making procedure on this scale.

3.3 If enacted in its current form, the Bill risks undermining the UK's standards in a host of areas: environmental protections, workers' rights, consumer rights, food standards and public health. Further underscoring the impropriety of the proposal, the equality impact

assessment notes that the Bill could lead to a loss of protection against discrimination (para.11). Meanwhile the ECHR Memorandum explains that provisions of domestic law could be revoked by the sunset that are relevant for Convention rights (pages 2-3).

3.4 Appropriate time, due process and scrutiny should be given to consider the case for meaningful substantive change to **legislation to identify the opportunities for improvements following the UK's departure from the EU**. Once a need is evidenced, impact assessed, appropriately considered, and consulted on, the ordinary process of reviewing laws on the UK statute book provides an **excellent opportunity for the UK to raise standards as promised in the Conservative Government manifesto of 2019**.

4 –Interactions between intra-UK divergence, the Northern Ireland Protocol and the Trade and Co-operation Agreement (TCA)

4.1 While this Bill excludes separation agreement law, the interactions between the resulting intra-UK divergences and the Protocol requirement to align in Northern Ireland are likely to be complex and have not been fully considered in these proposals.

4.2 Article 2 of the Protocol contains a commitment to no diminution of rights in Northern Ireland because of Brexit. This has the potential to be undermined by this Bill and its out workings, given the clear direction of travel towards deregulation and rights removal.

4.3 It seems unwise to frustrate the UK-EU relationship further and entirely unnecessarily, while the parties are actively seeking a negotiated solution to the tensions around the Northern Ireland Protocol

4.4 Furthermore, recent discussions among the civic society institutions attached to the Trade and Cooperation Agreement (TCA) have highlighted significant concern on the part of the EU that the REUL Bill could unnecessarily frustrate the operation of the level playing field provisions. Moreover, recent polling shows that UK citizens across all political inclinations are now gravitating towards wanting a constructive and slightly closer relationship with the EU.¹

About the Civil Society Alliance

The Civil Society Alliance is a coalition of civil society organisations from across the UK established to scrutinise and influence constitutional, administrative and legal changes in the complex, multidimensional regulatory landscape following the UK's withdrawal from the European Union.

Our aims are:

- *Open and accountable law-making that respects democratic processes, including the devolved nature of the UK constitution; subject to robust parliamentary scrutiny, transparency, and debate.*
- *A high standards UK, in which constitutional or legislative changes do not weaken standards, diminish rights, or lead to a loss of funding.*

¹ A. Spisak, "Moving On: How the British Public Views Brexit and What It Wants From the Future Relationship With the European Union", 18 October 2022. Available at: <https://institute.global/policy/moving-how-british-public-views-brexit-and-what-it-wants-future-relationship-european-union>

- *A strong, active civil society voice, with a culture of government engagement that is collaborative, consistent, open, effective, and accountable.*