



## Civil Society Alliance Briefing: Retained EU Law (Revocation and Reform) Bill

Second Reading House of Lords, Monday 6 February

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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. As advocates for a **strong civil society voice** in developing collaborative, consistent, open, effective, and accountable governance, the Civil Society Alliance wishes to highlight our concerns about this Bill. These have been raised throughout the passage of the Bill to date, including in our [written evidence](#) to the House of Commons Public Bill Committee last November, and as part of a wider coalition of academics, trade unions, legal groups and businesses, but have not been acknowledged nor addressed.

### Constitutional concerns

2. A central Civil Society Alliance objective is that **legislating must respect the democratic processes, including the devolved nature of the UK constitution**. This requires clear limits and safeguards on executive power and robust parliamentary scrutiny at all levels with appropriate transparency and debate.
3. We welcome the recent publication and House of Lords debate of the reports from the Delegated Powers and Regulatory Reform Committee: *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* and the Secondary Legislation Scrutiny Committee: *Government by Diktat: A call to return power to Parliament*. These reports reflect the views of civil society concerning the delegation of substantial legislative powers to Ministers which, over time, have led to

a significant shift in power from Parliament to the executive, a shift that continues and need to be reversed. The approach taken to the review of EU retained law clearly demonstrates this.

4. [The Delegated Powers and Regulatory Reform Committee's](#) 25<sup>th</sup> report, published on 2 February 2023 expresses regret that this “hyper skeletal” bill serves only to accentuate that concern. The [Secondary Legislation Scrutiny Committee report \*Losing Control?: The Implications for Parliament of the Retained EU Law \(Revocation and Reform\) Bill\*](#) (also published on 2 February), highlights issues relating to the sunset provisions and the lack of effective scrutiny of secondary legislation also.
5. This Bill undermines the UK’s democracy and constitution and the role of devolved and central parliaments. It gives staggeringly broad delegated powers to repeal and replace parliamentary laws with policy that is subject to little or no democratic scrutiny, to be introduced at an alarming pace. By the end of 2023 this could result in significant changes to policy and law. 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.
6. The extremely complicated implications for devolution have not been sufficiently considered. The very limited impact assessment (given a red rating by the Regulatory Policy Committee and judged “not fit for purpose”) 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 the different use of the inappropriately broad powers to replace retained EU Law.

### **The Bill causes significant legal and regulatory uncertainty.**

7. 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.
8. If enacted in its current form the REUL Bill will introduce many layers of unnecessary legal and regulatory 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. 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.

9. 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.
10. The absence of a definitive list of REUL the Government intends to revoke through this Bill creates significant legal and regulatory uncertainty that impacts on our whole economy and society. The proposed timetable for review (namely before the end of December 2023) is unrealistic. It is insufficient time for meaningful consultation with civil society and proper parliamentary scrutiny to take place before Ministers are given the power to sweep aside in one fell swoop diverse and vital protections.
11. The REUL dashboard on which we are told to rely for a definitive list of legislation affected, is incomplete and for most intent and purposes effectively incomprehensible. The version available to MPs at the time of Report stage and Third Reading set out a fraction of the laws in scope of the bill. The subsequent update to the dashboard on 30 January 2023, increased the number of REUL from the original 2400 to 3745. This includes 1781 environmental regulations covering pesticides, food, nature, air, and water quality. Whilst we welcome the addition of list of REUL by territorial application, the methodology is unclear and fails to distinguish between which REUL are devolved REUL that fall under the scope of the Bill and those which are retained from pre-devolution laws. The list does not include the 1200 additional pieces of REUL reported to have been identified by the National Archives.
12. At Report Stage in the House of Commons, the Civil Society Alliance supported a cross party amendment requiring the Government to publish an exhaustive list of every piece of legislation being revoked under the Sunset Clause and allow for Parliamentary oversight of this process so that the House of Commons has the ultimate say on which legislation is affected. We continue to support this approach provided that civil society is given the opportunity to engage in a pre-legislative scrutiny process.

### Threats to rights and standards

13. The second core objective of the Civil Society Alliance is that **standards within the UK should not be diminished or undermined**. Constitutional or legislative change should not mean weaker standards, fewer rights, or loss of funding. This includes the protection of standards and ensuring that no governance gaps are created following the UK's exit from the EU.

14. 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).
15. Given that raising standards may necessitate enhanced regulatory requirements, it is disconcerting that Clause 15 cannot be used to "increase regulatory burdens, impose obstacles to trade or innovation, financial costs and administrative inconveniences, and obstacles to efficiency, productivity or profitability, or sanctions that affect the carrying on of lawful activity" thereby imposing what is in effect a regulatory ceiling.
16. Clause 16 states that Ministers may make modifications to secondary REUL they consider '*appropriate to take account of changes in technology or developments in scientific understanding*'. This effectively gives Ministers an open ended power to decide which changes may be made through delegated rather than primary legislation – for example in relation to Artificial Intelligence, Genetically Modified Organisms, or Net Zero . Clause 16 can also be exercised indefinitely on REUL and any new regulations that replace it. It is not sunsetted.

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

17. 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).
18. 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.
19. It is equally inappropriate that the clause 2 power to extend sunset is only available to UK Government ministers when legislation in areas of devolved competence are included within the scope of clause 1.
20. 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.

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

21. While this Bill excludes separation agreement law, the interactions between the resulting intra-UK divergences and the Ireland / Northern Ireland Protocol requirement to align in Northern Ireland are likely to be complex and have not been fully considered in these proposals.
22. 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.
23. 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.

#### **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.*

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