

Research Briefing

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Progress of the Retained EU Law (Revocation and Reform) Bill 2022-23



Summary

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Summary

This briefing provides an overview of developments on the [Retained EU Law \(Revocation and Reform\) Bill](#) since its introduction on Thursday 22 September 2022. For detailed background on the Bill, its content as introduced, and initial stakeholder reaction, please see:

- Commons Library, [Retained EU Law \(Revocation and Reform\) Bill 2022-23](#), 17 October 2022

Bill progress

The Bill received its second reading on Tuesday 25 October 2022. Thereafter it was considered across four days in public bill committee, on 8, 22, 24 and 29 November. The first day was used to procure oral evidence, and the subsequent days for line-by-line scrutiny.

The committee agreed fifteen Government amendments to the Bill, all without a division. These were largely clarificatory, resolving drafting issues in the original Bill to reflect more clearly the Government's legislative intent.

No opposition amendments were made to the Bill, with the vast majority of them either being defeated on a division, not formally moved, or withdrawn.

Report stage and third reading are scheduled for Wednesday 18 January 2023.

Notable developments since presentation

The following other notable developments have taken place since the Bill was presented:

- Grant Shapps has succeeded Jacob Rees-Mogg as the Secretary of State for Business, Energy and Industrial Strategy (BEIS) following the change of Prime Minister on Tuesday 25 October 2022;
- The [Scottish Government](#) (PDF) and [Welsh Government](#) (PDF) have each published legislative consent memorandums (LCMs) recommending that consent be withheld for the Bill by the Scottish Parliament and Senedd Cymru;
- The Government's independent Regulatory Policy Committee has criticised the Government's Impact Assessment on the Bill, [describing it as "not fit for purpose"](#);

- The National Archives has identified significant omissions in the Government's Retained EU law dashboard. Media reports have suggested some 1,400 instruments could have been omitted from the initial catalogue (published back in July 2022); and
- Press reports emerged in the new year to the effect that the House of Lords may seek to push back the sunset provisions, so that they take effect later than the end of 2023.

1 Overview of Bill progress

1.1 Second reading

The Bill's second reading debate took place on Tuesday 25 October 2022.

The Official Opposition proposed a “reasoned amendment”.¹ Had the amendment been agreed, the motion before the House would have read:

That this House declines to give a Second Reading to the Retained EU Law (Revocation and Reform) Bill because, notwithstanding the need to address the future status and suitability of retained EU law following departure from the European Union, the Bill creates substantial uncertainty for businesses and workers risking business investment into the UK, is a significant threat to core British rights and protections for working people, consumers and the environment as signalled by the wide body of organisations opposed to the Bill, could jeopardise the UK's need to maintain a level playing field with the Single Market under the terms of the Trade and Cooperation Agreement, and contains powers which continue a dangerous trend of growing executive power, undermining democratic scrutiny and accountability.

The amendment was disagreed to on a division ([223 Ayes, 277 Noes](#)).

The main question, that the Bill be read a second time, was agreed to on a division ([280 Ayes, 225 Noes](#)).

1.2 Public Bill Committee

The Public Bill Committee met in accordance with the Bill's two programme orders, of 25 October and 7 November 2022.

Oral evidence – 8 November 2022

The Committee met for the first time on 8 November 2022, to hear oral evidence from more than 20 witnesses. Additionally, written evidence from more than 90 individuals and organisations was reported to the House.

¹ ie that the House adopt a motion declining to give the Bill a second reading, and giving reasons for doing so.

Oral evidence heard in the morning session

- Sir Stephen Laws KCB KC, Former First Parliamentary Counsel
- Professor Catherine Barnard, Professor of European & Employment Law, University of Cambridge
- Professor Alison Young, Sir David Williams Professor of Public Law, University of Cambridge
- Martin Howe KC, 8 New Square Tom Sharpe KC, One Essex Court
- Mark Fenhalls KC, Chair, Bar Council
- George Peretz KC, Working Group on REUL, Bar Council
- Eleonor Duhs, Partner, Head of Data Privacy, Bates Wells

Oral evidence heard in the afternoon session

- Sir Richard Aikens, Brick Court Chambers
- Barnabas Reynolds, Shearman and Sterling
- Jack Williams, Monckton Chambers
- Sir Jonathan Jones KC, Linklaters
- Dr Ruth Fox, Director, Hansard Society
- Tim Sharp, Senior Policy Officer, TUC
- Shantha David, Head of Legal Services, Unison
- Ruth Chambers, Senior Fellow, Green Alliance
- Dr Richard Benwell, CEO, Wildlife and Countryside Link
- David Bowles, Head of Public Affairs and Campaigns, RSPCA
- Phoebe Clay, Co-director, Unchecked
- Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government
- Michael Clancy OBE, Director of Law Reform, Law Society of Scotland
- Charles Whitmore, Research Associate, School of Law and Politics, Cardiff University
- Dr Viviane Gravey, School of History, Anthropology, Philosophy and Politics, Queen's University Belfast

Line-by-line scrutiny – 22, 24 and 29 November

The public bill committee conducted line-by-line scrutiny. The committee split its work across three days, 22, 24 and 29 November. Fifteen Government amendments were made (all of which were drafting amendments) and no opposition amendments were made.

1.3

Remaining stages

The Bill was reported to the House, with amendments, on 29 November 2022, and reprinted (as [Bill 204](#)). Report stage and third reading are anticipated to take place on Wednesday 18 January 2023.

2 Public Bill Committee

2.1 Day 1 – sunset provisions

The main sunset provisions were debated on 22 November.

Clause 1 – the legislation sunset

Clause 1 of the Bill provides for the expiry of two types of legislative instrument – retained direct EU legislation and EU-derived subordinate legislation – at the end of 2023. There is an exemption for relevant financial services legislation, and instruments can also be exempted by regulations.²

There were eight distinct groups of amendments to **clause 1** debated by the public bill committee.

Clause 1 – opposition amendments debated

These included seven groups of amendments from the opposition parties that would have:

- pushed back the sunset clause from the end of 2023 to the end of 2026;³
- disapplied the sunset clause for any legislation falling within the devolved competence of the Scottish Parliament and Ministers;⁴
- required the Government to set out the legislation to be sunsetted in a “definitive list” and to ensure relevant stakeholder groups are consulted before any listed legislation is allowed to expire;⁵
- required prior Parliamentary approval, and approval of the devolved legislatures, before the sunset clause could come into effect;⁶

² Such regulations can be made by either a UK Minister or a devolved authority.

³ **Amendment 26**, debated with **amendment 28** (SNP amendments). The lead amendment was withdrawn after debate.

⁴ **Amendment 68**, debated with **amendment 21** (SNP amendments). The lead amendment was defeated on a division (7 Ayes, 9 Noes).

⁵ **Amendment 90**, debated with **amendment 91** and **new Schedule 1** (Labour amendments). The lead amendment was defeated on a division (7 Ayes, 9 Noes).

⁶ **Amendment 22**, debated with **amendments 23-24** (which would have made similar provision about the powers to revoke legislation in **clause 15**) (SNP amendments). The lead amendment was withdrawn after debate.

- excluded listed instruments relating to labour law from the sunset clause;⁷
- excluded listed instruments relating to environmental protection from the sunset clause;⁸
- excluded listed instruments relating to consumer protection from the sunset clause.⁹

Each lead amendment was either rejected on a division or withdrawn.

Clause 1 – Government drafting amendments made

Additionally there were three Government amendments considered, each addressing drafting issues with **clause 1**. All three were agreed to without a division, and form part of the Bill as reported to the House.

Government amendments 2 and 3 added the following words (highlighted in bold) to **subsection 1(3)** of the Bill:

The revocation of an instrument, **or a provision of an instrument**, by subsection (1) does not affect an amendment made by the instrument to any other enactment **or provision**.

This language, referring to “provisions” better reflects the fact that some legislative instruments have a “hybrid” character: some but not all of their provisions are retained EU law. So, only part of hybrid instruments are susceptible to revocation under the sunset clause because only part of them are retained EU law.

The additional words ensure that, if a (hybrid) legislative instrument has modified the text of another (hybrid) legislative instrument, those modifications are not then “undone” by the sunset clause at the end of 2023.

Government amendment 4 adds the following new subsection to **clause 1**:

Any reference in regulations under subsection (2) to an instrument or a provision of an instrument is, unless otherwise stated, to the instrument or provision as it subsists immediately before the time when the revocation under subsection (1) would otherwise apply in relation to it.

This relates to the power to exempt instruments, by regulations, from expiry at the 2023 sunset. This new subsection ensures that what is to be exempted

⁷ **Amendment 73**, debated with **amendment 76** (which would have made similar provision about the powers to revoke legislation in **clause 15**) (Labour amendments), and related **amendments 67 and 60** (to **clause 22**) and **new clause 4**, (SNP amendments). The lead amendment was defeated on a division (7 Ayes, 9 Noes).

⁸ **Amendment 74**, debated with **amendment 77** (which would have made similar provision about the powers to revoke legislation in **clause 15**) (Labour amendments). The lead amendment was defeated on a division (7 Ayes, 8 Noes).

⁹ **Amendment 75**, debated with **amendment 78** (which would have made similar provision about the powers to revoke legislation in **clause 15**) (Labour amendments). The lead amendment was defeated on a division (6 Ayes, 9 Noes).

is any instrument as it stands at the end of 2023. This prevents changes made to the exempted instrument – between Royal Assent and the end of 2023 – from being inadvertently lost.

Clause 1, as amended, agreed on a division

The committee also voted on whether **clause 1**, the main sunset clause, should “stand part” of the Bill. This was agreed to on a division (9 Ayes, 6 Noes).

Clause 2 – the sunset delaying power

As introduced, the Bill would allow UK Ministers, but not devolved authorities, to delay the expiry of specified legislative instruments until as late as 23 June 2026, using regulations made under **clause 2**. This power is anomalous, in that it cannot be used by devolved authorities at all (unlike the concurrent powers in **clauses 1, 8, 12, 13, 15 and 16**).

Clause 2 – opposition amendments debated

The public bill committee considered opposition amendments that would:

- extend the sunset delay power to devolved authorities;¹⁰
- enable the Scottish Ministers, by regulations, to extend the sunset for any devolved instrument either to 23 June 2026 or 23 June 2029.¹¹

The Government opposed the amendments and they were not made by the committee. Nusrat Ghani, the Minister of State for Industry and Investment Security, said that to extend the **clause 2** power to devolved authorities would:

introduce additional legal complexity, as it may result in different pieces and descriptions of REUL expiring at different times in different jurisdictions in the UK, across both reserved and devolved policy areas...

and that this would cause “confusion”.¹²

Clause 2 agreed without a division

Clause 2 as introduced, was ordered to stand part of the Bill without any division.

¹⁰ **Amendment 72** (Labour amendment), debated with **amendment 31** and **new clauses 5 and 6** (SNP amendments). **Amendment 72** was withdrawn and **amendment 31** was defeated on a division (6 Ayes, 9 Noes).

¹¹ **Amendment 32**, debated with **amendment 29** (SNP amendments). The lead amendment was withdrawn after debate.

¹² [PBC 22 November 2022 c176](#).

2.2

Day 2 – assimilation, interpretation, scrutiny, restatement and revocation provisions

Clauses 3-15 were debated on 24 November.

Clause 3 – revocation of law retained under section 4 of EUWA 2018

As introduced, the Bill would revoke **retained EU law of a non-legislative character** separately from **retained EU law that is legislation**.

Clause 3 would revoke, at the end of 2023, all of the law currently preserved by the “sweeper” provision in section 4 of the EU (Withdrawal) Act 2018. The sweeper provision has, since the end of 2020, preserved the **direct legal effects** of (for example) EU treaties and directives, in the absence of a treaty relationship underpinning them.

No amendments tabled

No amendments were tabled in relation to **clause 3**. The committee debate took place on the question whether the clause should stand part of the Bill. Justin Madders (Labour) raised concerns about the scoping exercise of the retained EU law that **clause 3** would revoke:

Can we be certain that all those [effects under section 4 of EUWA] have been picked up [on the Government’s Retained EU law dashboard], given that even the Government admits that not all the regulations have been captured? How on earth can we be certain that serious vacuums will not be left by the removal of section 4 if we cannot be sure that we have identified everything affected by it?¹³

Clause 3 agreed without a division

The committee nevertheless agreed to the inclusion of **clause 3** in the bill, without a division.

Clauses 4-6 the assimilation provisions

Clauses 4-6, collectively, are the “assimilation provisions”. After 2023 they would:

- abolish the supremacy of retained EU law
- abolish the retained general principles of retained EU law
- rename any remaining “retained EU law” as “assimilated law”.

¹³ [PBC 24 November 2022 c186](#).

Opposition new clause 8 debated

The assimilation provisions were debated alongside proposed **new clause 8**. The new clause would have imposed a “Parliamentary lock” on the commencement of the assimilation provisions. The proposal was to require the Government to provide time for post-legislative scrutiny of the impact of those clauses, before they could come into effect.

The **new clause 8** was not formally voted on until 29 November, when it was rejected (5 Ayes, 9 Noes).

Clauses 4-6 agreed without any division

All three of the assimilation provisions were agreed to by the public bill committee without amendment or division.

Clauses 7-9 - the interpretation provisions

Clauses 7-9 of the Bill are concerned with the way that courts interpret retained EU law/assimilated law. Among other things they would:

- adopt new criteria to encourage appellate courts to depart more often from legacy EU-related caselaw (**clause 7**);
- create new reference procedures under which lower courts can ask appellate courts about whether legacy EU-related caselaw should be departed from (**clause 7**);
- provide for the circumstances in which the practical effects of supremacy of retained EU law can be reinstated (**clause 8**); and
- give courts the power to make incompatibility orders where retained EU law/assimilated law conflicts with other domestic law, clarifying the effect of one taking precedence over the other (**clause 9**).

Clause 7 – opposition amendments debated

Four groups of opposition amendments to **clause 7** were debated, but none pressed to a division. These would have:

- added conditions to the test for departing from legacy EU-related caselaw, so as to prioritise legal certainty and to leave significant changes in the law to Parliament, rather than to the courts;¹⁴
- excluded the Scottish courts system and law officers from the new reference procedures;¹⁵

¹⁴ **Amendment 79** (Labour amendment), withdrawn after debate.

¹⁵ **Amendment 38** (SNP amendment) debated with **amendments 39-41, 42, 44-47** and **amendment (a) to Government amendment 5**. The lead amendment was withdrawn after debate.

- broadened the range of matters on which the Lord Advocate (the Scottish Government’s principal law officer) could make references or intervene;¹⁶ and
- required the Secretary of State to report to Parliament on the impact of the clause on the non-diminution of rights provision of the Northern Ireland Protocol (Article 2(2)).¹⁷

Clause 7 – Government drafting amendments made

Two drafting amendments were proposed by the Government, to clarify the statutory language in relation to the law officers operating in the devolution settlements. These were agreed to without a division.¹⁸

Clause 7 agreed to as amended

Clause 7 itself, as amended, was then agreed to without a division.

Clause 8 agreed without a division

Clause 8 was also agreed without a division.

Clause 9 – opposition amendment debated

One Labour amendment (**Amendment 80**) was proposed to **clause 9** but was not pressed to a division. **Clause 9**, in its original form, was agreed without a division.

Amendment 80 would have required the Government, within four weeks of a court making an incompatibility order, to make a written statement giving the Government’s view of the incompatibility.

This statement would need to cover the order’s impact on “rights of and protections for consumers, workers, and businesses, and protections of the environment and animal welfare”. The Government would also be expected to indicate whether it planned to revoke, amend, or clarify the law in light of the order having been made.

Clauses 10 and 11 - the scrutiny provisions

Clauses 10 and 11 are the scrutiny provisions. **Clause 10** would make it easier for existing delegated powers (in other Acts of Parliament) to amend all types of retained EU law, and to do so using the negative resolution procedure instead of the draft affirmative procedure. **Clause 11** would remove additional scrutiny requirements for revoking or amending certain types of retained EU law, originally included in the EU (Withdrawal) Act 2018.

¹⁶ **Amendment 35** (SNP amendment), debated with **amendments 36, 37, 93 and 48**. The lead amendment was withdrawn after debate.

¹⁷ **Amendment 49** (SNP amendment) withdrawn after debate.

¹⁸ **Government amendments 5 and 6**.

Clause 10 – opposition amendments debated

Two SNP amendments were proposed to **clause 10**. The first, **amendment 50**, would have required ministers to make written and oral ministerial statements, and to publish impact assessments, before relevant powers in other Acts could be used to amend retained EU law. The second, **amendment 51**, would have imposed the draft affirmative procedure (ie pre-emptive Parliamentary approval) in all such cases.

Clause 10 and Schedule 1 approved without a division

Neither amendment was pressed to a division and **clause 10** and related **Schedule 1**, as introduced, were both agreed to without a division.

Clause 11 – opposition amendment debated

One Labour amendment was proposed to **clause 11**. **Amendment 81** would have had the effect of reinstating the additional scrutiny provisions in Schedule 8 of EUWA, which **clause 11** proposes to remove. There were two divisions: both on the amendment and then on the question that the clause stand part. The amendment was rejected (7 Ayes, 8 Noes).

Clause 11 approved on a division

The original **clause 11** was approved on a division (8 Ayes, 7 Noes).

Clauses 12-14 – the restating provisions

Clauses 12-14 contain powers for relevant national authorities to restate secondary retained EU law/assimilated law. The effect of restating the law (in a new statutory instrument) is that it ceases to be retained EU law or assimilated law, and is no longer subject to the interpretive rules that govern that body of law. It is primarily intended as a method of preserving the existing law, or something very similar to it, rather than allowing it to expire.

Clause 12 – opposition amendments debated

The SNP proposed two amendments to **clause 12** (the power to restate retained EU law).¹⁹ The first, **amendment 53**, would have meant that restated law would continue to be treated as retained EU law. The second, **amendment 54**, would have (consequentially) allowed restating regulations to be made indefinitely, rather than requiring them to be made before the end of 2023. Neither was pressed to a division.

Clauses 12 and 13 – Government drafting amendments made

The Government proposed six related **amendments 8-13** to **clauses 12 and 13**. All were agreed to without a division. Each of these is a drafting amendment,

¹⁹ **Clause 13** is the power to restate assimilated law.

and either omits a reference to “legislation” or replaces it with the word “thing”. For example, **subsection 12(4)** now reads (emphasis added):

Any effect which is produced in relation to ~~legislation~~ **the thing** being restated by virtue of the retained EU law mentioned in subsection (5) does not apply in relation to the restatement.

This language better reflects the fact that the power to restate retained EU law is not confined to restating **legislation**. It can also be used to restate (for example) part of retained EU law that has been preserved by section 4 of EUWA, like a directly effective right under a directive or an EU treaty provision. It might also seek to codify the related case law on the interpretation of an instrument.

Clauses 12 and 13 agreed to as amended

Clauses 12 and 13, as amended, were agreed to without a division.

Clause 14 – opposition amendments debated

Clause 14 makes further provision about when and how the restating powers can be used. Labour proposed two amendments to it, neither of which were pressed to a division. Two SNP amendments were also debated.

Labour amendments 82 and 83 would have imposed consultation requirements on the use of the restatement powers. A relevant national authority would have first had to:

- consult on draft regulations with those substantially affected by, or with expertise in the legal effect of, restatement provisions;
- lay a report before the relevant legislature setting out whether the regulations would change any rights and protections of consumers, workers, businesses, the environment or animal welfare;
- set out, if relevant, why it has opted not to restate interpretative effects of retained EU law (eg those arising by virtue of the general principles);
- provide the relevant legislature with a sixty-day period to scrutinise the draft instrument and accompanying materials; and
- consult with relevant stakeholders as to whether any changes made during a restatement “resolve ambiguities”, “remove doubts or anomalies” or “facilitate improvement in the clarity or accessibility of the law”.

The SNP amendment 56 would have prevented restating regulations from modifying primary legislation. **Amendment 55** would have imposed a (less prescriptive) consultation requirement than **Labour’s amendment 82**.

None of the opposition amendments to **clause 14** were pressed to a division.

Clause 14 – Government drafting amendments made

The Government proposed two “clarifying” amendments to **clause 14**.²⁰ These set out more explicitly than the original wording that, while restatement regulations can reproduce the **effects** of principles like supremacy and the retained general principles, **they cannot reproduce the principles themselves**.

Clause 14 agreed to as amended

Both government amendments were agreed to without a division, as was **clause 14** as amended.

Clause 15 - the revoke and replace provisions

Under **clause 15**, relevant national authorities have broad powers to revoke and replace retained EU law/assimilated law by regulations. The main notable constraint on these powers is that the “overall effect” of the regulations cannot be to “increase the regulatory burden” in the relevant subject area.

Clause 15 – opposition amendments and new clause debated

Labour proposed four amendments to **clause 15**, and a related **new clause 9**. If adopted, these would have made three (related) changes:

- imposed statutory consultation requirements on the use of **clause 15** powers;²¹
- imposed additional environmental safeguards on the use of **clause 15** powers;²² and
- removed the requirement that **clause 15** regulations do not “increase the regulatory burden”.²³

Only **amendment 85**, on the third of these changes, was pressed to a division. It was defeated (Ayes 6, Noes 7).

Clause 15 agreed on a division

There was a division on whether **clause 15** should stand part of the Bill. The clause was agreed to (Ayes 7, Noes 6).

²⁰ **Government amendments 14 and 15.**

²¹ **Amendment 84**, related to and debated with **new clause 9** and **amendment 87** (to **clause 16**). The lead amendment was withdrawn after debate.

²² **Amendment 94**, debated with **amendment 84**.

²³ **Amendment 85**, related to and debated with **amendment 86**.

2.3

Day 3 – all remaining provisions

Clauses 16-23, Schedules 2 and 3 and new clauses 1-3, 7 and 10-12 were debated on the final day of committee.

Clause 16

Clause 16 would confer a permanent power for relevant national authorities to update:

- secondary retained EU law;
- secondary assimilated law;
- law restated by powers under would-be **sections 12 or 13**; and
- replacement or alternative provision made under would-be **section 15**.

in light of changes in technology or developments in scientific understanding.

Clause 16 - opposition amendment debated

One SNP amendment was debated with this clause. **Amendment 70** would have required the relevant national authority to publish a written statement on any societal and economic changes relevant to the intended modification(s). The amendment was not pressed to a division.

Clause 16 agreed to without amendment

The clause, as introduced, was also agreed to without a division.

Clauses 17-19

The provisions in the Bill about:

- making it easier to use legislative reform orders to modify or revoke retained EU law (**clause 17**);
- abolish the Business Impact Target (**clause 18**); and
- make consequential provision in consequence of the Act (**clause 19**)

were all agreed to without amendment by the committee.²⁴

²⁴ **Clause 18** was agreed on a division (8 Ayes, 2 Noes).

Clause 20, Schedule 2 and Schedule 3

General provision about regulation-making powers is set out in **clause 20** of the Bill. Related measures are contained in **Schedules 2-3**.

Clause 20 – opposition amendment debated

One amendment was proposed by the SNP to this clause (**amendment 64**). It would have prevented UK ministers from making provision under the Act's powers in relation to anything within devolved competence. The amendment was not pressed to a division.

Clause 20 and Schedule 2 agreed without amendment

The clause, as introduced, was agreed on a division (9 Ayes, 2 Noes). Related **Schedule 2** (making provision about restrictions on the powers of devolved authorities) was also agreed, but without a division.

Schedule 3 – Government drafting amendment made

One drafting change was proposed to **Schedule 3** by the Government (through **Government amendment 1**). As Graham Stuart, the Minister of State for Energy and Climate explained:

This is a technical amendment necessary to ensure that the mechanism for combining statutory instruments in the Bill functions correctly. The intent behind the Bill is to enable regulations made under different powers in the Bill to be combined into a single statutory instrument where it would be more appropriate to do so. This technical amendment will allow provisions made under any powers in the Bill and other enactments to be combined with regulations under the Bill that require a draft affirmative instrument.²⁵

That amendment was agreed to without a division, as was the Schedule as amended.

Schedule 3 – Opposition amendments debated

Further opposition amendments were proposed to **Schedule 3**. However, none were pressed to a division.

- Labour's amendments would have applied the affirmative resolution procedure to all uses of the powers in **clauses 15 and 16**.²⁶
- The SNP's amendment would have required UK ministers to secure the consent of the Scottish Ministers before making regulations within areas of devolved competence.²⁷

²⁵ [PBC 29 November 2022 c269](#).

²⁶ **Amendment 88**, debated with **amendment 89**.

²⁷ **Amendment 69**.

Clauses 21-23 – interpretation, commencement, extent and short title

Clause 21 - interpretation

The interpretation clause, **clause 21**, was agreed without debate or division.

Clause 22 – commencement

The commencement provisions of the Bill are contained in **clause 22**.

Clause 22 – opposition amendment debated

An SNP amendment to **clause 22** would have prevented the Act from coming into force “in relation to” Scotland. There would first need to be a motion passed in the Scottish Parliament consenting to the Act. The amendment was not pressed to a division.²⁸

Clause 22 – Government drafting amendment made

The Government proposed, and the committee agreed to, a drafting amendment to **clause 22**. It clarifies that transitional, transitory and saving provision can be made in relation to the revocation of retained EU law/assimilated law.²⁹

Clause 22, as amended, agreed

The amended **clause 22** was agreed to without a division.

Clause 23 – territorial extent and short title – agreed without a division

The provisions on territorial extent and the Bill’s short title, in **clause 23**, were also agreed without a division.

New clauses debated

Several new clauses were proposed in relation to the Bill, either as part of the debate on **clause 22** (commencement) or in their own right.

SNP new clauses - impact reporting

New clauses 1, 3 and 7, all proposed by the SNP, would have imposed post-enactment impact reporting requirements on the Secretary of State.³⁰

- **New clause 1** related to the impact of the Bill on the UK’s obligations under the UK’s Trade and Cooperation Agreement (TCA) with the EU.

²⁸ **Amendment 62.**

²⁹ **Government amendment 7.**

³⁰ These were debated with **clause 22** and related **amendments 61, 66 and 71.**

- **New clauses 3 and 7** related to the impact of revocation of retained EU law, whether done under the sunset clauses or delegated powers in the Bill.

None of these three new clauses were pressed to a division.

SNP new clause – UK Internal Market Act 2020

The SNP proposed **new clause 2**, which would have disapplied the UK Internal Market Act's provisions in certain cases.

Specifically, if the Scottish Ministers used powers under this Act either to prevent the expiry of retained EU law (using powers in **clause 1**), or to restate provisions (using powers in **clauses 12 or 13**) the 2020 Act would not apply to those regulations. This would preserve explicitly the ability of Scottish Ministers to maintain policy divergence in certain areas where desired.

The related **amendment 65** was defeated on a division (2 Ayes, 9 Noes).

Official opposition new clauses – impact assessments and reports

New clauses 10 and 11, proposed by the official opposition, would have imposed requirement on relevant national authorities to publish impact assessments in connection with the expiry, restatement, replacement or updating of retained EU law/assimilated law.

The relevant impact assessments would need to be published six weeks before any regulations came into effect or, as the case may be, three months before the automatic expiry of the relevant retained EU law.

- **New clause 10** was concerned with equality impact assessments and section 149 of the Equality Act 2010.
- **New clause 11** was concerned with the impact on:
 - the Trade and Cooperation Agreement with the EU;
 - divergence in standards rights, protections and regulatory burdens within the UK;
 - the regulatory burden for businesses importing or exporting goods or services; and
 - the level playing field provisions of the UK's trade agreements with other non-EU countries.

Neither new clause was pressed to a division.

New clause 14, also tabled by the official opposition, would have imposed a reporting requirement on relevant national authorities. Within four weeks of the Act receiving Royal Assent, each authority (or where relevant, Government department) would be required to set out in a report:

- their projected costs for implementing the Act;
- their projected human resourcing impact for implementing the Act;
- the projected impact on Parliamentary time to process their legislation needed under or in consequence of the Act; and
- a timeline outlining how they plan to meet the sunset clause deadline.

This new clause was not pressed to a division.

3 Notable developments

Since the Bill's introduction, a number of important developments have taken place, separately from its formal scrutiny by the House of Commons.

3.1 Changes in ministerial responsibility

Prior to its introduction, the preparations for the Bill were carried out by the Cabinet Office, under the responsibility of Jacob Rees-Mogg (the then Minister for Brexit Opportunities). However, following the change of Prime Minister to Liz Truss, responsibility for the Bill moved (with Rees-Mogg) to the Department for Business, Energy and Industrial Strategy (BEIS).

The second reading debate for the Bill took place on the first day of the Rishi Sunak premiership. As a result, it coincided with a change in Secretary of State for BEIS. The new Secretary of State is Grant Shapps, who has replaced Jacob Rees-Mogg.

The Government's second reading debate contributions were from:

- Dean Russell (the then Parliamentary Under-Secretary of State for Enterprise and Markets); and
- Graham Stuart (the Minister of State for Energy and Climate)

In public bill committee, Ministerial contributions have come from Graham Stuart and Nusrat Ghani, the Minister of State for Industry and Investment Security.

3.2 Legislative consent

When the UK Government published the Bill, it included, as is normal, a "territorial extent" table as part of the Explanatory Notes. This sets out the Government's position on whether, and to what extent, provisions of the Bill apply to Scotland, Wales and/or Northern Ireland, or to England only. It also indicates whether legislative consent is being sought, and if so, in respect of which provisions and in relation to which devolution settlements.

Under the legislative consent convention, the UK Parliament recognises that it will not normally legislate with regard to devolved (or transferred) matters without the consent of the relevant devolved legislature.

Legislative consent memorandums (LCMs)

Both the [Scottish](#) and [Welsh](#) Governments (PDFs) have published legislative consent memorandums. In both cases, the relevant devolved administration has recommended, at this stage, that legislative consent should not be granted by the devolved legislature. Several objections have been raised to the Bill and its impact on devolved matters. The Scottish and Welsh Governments also believe that the Bill's provisions more widely engage the legislative consent convention than the UK Government has, thus far, acknowledged.

The memorandums are being considered by committees of the devolved legislatures, who will prepare their own reports and make their own recommendations. It will then be for the Scottish Parliament and the Senedd Cymru to decide whether to grant or withhold consent for the Bill, as and when any legislative consent motions are moved for debate.

Scotland

On 8 November 2022, the Scottish Government published a legislative consent memorandum on the Bill.³¹ The memorandum argues that the Scottish Parliament should withhold consent for the Bill, so far as the convention is engaged.

Extent to which the legislative consent convention is engaged

The Scottish Government argues that, in addition to those provisions the UK Government accepted engage the legislative consent convention (in the Bill's Explanatory Notes) further provisions require Holyrood's consent. Those additional provisions are:

- **Clauses 3-6**
- **Clauses 19-21**
- **Schedule 1**

The disagreement about whether these provisions engage the legislative consent convention hinges on whether they deal with devolved matters/competencies in a way that is more than incidental or consequential. The Scottish Government's position, in each case, is that they do, whereas it appears the UK Government's position is that they do not.

Similar disagreements about convention scope arose, for example, in relation to the EU (Withdrawal) Bill in the 2017-19 Parliament.

³¹ Scottish Government, [Legislative Consent Memorandum – The Retained EU Law \(Revocation and Reform\) Bill](#) (PDF), 8 November 2022.

The Scottish Government's position on consent

In the memorandum, three arguments are advanced against the granting of consent for the Bill.

- Firstly, that the “deregulatory agenda” underpinning it “poses risks to important protections and high standards” including in devolved areas.
- Secondly, that devolution is “undermined” by, among other things, giving UK Ministers powers in devolved areas, over which devolved authorities have no veto.
- Thirdly, that the sunset approach brings “significant risk to the coherence of the statute book”, that the 2023 deadline is “impractical and unachievable” and will “impos[e] unrealistic burdens on both government and Parliamentary resources.

Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture, has also written to the BEIS Secretary, Grant Shapps, on 15 November 2022.³² In that letter, Robertson called on the UK Government to withdraw the Bill completely, but also provided an annex of suggested amendments to ameliorate the Scottish Government's main concerns.

The Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee (CEEAC) and its Delegated Powers and Law Reform Committee (DPLR) have taken evidence on the Bill.

The Scottish Parliament approved a motion, following a topical debate on 29 November 2022, stating:

That the Parliament agrees that the Retained EU Law (Revocation and Reform) Bill threatens vital environmental and health standards and protections built up over 47 years of EU membership, creates enormous uncertainty for workers and businesses, and undermines devolution, and should, therefore, be scrapped by the UK Government.³³

A debate on a formal legislative consent motion is anticipated once the CEEAC Committee has published its report on the legislative consent memorandum.

Wales

On 3 November 2022, the Welsh Government published a legislative consent memorandum on the Bill.³⁴ The memorandum argues that the Senedd Cymru should withhold consent for the Bill, so far as the convention is engaged.

³² [Letter from Angus Robertson to Grant Shapps](#), 15 November 2022.

³³ [Scottish Parliament Official Report 29 November 2022](#), c75.

³⁴ Welsh Government, [Legislative Consent Memorandum – The Retained EU Law \(Revocation and Reform\) Bill](#) (PDF), 3 November 2022.

Extent to which the legislative consent convention is engaged

The Welsh Government has taken a more expansive view on legislative consent on this Bill than either the UK or Scottish Governments. Its memorandum, like the Scottish Government's one, suggests that consent should additionally be sought for **clauses 3-6** and **19-21** and **Schedule 1**. However, it also maintains consent should be sought for **clauses 9** and **11**.³⁵

The Welsh Government's position on consent

The legislative consent memorandum makes clear that the policy objectives for the Bill are “not shared by the Welsh Government”. On the contrary, it maintains that “the body of retained EU law is, in general, functioning well and does not need to be treated collectively in this way”.

The Welsh Government has raised very similar objections to the Scottish Government. It considers the following aspects of the proposals to be objectionable:

- the fact that the Bill allows UK Ministers to make regulations in relation to devolved matters without the consent of the Welsh Government;
- the fact that the clause 2 power (on delaying the sunset) is exercisable solely by a Minister of the Crown and not by Welsh Ministers;
- that the 2023 sunset would have significant and undesirable resourcing implications for the civil service, both within the UK and the Welsh Governments;
- relatedly, that the sunset will significantly impact the bandwidth in the Senedd for the Welsh Government's own legislative programme;
- that the prioritisation of deregulation in the Bill (especially given its interaction with the UK Internal Market Act) could lead to an erosion of standards and protections in devolved areas; and
- that the Counsel General for Wales's reference powers in the Bill should be wider, to enable reserved matters to be referred where they have broader implications for devolved matters.

Counsel General for Wales, Mick Antoniw, added in a written statement:

The Bill is a significant distraction at a time when the focus of government should be on matters of greater importance such as the cost-of-living crisis. It is our opinion that the body of retained EU law, as it currently stands, is in general fit for purpose. The imposition of the arbitrary deadline means that there is a very real risk in revisiting these legal instruments in haste, that

³⁵ The UK and Welsh Governments also agree that legislative consent is required for clause 17. This is not the case in Scotland, as legislative reform order powers do not extend to Scottish Ministers.

interdependencies and other issues may not be identified, and that the consequence could be an inoperable statute book.³⁶

The Welsh Government tabled a supplementary memorandum, affirming that its view on the Bill was unchanged, so far as it had been amended in public bill committee.³⁷

The position in Northern Ireland

There is currently no functioning Northern Ireland Assembly and Executive. This means that it is impossible for a legislative consent memorandum to be prepared or for legislative consent scrutiny to be undertaken. Previously where this has been the case (in relation to Brexit and post-Brexit legislation) the UK Government has proceeded to legislate without consent.

The Protocol on Ireland/Northern Ireland (part of the UK's EU Withdrawal Agreement) depends on retained EU law for significant aspects of its implementation and enforcement. In the second reading debate, the Minister for Energy and Climate, Graham Stuart, made the following commitment:

Several hon. Members raised specific concerns about the impact on Northern Ireland. I reassure the House that we will stand by our international commitments. We will preserve, restate or reform retained EU law to uphold those international obligations.³⁸

However, there is currently no provision in the Bill specifically ensuring that this will be the case. This is a ministerial commitment to use the powers available in the Bill to achieve that outcome.

Similar concerns have also been raised about the UK's "level playing field" obligations under the Trade and Cooperation Agreement. For more on this, see the Commons Library briefing paper [The UK-EU Trade and Cooperation Agreement: Level playing field](#).

3.3

Regulatory Policy Committee report

The Government published an impact assessment in connection with the Bill.³⁹ When the Government publishes impact assessments, the Regulatory Policy Committee (RPC) scrutinises the adequacy of those impact assessment

³⁶ Welsh Government, [Written Statement: The Retained EU Law \(Revocation and Reform\) Bill](#), 3 November 2022.

³⁷ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) Retained EU Law \(Revocation and Reform\) Bill](#) (PDF), 21 December 2022.

³⁸ [HC Deb 25 October 2022 c253](#).

³⁹ BEIS, [Retained EU Law \(Revocation and Reform\) Bill 2022: impact assessment](#), 22 November 2022.

exercises.⁴⁰ This is a form of quality assurance, to ensure that the implications of legislative proposals have been properly considered by Government.

The RPC published its own report on the impact assessment on 18 November 2022. It was highly critical of both the original impact assessment and a follow-up revised assessment submitted on 29 September 2022.

Against all criteria, the revised impact assessment was judged to be “weak” or “very weak” and received an overall “red” rating (meaning that the impact assessment is “not fit for purpose”). This is because the assessment has made no attempt to quantify the impacts of individual pieces of legislation being sunsetted, and no commitment has been made to do this later on in the process:

The Department [for Business, Energy and Industrial Strategy] has suggested that IAs may be required upon a material policy change, however, given the significant number of REULs that could be sunsetted, there is the potential for significant harmful impacts without a firm commitment to properly assess the impacts of these changes in each case. Therefore, we are not reassured that the principles of Better Regulation are upheld by the proposed approach, nor that the [Equivalent Annual Net Direct Cost to Business] impact from this Bill will ever be calculated or understood.⁴¹

It also questioned the evidence base for the use of a sunset clause to change behaviours and priorities of government departments:

The Department does not make a clear or well evidenced case for regulatory intervention through the introduction of a sunset date. While the IA states that there is a large amount of REUL still in effect, it does not illustrate how the introduction of an automatic sunset date would allow departments to alleviate disproportionate regulatory burdens more effectively than they would otherwise through evaluating REUL in the normal course of their business.⁴²

3.4 Cross-government scoping exercise

Back in September 2021, (then) Cabinet Office Minister Lord Frost commissioned a cross-Whitehall scoping exercise of retained EU law. The purpose of this was to seek to identify, so far as possible the legislative instruments and other law that comprises “retained EU law” under the EU (Withdrawal) Act 2018.

The broader aim of such an exercise was to enable Government departments and devolved authorities to identify the areas where retained EU law still

⁴⁰ The Regulatory Policy Committee is a non-departmental public body, sponsored by the Department for Business, Energy and Industrial Strategy.

⁴¹ Regulatory Policy Committee, [Retained EU Law \(Revocation & Reform\) Bill](#) (PDF), RPC-CO-5223(1), 18 November 2022, p7.

⁴² As above, p9.

influenced policy, and to decide what to do with that law in light of the policy flexibility afforded by the UK's withdrawal from the EU.

The original dashboard

The original Retained EU law dashboard, published in June 2022, identified more than 2,400 distinct sources of retained EU law, of which around 2,000 had remained unchanged, around 180 had been amended, almost 200 had been repealed, and around 30 had been replaced.

However, the Government has acknowledged that the dashboard was not exhaustive, and that the data gathering exercise was incomplete. The work to identify and fill the gaps has been ongoing and a further update to the dashboard is anticipated, but no firm deadline has been given.

Recent National Archives scoping work

The Government has confirmed that it commissioned the National Archives to assist departments with their work in identifying and categorising retained EU law. Press reports in November indicated that a further 1,400 pieces of legislation had been identified that could potentially form part of the body of retained EU law.⁴³ However, neither the National Archives nor the Government has provided a definitive public figure for how much legislation has yet to be captured by the dashboard.

The recent revelations have caused experts to raise concerns about the risk of law being revoked “by accident” under the sunset clause. Professor Catherine Barnard told the public bill committee:

If they found an extra 1,400 pieces after the extensive work that Government had done before that, it makes you wonder whether other things are out there. This is the issue with the sunset being the default position. As a default, it will turn off all retained EU law, even if the Government are unaware of what that retained EU law actually is.⁴⁴

Similarly, Dr Ruth Fox of the Hansard Society said:

We have heard today that there is a possibility that a significant proportion of retained EU law has been missed from the Government's dashboard, so we do not know exactly what the scope of retained EU law is. If pieces of legislation have not been identified and saved by the expiry date, they will fall away and we may have regulatory gaps. That is a significant concern for Parliament's oversight of the regulatory landscape going forward. That is our primary concern: the cliff-edge nature of the sunset clause and the fact that the Government's objectives, in our view, could be done in a different and less risky way.⁴⁵

⁴³ Financial Times, [UK plan to scrap all EU laws suffers new setback: Discovery of 1,400 more pieces of legislation makes huge bureaucratic task even harder](#), 8 November 2022.

⁴⁴ [PBC 8 November 2022 c11](#).

⁴⁵ [PBC 8 November 2022 c48](#).

3.5

Press briefing on the sunset clause

The end of 2023 deadline, after which most retained EU law is set to expire, has attracted considerable external criticism from academics, business groups, trade unions and third sector organisations, both in press briefing and in oral and written evidence to the public bill committee. Some concerns have also been raised within the civil service about resourcing, and how realistic it would be for all retained EU law to be reviewed, and decisions taken about it, in advance of 2024.

On 2 January 2023, [The Times reported comments from a “senior government source”](#) to the effect that the deadline will have to be extended.⁴⁶ This was seen both as a likely consequence of House of Lords opposition to the deadline and the practical challenges currently faced by civil servants. The senior government source was quoted as saying:

I can't see it [the deadline] surviving... We'll have to compromise when it gets to the Lords. If the object is to review all these regulations properly rather than just cut and paste them into UK law then we'll need more time. It's an entirely arbitrary deadline. We're going to have to make a concession to get it through.

The Times reported that officials in three UK Government departments in particular were seeking to extend the deadline: the Department for Business, Energy and Industrial Strategy (BEIS) itself, the Department for Transport (DfT), and the Department for the Environment, Food and Rural Affairs (Defra).

The June 2022 figures on the Government's [Retained EU law dashboard](#) indicate that Defra, DfT and BEIS are three of the four the departments with the most retained EU law in their policy spaces.⁴⁷ The process of reviewing and making recommendations about retained EU law might therefore be more burdensome in those departments than in others.

The Government has, however, publicly denied any intention to extend the deadline for retained EU law beyond 2023, either selectively (eg by government department) or across the board. A BEIS spokesperson told The Times:

The programme to review, revoke and reform retained EU law is under way and there are no plans to change the sunset deadline for any government departments.

⁴⁶ Steve Swinford, [Lords will delay Rishi Sunak's bonfire of EU laws](#), The Times, 2 January 2023.

⁴⁷ HM Treasury has more sources of retained EU law logged on the dashboard than BEIS, but most of this is unaffected by the current Bill and is instead being reviewed and revoked/replaced under the provisions of the Financial Services and Markets Bill.

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