

Legislation, Justice and Constitution Committee on the Retained EU Law (Revocation and Reform) Bill

18 November 2022

Summary

Wales Environment Link is deeply concerned about the REUL Bill¹, which has major implications for environmental protection, food standards, animal and human welfare and worker's rights law as well as for legal certainty for all in Wales. Retained EU Law (REUL) includes some of the most important and powerful legislation we have to protect the environment and nature, such as the Habitats Regulations², air quality and water regulations³ and regulations on environmental assessment. As stated by the Counsel General⁴, the Bill

“...risks the reduction of standards in important areas including employment, health and the environment.”

The REUL Bill is a blunt instrument that does not allow for a sensible, consultative process to examine, update and improve the laws in these areas, but puts vital protections and standards at risk. We are therefore calling on the UK Government to withdraw the Bill.

What are the Bill's impacts in Wales?

REUL in Wales exists in a huge number and variety of statutory instruments. Some are specific to Wales, while some apply to England and Wales and others to the whole of the UK. The sunset provision in clause 1 of the Bill means that, unless other action is taken to retain, replace or amend REUL, it will automatically be revoked on

¹ the Retained EU Law (Revocation and Reform) Bill

² Conservation of Habitats and Species Regulations 2017

³ For example the National Emission Ceilings Regulations 2018, Water Environment (Water Framework Directive) (England and Wales) Regulations 2017/407 and the Bathing Water Regulations 2013/1675 which in part implement - the Water Framework Directive 2000/60/EC and the Bathing Water Directive 2006/7/EC

⁴ <https://gov.wales/power-grab-fears-over-new-uk-government-legislation>

31 December 2023. While there is scope for some laws to be subject to a later sunset of 2026, the power to extend the sunset (to 2026) is only available to Ministers of the Crown and not to devolved administrations.

It is not clear, at present, whether and how Welsh Government might retain laws in effect for Wales if the UK Government's position is to revoke or amend England and Wales, or UK wide regulations, or the implications for Wales if English regulations are revoked entirely or significantly amended but Wales wishes to retain its regulations.

It is of significant concern that there is not a complete list of REUL that is caught by the Bill, as [stated by expert academics](#) Dr Viviane Gravey from Queen's University Belfast and Professor Colin Reid from the University of Dundee

“it is difficult, if not impossible, to fully gauge what the impact of the Bill will be on devolved competences as the scope of Retained EU Law itself is unclear”.

Nor is it clear what impact the Internal Market Act 2020 might have on the ability and freedom of the devolved nations to retain higher standards in devolved areas than the UK Government. During a Westminster Hall debate held to [consider the impact of Retained EU law on the Scottish Devolution Settlement on 19th October 2022](#), BEIS Minister Dean Russell sought to reassure Scottish MPs

“I want to assure the House that the Government are committed to ensuring that the Bill works for all parts of the UK. We have carefully considered how it will impact each of the four nations, in close discussion with the devolved Governments, and it is of paramount importance that our legislatures function in a way that makes certain that we can continue to work together as one.

The Government recognise the importance of ensuring that the Bill is consistent with the devolved arrangements, and we remain committed to respecting the devolution settlements and the Sewel convention.... We are not changing the constitutional settlement.... Environmental protections will not be weakened. We want to ensure that environmental law is fit for purpose and able to drive

improved environmental outcomes⁵.... If the Scottish Government want to preserve legislation within their competency, the UK will respect it.⁶”

However, this is not clearly contained within the Bill. In fact, complexity notwithstanding, the apparent impact of the 2023 sunset clause is that government officials will need to work through a body of thousands of pieces of REUL⁷ and implement decisions before a deadline which is a little over a year away (and will not change no matter how long the Bill takes to reach Royal Assent). The requirement to process the vast number of REUL due to Brexit has given a glimpse of what this looks like in terms of impacts on Welsh Government workload and capacity to drive forward its own legislation; the current implications of the REUL Bill look yet more drastic.

[The Welsh Government has stated](#) that there is a risk REUL will simply be lost due to insufficient time being available to fully review, or due to confusion over where competency lies. Furthermore, due to Welsh Government teams having to absorb this vast, new workload, there will be an impact on the delivery of Welsh Government’s own commitments and legislative priorities – for example the promised, and already delayed, Bill on environmental governance and nature recovery targets and the Clean Air Bill. Dealing with the REUL Bill will mean more precious time lost when nature in Wales needs us to move further and faster.

In addition to the risks to regulations that are within the competence of the Welsh Government and the Senedd (whether or not it exists as Wales-only or shared competency) it is important to note that changes in respect of areas solely within UK Government control also have major potential to impact on environmental protections in Wales – for example, the UK Government is responsible for consenting energy projects in Wales that are over a certain size (50MW on land, 350 MW at sea). Changes to the rules governing the UK Government’s assessment of environmental

⁵ <https://hansard.parliament.uk/Commons/2022-10-19/debates/300E533E-0C71-44BC-A140-028019516462/details#contribution-3CD6C4C2-B588-4976-9917-FB50ECE00E5E>

⁶ <https://hansard.parliament.uk/Commons/2022-10-19/debates/300E533E-0C71-44BC-A140-028019516462/details#contribution-74D97EBA-D66C-4F02-ACB2-A78CD12C1C0E>

⁷ *The UK Government estimates that there are over 2,400 pieces of legislation on its REUL dashboard but this does not include REUL made by Welsh Ministers (Senedd Research Service briefing <https://research.senedd.wales/media/fqfhrteg/22-67-eng-web.pdf>)*

impacts and responsibilities to protect nature, for example, could also have a significant impact on Wales' natural environment.

What role should the Senedd have in the revocation and reform of retained EU law in devolved areas

WEL is concerned that the role of the Senedd in respect of the Bill's implementation is limited. Key issues include:

1. The Bill will transfer considerable legislative powers from the UK and devolved Parliaments to the Executive. Ministers will be empowered to change REUL via statutory instruments which receive very limited scrutiny with no meaningful opportunity for challenge from parliamentarians;
2. The Bill gives UK Government Ministers powers to make changes without Welsh Government consent;
3. Clause 15 of the Bill, described by some including [the Hansard Society](#) as "...tantamount, with just a few caveats, to a 'do anything we want' power for Ministers." It gives ministers extremely wide powers to revoke or replace retained EU law (REUL) and to lay replacement legislation either with "such provision as the relevant national authority considers to be appropriate to achieve the same or similar objectives" or with "such alternative provision as the relevant national authority considers appropriate". This subjective judgement of appropriateness, accompanied by such a limited link to the objectives of the original legislation, leaves clear potential for sensible, longstanding protections to be replaced by regulations with entirely divergent aims and outcomes;
4. When replacing REUL, ministers must also not increase the regulatory burden, which is defined to include any financial costs, administrative inconveniences or obstacles to trade, innovation, efficiency, productivity or profitability. The direction of travel that this Bill promotes is therefore abundantly clear – deregulatory; and
5. Clause 16 provides an ongoing power to amend REUL in light of changes to science and technological understanding, but provides no clarity as to the expertise, objectivity or scrutiny of such judgements nor definitions for either.

Please see the [Greener UK Second Reading briefing](#) for more information.

Implications arising from the potential deadlines introduced by the Bill

As discussed above, a major concern is that Clause 1 of the Bill contains a sunset provision which would mean that, unless other action is taken to retain, replace or amend REUL, it would automatically be revoked on 31 December 2023. While there is scope for some REUL to be subject to a later sunset of 2026, this power is only available to Ministers of the Crown and not to devolved administrations, and there is no clarity on how this would be decided. This ‘cliff edge’ constitutes irresponsible law making: a legislative sledgehammer instead of an evidence-driven, targeted and cost-effective process. Moreover, due to the sheer amount of REUL, there is a real danger that important laws will fall automatically at the end of 2023, simply because they have not been identified and/or restated or amended in time. This could lead to significant gaps in our environmental law framework that could have knock-on effects on other domestic and assimilated laws because they depend on each other.

The Welsh Government’s decision not to carry out its own assessment of REUL, including not forming its own view on what is devolved and reserved

It is worth noting that in June of this year [devolved administrations requested the REUL dashboard](#) including information about which REUL are in devolved areas. It is our understanding this still has not been made clear nor is there the ability to search for such REUL within the dashboard.

We also note that Counsel General stated, in his letter to the Committee Chair dated 4 August 2022:

“My officials, along with officials from the Scottish Government and Northern Ireland Executive, have made strong representations requesting UK Government departments share an understanding of the split of devolved and reserved REUL, recognising that UK Government departments will need to identify this in any case as part of their work. To date this has not been forthcoming. We do not consider that the Devolved Governments should have to undertake entire separate analytical exercises on this, not least given the scale of the task and that this is a UK Government initiative driven to an arbitrary UK Government timetable, and bearing in mind that we have requested this be worked on collaboratively.”

The scope of regulation-making powers granted to the Welsh Ministers by the Bill including the scrutiny procedures attached to those powers

As per our comments above, we have serious reservations about the wide-ranging powers represented by Clauses 15 and 16 of the Bill. As Sir Jonathan Jones KC (a previous head of the Government Legal Services) has clearly stated – retained EU law is domestic law. This Bill gives very wide powers to ministers (more to UK Government than to Welsh Ministers) to revoke or modify domestic law without the normal parliamentary scrutiny. WEL members feel strongly that these reduce democratic scrutiny and move England, and potentially Wales, in a deregulatory direction which does not sit well with existing legislation in Wales, for example, the Well-being of Future Generations Act.

Whether the Bill might introduce new limitations for the Welsh Government, which wants to improve pre-Brexit standards, where possible

As mentioned above, the Bill requires Ministers, when replacing REUL, to not increase the regulatory burden, which is defined to include financial costs, administrative inconveniences, obstacles to trade, innovation, efficiency, productivity or profitability. The direction of travel that this Bill promotes is therefore abundantly clear – deregulatory.

Clause 16 provides an ongoing power for REUL, and legislation brought in to replace REUL, to be amended in light of changes to science and technological understanding, but provides no clarity as to the expertise, objectivity or scrutiny of such judgements.

The Welsh Government has repeatedly reaffirmed its commitment to upholding EU standards, which we strongly welcome. As stated by the Counsel General in the [Legislative Consent Memorandum](#)⁸, the Bill’s policy objectives “are those of the UK Government and are not shared by the Welsh Government, where it is our view that the body of REUL is, in general, functioning well and does not need to be treated collectively in this way”. It appears – given the risks and uncertainty discussed throughout this paper – that the Bill has potential not only to cool ambition for

⁸ <https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>

improvement, but to weaken current standards in a way that directly contradicts Welsh Government policy.

Implications for Wales' legal landscape, including the introduction of new categories of legislation, and issues relating to clarity and accessibility

Information on the impacts of the Bill on businesses, large and small, has not been made available by UK Government. Environmental regulations play a key role in driving investment, job creation, skills, and innovation, as discussed further in [the Greener UK Second Reading Briefing](#). In addition, industry is committed to improving the environment through corporate social responsibility (CSR); not achieving CSR goals will impact on investment and public perception of industry. The REUL Bill will not provide a stable operating and planning environment for businesses because of the “endless uncertainty” that it will create. With no clarity about whether regulations will be replaced and if so by what, instead of reducing red tape, we believe the UK Government's REUL plans would have a severe chilling effect on business activity and investment.

Since the impact assessment for the Bill is still not published, this too is an area where there is no further information available.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.



Swyddfa Caerdydd
 Tramshed Tech
 Uned D, Stryd Pendyris Caerdydd CF11 6BH
 F: 07498 228066 | E: enquiry@waleslink.org
 Trydar: @WalesLink

Cardiff Office
 Tramshed Tech
 Unit D, Pendyris Street, Cardiff CF11 6BH
 T: 07498 228066 | E: enquiry@waleslink.org
 Twitter: @WalesLink

www.waleslink.org