

CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

27th Meeting, 2022, Session 6

24 November 2022

Retained EU Law (Revocation and Reform) Bill (UK Parliament legislation)

1. The [Retained EU Law \(Revocation and Reform\) Bill](#) was introduced by the UK Government on 22 September 2022. The Bill is now at Committee stage in the House of Commons, having been considered at Second Reading on 25 October 2022, and is yet to be considered in the House of Lords.
2. [Chapter 9B of the Standing Orders](#) sets out the rules and procedures for UK Parliament Bills making provision requiring the Scottish Parliament's consent. The Retained EU Law (Revocation and Reform) Bill falls under Rule 9B.1.1 of the Standing Orders as a 'relevant Bill' as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament; makes provision which alters the legislative competence of the Scottish Parliament; and makes provision which alters the executive competence of the Scottish Ministers.
3. On 8 November 2022, the Scottish Government lodged a [legislative consent memorandum](#) (LCM), which recommends that the Parliament *not* give its consent to the Bill.
4. At its meeting on 6 October 2022, the Committee agreed to examine the potential impact of this Bill in devolved areas, with a particular focus on the issues identified in its [report on the impact of Brexit on devolution](#). The Committee took evidence on the Bill from lawyers and academics at its meeting on 10 November 2022.
5. At this meeting, the Committee will take evidence on the legislative consent memorandum in a roundtable format from—
 - Julie Hesketh-Laird, Deputy CEO & Director of Strategy and Corporate Affairs, Food Standards Scotland
 - Donna Fordyce, Chief Executive, Seafood Scotland
 - Elspeth Macdonald, Chief Executive, Scottish Fisherman's Federation
 - Jonnie Hall, Director of Policy, National Farmers Union Scotland
 - Sarah Millar, Chief Executive, Quality Meat Scotland
 - Ian Muirhead, Policy Manager, Agricultural Industries Confederation Scotland
 - Dr Gareth Hateley, Junior Vice President Scottish Branch, British Veterinary Association

6. The roundtable will be focused around the following topics—

- **Regulatory environment** (e.g. impact on standards and protections; impact on trade; regulatory divergence with the EU; (un)certainty of the regulatory environment)
- **Interaction with devolution** (e.g. intra-UK divergence, including Common Frameworks, the UK Internal Market Act, and the NI Protocol)
- **Practical considerations** (e.g. time and resource to review REUL; stakeholder engagement in the policy-making and legislative process; the sunset clause; (un)certainty of what is being sunsetted).

7. The following papers are attached—

- **Annexe A:** Legislative consent memorandum (LCM-S6-29) for the Retained EU Law (Revocation and Reform) Bill.
- **Annexe B:** Written submissions from Food Standards Scotland, Seafood Scotland, Quality Meat Scotland, British Veterinary Association, National Farmers Union of Scotland, and Agricultural Industries Confederation Scotland.

**CEEAC Committee Clerks
November 2022**

Legislative Consent Memorandum

The Retained EU Law (Revocation and Reform) Bill

Introduction

1. This memorandum has been lodged by Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, under Rule 9B.3.1(a) of the Parliament's standing orders. The Retained EU Law (Revocation and Reform) Bill ("**the Bill**") was introduced in the House of Commons on 22 September 2022. The Bill can be found at the UK Parliamentary website.¹

Background

EU law in the UK

2. During the UK's period of EU membership, EU law applied in the UK. The legislation which gave effect to EU law in the UK was the European Communities Act 1972 (the "**ECA**"), in particular section 2 of that Act which made provision for the "General implementation of the EU Treaties". Section 2(1) provided that all "rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties" were to have legal effect in the UK and be part of the UK's legal system. Section 2(2) of the ECA (together with Schedule 2) conferred a power on government Ministers to make regulations to implement any of the UK's EU obligations or to otherwise give effect to EU law (where it didn't already have effect by virtue of section 2(1)).

3. The ECA therefore provided for a comprehensive application of EU law in the UK: where EU legislation had direct effect it applied automatically under section 2(1) and all other EU legislation could be given effect by section 2(2).

4. During the UK's membership of the EU, the European Commission would plan, prepare and propose new European laws. The Commission would then submit a legislative proposal to the European Parliament and the Council of the European Union, which – after discussion, negotiation and amendment - agreed on the text for it to become EU law.

5. National governments and the European Commission are responsible for seeing that those laws passed are then implemented. The two most common forms of EU legal act are Regulations and Directives. Both Regulations and Directives are legally binding, and both are applicable to all members of the EU (although they can be specifically addressed to particular Member States rather than them all). This applied to the UK when it was a Member State.

¹ [Retained EU Law \(Revocation and Reform\) Bill - Parliamentary Bills - UK Parliament](#)

6. As a Member State, the UK had the opportunity to shape the policymaking process through its representation in the European Parliament and Council. Over the course of the UK's 47-year membership, EU law influenced a wide range of areas of UK law, including agriculture, financial services, the environment, employment and immigration. For example, UK employees have benefitted from the introduction of the Working Time Directive.

7. On 12 May 1999, the Scottish Parliament was reconvened in accordance with the wishes of the people of Scotland expressed in the referendum on Scottish devolution held in 1997. The Scottish Parliament is established under the Scotland Act 1998 ("**the Scotland Act**"). Under the terms of the Scotland Act, the Scottish Parliament is empowered to legislate generally for Scotland, but may not legislate for "reserved matters". Reserved matters are those areas which are specified as being the responsibility of the UK Parliament. They include foreign affairs, defence and most economic policy.² Other areas of governance in Scotland, such as health, justice, education, and agriculture/fisheries, are within the legislative competence of the Scottish Parliament.

8. Through devolution, the Scottish Parliament and the Scottish Government became responsible for EU law in devolved areas. Indeed, the Scottish Parliament was expressly prohibited from legislating in a manner which would be contrary to EU law.³ The power in section 2(2) of the ECA to implement EU obligations became exercisable by the Scottish Ministers in devolved areas.⁴

9. Engagement between the devolved and UK Governments in respect of areas where policy making impacted upon devolved competence were set out in a concordat⁵ on EU policy development between the UK and Devolved Administrations. This acted as the underpinning on which inter-UK engagement would take place by which to influence EU policy development.

10. This committed to the full and continuing involvement of Scottish Ministers and officials in the processes of policy formulation, negotiation and implementation, for issues which touch on devolved matters, while emphasising the need to respect the pursuit of a single UK policy line.

11. In practice, this would involve devolved Government representatives working directly within EU groups and contributing directly to EU initiatives, in particular in areas of significant interest to Scotland such as environmental management and protection, research, common fisheries and international further education. Although reflection of the Scottish Government position was variable in terms of the establishment of a common UK line, our direct involvement played a significant role in influencing the EU position in a number of key areas, ensuring Scotland's devolved position was reflected and Scottish expertise was well respected by EU counterparts.

² A full list of reserved matters is set out in Schedule 5 of the Scotland Act.

³ This constraint was provided by the reference to "EU law" in section 29(2)(d) of the Scotland Act which has now been repealed.

⁴ See section 53 of the Scotland Act.

⁵ Concordant on European Union Policy Issues, Supplementary agreement to Memorandum of Understanding on Devolution between the UK Government and Devolved Administrations.

12. The UK voted to leave the EU in a referendum held on 23 June 2016. On 31 January 2020 (“**exit day**”) the United Kingdom left the EU under the terms of the UK/EU Withdrawal Agreement.⁶ This provided for a transition period during which EU law continued to apply in the UK. At 11:00 p.m. on 31 December 2020 (“**IP completion day**”) the transition period ended and EU law (as such) ceased to have effect in the UK. Simultaneously with the end of the transition period, the main substantive provisions of European Union (Withdrawal) Act 2018 (“**EUWA**”) came into force. Sections 2, 3 and 4 of EUWA established a new body of law in the UK known as retained EU law (“**REUL**”).

Retained EU law

13. REUL is a snapshot of the EU law which applied in the UK on 31 December 2020, IP completion day.

14. REUL is divided into three categories. The first category is known as “EU-derived domestic legislation” and is established under section 2 of EUWA. This is any domestic law which implemented the UK’s EU obligations during its period as a Member State. The majority of this legislation is regulations made under section 2(2) of the ECA by UK Ministers, the Scottish Ministers or the ministers of other devolved governments. However, any legislation which was enacted for the purpose of implementing EU law or otherwise for a purpose “relating otherwise to the EU or the EEA” is EU-derived domestic legislation. There were cases when EU obligations were implemented by primary legislation and this constitutes EU-derived domestic legislation. It also includes regulations made using non-ECA powers.

15. The second category is known as “retained direct EU legislation” and is established under section 3 of EUWA. This is the body of EU legislation which had direct effect in the UK immediately before IP completion day. It is mainly EU Regulations but any legislation with direct effect was caught (for example, Decisions addressed to the UK). EU legislation which did not apply in the UK or which was not in force on IP completion day did not become retained direct EU law.

16. The third category of retained EU law is established by section 4 of EUWA. This comprises rights which existed in, and were directly enforceable under, the EU Treaties in the UK.

17. The final component of retained EU law is retained case law. Retained case law comprises judgments of courts which relate to anything which is retained EU law by virtue of sections 2, 3 and 4 of EUWA and were issued prior to IP completion day. Judgments both of the UK’s courts and of the Court of Justice of the European Union (“CJEU”) are retained case law although they are subject to different treatment. Case law developed after IP completion day is not part of retained EU law. The general rule is that retained EU law must be interpreted in accordance with retained case law. Section 6 of EUWA sets out when retained case law may be departed from.

⁶ The agreement, titled the “Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community” is available here: <https://www.legislation.gov.uk/eu/withdrawal-agreement/contents/adopted>

Only certain courts may depart from retained case law. Initially in Scotland it was only the Supreme Court and the High Court of Justiciary which could do so but this was subsequently extended to include the Inner House.

18. A further distinction within EU law is that some of it is reserved and some of it is devolved, falling within the legislative competence of the Scottish Parliament. Indeed, REUL encompasses many regulations made under section 2(2) of the ECA for Scotland by Scottish Ministers and scrutinised by the Scottish Parliament, or made on a UK-wide basis by UK Ministers with the agreement of the Scottish Ministers.

19. The status of retained EU law in the UK's legal systems is governed by EUWA. Section 5(2) retains the principle of supremacy of retained EU law over pre-IP completion day enactments (the principle does not apply in relation to post IP-completion day enactments). This means that where there is a conflict between retained EU law and domestic law passed before IP completion day, the retained EU law will prevail. Section 7 and Schedule 8 of EUWA set down rules as to how retained EU law can be amended and how it interacts with domestic law.

20. Section 8 of EUWA confers a power on UK Ministers to amend or revoke retained EU law to address "deficiencies". Schedule 2 confers a corresponding power on the Scottish Ministers and other devolved governments. The power has been used to amend retained EU law so that it functions outside of the European Union. It cannot be used to update retained EU law for future policy or technical requirements. The deficiency power will expire shortly - two years after IP completion day, 31 December 2022 (section 8(8) of EUWA).

21. The scheme set out for REUL in EUWA was intended to provide a stable and consistent legal framework on EU exit, including the treatment of precedent - the concept of supremacy and the general principles of EU law - and allow for any reform of these areas of law to be done in an orderly and considered manner.

Content of the Retained EU Law (Revocation and Reform) Bill

22. The Explanatory Notes which accompany the Bill set out the UK Government's view on its purpose and effect. These state that the main purpose of the Bill is to "remove the precedence of retained EU law in the UK statute book and to firmly re-establish our Parliament as the principal source of law in the UK, restoring the primacy of Acts of Parliament in the UK statute book".

23. The Bill makes the following provision, which significantly alters the application of EUWA as described above:

Sunset of retained EU law

24. The Bill provides that the majority of retained EU law will be brought to an end, removing its effect in domestic law. This is referred to in the Bill and Explanatory Notes as a “sunset” of retained EU law.

25. Clause 1 of the Bill provides that retained EU law which falls into either of two categories is revoked at the end of 2023. These are “EU derived subordinate legislation” and “retained EU direct legislation”. Detail of the scope of this revocation (including an explanation of these terms) is provided in the Annex. Essentially, the sunset will cover domestic law which implemented EU obligations and is retained EU law under section 2 of EUWA (with the exception of provisions in Acts of the Scottish Parliament and other primary legislation) and EU law which had direct effect in the UK before IP completion day and became retained EU law under section 3 of EUWA.⁷

26. Clause 1(2) of the Bill sets out how retained EU law may be preserved. “A relevant national authority” may make regulations to specify that all or part of a piece of retained EU law is not to be revoked (and so remain in force after the end of 2023). As regards devolved matters in Scotland, the appropriate national authority is the Scottish Ministers or Ministers of the Crown (UK Government Ministers) either separately or acting together. Only UK Ministers may decide to preserve retained EU law which relates to reserved matters.

27. Clause 2 of the Bill allows for the possibility of an extension of the sunset for specified instruments or classes of instrument to a date no later than 23 June 2026 at the discretion of Ministers of the Crown; this power is not exercisable by Scottish Ministers.

28. Clause 3 of the Bill provides a further sunset by repealing section 4 EUWA by the end of 2023. This will bring to an end the rights which were retained under that section. There is no provision enabling anything retained under section 4 to be preserved and the sunset date cannot be extended.

“Assimilation” of retained EU law

29. The preceding provisions of the Bill provide for the sunset of retained EU law unless it is specifically preserved. Where retained EU law is preserved it will remain on the statute book and the Bill makes changes to its status within the legal system. The Bill and Explanatory Notes refer this as “assimilation”.

30. Clause 4 of the Bill abolishes the principle of supremacy of EU law over pre-IP completion day enactments. Under current arrangements, where there is a conflict between a provision in retained EU law and a provision in domestic law which was enacted prior to IP completion day, retained EU law will prevail. The Bill switches the hierarchy of this position.

⁷ Other matters excluded from the sunset are “Northern Ireland legislation” and certain financial services rules, regulations and requirements which are not relevant for this memorandum.

31. Clause 8 enables a relevant national authority to make regulations to disapply the removal of supremacy in respect of the relationship between specified pieces of retained EU law and domestic law (therefore maintaining the status quo).

32. Clause 5 of the Bill abolishes the retained general principles of EU law which are currently relevant for interpreting retained EU law.

33. These changes are effected by amendments to EUWA which come into effect at the end of 2023. There is no provision to allow them to happen at a later date even if the sunset provision of clause 1 is extended. Clause 6 provides that retained EU law will become known as “assimilated” law from then on.

Interpretation of retained EU law

34. At present, EUWA enables certain senior courts to overrule (and depart from) retained case law. In Scotland these courts are the Supreme Court, the Inner House of the Court of Session and the High Court of Justiciary. The Bill seeks to make it easier for them to do so and creates new routes for questions about retained case law to come before them.

35. Clause 7 changes the criteria which the superior courts must take into account when deciding to depart from retained case law. It also creates a new referral procedure whereby the lower courts (or the Law Officers of governments across the UK) may make references to the superior courts for a determination about departing from retained case law.

Modification of retained EU law

36. The Bill is intended to make retained EU law easier to amend. At present EUWA provides a scheme setting out how retained EU law can be departed from. This varies between “retained direct principal EU legislation” (as mentioned, largely EU Regulations) and “retained direct minor EU legislation”. The former category requires either primary legislation or specific powers in secondary legislation to amend. The latter may be amended by secondary legislation generally.

37. Clause 10 and Schedule 1 of the Bill makes modifications to EUWA which will remove the protected status of retained principle EU legislation so that it can be amended in the same way as retained minor EU legislation. Clause 11 removes certain procedural requirements which currently must be satisfied before retained EU law can be modified.

Powers related to retained EU law and assimilated law

38. Clauses 12 to 16 confer a number of new powers to make changes to retained EU law.⁸ In devolved areas these powers are conferred on the Scottish

⁸ Clause 17 confers a power on UK Ministers to “reduce or remove burdens”. It does so by extending the existing power in section 1 of the Legislative and Regulatory Reform Act 2006 to include retained EU law. It cannot be exercised in areas of devolved competence and so is not relevant for this memorandum.

Ministers and Ministers of the Crown. Following the sunset of retained EU law, these powers will be exercisable in relation to preserved retained EU law (which will then be known as “assimilated law”). The new powers will enable Ministers to make the following changes to retained EU law/assimilated law: restate (clauses 12, 13 and 14), revoke with or without replacement (clause 15) and update (clause 16). The revocation power is additional to the “sunset” and is exercisable, including by UK Ministers, ahead of the sunset date and up to 23 June 2026.

Provisions which relate to Scotland

39. The Bill applies to Scotland in its entirety. The Bill is a relevant Bill within Rule 9B.1.1 of the Standing Orders of the Scottish Parliament as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament; it makes provision which alters the legislative competence of the Scottish Parliament; and it makes provision which alters the executive competence of the Scottish Ministers.

40. The clauses of the Bill which require the legislative consent of the Scottish Parliament are:

- a) Clause 1: Sunset of EU-derived subordinate legislation and retained direct EU Legislation,
- b) Clause 2: Extension of sunset under section 1,
- c) Clause 3: Sunset of retained EU rights, powers, liabilities etc.,
- d) Clause 4: Abolition of supremacy of EU law,
- e) Clause 5: Abolition of the general principles of EU law,
- f) Clause 6: “Assimilated law”,
- g) Clause 7: Role of courts,
- h) Clause 8: Compatibility,
- i) Clause 10: Scope of powers,
- j) Clause 12: Power to restate retained EU law,
- k) Clause 13: Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc.,
- l) Clause 14: Power to restate or reproduce: General,
- m) Clause 15: Powers to revoke or replace,
- n) Clause 16: Power to update,
- o) Clause 19: Consequential provision,
- p) Clause 20: Regulations: General
- q) Clause 21: Interpretation,
- r) Schedule 1: Amendment of certain retained EU law,
- s) Schedule 2: Regulations restrictions on the powers of devolved authorities,
- t) Schedule 3: Regulations: procedure.

41. Full details of the provisions which require legislative consent are set out in the Annex.

42. In a letter to the Cabinet Secretary for the Constitution, External Affairs and Culture dated 22 September 2022, the Secretary of State for Business, Energy and Industrial Strategy set out the UK Government’s views on which clauses of the Bill

require the consent of the Scottish Parliament. These clauses are listed in a table in the Explanatory Notes published alongside the Bill. There are a number of clauses which the Scottish Government considers to require the legislative consent of the Scottish Parliament, but which the UK Government does not.⁹ These clauses are included in this Legislative Consent Memorandum as the Scottish Government considers them to be relevant provisions under Rule 9B of the Scottish Parliament's Standing Orders.

Recommendation on legislative consent

43. The Scottish Government believes that the Parliament should not give consent to the Bill for three reasons. Firstly, the Bill's deregulatory agenda poses risks to important protections and high standards. Secondly, it significantly undermines devolution. And thirdly, the Scottish Government believes that the sunset approach brings significant risk to the coherence of the statute book, and that the proposed 2023 date for sunset is impractical and unachievable, imposing unrealistic burdens on both government and Parliamentary resources to complete the necessary work to preserve REUL in the available time.

Deregulation

44. The Scottish Government does not believe that REUL should be sunsetted in Scotland or indeed the UK as a whole. EU law provides for high standards across a range of important areas including devolved matters, such as the environment and agriculture, and reserved matters such as employment law. The Bill risks 47 years of these protections gained via EU membership, and could usher in a deregulated race to the bottom, for society and economy. This is clearly at odds with the wishes of the vast majority of the people of Scotland, 62% of whom voted to remain part of the EU in 2016 and maintain these benefits of membership. Polling from August 2022 shows that support for EU membership has risen since 2016, with 69% saying they would vote to rejoin the EU.

45. The Scottish Government has therefore requested that the UK Government exclude devolved areas of REUL from the sunset, and other areas of the Bill that would impact on the coherence of the application of REUL in Scots law, such as the principle of supremacy.

Respect for devolution

46. A currently drafted, the Bill is another example of a UK Bill that gives UK Ministers powers to act in devolved areas without a formal legal requirement for consent from Scottish Ministers, accountable to the Scottish Parliament for the exercise of that consent. Both the Scottish Government and the Scottish Parliament have made clear their increasing concern at the UK Government taking more of such

⁹ These are: clause 4 (Abolition of supremacy of EU law), clause 5 (Abolition of the general principles of EU law), clause 6 ("Assimilated law"), clause 19 (Consequential provision), clause 20 (Regulations: general), clause 21 (Interpretation), and Schedule 1 (Amendment of certain retained EU law).

powers in Westminster legislation, without the consent of the Scottish Parliament, as they undermine democratic accountability and responsibility for devolved matters.

47. There are no practical or legislative bars to a formal consent requirement which would allow the flexibility to make GB or UK-wide instruments where that is agreed to be best, while recognising and respecting devolution.

48. An example of a recent Westminster Bill where the legislative consent convention was duly respected, and where arrangements were agreed that gave devolved administrations full control over devolved matters was the UK Coronavirus Act 2020. The Scottish Parliament gave legislative consent to the Bill on 24 March 2020, including that the Scottish Ministers had sole authority to decide when temporary devolved, Scottish provisions should be expired, suspended or extended. Key temporary powers included public health protection powers and provision for telephone registration of deaths which were essential to Scotland's response to coronavirus. This demonstrates that the case for giving UK Ministers sole or concurrent powers over devolved, Scottish matters is not made simply because the legislative context is sensitive or complicated. In line with Scottish Ministers' commitment to expire temporary provisions that are no longer necessary, all temporary devolved Scottish provisions of the UK Coronavirus Act 2020 have now expired.

49. The Scottish Government has requested the UK Government amends the Bill to include a statutory consent requirement for UK Ministers' use of the powers in relation to devolved matters in or as regards Scotland. The Scottish Government also believes that, if the Bill is passed, UK and Scottish Ministers should have broadly equivalent powers for example in extending the sunset for specified REUL, a power that rests solely with UK Ministers in the current version of the Bill.

Practical issues

50. The 31 December 2023 sunset date for over 2,400 pieces of REUL creates an unacceptably high risk that vital standards and protections are not properly considered and may, through oversight, disappear overnight at the end of the period. The Scottish Government considers this to be a reckless way to proceed with this crucial legislative framework, and that, if passed in this form, the Bill will create extremely significant burdens on both government and Parliament, potentially jeopardising other elements of the legislative programme and Parliament's work.

Conclusion

51. The Scottish Government believes that the Parliament should not give consent to the Bill for three reasons: its deregulatory agenda; its undermining of devolution; and the risk posed by the sunset provision to automatically repeal this body of law unless Ministers take legislative action and the date of sunset which will disrupt Scottish Government work, including the legislative programme.

Annex

Retained EU Law (Reform and Revocation) Bill: requirement for legislative consent

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

1. Clause 1(1) of the Bill revokes EU-derived subordinate legislation and retained direct EU legislation at the end of 2023. EU derived subordinate legislation is defined in clause 1(4) as:-

“any domestic subordinate legislation so far as

- (a) it was made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972, or
- (b) it was made, or operated immediately before IP completion day, for a purpose mentioned in section 2(2)(a) of that Act (implementation of EU obligations etc.)

and as modified by any enactment”

2. The revocation applies to everything which is retained EU law by virtue of section 2 of EUWA with the exception of primary legislation. The majority of retained EU law in this category comprises regulations made by UK Ministers, the Scottish Ministers or the ministers of other devolved governments under the power in section 2(2) of the ECA. However, the revocation is wider than those instruments and subordinate legislation made under those powers is within scope if it falls into the description of subheading (b). This includes subordinate legislation made under other powers for the purpose of implementing EU law and subordinate legislation which was made for another purpose but which was functioning to implement EU law on IP completion day.

3. Retained direct EU legislation takes its meaning from section 6(7) of EUWA.¹⁰ It is “any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after IP completion day”.¹¹ Any EU legislation which forms part of retained EU law is retained direct EU legislation. There is also a body of retained direct EU legislation which has been created after IP completion day by the exercise of powers conferred in retained EU law.

4. The revocation in clause 1(1) is subject to a number of exclusions. As the Bill applies in Scotland, the primary exclusion is set out in clause 1(2). This clause provides that the revocation “does not apply to an instrument, or a provision of an

¹⁰ See Schedule 1 of the Interpretation Act 1978.

¹¹ It also includes a limited body of EU law which was retained on exit day by the Direct Payments to Farmers (Legislative Continuity) Act 2020.

instrument, that is specified in regulations made by a relevant national authority”.¹² In devolved areas, the Scottish Ministers are a relevant national authority as are Ministers of the Crown. This clause confers a power on the Scottish Ministers to specify in regulations (either alone or jointly with Ministers of the Crown) EU-derived subordinate legislation and retained direct EU legislation to be excluded from the revocation and so remain on the statute book. The Scottish Ministers may specify entire instruments or parts of instruments. Paragraph 2 of Schedule 2 provides that the Scottish Ministers may only make regulations which are within devolved competence.

5. Prior to IP completion day, section 29(2)(d) of the Scotland Act 1998 provided that it was outwith the legislative competence of the Scottish Parliament to make provision which was incompatible with EU law. On IP completion day this restriction was removed. Instead, a new restriction on competence was inserted by section 12(1) of EUWA which provided that the Scottish Parliament could not modify any retained EU law specified in regulations made by the Secretary of State within the period of 2 years from IP completion day. The power of the Secretary of State to do so expired without any such regulations being made and the restriction was removed from section 29(2)(d).¹³

6. In contrast to the position of the Scottish Parliament during the period of the United Kingdom’s membership of the EU, incompatibility with retained EU law is not a constraint on the legislative competence of the Scottish Parliament. The Scottish Parliament may modify, including by revocation and repeal, retained EU law in devolved areas. Clause 1(1) of the Bill applies to EU-derived subordinate legislation and retained direct EU legislation in devolved areas and the Scottish Parliament would have the power to revoke that body of law. This clause is within the legislative competence of the Scottish Parliament.

7. Separately, the power to specify instruments in clause 1(2) to be excluded from the revocation is conferred on the Scottish Ministers and so is a modification of the executive competence of the Scottish Ministers.

Clause 2: Extension of sunset under section 1

8. Clause 2(2) confers a power conferred on Ministers of the Crown to modify the date of the revocation in clause 1 to be a date no later than 23 June 2026. The exercise of this power has the effect of delaying the revocation of EU-derived subordinate legislation and retained direct EU legislation to the date specified.

9. For the reasons set out above, the revocation of retained EU law in devolved areas is within the legislative competence of the Scottish Parliament. The conferral of the power to specify a date of the revocation is also within the legislative competence of the Scottish Parliament.

¹² Clause 1(5) provides an exclusion for subordinate legislation which is “Northern Ireland legislation” and clause 23(5) provides that the revocation does not apply to certain financial services regulations, rules and requirements. These exclusions are not relevant for the purposes of this LCM.

¹³ See the European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022

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

10. This clause repeals section 4 of EUWA. The effect of this will be to cease the effect in domestic law of anything retained by that section. Section 4 of EUWA retained “rights, powers, liabilities, obligations, restrictions, remedies and procedures” which were recognised and enforceable under section 2(1) of the ECA immediately before IP completion day (often referred to as “directly effective rights”).

11. Like clause 1, this clause is described as a “sunset of retained EU law” but it operates in a different manner than the revocation in clause 1. Whereas that clause revoked retained EU law while maintaining the legal effect of sections 2 and 3 of EUWA, this clause effects the sunset by repealing section 4 of EUWA itself.

12. Section 29(2)(c) of the Scotland Act provides that a provision is outside the competence of the Scottish Parliament if “it is in breach of the restrictions in Schedule 4”. Paragraph 1(2)(g) of Schedule 4 provides that the Scottish Parliament cannot modify EUWA.¹⁴ It would therefore not be within the legislative competence of the Scottish Parliament to repeal section 4 of EUWA.

13. However, the repeal of section 4 will cease the effect of directly effective rights in domestic law. It would be within the legislative competence of the Scottish Parliament to revoke directly effective rights in devolved areas. This clause is within the legislative competence of the Scottish Parliament.

Clause 4: Abolition of the supremacy of EU law

14. Clause 4 of the Bill abolishes the supremacy of EU law. While the UK was a member state, EU law had supremacy over domestic law. This meant that domestic law would be interpreted so as to be consistent with EU law. EU law would take precedence over domestic law in the event of an inconsistency. Section 5(1) of EUWA ended the principle of supremacy in relation to post-IP completion enactments. Laws which have been passed since IP completion day have not been subject to the principle of supremacy and prevail over retained EU law. In devolved areas, the Scottish Parliament can modify retained EU law, including by modification or repeal.

15. The principle of supremacy forms part of retained EU law in relation to pre-IP completion day enactments by virtue of section 5(2) and (3) of EUWA. Subsection (3) provides:-

“Subsection (1) does not prevent the principle of the supremacy of EU law from applying to a modification made on or after IP completion day of any enactment or rule of law passed or made before IP completion day if the application of the principle is consistent with the intention of the modification.”

16. The effect of this is to provide that domestic law which existed before IP completion day remains subject to retained EU law and must be interpreted in a manner which is consistent with it.

¹⁴ With the exception of a number of provisions listed in paragraph 1(3) of Schedule 4.

17. Clause 4(1) of the Bill inserts new sections 5(A1), (A2), and (A3) into EUWA. Section 5(A1) provides that the principle of supremacy does not apply to any enactment whenever passed and clause 5(A2) provides that any provision of retained direct EU legislation:-

“(a) must, so far as possible, be read and given effect in a way which is compatible with all domestic enactments, and

(b) is subject to all domestic enactments, so far as it is incompatible with them”.

18. As a result of this clause, pre-IP completion day domestic law will have precedence over retained EU law. This includes domestic law in devolved areas. It would currently be within the competence of the Scottish Parliament to make certain provision in respect of supremacy in an Act of the Scottish Parliament (Clause 8 of the Bill also confers a delegated power on the Scottish Ministers to reinstate supremacy in relation to specific enactments by regulations). The rule in section 5(A1) inserted by clause 4(1) will not be able to be modified, which is a change to the Parliament’s legislative competence.

Clause 5: Abolition of the general principles of EU law

19. Clause 5 of the Bill abolishes the general principles of EU law in domestic law. The general principles of EU law are principles which have been identified by the CJEU which EU institutions and Member States must comply with (for example, proportionality). While the UK was a member state, its legislative and administrative actions which were within the scope of EU law needed to comply with the general principles or be at risk of challenge.

20. The general principles of EU law form part of retained EU law by virtue of section 6(3) of EUWA.¹⁵ This provision provides that:-

“any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after IP completion day and so far as they are relevant to it—

(a) in accordance with any retained case law and any retained general principles of EU law, and

(b) having regard (among other things) to the limits, immediately before IP completion day, of EU competences”.

21. The general principles of EU law are not a fixed list and may be added to from time to time by CJEU jurisprudence. Paragraph 2 of schedule 1 of EUWA provides that no general principle of EU law will be part of retained EU law if it is recognised for the first time after IP completion day. Paragraph 3(1) of Schedule 1 of EUWA removes any rights of action in domestic law based on a failure to comply with any of the general principles of EU law. Paragraph 3(2) provides that a court may not

¹⁵ See section 6(7) of EUWA which provides a definition.

quash an enactment or conduct because it is incompatible with any of the general principles of EU law. The incorporation of the general principles of EU law into retained EU law is clarified by section 5(5) of EUWA. This subsection provides that general principles of EU law form part of retained EU law notwithstanding the fact that the Charter of Fundamental Rights does not (the Explanatory Notes for EUWA explain that a number of general principles of EU law are re-affirmed by the Charter).

22. Clause 5(2)(a) of the Bill inserts a new section 5(A4) into EUWA which provides “No general principle of EU law is part of domestic law after the end of 2023”. The remaining provisions of this section make consequential provision to give effect to this in other parts of EUWA.

23. This clause modifies the rules by which retained EU law operates. The rules are contained in sections 5, 6 and Schedule 1 of EUWA which are protected enactments. The Scottish Parliament could not modify these provisions and this clause is not within the legislative competence of the Scottish Parliament.

24. It is within the legislative competence of the Scottish Parliament to modify retained EU law in devolved areas. At present, the Scottish Parliament may make provision about the application of the general principles of EU law to devolved retained EU law. The effect of this provision is to end the application of those principles in domestic law which will limit the Scottish Parliament’s ability to legislate for their application. This is a modification of the Scottish Parliament’s legislative competence.

Clause 6: “Assimilated law”

25. Clause 6(1) provides that retained EU law is to be known as assimilated law after the end of 2023.

26. Clause 6(2) enables Ministers of the Crown to use the consequential amendment power in clause 19 to amend enactments in consequence of the change in terminology. This would enable UK Ministers to amend devolved legislation and as such is within the legislative competence of the Scottish Parliament.

27. Retained EU law is established by sections 2 to 4 of EUWA and it would not be within legislative competence of the Scottish Parliament to modify the terminology by which it is established. It would be within the legislative competence of the Scottish Parliament to make provision which is consequential on the change in terminology, for example by amending references to retained EU law in Acts of the Scottish Parliament or Scottish Statutory Instruments.

Clause 7: Role of courts

28. Clause 7 provides for amendments to section 6 of EUWA (interpretation of REUL) about the application of retained case law by domestic case law interpreting and applying REUL.

29. It is within the legislative competence of the Scottish Parliament to modify retained EU law in devolved areas. At present, the Parliament is restricted in the provision it can make to modify section 6 of EUWA, as it is a protected enactment. It may, however, otherwise make provision about the interpretation of REUL in devolved areas in certain circumstances where not modifying section 6. The effect of clause 7 is to amend the detail of those provisions, which will accordingly modify the Scottish Parliament's legislative competence.

Clause 8: Compatibility

30. Clause 4 of the Bill provides for the abolition of supremacy of retained EU law. Currently, section 5(2) of EUWA provides that the principle of supremacy applies to enactments passed before IP completion day. Pre-IP completion day enactments require to be read in accordance with retained EU law and where there is a conflict retained EU law will prevail. Section 5(1) of EUWA ended supremacy in respect of enactments passed after IP completion day. Clause 4(1) adds a new sections 5(A1) to (A3) to EUWA. These will end the remaining effects of the principle of supremacy after the end of 2023 and provide that retained direct EU legislation must be read so as to be compatible with, and subject to, domestic legislation.

31. Clause 8 confers a power to provide by regulations for the relationship between parts of retained EU law and domestic law. Regulations may specify that a particular domestic enactment must be read so as to be compatible with, and subject to, retained EU law. In devolved areas, a relevant national authority is the Scottish Ministers or Ministers of the Crown.

32. This clause alters the executive competence of the Scottish Ministers by conferring a function on them.

Clause 10: Scope of powers

33. Clause 10 makes a number of amendments to Part 1 of Schedule 8 of EUWA. This Part sets out how retained direct principle legislation (as defined in section 7(6) of EUWA) and anything retained under section 4 of EUWA may be modified by subordinate legislation. At present, modifications of these types of REUL are subject to restrictions which do not apply to modifications of other types of retained EU law. This clause removes a number of these restrictions enabling retained direct principle legislation and anything retained under section 4 of EUWA to be modified more easily, for example by removing the requirement that they can only be amended or repealed by subordinate legislation that is capable of amending primary legislation (or is expressly capable of modifying that piece of REUL).

34. The effect of this clause is to change the scope of delegated powers generally with regard to their use to modify the categories of REUL mentioned above. This includes delegated powers conferred on the Scottish Ministers and so this clause modifies the executive competence of the Scottish Ministers.

Clauses 12 to 16: new powers to amend retained EU law

35. This set of clauses confer powers on a “relevant national authority”. Clause 21 defines this term:-

“relevant national authority” means—

- (a) a Minister of the Crown,
- (b) a devolved authority, or
- (c) a Minister of the Crown acting jointly with one or more devolved authorities”

36. The Scottish Ministers are a devolved authority. Schedule 2 sets out the scope of the powers of the Scottish Ministers when making regulations under the Bill including these powers. Paragraph 2(2) of Schedule 2 provides that the Scottish Ministers may exercise the powers to make provision if it would be within devolved competence. A provision is within devolved competence if the Scottish Parliament could include it within an Act.¹⁶

37. Each of these clauses modify the executive competence of the Scottish Ministers by conferring functions on them. The powers which are conferred in these clauses are as follows.

Clause 12: Power to restate retained EU law

38. Clause 12(1) confers a power to restate EU law. It applies to any retained EU law which is not primary legislation. This catches law which retained under each of sections 2, 3 and 4 of EUWA as well as rules contained in retained case law. The power can be used to amend the text of primary legislation which was inserted by subordinate legislation. Clause 14 clarifies what is meant by a “restatement”.

39. Clause 12(3) provides that a restatement is not retained EU law and so EUWA will cease to apply to it. The power is time limited by clause 12(7) and it cannot be exercised after the end of 2023.

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

40. Clause 13(1) confers a power in relation to assimilated law that corresponds to the power conferred by clause 12 in relation to retained EU law. Clause 6 of the Bill provides that after the end of 2023 retained EU law will become known as assimilated law and this is the date that the clause 12 power expires.

41. Clause 13(9) provides that the power may not be exercised after 23 June 2026.

¹⁶ Or if it could be made by the Scottish Ministers, the First Ministers or the Lord Advocate in subordinate legislation (see paragraph 2(2)(b) of Schedule 2).

Clause 14: Power to restate or reproduce: general

42. This clause provides what is meant by a “restatement” for the purposes of clauses 12 and 13.

43. Clauses 14(2) and 14(3) sets out the extent to which a restatement may differ from the law being restated. Clause 14(2) provides that the restatement may be drafted using different words or concepts that are used in the original law. Clause 14(3) provides three purposes for which the substance of the restatement may differ. These are to resolve ambiguities, remove doubts or anomalies or to facilitate improvements.

Clause 15: Powers to revoke or replace

44. Clauses 15(1), (2) and (3) confer three separate powers, each of which enables the revocation of retained EU law with different options following the revocation. Clause 15(1) is a power to revoke retained EU law without replacing it. Clause 15(2) is a power to revoke retained EU law and “replace it with such provision as the relevant authority considers to be appropriate and to achieve the same or similar objectives”. Clause 15(3) is a power to revoke retained EU law and “make such alternative provision as the relevant national authority considers appropriate”.

45. These powers may be used to make provision as described in the heads of clause 15(4). These include provision to “create a criminal offence that corresponds or is similar to a criminal offence created by secondary retained EU law revoked by the regulations (and may not otherwise create a criminal offence)” (head (c)) and provide the imposition of monetary penalties (head (d)) and fees (head (e)) but may not impose taxation (head (f)(i)).

46. Clause 15(5) provides that the exercise of the powers in this clause cannot be used to increase a regulatory burden.

47. The powers in this clause may not be exercised after 23 June 2026.

Clause 16: Power to update

48. Clause 16 confers a power to modify secondary retained EU law (or, after the end of 2023, assimilated law) to take account for changes in technology or development in scientific understanding. This power is not time limited.

Clause 19: Consequential provision

49. This clause confers a power on UK Ministers to make consequential provision including amending any enactment, including Acts of the Scottish Parliament and Scottish Statutory Instruments. It would be within the legislative competence to confer a power such as this on the Scottish Ministers.

Clause 20: Regulations: General

50. This clause clarifies the scope of powers conferred under the Bill including powers conferred on the Scottish Ministers. This clause modifies the executive competence of the Scottish Ministers.

Clause 21: Interpretation

51. This clause introduces defined terms which are used in clauses which are within devolved competence and confer functions on the Scottish Ministers. It would therefore be within devolved competence to that extent and so requires an LCM.

Schedule 1

52. This Schedule makes consequential modifications to enactments which refer to retained EU law. One of these enactments is the Professional Qualifications Act 2022 which is within devolved competence.¹⁷ The Scottish Ministers have conferred powers under that Act and this clause will modify the procedure to which those powers are subject. This clause therefore modifies the Scottish Ministers' executive competence.

Schedule 2

53. This Schedule makes provision about the extent of the powers conferred on the Scottish Ministers under the Bill. This schedule therefore modifies the Scottish Ministers' executive competence. This is similar to schedules contained in the other UK "Brexit" legislation.

Schedule 3

54. This Schedule makes provision about procedure that powers conferred under the Bill are subject to, including powers conferred on the Scottish Ministers. This schedule therefore modifies the Scottish Ministers' executive competence.

¹⁷ The Scottish Government's legislative consent memorandum for the Professional Qualifications Act 2022 is available here: [Professional Qualifications Bill | Scottish Parliament Website](#)

This Legislative Consent Memorandum relates to the Retained EU Law (Revocation and Reform) Bill (UK legislation) and was lodged with the Scottish Parliament on 8 November 2022

Retained EU Law (Revocation and Reform) Bill – Legislative Consent Memorandum

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The Retained EU Law (Revocation and Reform) Bill: Food law protects consumers and enables trade

Introduction

By way of background, Food Standards Scotland's (FSS) purpose, as a Non-Ministerial Office of the Scottish Administration, is defined in the Food (Scotland) Act 2015 which gives FSS three objectives:

- to protect the public from risks to health which may arise in connection with the consumption of food;
- to improve the extent to which members of the public have diets which are conducive to good health; and
- to protect the other interests of consumers in relation to food.

We are accountable to the Scottish Parliament and our focus is in ensuring that what we do is:

- developed in accordance with international standards;
- targeted to support consumers interests;
- proportionate to the policy objective in line with our better regulation commitments;
- is non-discriminatory; and
- is appraised in terms of the cost and overall value of the policy objective in accordance with recognised international laws and conventions for such public policy.

We have three main areas of concern with this Bill:

- (i) the legal framework;
- (ii) consumer protection; and
- (iii) trade.

The Legal Framework

Food law is a system. It's not a simple list of regulations that can be picked off without considering interdependencies elsewhere. We consider that food and feed safety and standards legislation should not be subject to the sun setting terms set out in the Bill (irrespective of sunset date) due to the risks of inadvertent or unintended harms that could arise for both consumers and businesses.

Why is food law important? Because it gives businesses certainty, enables trade and underpins UK exports. More importantly it protects consumers. By implication, the Bill presumes that almost all food law (of which over 90% is in fact retained EU law - REUL) is flawed and must therefore be revoked or reformed. While current law can be preserved or restated, the Bill requires that the choice to maintain the law has to be made proactively and confirmed once again by Ministers.

In the context of food safety and standards, the Bill undermines the independence of FSS (and the Food Standards Agency (FSA)) by defaulting to a non-evidenced

sunset of all food law within our remit, unless a huge effort is made to preserve or amend it. The rationale for driving change to retained food law in this way has not been articulated to FSS in a way that makes sense from a food safety and standards perspective. FSS was set up to provide independent, evidence-based advice to Parliament and Scottish Ministers, but the Bill precludes this advice from having to be produced in relation to ending retained EU food law. It's one thing to sunset EU legislation at an arbitrary point in time, but quite another to do it without requiring a proper assessment of the risks to consumers and businesses be carried out first. It is our view that rather than an arbitrary date, food and feed law should only be removed from statute once the effects of doing so have been assessed by independent food safety authorities in the UK, in line with their statutory role.

There are approximately 200 substantial items of REUL which fall either exclusively to FSS or are shared with the FSA (for England, Wales and Northern Ireland), Defra or Department of Health and Social Care. In addition, there are several hundred individual REUL authorisations for regulated food and feed products. The full extent of affected legislation is being worked on by our legal advisors which is indicative of the complexity of the exercise and the potential to inadvertently remove law without it being subject to any scrutiny whatsoever.

These proposals do not represent 'best value' for taxpayer's money given current funding and resource challenges. While one outcome could of course be that Ministers decide that large swathes of retained EU food law can be preserved it still requires the use of significant resource - for very little or no gain – to make the "case" for preservation, irrespective of the sunset dates proposed.

Our concerns are compounded by the fact that any subsequent choice by UK Government Ministers to amend the regulatory landscape in England has consequences elsewhere in GB on account of the Internal Market Act 2020. This makes the determination of the law that applies in any given instance much more difficult if Ministers in one jurisdiction make an active choice to diverge from existing rules and others do not. Any arbitrary sunset date, and a default "deregulatory" policy setting will undermine the collaborative approach to policy development which had been provisionally agreed by each administration under the Common Framework programme¹. That approach enables meaningful discussion on potential areas of divergence as well as evidence in support to be gathered and presented.

Consumer Protection

We noted during second reading of the Bill that it was suggested that the UK had a history of high legislative standards in legislation that "antedate" retained EU Law. However, the Bill does not return us to the legal standards that applied immediately before REUL. Those standards no longer exist. By way of a specific example, in 2004 detailed and prescriptive sector specific legislation in relation to food hygiene was replaced by risk based general requirements which then came into force in 2006. One of the most notable changes at the time was the requirement on most businesses to operate food safety management procedures based on "hazard

¹ [Common Frameworks Update - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/common-frameworks-update)

analysis” (HACCP) principles. In negotiating the legislation the main aim for the UK was the achievement of effective, proportionate and risk-based controls. One area where these EU regulations replaced detailed domestic requirements in law was in relation to butcher’s shops.

If raw meat is contaminated with pathogens such as E.coli O157 and it comes into contact with ready to eat food, people consuming the ready to eat food can become seriously ill. In 1996, a Lanarkshire butcher was identified as being the source of a fatal cross-contamination incident which resulted in 490 cases of infection and 18 deaths. This in turn led to the publication of the Pennington group report which made a number of recommendations including proposals for a licensing scheme for butchers which should apply pending training in and the roll out of a HACCP based approach.

The licensing scheme applied from 2000 until the introduction by the EU of these more flexible risk based controls by the EU in 2006. We presume that measures will be taken to preserve these basic requirements, but we provide this as an example where antecedent domestic law was replaced, with the full support across the UK at the time.

Similarly, the current prohibition on the sale of raw drinking milk direct to consumers in Scotland, which both predates current EU requirements and was permissible through EU “subsidiarity” flexibilities would also be removed by any default sunset. Raw drinking milk has historically been recognised as a high risk to public health due to its association with a number of food poisoning outbreaks in Scotland, and 12 potentially associated deaths. To mitigate this risk mandatory pasteurisation of raw cows’ drinking milk was introduced in Scotland in 1983, and extended to drinking milk from all farmed animals in 2006. Since these controls were put in place illnesses linked to the consumption of raw milk in Scotland have virtually disappeared. Further advice received from the UK Scientific Advisory Committee on the Microbiological Safety of Food in 2018 has supported maintenance of this prohibition in Scotland but nevertheless the regulation giving effect to this policy would be “sunset” by this Bill, unless preserved. We consider this a wholly unnecessary intrusion into a policy area that has already been subject to extensive review and endorsed by public health experts.

The removal of REUL would not therefore return the UK statute book to the UK standards that existed prior to REUL. It would return us to a time where little in the way of any standards applied. We recognise that there are powers available to maintain (but not improve) standards, but we do not agree that we should have to use limited staffing resources to justify their continued existence. A critical purpose of food law is to prevent poor quality, unsafe food reaching the market. Regulation should restrict poor and unsafe practices because **its purpose is to provide public protection**. De-regulation that removes consumer protection should not be assumed to be an improvement.

Food law allows consumers to make informed choices about what they eat, and it helps vulnerable consumers avoid foods that can cause them harm. Food law provides enforcement authorities with the tools to tackle both food fraud and unsafe

practices which in turn enables our reputation for high quality food and drink to be maintained.

Trade Implications

UK food businesses are required to be compliant with food law. The EU remains, and is likely to continue to remain for some time, the UK's biggest export market and therefore exporting businesses will need to continue with close regulatory alignment if they want to retain access to the EU market. Removing large swathes of EU law for businesses trading in Europe doesn't help them at all and nor does it assist Scottish food businesses trading in Northern Ireland where EU food law still applies.

Parliamentarians will also be aware that high regulatory standards for food, based on international rules and norms, are required in order to provide assurance to Scottish and UK trading partners. The World Trade Organisation (WTO) sanitary and phytosanitary (SPS) agreement, for example, is critical in underpinning the UK and EU food safety regimes to facilitate trade. The wholesale sunseting of food law would both undermine our ability to meet these international obligations and send the entirely wrong signal to our international trading partners on our commitment to them. A coherent statute book and well-articulated policy intent form an important part of the narrative when the UK is audited against regulatory standards by our trading partners. The risks of unintended consequences in relation to the trade of food and drink – some of the UK's most valuable exports - should also be considered. To be able to export, there needs to be legal certainty on what the food law framework is and with this Bill that is entirely unclear.

Of course, we recognise that food law should evolve and there is no doubt that areas of law like Regulated Product authorisations (e.g. for food and feed additives) could benefit from review. However, this bill is a high risk approach to achieving improvements or simplifications in food rules.

We remain on hand to provide independent advice to Scottish Ministers and Parliament on areas of regulation that could benefit from evolutionary or wholesale change. With the right resources and a sharper political focus on food and the health of our UK nations there is significant scope for reform. But the 'volume approach' suggested in the scope of this Bill even if the sunset was pushed further back to 2026 is the wrong approach.

Scottish consumers benefit from a legal framework that protects them, and gives businesses legal certainty. Leaving the EU is insufficient justification to simply set aside or deregulate swathes of food law that risks undermining the protection of consumers.

The Scottish Parliament
Constitution, Europe, External Affairs and Culture (CEEAC)
Committee

Retained EU Law (Revocation and Reform) Bill

[Retained EU Law \(Revocation and Reform\) Bill - Parliamentary Bills - UK Parliament](#)



Written Submission by

Seafood Scotland

Edinburgh, 18 November 2022

Sector Summary

Key Facts

- Scottish seafood is exported to over 100 countries
- Scottish vessels landed 437,000 tonnes of Seafish and shellfish in 2021, with a gross value of £560m in 2021
- Exports of Scottish fish and seafood were valued at around £1 billion in 2019, an increase of nearly 11% on the previous year.
- Scottish seafood's top export markets are EU member states, accounting for 70% of Scottish seafood exports (coming to £774 million by value) to the EU in 2019;
- Over half (approx. £435 million) of all Scottish fish and seafood exports bound for the EU go to France. While some exports go to each of the 26 other EU member states, much of the remaining go to countries such as Spain (£91 million), Italy (£56 million), the Irish Republic (£46 million) and Germany (£39 million).
- Global Scottish Salmon export sales were £614m in 2021. The EU accounting for 61% of the volume of global Scottish salmon exports.
- Scotland is by far the biggest aquaculture producer in the UK. Scottish farmed salmon is the UK's number one food export. The EU remains the largest single regional market, importing £449 million of Scottish salmon in 2021
- Scotland exports a significant share of the seafood caught in Scottish waters, with figures estimating that around 80% is consumed outside the UK. The diversity of demand from international markets guarantees that continued supply routes are available for the varied species that Scottish sector lands.

Employment

- There are approximately 314 fish processors in Scotland, most of which are primary processors. The few secondary processors tend to concentrate on food service and retail supply.
- Approximately 8,000 people are employed in the seafood processing sector in Scotland (the Scottish catching sector employs around 4,241).
- Processing is concentrated in the Grampian area, which makes up 38% of all of the processing units and provides 45% of the employment. The Highlands and Islands is the next most important in terms of employment in the processing sector.
- In Grampian, pre Brexit and covid 72% of workers in seafood processing are from the European Economic Area (EEA), a much higher proportion than any other part of the UK.
- The farm-raised salmon sector delivers 2,500 direct jobs in Scotland, supporting more than 3,600 domestic suppliers, and a total of more than 12,000 jobs dependent on the sector.

Value

- Scallops and langoustines are the most valuable UK shellfish exports. Over two-thirds of the world's langoustine are sourced in Scotland. The main markets are France, Spain and Italy.
- Whitefish (Demersal) are also caught, mostly in the North East of Scotland. The main white fish species targeted are haddock, cod and saithe. Monkfish and flatfish species are also landed.
- In 2021 exports of Scottish salmon were worth £614 million. France, USA, and China were the top three markets for Scottish salmon. France is the largest market for Scottish salmon with sales worth £351.3 million, followed by USA (£173.7 million), and China (£45.6 million).
- The EU accounted for 61 per cent of the volume of global Scottish salmon exports and 52 per cent of the value.

EU Market

- Access to EU markets is critical to the seafood industry in Scotland. Seven out of the top ten export markets for Scottish seafood are EU member states, accounting for 70% of Scottish seafood exports (by value).
- Non-Tariff Barriers are now a major headache – customs and sanitary and phytosanitary (SPS) controls are matters of considerable concern given their potential for delays at points of entry to the EU market. Delays can be very damaging, potentially leading to goods being delivered late to customers and/or spoiling of fresh/live products.
- Given the nature of seafood, freshness is key to seafood's appeal to consumers and therefore it must be delivered to market in as pristine a condition as possible, as swiftly as possible. There is a diminution in achievable market price as each day of this shelf life passes. Delays, therefore, can ultimately undermine the profitability (and, in some cases, viability) of the aquaculture, fisheries and fish processing sectors in the UK, particularly in Scotland, which has a higher proportion of its economy centred on seafood than other parts of the UK.
- Scottish seafood enters the EU27 market via a number of routes. However, a very considerable proportion arrives via the Channel Tunnel and this volume of produce is cleared for free circulation within the EU by undergoing checks and formalities at the Border Control Post (BCP) at Boulogne-sur-Mer.
- As well as operating as a BCP, the seafood markets and distribution hubs at Boulogne-sur-Mer are some of the largest in continental Europe and supply much of the European continent with Scottish seafood. They are critical to the exporting success of the Scottish seafood sector.

More information about Seafood Scotland is available here: [About us - Seafood Scotland](#)

Points of Note in relation to the Retained EU Law (Revocation and Reform) Bill

- The Scottish seafood sector has been affected in a variety of ways by the UK's decision to leave the EU. There are a range of views on the issue but the overriding aim for all in the sector is to make a success of the changed circumstances.
- Seafood Scotland recognises and respects the respective political prerogatives of both the UK and Scottish Governments, and the political aims and objectives they are respectively pursuing.
- Notwithstanding this, Seafood Scotland seeks to protect, promote and further the interests of the Scottish seafood sector in all political and legal contexts.

- The **UK Government's** aim to amend the statute book via the Retained EU Law (Revocation and Reform) legislation in order to rationalise and, where desirable, update or replace Retained EU Law (REUL) following EU exit is understandable, and we respect this. The objective of having the "*most sensibly regulated economy in the world*¹" is, as a mere matter of stated intention, a reasonable one. However, to achieve this aim, Scottish seafood and other UK commercial sectors must be involved in the consultation process from the outset and be afforded as much time as is necessary to work with legislators and regulators to inform this.
- Applying sunset clauses to vast swathes of legislation does not allow for the scrutiny and consultation necessary to inform good governance and, more critically, risks adding instability into the business environment. Instead, it appears to create a legal "cliff edge" which will force businesses and representatives to divert considerable resource to understanding and responding to proposed changes. In our view, this is not a satisfactory or sensible approach.
- Moreover, the businesses we represent seek legal certainty and a stable, predictable regulatory framework. Crucially, any changes to the body of REUL may have implications for the operation of the Trade and Cooperation Agreement (TCA) and, ultimately, the conditions under which Scottish seafood businesses trade with the EU.
- We recognise and in a number of instances, could feasibly support the idea of reforming and/or replacing REUL but this needs to be driven by the evidence-based pursuit of desired outcomes, based on normal consultation processes (and appropriate stakeholder engagement); not by arbitrary cut-off dates. The large body of law in question also means that the amount of time necessary for meaningful consultation and scrutiny of the proposed legal changes may be underestimated, and in some cases, quite significantly.
- Furthermore, the process of reform of REUL within any timescale requires full transparency. The [Retained EU Law Dashboard](#) is a useful starting point and should be kept updated with detailed summaries to accompany the legislation in question so that businesses, and their representative bodies, are kept fully informed of the nature of the proposed changes. However, far more needs to be done to involve and consider the views of the sectors affected by the proposed changes.

- The **Scottish Government's** stated intention of dynamically aligning with EU law, meanwhile, is perfectly understandable. However, it has the potential to create a number of problems.

¹ [EU Retained Law - Hansard - UK Parliament](#)

- The [UK Internal Market Act](#) means that goods produced and sold in one constituent nation of the UK must, as a general rule, be accepted and enjoy unfettered market access in any other constituent nation. However, divergence in the rules governing, for example, food production between the constituent nations – which may increasingly be the case if Scotland followed EU laws in devolved policy areas - could see material differences in cost and competitiveness between seafood businesses across the UK. This is a particularly important consideration where there are products with similar characteristics, levels of market demand and price points.
- Furthermore, as representatives of a commercial sector, we reserve the right to keep an open mind on what we consider to be the most appropriate regulation and legislation. We do not have to accept automatically, and without question, that EU Law is the most appropriate body of rules in all circumstances.
- Moreover, it is our assessment that there would be no commercial upside to this policy in terms of, for example, easier access to the EU market for Scottish seafood exporters. We do not foresee the EU providing any special dispensations to Scottish exporters on account of any dynamic alignment with EU law. Not only would there be concerns from the European Commission on traceability in the supply chain but, more fundamentally, as part of the UK, now a Third Country, Scottish exporters to the EU would receive no preferential treatment. This would suggest a situation of having obligations but not rights in relation to EU law.
- We urge the UK Government and Scottish Government to seek to find common ground where possible, and work in a spirit of cooperation to support the Scottish seafood sector. Where there is a purported benefit to diverging from REUL, this should be discussed, debated and considered in a full and transparent consultation process involving the sectors affected. Likewise, where there is a purported benefit to dynamically aligning with EU law, this should be discussed, debated and considered with sectoral input in the same way. The emergence of UK Common Frameworks could possibly help to establish a way forward in this regard.
- The Scottish seafood sector has been forced to adapt to considerable upheaval in recent years, and this next stage of the post-Brexit process will undoubtedly entail more upheaval. This should be done with appropriate consideration of the time and other resource involved.
- The process is also inevitably subject to the law of unintended consequences. As such, we would reiterate the importance of taking sufficient time and affording sufficient consultation and scrutiny to the proposed changes to REUL.

QMS Briefing

Purpose: *To provide written evidence to the Constitution, Europe, External Affairs and Culture Committee on the Retained EU Law (Revocation and Reform) Bill (UK Parliament Legislation).*

Prepared by: *Lucy Ozanne, Industry Strategy and Public Affairs Manager*

Date: *18 November 2022*

Contact: lozanne@qmscotland.co.uk

Quality Meat Scotland is a Non-Departmental Public Body. This advice is provided under the Quality Meat Scotland Order 2008 Schedule 1 point 18 ‘Advising on any matters relating to the red meat sector (other than remuneration or conditions of employment) as to which the Scottish Ministers may request Quality Meat Scotland to advise, and undertaking inquiry for the purpose of enabling Quality Meat Scotland to advise on such matters’. This advice is freely available and further information can be provided by the designated contact above.

1. Legislative burden and impact on sector

- 1.1 There are 2,400 pieces of retained EU law (REUL), with a further 1,400 pieces recently discovered which had not initially been counted.
- 1.2 It is a concern that the correct number of retained EU laws has not been confirmed until recently, several weeks after the bill itself was introduced and the initial timescales had been proposed.
- 1.3 This contributes to the sense that the time scales to reform the UK statute book in relation to REUL are significantly pressured, and therefore the process to “revoke, replace, restate, update, remove or amend” is compromisedⁱ.
- 1.4 We echo the Law Society of Scotland’s concern that “this does not appear to allow sufficient time to enable the review to be completed properly after due consultation with the devolved authorities and the relevant stakeholders including UK Parliamentary and Devolved Legislature Committees”.ⁱⁱ
- 1.5 Former Prime Minister Theresa May stated in the foreword to *Legislating for the United Kingdom’s withdrawal from the European Union*ⁱⁱⁱ that the decision to convert the body of European legislation into UK law at the moment that the European Communities Act was repealed was in order to ensure “maximum certainty” as to what rules and laws apply after Brexit. May stated that it would then be for “democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate”.
- 1.6 The Bill and its timelines as introduced, do not allow for full scrutiny and proper debate. We share the Law Society of Scotland concern that “the process of moving from the “maximum certainty” of REUL to domestic provisions in such a short time could result in less certainty and more confusion with consequent adverse impact on individuals and businesses affected”.
- 1.7 We are deeply concerned as to what this will mean for the Scottish red meat supply chain, as the majority of the sum of REUL sits with Defra (570 laws). The subsequent policy areas with the highest number of REUL to review are:
 - a. Common fisheries – 107 laws
 - b. Animal health – 55 laws

- c. Biosecurity, import controls, controls on food handling within GB – 54 laws
 - d. Plant health – 40 laws
 - e. Rural development, agriculture and the environment – 31 laws
- 1.8 For a sector already facing significant operating challenges and on the brink of undergoing huge policy change, this is alarming and disconcerting.
- 1.9 We are concerned that, with the Scottish Government’s policy to remain as aligned with EU law as possible, divergence between, Scotland and the rest of the UK, and the UK with the EU will widen over time, creating an increasingly complicated operating environment for businesses.
- 1.10 The sector is already deeply concerned regarding the imbalance in import controls between goods entering the UK versus the EU, and the fact that there are over 50 pieces of REUL that will need to be reviewed over the coming months will not abate this concern.

2. Impact on trade

- 2.1 The Scottish red meat supply chain generates over £2 billion annually to Scotland's economy. The supply, use and input-output tables produced by the Scottish Government highlight how valuable meat processing is to the Scottish economy, ranking it in the top 10 out of Scotland’s 98 industrial sectors. Currently, there are over 36,000 people working in the food and drink manufacturing sector in Scotland which accounts for 19% of the Scottish manufacturing workforce. Gross value added to the economy is £1.9bn which is 14.2% of Scottish manufacturing value added. Food and drink manufacturing is Scotland's largest manufacturing sector, made up of almost 900 businesses. Over the last ten years, food exports from Scotland have increased by more than 50% to £815 million. Food and drink manufacturing accounts for around 45% of Scotland's full supply chain turnover and the number of people it employs^{iv}. The red meat sector in Scotland currently supports around 50,000 jobs.
- 2.2 The Scottish Food & Drink industry plays a major role in UK exports, accounting for 29% of all UK food and drink exports to the world in 2021.
- 2.3 Despite the additional cost and complexity involved in accessing the EU market following single market exit, export sales remain heavily dominated by trade with customers in EU countries, with Scottish exports of red meat and offal sold outside the UK rebounding to £80.5m in the year from August 2021 to July 2022.
- 2.4 Around 93% of overall export revenues were generated in EU markets, climbing to around 99% for Scotch Lamb.
- 2.5 With thin operating margins in the processing sector of as little as 2%, export markets are a vital source of additional revenue over and above what can be achieved in the home market, helping to balance the carcass. In turn, this supports the amount of money that can be spent procuring livestock from Scotland’s cattle, sheep and pig producers.
- 2.6 The main export destinations for Scotch Beef in 2021-22 were Italy, France and The Netherlands, collectively accounting for nearly two-thirds of the total, with Belgium, Germany and Hong Kong also proving to be important markets. Along with the Irish Republic, The Netherlands and France were the main destinations for non-Scotch Beef, accounting for more than 80% of trade
- 2.7 Sales of co-products to overseas customers continued to make an important contribution to carcass balance for Scotland’s red meat processors. Overall sales of offal were estimated at

almost £9m with close to 90% of this being from cattle. There were a number of important outlets for these co-products, led by France. Other important destinations in the EU included the Irish Republic, Poland and Germany.

2.8 Therefore the Scottish red meat sector cannot risk any further obstacles in accessing the EU trade market.

3. Conclusion

3.1 As outlined by the Law Society of Scotland, “there is no reason why retained EU law (REUL) cannot be considered a sustainable concept”.

3.2 We believe that the priority should be ensuring that our producers, processors and the rest of the supply chain remain on a level, legislative playing field with their counterparts in the EU, and law are reviewed as deemed necessary, without a deadline.

ⁱ <https://publications.parliament.uk/pa/bills/cbill/58-03/0156/en/220156en.pdf>

ⁱⁱ <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-202223/retained-eu-law-revocation-and-reform-bill/>

ⁱⁱⁱ <https://www.gov.uk/government/publications/the-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union#foreword-from-the-prime-minister>

^{iv} <https://www.skillsdevelopmentscotland.co.uk/media/43589/fa-l6-food-and-drink-technologies-framework-specification.pdf>

BVA comments on Retained EU Law (Revocation and Reform) Bill

Who we are

- 1) The British Veterinary Association (BVA) is the national representative body for the veterinary profession in the UK with over 19,000 members. BVA represents, supports, and champions the interests of vets in this country.
- 2) BVA Scottish Branch brings together representatives of local veterinary associations, BVA's specialist divisions, government, and research organisations in Scotland. The Branch advises BVA on the consensus view of Scottish members on local and United Kingdom issues.
- 3) We are grateful for the opportunity to submit evidence to the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee's on the Legislative Consent Memorandum for the [Retained EU Law \(Revocation and Reform\) Bill](#).

Introduction

- 4) The Retained EU Law (Revocation and Reform) Bill, was presented to the House of Commons for its first reading on Thursday 22 September 2022. Its purpose is to overhaul the body of UK domestic law known as "retained EU law" (REUL), which came into existence after the post-Brexit transition period at the end of 2020.

Summary of the Bill

- 5) The Bill would repeal a large section of what is currently retained EU law and any laws which are retained beyond the end of 2023 will be retitled as "assimilated law". It also establishes a process to make it easier to restate, amend, or repeal EU derived legislation through the use of secondary legislation. The Bill would also abolish the current principle of supremacy of EU law and courts will be required to interpret REUL in a manner which is compatible with domestic law as far as possible. Among the key provisions introduced by the Bill will be the "sunsetting", or automatic repeal, of the majority of REUL at the end of 2023. The bill makes provision for the sunset clause to be extended, up to 23 June 2026.
- 6) Under the proposals in the Bill it would become easier for courts to depart from retained EU case law, by creating a new power for the courts to make Incompatibility Orders where a provision of retained direct EU legislation is incompatible with any domestic enactment. It will create new powers for Ministers and devolved authorities to restate or revoke (with or without replacement) retained EU law by Regulation.

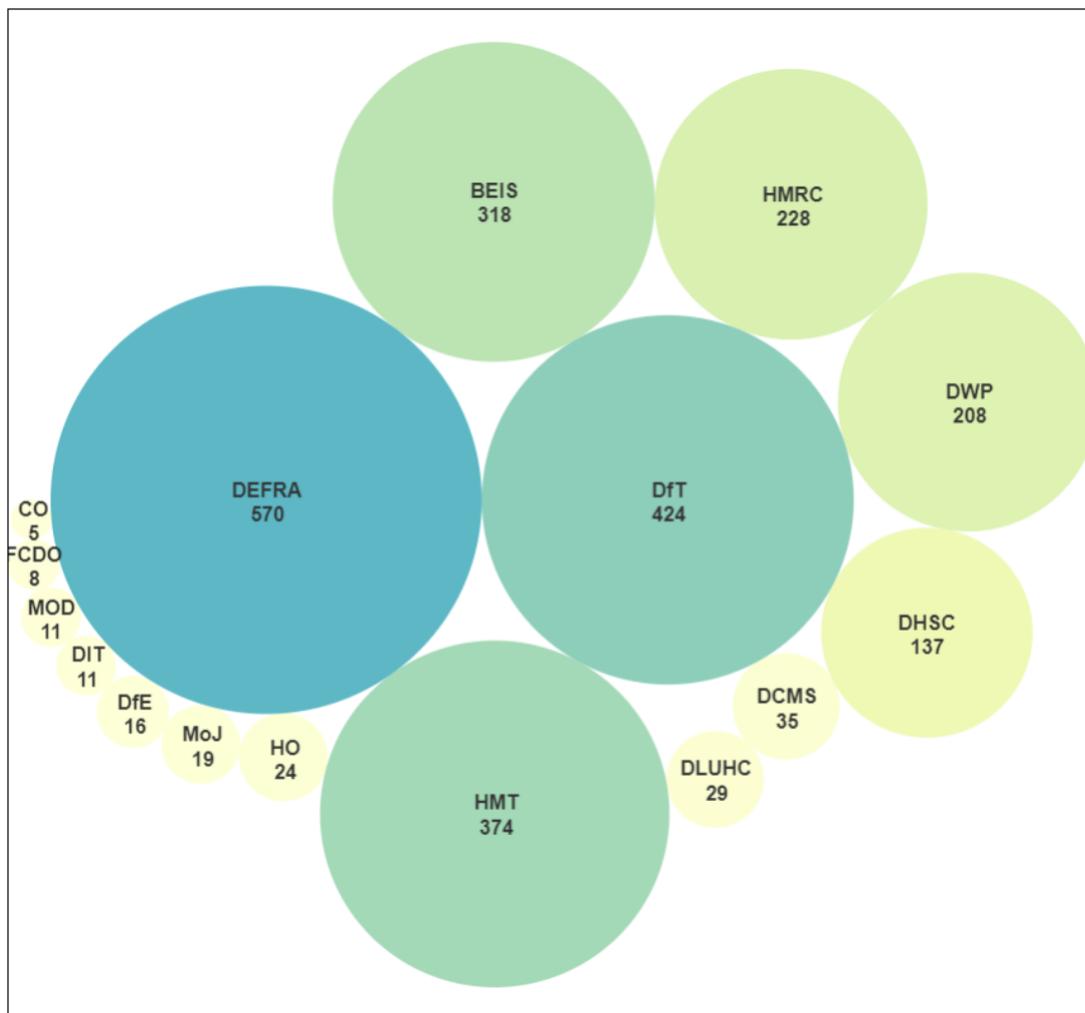
Our thoughts

- 7) We acknowledge the need to review parts of the existing regulatory regime in light of the UK's departure from the EU, to ensure the regulatory framework is optimal to the specific needs of the UK. Any opportunities that may have arisen as a result of the UK leaving the EU should be grasped. However, we have concerns that the proposed Bill is setting up a process for doing so which could create uncertainty and reduce Parliamentary oversight, both in Westminster and Holyrood, of important animal health, animal welfare, public health, food and feed safety regulations.

Government resources

- 8) There is currently a large volume of retained EU law in force in the UK, covering a very wide range of areas. The responsibility for reviewing and replacing legislation would fall

disproportionately within the areas of interest to the veterinary profession: animal health, animal welfare, public health, food and feed safety regulations.



9)

Source: Cabinet Office: Retained EU Law – Public Dashboard¹

- 10) Of the 2417 pieces of EURL listed on the UK Government - Retained EU Law Dashboard², 570 fall within the competence of Defra. More than any other department, Defra would need to initiate the most significant programme to meet the requirements of the Retained EU Law (Revocation and Reform) Bill. Therefore, vital capacity will be diverted from other necessary business unless proportionate additional resources are allocated to this work.
- 11) A high proportion of UK Government animal health policy is enacted via EU legislation in the form of either Directives or Regulations. As well as addressing exotic diseases, such as rabies, avian influenza (AI), foot-and-mouth disease (FMD) and African horse sickness, the legislation includes measures to address endemic diseases such as bovine tuberculosis. Prevention and containment of the latter require systematic measures including targeted surveillance, movement controls and 'stamping-out'. It will be vital for the conclusion of future trade deals to build confidence in our regulatory regime and structures as these will be evaluated by foreign

¹ <https://public.tableau.com/app/profile/governmentreporting/viz/UKGovernment-RetainedEURLawDashboard/Guidance>

² Ibid.

authorities when deciding if the UK is able to export its goods into their territories.

- 12) Close attention also needs to be paid to the potential consequences for public health stemming from the possible introduction of zoonotic diseases if an adequate regulatory regime and subsequent controls are not put in place.
- 13) Additionally, non-Defra regulation will impact veterinary areas. For example, much of the food and feed safety regulation which is overseen by official vets will be counted as Department of Health and Social Care EURL as this is overseen by the Food Standards Agency and Food Standards Scotland. Veterinary businesses will be affected alongside businesses in other sectors of the UK economy, including areas such as employment law, company law, taxation and data protection.
- 14) To achieve improved or at least equivalent regulatory outcomes, every single piece of regulation that is due to be discarded under the Bill should be properly reviewed including a stakeholder consultation to establish whether it should be retained, amended or completely replaced. In our view, it is not feasible to carry out such a process within the proposed timeframe.
- 15) We are concerned that there is a high risk of losing important regulatory protections with significant societal benefits if the process is not undertaken with due care. A project of such magnitude should also look to result in the development of improved regulatory approaches, but this will require stakeholder consultation and review. The proposed timeframe is unlikely to allow for this to take place.
- 16) A further concern is the development of gaps in the regulatory framework which can result in uncertainty for businesses and in turn, inefficient allocation of resources. We are also concerned that whole-sale withdrawal of EU legislation could lead to misalignment in the regulatory regime applicable in Northern Ireland and the rest of the United Kingdom.
- 17) Finally, we are also concerned that already very stretched departmental resources will be re-directed away from other important policy areas, something that may be exacerbated in light of potential public spending restraint.

Devolution

- 18) The policy areas that are of interest have been framed largely by EU membership and devolution. The National Audit Office note that approximately 80% of Defra's areas of responsibility are currently framed by EU legislation.³ Similarly, 80% of Defra's functions are in devolved areas of policy. Agriculture, fisheries, and the environment are all devolved areas of policy.⁴
- 19) EU directives and regulations have provided for common approaches across the UK. It is uncertain how this legislation would interact with devolution. However, there is the potential that this could allow for considerable policy differentiation within the UK in areas where EU law has previously provided a common legal framework. Essentially in each case, the appropriate Minister in England, Scotland and Wales could amend legislation. Allowing different standards could lead to confusion for farmers, transporters, businesses and vets which could potentially compromise animal welfare. In our [Brexit report](#), BVA noted:⁵
- 20) "... in a post-Brexit UK we believe that structures should be put in place to ensure ongoing cooperation and collaboration. Our overarching call is therefore for the four parts of the UK to continue to work together for the good of animal health and welfare, and public health."
- 21) Managing the interaction with devolution will be vital. We would seek assurances from

³ <https://www.nao.org.uk/wp-content/uploads/2017/12/Implementing-the-UKs-exit-from-the-European-Union-the-Department-for-Environment-Food-Rural-Affairs.pdf>

⁴ <https://www.nao.org.uk/wp-content/uploads/2017/12/Implementing-the-UKs-exit-from-the-European-Union-the-Department-for-Environment-Food-Rural-Affairs.pdf>

⁵ <https://www.bva.co.uk/resources-support/practice-management/brexit-and-the-veterinary-profession/>

government that common frameworks that have been developed will be capable of providing a forum where divergence can be managed. Managing these frameworks will be an additional resource demand on Defra. Frameworks are usually led by individual UK Departments. Almost half the Frameworks cover the work of Defra which deals with both environment and agriculture, the two areas with the largest overlap of EU and devolved competences.⁶

Parliamentary oversight

- 22) The Bill includes a transfer of considerable legislative powers to Ministers to modify or revoke regulations. We are concerned that this has the potential to result in new policies that have not undergone a sufficient level of both Parliamentary scrutiny and stakeholder consultation. Consultation with subject matter experts is an important recognised tool to avoid unintended consequences, as well as adverse impacts on affected organisations, professions, businesses and the general public.
- 23) The deadlines proposed under the Bill can possibly only be achieved by granting such sweeping powers to Ministers to modify and revoke existing regulations. However, rather than justifying such powers which undermine principles of Parliamentary scrutiny and prudent policymaking it raises questions and concerns over the appropriateness and knock-on effects of the sunset provisions.

Stakeholder involvement

- 24) BVA, as a key representative body for a profession extensively affected by the provisions in the Bill, will be expected to and will want to liaise with Defra and other government departments as they undertake their own assessments of REUL. However, in order to be in a position to do so we will be required to dedicate significant resources to an internal review of REUL, given that a large number of the laws affected by the Bill have an impact on the work of the veterinary profession.
- 25) This will result in us having to cut down or drop work on other issues of importance to BVA members and by association the wider public. There is a significant danger that this will result in a reduced ability to engage on other relevant issues and lead to a weakening of the role we can play. We therefore see a need to extend the timeframes or remove the “sunsetting” provisions altogether.

⁶ <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-constitution-europe-external-affairs-and-culture-committee/correspondence/2022/common-frameworks-after-brexite>



RETAINED EU LAW (REVOCATION AND REFORM) BILL

1. NFU Scotland is pleased to provide a written submission to the Constitution, Europe, External Affairs and Culture Committee on the Retained EU Law (Revocation and Reform) Bill.
2. We are concerned that this Bill adds to business uncertainty at a time when our sector is facing exponential increases in input costs. Given the importance of Scottish agriculture to rural communities, any negative impacts on our sector must be considered.
3. There is a large number of necessary regulations and policy that may be affected. Those relating to agriculture and food production are important covering standards on food safety, animal health and welfare and the environment. NFU Scotland is therefore seeking clarity on potential implications and assurance that the Bill's unintended consequences will not be detrimental to Scotland's farming and crofting interests or the supply chains and consumers they serve.

Timescale

4. Before the 31 December 2023, UK Government departments and devolved administrations will have to determine which retained EU laws need to be preserved and incorporated into domestic law. Any laws that are not preserved will fall after this date.
5. The sunset date for all direct and derived retained EU law carries a high risk that vital law, on which the smooth functioning of policy mechanisms rely, could be missed.
6. The timescale set out within the Bill is not realistic given the importance of ensuring all required legislation is preserved. Given the current workload of Scottish Government officials, which includes a new Agricultural Bill for the sector, there is concern that there is not sufficient time to ensure all required legislation can be considered in time.
7. The Bill includes an extension mechanism (for up to 23 June 2026) for specified pieces of retained EU law, which would give departments additional time where necessary to assess whether some retained EU law should be preserved.
8. NFU Scotland calls for this extension to be enabled for all legislation relating to agriculture, food production and agri-food supply chains. We understand that this power sits with UK Government Ministers only and is not within the power of the Scottish Government or Parliament.

Missed laws

- There is currently a large volume of retained EU law in force in the UK (approximately 1,500 pieces of legislation in total), covering a very wide range of areas. The Department for Environment, Food and Rural Affairs (DEFRA) has been reported as having the largest amount of retained EU law within its remit, with nearly 600 pieces of legislation, much of which will impact UK farmers. Additionally, non-DEFRA regulation will impact farm businesses alongside businesses in other sectors of the UK economy, including areas such as employment law, company law, taxation and data protection. There must be considerable doubt that this process can be undertaken with due care and attention, while properly involving stakeholders, in such a small timeframe.
- Given the wide scope of the Bill we believe there is an unacceptably high risk that vital law, on which the smooth functioning of food production and the economy depends, simply drops off the UK statute book.

Lack of detail

- The premise of the Bill is that legislation will be removed unless it is preserved. It is therefore not possible to have a complete understanding as to what will go and what will be saved. This uncertainty and inability to determine possible impacts is not helpful for agri-food business at this time of immense economic uncertainty.
- Ideally, we would like to see a schedule with a comprehensive list of legislation. We do not believe that the UK Government dashboard is sufficient or comprehensive that covers all, including devolved, matters.

Internal Market Act

- If measures are retained in Scotland and not in other parts of the UK, the Internal Market Act would result in goods being sold across the UK despite differing regulations. This could result in competitive disadvantages for businesses that could significantly impact business feasibility going forward. NFU Scotland is supportive of common frameworks and encourages their use to retain some form of commonality across the UK to avoid such issues.

Assurance

- There are concerns that the Bill puts environmental and animal health standards at risk. NFU Scotland therefore seek assurances that high agricultural standards will be maintained and that information is provided as to what safeguards will be introduced so as to provide continuity and certainty for the Scottish agricultural sector.

- We understand that primary legislation is not covered by this Bill however we seek concrete assurance that Agriculture (EU Retained Law and Data) (Scotland) Act 2020, which was introduced to provide the legal basis to rollover CAP schemes), will not be affected by this Bill.
- NFU Scotland is also concerned that, given the short timescales involved, that parliamentary scrutiny and engagement with stakeholders will be diminished. This approach increases the risk of unintended consequences and adverse impacts on businesses and minimises accountability for important policy decisions.
- NFU Scotland therefore is seeking a commitment from both Governments and Parliaments that stakeholder engagement will be a priority to ensure that unintended consequences can be avoided where possible.

Conclusion

- Agriculture is the lynchpin of rural Scotland, directly employing 65,000 people in agricultural production whilst also indirectly supporting Scotland's booming food and drink industry which employs 360,000 people. It is essential that government measures support primary producers so that we can maintain a competitive and resilient food supply chain.
- NFU Scotland therefore encourages this Committee and the Scottish Parliament to ensure that an extension to the 31 December 2023 sunset date is granted and that the agri-food sector is given the required detail and assurances to confirm that our farming and crofting sector will not be detrimentally impacted by this legislation.

Retained EU Law (Revocation and Reform) Bill

This Bill was published and introduced to the UK parliament on 22 September 2022 by the short-lived Truss government. At the time of writing it is unclear whether the Sunak government will progress with the Bill as a priority although it is understood that the new prime minister was in principle a supporter of the removal of EU derived law where possible.

The Bill provides the mechanisms for transitioning completely away from “retained EU law” (retained under the European Union (Withdrawal) Act 2018) so that UK law (English, Scottish, Welsh and Northern Ireland laws) contains only domestically enacted legislation. Under the Bill, any retained EU law not expressly preserved and “assimilated” into domestic law will automatically expire (and be removed from the statute book) **by 31 December 2023**, unless extended by ministerial exception.

About the AIC

The Agricultural Industries Confederation (AIC) is the agri-supply industry’s leading trade association with over 230 Members in the agri-supply trade and represents £9 billion turnover at farmgate. AIC represents several sectors within the agri-supply industry including: Animal Feed; Crop Protection and Agronomy; Fertilisers; Grain and Oilseed; Seed.

Five Sectors
Working in support of modern sustainable commercial agriculture

Animal Feed Crop-Protection Fertiliser Grain & Oilseed Seed

Six Assurance Schemes

ESTA TASC (Trade Assurance Scheme for Combinable Crops) FEMAS (Feed Materials Assurance Scheme) UFAS (Universal Feed Assurance Scheme) FIS (Fertiliser Industry Assurance Scheme) RED (Renewable Energy Directive COMPLIANT)

ONE POLICY TEAM

Background

The Withdrawal Act 2018 came into effect at the end of the Brexit transition period, on 31 December 2020, and effectively cut and pasted EU legislation that still applied to the UK on 31 December 2020, whether directly or indirectly, onto the UK statute book with limited exemptions.

This wholesale conversion into UK law of this distinct category of former EU law (labelled “retained EU law”) ensured there were not large holes in the UK statute book after Brexit took effect, providing business continuity and legal certainty. As a general rule, this meant the same EU rules and laws applied after Brexit as before.

Retained EU Law

In September 2021 the government announced a review into the substance of retained EU law. This cross-government review exercise has so far catalogued over 2,400 pieces of EU legislation, known as the Retained EU law dashboard (REUL) (see below)

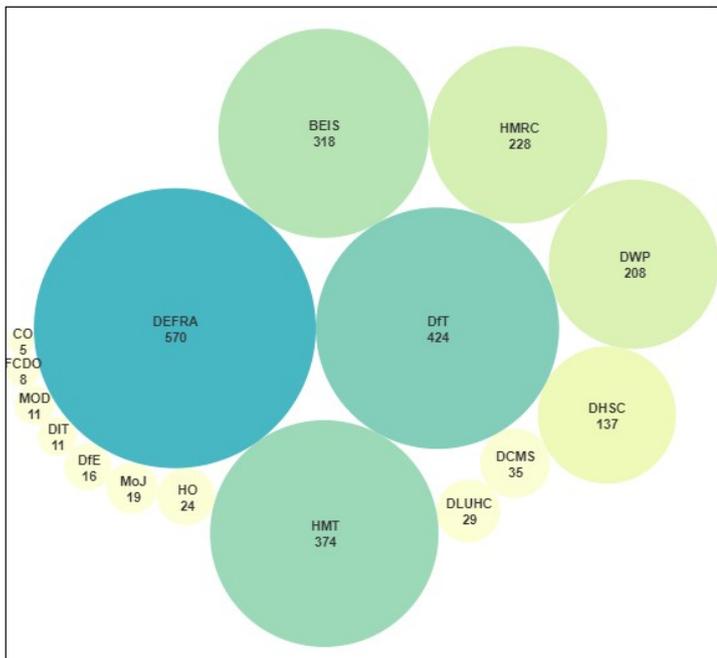


RETAINED EU LAW - PUBLIC DASHBOARD

This page contains a map of retained EU law. You can hover over the department name to view details.

Interactivity: Click on an area of a visualisation to highlight that selection in both charts. CTRL/CMD + click to select multiple objects. To clear your selection(s) either click the selection again or click in the white space of the selected chart.

Department	Number of REUL
Department for Environment, Food and Rural Affairs	570
Department for Transport	424
HM Treasury	374
Department for Business, Energy and Industrial Strategy	318
HM Revenue and Customs	228
Department for Work and Pensions	208
Department of Health and Social Care	137
Department for Digital, Culture, Media & Sport	35
Department for Levelling Up, Housing and Communities	29
Home Office	24
Ministry of Justice	19
Department for Education	16
Department for International Trade	11
Ministry of Defence	11
Foreign, Commonwealth and Development Office	8
Cabinet Office	5



Agricultural Considerations

This Bill's provisions fall most strongly upon Defra as a department, and equivalent departments in devolved nations. Of the 570 identified Defra regulations (noting that the REUL does not necessarily cover all regulations – just those that have been identified), 437 remain unchanged, 70 have been amended and 63 have been repealed.

A vast number of established laws and regulatory standards have been embedded into British regulations for nearly 50 years and many will not realise they are EU derived. Laws relating to the environment, food standards, health and safety, animal welfare etc will fall into this category and will need to be individually considered for retention.

The wholesale review of these regulations in a tight timescale will create both opportunities for change but also potential risks of unintended consequences. A key challenge is ensuring that minimum requirements of food and feed safety remain in place. Failure to do so would mean that the supply chain and assurance schemes would inevitably have to implement their own standards, likely to reciprocate EU legislation as a means to ensure continuity of trade. The continued delay by the Government in putting in place any kind of Border Operating Model (BOM) does mean that any gaps in food and feed law could lead to risks in consumer safety or UK biosecurity. This issue has been raised by the Chair of the FSA in England, Prof Susan Jebb:

In the FSA, we are clear that we cannot simply sunset the laws on food safety and authenticity without a decline in UK food standards and a significant risk to public health. While I'm sure this is not the Government's intention with these plans, the current timeframe does cause me some concern.... This is a very challenging task, and it inevitably means that we will have to deprioritise other important work.

The time allotted and the available civil service resource are perhaps the biggest challenge in the process. It is a substantial exercise to individually scrutinise and, where appropriate, reform 2,400 laws within 13 or fewer months, particularly as many of the laws are interlinked with other laws.

Devolved Considerations

A problem of the REUL dashboard is that it does not clearly distinguish whether and when retained EU law is devolved, and therefore susceptible to amendment or revocation by devolved legislatures or authorities.

Both Welsh and Scottish Ministers have expressed deep concern about the Bill, and the powers it would give to UK Ministers in devolved areas. They have also complained about a lack of advance sight of the most controversial clauses of the bill, adding that the sunset provisions would significantly disrupt their legislative agenda, as efforts were made to preserve REUL that would otherwise fall away.

The FSS has warned of major risks and impacts to Scottish consumers in relation to food safety and standards if the Retained EU Law (Reform and Revocation) Bill is progressed in its current form:

“Unless action is taken, which would require a substantial resource in an extraordinarily short timeframe, to save these standards in law and effectively maintain the protection of consumers, these safeguards will disappear on 31 December, 2023. Hard pressed resources will now have to be devoted to introducing new law to maintain existing law to protect Scottish consumers. Even if high legal standards continued to apply in Scotland, the Internal Market Act, which was introduced in 2020, despite significant concerns voiced by FSS which were ignored, means that there would be no way of stopping goods from elsewhere in the UK being sold in Scotland produced under lower legal standards”

“This Bill could lead to a significant hole where consumer protections sit. The purpose of regulators and regulations, especially in relation to food, is to protect consumers. This Bill confuses ‘red tape’ with consumer protection and indicates that the latter is now less of a priority and of less importance than when we were in the EU”.

Conclusion

- AIC agrees that a fundamental review of all EU legislation is welcome, however this has to be in a realistic timeframe, given its complexity.
 - UK should work towards a comprehensive rethink of food and feed legislation and its process, tailored to the needs of the UK. Developing policy in an evidence-based, open and transparent way is better for the supply chain and consumers. It is better to take more time over this, and get it right, than rush through in just over a year.
 - With the burden falling the highest upon Defra, it remains to be seen how this can be achieved within their current resourcing. If cuts are made to Defra, FSS or FSA, this task is made all the more challenging.
 - It is hard to envisage how this Bill can be enacted in the current timeframe without causing major diversions away from critical Defra legislative work, such as EU Exit legacy issues elsewhere in the crop protection, fertiliser, animal feed and seed sectors.
-