

## CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

28<sup>th</sup> Meeting, 2022, Session 6

1 December 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. On 22 November, under Rule 9B.3.5 of the Standing Orders, the Parliamentary Bureau referred the LCM to the Constitution, Europe, External Affairs and Culture Committee ('the Committee') to consider and report on the LCM.
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](#).
5. At this meeting, the Committee will take evidence on the legislative consent memorandum in a roundtable format from—
  - Isobel Mercer, Senior Policy Officer, RSPB Scotland
  - David McKay, Head of Policy – Scotland, Soil Association
  - Professor Colin Reid, UK Environmental Law Association
  - Lloyd Austin, Governance Group Convener, Scottish Environment LINK
  - David Bowles, Chair, Trade and Animal Welfare Coalition
  - David MacKenzie, Chair, Society of Chief Officers of Trading Standards in Scotland.

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:** Written submissions from UK Environmental Law Association (UKELA), RSPB Scotland, Soil Association, Scottish Environment LINK, and the Society of Chief Officers of Trading Standards in Scotland (SCOTSS).

**CEEAC Committee Clerks  
November 2022**

**UKELA (UK ENVIRONMENTAL LAW ASSOCIATION) SUBMISSIONS TO THE CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE ON THE LEGISLATIVE CONSENT MEMORANDUM FOR THE RETAINED EU LAW (REVOCATION AND REFORM) BILL**

**Introduction**

1. UKELA (UK Environmental Law Association) includes over 1500 academics, lawyers and consultants across the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. These submissions to the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee in relation to the Legislative Consent Memorandum for the Retained EU law (Revocation and Reform) Bill (the LCM) have been prepared by UKELA's Governance and Devolution Group, which aims to inform the debate on the development of post-Brexit environmental law and policy. It does not necessarily, and is not intended to, represent the views and opinions of all UKELA members but has been drawn together from a range of its members. Submissions on the Retained EU law (Revocation and Reform) Bill (the Bill) have recently been made by UKELA to the Senedd the Legislation, Justice and Constitution Committee of Senedd Cymru (16.11.22) and the House of Commons Public Bill Committee (21.11.22)

**Preliminary comments on the approach of the Bill and implications**

3. As the LCM explains the Bill aims to 'sunset' most retained EU law at the end of 2023, subject to provision for: (i) UK and devolved ministers exercising powers to exempt pieces of retained EU law from the sunset and (ii) the ability to 'restate, reproduce or replace' retained EU law that has been 'sunsetting'. There is also a reserve power (for UK ministers only) to delay the deadline for sunset until 23 June 2026.
4. The effect of the Bill is therefore to create a 'cliff-edge' situation for EU-derived

environmental law, the dominant source of domestic environmental law<sup>1</sup>, at the end of 2023.

5. UKELA agrees with the view at paragraph 50 of the LCM that the work required to identify and consider each of the 2,400+ pieces of retained EU law prior to the sunseting deadline would be a monumental exercise for government and the civil service in any circumstances, let alone the current stark economic climate. Implementing the Bill will require very significant administrative time and cost, unnecessarily distracting government departments from focusing on other policy priorities.
6. It should be noted that it is not wholly clear that the Bill identifies the full spectrum of retained EU law that will fall within its scope. Its published dashboard on retained EU law has been shown to be incomplete and there have been media reports that hundreds of additional pieces of individual retained EU law have recently been discovered.
7. Unless specific action is taken to the contrary, whole areas of environmental law such as waste, water and air quality, nature conservation, and the regulation of chemicals will be removed from the statute book automatically, simultaneously and without any safeguards or replacement.
8. Retained EU law that is preserved after the end of 2023 will become 'assimilated law', but will be denuded of the interpretative provisions of EU law, such as supremacy and the general principles (e.g. proportionality) which apply to the interpretation of retained EU law at present. This is not a technical change but a fundamental change in domestic law as, stripped of these interpretive provisions, assimilated law may be interpreted differently in future. This creates further uncertainty and the risk that environmental protections may be lowered in the future through altered interpretative norms.
9. The approach in the Bill stands in stark contrast to the approach taken to the European Union (Withdrawal) Act 2018, under which directly effective EU legislation was converted and incorporated into domestic law and preserved following Brexit (as

<sup>1</sup> It is common view that up until the 31.12.20 around 80% of UK environmental legislation derived from the EU. See e.g. UK Government's Environmental Audit Committee (EAC) report *The Future of the Natural Environment after the EU Referendum* (HMSO, Dec 2016) and reference to evidence submitted to the EAC by the European Environment Bureau at (AEP0054) (footnote 42).

the new concept of “retained EU law”), along with EU-derived domestic legislation. The rationale for this approach was explained by the government in the following terms:

*“This maximises certainty for individuals and businesses, avoids a cliff edge, and provides a stable basis for Parliament and, where appropriate, devolved institutions to change the law where they decide it is right to do so.”<sup>2</sup>*

10. The proposals contained in the Bill represent a radical departure from this approach and will undermine each of those objectives:
  - a. The Bill would not provide individuals and businesses with certainty, as it would not be clear at the point that it is enacted which (if any) pieces of retained EU law may be exempted from the sunseting or possibly restated or replaced subsequently, and therefore what domestic environmental law will look like after 2023.
  - b. The Bill would impose a cliff-edge for EU-derived domestic environmental law, giving rise to a wholesale change in domestic environmental law overnight.
  - c. Far from providing a stable basis for Parliament and the devolved administrations to change retained EU law where they may decide that it is right to do so in the future, the Bill creates unhelpful uncertainty over its continued validity.
  
11. Under the Bill’s proposals, none of the UK Parliament’s, nor the Northern Ireland Assembly will be able to consider retained EU law in the careful and systematic way that was envisaged when the European Union (Withdrawal) Act 2018 was passed. Instead of enabling a detailed consideration of whether particular pieces of retained EU law should be removed from the statute book or replaced with new legislation to reflect the objectives of government post-Brexit (in each case underpinned by a clear policy direction for each area of retained EU law, of which environmental law is only one part), under the Bill nearly all of the body of retained EU law will simply be

<sup>2</sup> Government factsheet on European Union Withdrawal Bill  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714373/2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714373/2.pdf)

removed from the statute book in thirteen months' time, unless regulations are made to preserve individual pieces of retained EU law in the interim.

### **The particular impact of the Bill on environmental law**

12. As noted above, EU-derived environmental law is the dominant source of domestic environmental law and is embedded in domestic legal structures. It is difficult in practice to speak of 'environmental law' without acknowledging the role played by EU-derived provisions within domestic environmental law. While it is recognised that not all domestic environmental law is EU-derived, and also that many other areas of domestic law influenced by retained EU law will also be affected by the Bill, the impacts of the Bill on environmental law will be profound in Scotland as it will in England, Northern Ireland and Wales.
13. The bluntness of the Bill's central feature on revocation is compounded by a paucity of policy direction from the UK government as to how a review of all affected retained EU law (including environmental law) would be carried out within the narrow window before the end of 2023 and the policy aims and objectives that would underpin and guide that exercise.
14. The UK government has previously expressed a desire to drive improved environmental outcomes, and has taken powers to achieve this through the Environment Act 2021 which were expressly intended to build upon retained EU environmental law<sup>3</sup>, not act as a replacement or substitute for it. It has also introduced proposed reform to environmental assessment regimes in the Levelling Up and Regeneration Bill through the concept of 'environmental outcome reports' (EORs), but that bill contains very little detail on the new approach, which is to be set out in secondary legislation<sup>4</sup>.
15. It is therefore unclear how the government's ambitions for improved environmental outcomes can be achieved through the Bill given the deregulatory parameters that apply to the powers under clause 15 which limit the exercise of powers to revoke or

<sup>3</sup> See [Overarching Impact Assessment for proposed Environment Act \(2021\) targets \(Consultation Stage\)](#) 'The UK has a range of existing environmental commitments, some of which are from retained EU law, which will remain in place. Targets will complement the existing legislative landscape but there are gaps in mechanisms to drive improvements and improve the state of our environment (emphasis added)

<sup>4</sup> See e.g., the UKELA submissions to the Scottish Parliament's Net Zero, Energy and Transport Committee (NZET Committee) on the provisions in the Levelling Up and Regeneration Bill 2022 (the Levelling Up Bill) (18.10.22)

replace retained EU law to changes that ‘do not increase the regulatory burden’. ‘Burden’ is defined widely and includes, in addition to financial costs and regulatory obstacles, the concept of ‘administrative inconvenience’ which appears to be of potentially very broad application. There is an inherent tension between the ambition to deliver a ‘nature positive’ future and the deregulatory ceiling that the Bill will introduce.

16. The deregulatory nature of the Bill contrasts starkly with the approach to retained EU law under other recent and emerging legislation. For example, clause 122 of the Levelling Up and Regeneration Bill expressly includes the terms ‘safeguards’ and ‘non-regression’ in the heading and limits the Secretary of State’s powers to make EOR regulations that would weaken the protections secured by retained EU law on environmental assessment:

***122 Safeguards: non-regression, international obligations and public engagement***

*(1) The Secretary of State may make EOR regulations only if satisfied that making the regulations will not result in environmental law providing an overall level of environmental protection that is less than that provided by environmental law at the time this Act is passed.*

*(2) EOR regulations may not contain provision that is inconsistent with the implementation of the international obligations of the United Kingdom relating to the assessment of the environmental impact of relevant plans and relevant consents.* (underlining added)

17. It is unclear how the provisions of these two Bills are intended to interact. In the event that the Levelling Up and Regeneration Bill is enacted in its current form prior to the sunseting deadline under the Bill at the end of 2023, this would seem to mean that regulations under the Levelling Up and Regeneration Bill to implement the EOR regime could not be made if they would provide an overall level of environmental protection that was less than the protections deriving from retained EU law (e.g. environmental impact assessment, strategic environmental assessment and the Habitats Regulations) prior to sunseting, even though the relevant pieces of retained EU law will, absent a decision to save them, be subject to sunseting under the Bill.
18. Similarly, powers under sections 112 & 113 of the Environment Act 2021 to make regulations amending aspects of the Habitats Regulations may only be exercised

where the Secretary of State is satisfied that '*the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.*' The powers under ss. 112 & 113 were clearly designed to ensure that the environmental protections secured under the Habitats Regulations would not be weakened (and, implicitly, that the Habitats Regulations would continue to have effect). The Bill will ride roughshod over these provisions.

19. In summary, UKELA considers that the overall approach proposed under the Bill will lead to a significant risk that the substance as well as the coherence of environmental law across the UK will be undermined and weakened, and it is very difficult to reconcile this approach with the UK government's previous statements as to the future of environmental law.

### **Implications for devolved administrations and the nature of UK-wide environmental law post-Brexit**

20. UKELA agrees with the LCM and considers that the Bill will have significant implications for devolution and UK-wide environmental law. Whilst Ministers in the devolved administrations will have powers under the Bill in relation to devolved matters, UK ministers will have co-extensive powers to change retained EU law as it applies within the devolved administrations without their consent, in contravention of the principle of the Sewel convention (albeit that the convention only applies to primary legislation which is not within the scope of the Bill).
21. Environmental policy is largely a devolved matter in the UK. When the UK was an EU Member State, environmental law across the UK remained relatively unified due to the common EU environmental law framework, without the need to draw sharp lines around devolved policy competence for environmental matters domestically. The Bill is likely to herald a divergence in environmental law across the nations of the UK, leading to a patchwork and fragmented approach, given the Scottish Parliament's intention in enacting the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021<sup>5</sup> to maintain alignment with EU standards on environmental protection and other matters.
22. By legislative happenstance, the impact of the Bill in devolved administrations will be

<sup>5</sup> And similarly in the requirements of the Northern Ireland Protocol with respect to Northern Ireland.

different to England in some respects. For example, in Scotland the strategic environmental assessment directive is implemented through primary legislation (the Environmental Assessment (Scotland) Act 2005) which is outside the scope of the Bill, whereas in England it is implemented through regulations which are subject to the Bill. Similarly, the Water Framework Directive is largely implemented in Scotland by the Water Environment and Water Services (Scotland) Act 2003, and will thus not be subject to 'sunsetting' under the Bill, whereas the equivalent regulations in England will be.

23. The tight timescales between the enactment of the Bill and the sunseting deadline mean that there is likely to be no realistic prospect that the UK government and devolved administrations could agree where an agreed common framework with respect to a matter of retained EU environmental law would be desirable, let alone work up and implement an agreed common framework. It is difficult to see how the administrations will be able to coordinate progress within the time constraints to avoid the risk of a silo approach and uncoordinated action<sup>6</sup>.
24. Moreover, UKELA believes that the situation for some legislative provisions may be further complicated in Scotland by two factors:
  - 1) That the European Communities Act 1972 (ECA 1972) allowed UK Ministers to make regulations within devolved areas, so that there did not have to be rigid separation between devolved and reserved provisions where a measure straddled the boundary. Accordingly some instruments that do contain matters within devolved competence may also contain some that are reserved, so that Scottish Ministers will not by themselves have power to determine the future (saving, replacing, etc.) in relation to all elements of the instrument. Over the 50 years that primary and secondary legislation in environmental matters was drawn up based upon EU provisions it will likely to be impossible to identify which provisions (some predating the existence of devolution) were made via 'reserved' provisions but where Scotland will wish to nevertheless retain that law.

<sup>6</sup> There are also particular challenges in relation to Northern Ireland, where the obligations under the Northern Ireland Protocol require that the law remains in step with many aspects of EU law. Identifying what measures need to be retained for this reason, and any incidental effects of other measures disappearing will be a major task. The passage of the Northern Ireland Protocol Bill and the outcome of the continuing negotiations between the UK and the EU may provide some answers to this challenge, but for the time being the added layers of uncertainty over these only complicate the position further. The current absence of functioning institutions of government in NI only exacerbates the situation.

- 2) Also, a number of statutory instruments were made under the authority of both the ECA 1972 and a domestic 'parent Act'. For instance, the Water Environment (Controlled Activities) (Scotland) Regulations 2011, SSI 2011/209 was made under the ECA 1972 and the Water Environment and Water Services (Scotland) Act 2003. In these cases, there is likely to be overlapping authority under both Acts for some provisions, but there appears to be a need to identify and separate those which are authorised only by the ECA 1972 since those will be affected by the sunset provision, whereas others will survive on the basis of their domestic authority. This need to segregate the provisions on the basis of devolved/reserved content and the specific parent authority will be a further substantial task and the differential impact on different provisions within the one set of regulations may be very disruptive.
25. Devolution is another example where the approach of the Bill contrasts with other recent legislation. For example, in the case of EORs under the Levelling Up and Regeneration Bill, the Secretary of State may only make regulations which contain provision within Scottish devolved competence after at least consulting the Scottish Ministers<sup>7</sup>.

### **Impact on UK's international obligations relating to environmental law**

26. It should be borne in mind that many EU-derived environmental obligations, now persisting as retained EU law, implement multilateral environmental agreements by which the UK is bound, such as the Bern Convention<sup>8</sup>, the Ramsar Convention<sup>9</sup> the Aarhus Convention<sup>10</sup>, or the Convention on Long-range Transboundary Air Pollution. Ongoing compliance with these international treaties by the UK government is an important reason for maintaining retained EU law as a baseline level of environmental protection and for being mindful of the wider legal architectures in which they are embedded.
27. In addition, the UK has made commitments under the UK-EU Trade and Cooperation Agreement (TCA), including as to non-regression on levels of environmental and climate protection and to respect recognised international principles of environmental

<sup>7</sup> See clause 123(1) of the Bill

<sup>8</sup> Convention on the conservation of European wildlife and natural habitats

<sup>9</sup> Convention on wetlands of international importance especially as waterfowl habitat

<sup>10</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

policy, such as the precautionary principle and polluter pays principle. There are specific obligations under the TCA on the UK to maintain specific features of the law which are currently retained EU law but which will disappear with sunseting, for example commitments to procedures for environmental assessment under Article 393 and access to environmental information under Article 398.

28. As contrasted with the Levelling Up and Regeneration Bill, which in the context of EORs recognises the importance of international commitments (see 16 above), the proposals in the Bill would leave a legislative vacuum which undermines confidence and certainty as to the UK's willingness and capacity in view of a changing legal framework to continue to comply with these international obligations.

### **Government resources and other pressures**

29. The challenge of reviewing each piece of retained EU law that will be affected by the Bill prior to the sunseting deadline will be particularly acute for the Scottish Government's Environment and Forestry Directorate with probably the largest amount of retained EU law by area to review<sup>11</sup>. If the UK government is unable to meet statutory obligations relating to the environment (particularly very recently enacted ones)<sup>12</sup>, it is difficult to see how a wide-ranging review into all retained EU law that will be affected by the Bill prior to the end of 2023, including environmental law, will be undertaken. There is no reason to believe that the pressures on public resources in Scotland will be any different. This is particularly so, bearing in mind that under the UK Internal Market Act 2020 the decisions for England will in practice have a major impact on the practical effect of regulatory decisions in devolved nations.

### **Conclusions**

30. UKELA considers that the Bill should be significantly rethought to ensure that the important environmental protections found in retained EU law are not lost by the arbitrary application of legislative guillotine at the end of 2023.

<sup>11</sup> As is anticipated to be the case for Defra in relation to England.:

<sup>12</sup> The question of resources is already a real rather than purely hypothetical one. For example, in England, the UK government has recently failed to introduce draft statutory instruments to set statutory environmental targets as required under the Environment Act 2021 by the end of October 2021, citing '*the volume of material and the significant public response*' <https://www.gov.uk/government/news/update-on-progress-on-environmental-targets>. This has attracted the scrutiny of the Office for Environmental Protection: <https://www.theoep.org.uk/news/oep-statement-environmental-targets-deadline-being-missed>

31. As already identified, the impact of the Bill on retained EU environmental law (which, as noted, is the predominant source of domestic environmental law) is not readily reconcilable with other recent and emerging legislation and government policy which provide a cogent framework within which the modification of particular pieces of retained EU environmental law should be carried out.

**Professor Colin T Reid and Oliver Spencer (Chair)**  
**UKELA's Governance & Devolution Group**

24 November 2022



November 2022

## RSPB Scotland Evidence to the Constitution and External Affairs Committee on the Retained EU Law (Revocation and Reform Bill)

RSPB Scotland is part of the RSPB, the largest nature conservation charity in Europe, taking action for nature with a bird's eye view. Together with our partners, we protect threatened birds and wildlife so our towns, coasts and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations.

We are deeply concerned about the [Retained EU Law \(Revocation and Reform\) Bill](#) ('the REUL Bill'), which has major implications for environmental standards and many other areas of law in Scotland. We appreciate the opportunity to present our views to the committee. This a technically complex bill – our evidence sets out our initial understanding about the implications of this Bill for Scotland's environment.

### Summary

The REUL Bill has **major implications for a whole range of areas in Scotland** including environmental protection, food standards, animal and human welfare and workers' rights law as well as for legal certainty more generally.

**Retained EU Law (REUL) creates a legislative cliff-edge for some of the most important and powerful legislation we have to protect the environment and nature**, such as the Habitats Regulations, air quality and water regulations and regulations on environmental assessment. We agree with the [statement from the Scottish Government](#) that: "This bill puts at risk the high standards people in Scotland have rightly come to expect..."

We are at a critical juncture for nature, almost two years into the [UN Decade on Ecosystem Restoration](#) – we must focus on restoring nature, but instead we find ourselves fighting to keep our existing, effective protections. Scotland is [ranked](#) 212<sup>th</sup> of 240 countries and territories on how intact our biodiversity remains. Some of this loss is historical, but [evidence](#) also shows we are still losing nature now, with 49% of species in Scotland having declined in abundance since 1994. **The Scottish Government has welcome ambitions to restore nature but the REUL Bill could derail Scotland's ability to deliver those ambitions.**

**This Bill creates an unacceptably high level of risk and uncertainty for nature.** In December, the UK Government will represent the UK at the Convention on Biological Diversity COP15 in Montreal, to agree a vital new global deal for nature. This Bill sends a message to global leaders that the UK is not serious in its intentions on nature. **We are calling on the UK Government to withdraw the Bill with immediate effect.**

### Potential impacts of the Bill's 'sunsetting' provisions

Retained EU Law (REUL) is a category of domestic law created at the end of the transition period by the European Union (Withdrawal) Act 2018. It contains many essential environmental and human health protections on a vast range of subjects including air and water quality, species and habitats protection and pesticides and chemicals levels in food and water as well as workers, consumers and other business regulations. This is a huge concern for many sectors (for example, [business and unions](#)).



SCOTLAND

November 2022

As Angus Roberston, Cabinet Secretary for Constitution, External Affairs and Culture clearly articulated in [his evidence](#) to the Westminster Bill Committee:

“The Bill grants Ministers, including Scottish Ministers, powers to amend or abandon legislation with minimum democratic scrutiny. Mere inaction or oversight could result in important protections falling from the statute book..”

REUL in Scotland exists in a huge number and variety of statutory instruments. While a comprehensive list of REUL is yet to be published, the Cabinet Office has published a [dashboard](#), which includes 570 pieces of law relating to the environment. We now believe that figure to be closer to 900. However we do not yet know how many of these laws have devolved implications or how many laws in Scotland will be affected. It is of significant concern that there is not a complete list of REUL that is captured by the Bill, as [stated by expert academics](#):

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

It is worth noting that in June of this year [the Welsh Government requested the REUL dashboard](#) was amended to include information about which REUL are in devolved areas. It is our understanding this has still not been made clear and there is no ability to search for REUL in devolved areas within the dashboard.

Some environmental REULs are specific to Scotland, while some apply to the whole of the UK. The sunset provision in Clause 1 of the Bill means that, unless action is taken to retain, replace or amend a REUL, it will automatically be revoked on the 31<sup>st</sup> December 2023. While there is scope for some laws to be subject to a later sunset of 2026, the power to extend the sunset (to 2026) is only available to a Minister of the Crown and not to Ministers in the Devolved Administrations, meaning everything in Scotland will need to be reviewed before the end of 2023 with time before 31<sup>st</sup> December to retain, revoke amend etc and the parliamentary processes required for that.

This ‘cliff edge’ constitutes irresponsible law making: a legislative sledgehammer instead of an evidence-driven, targeted and cost-effective process. Moreover, due to the sheer amount of REUL, there is a real danger that important laws will fall automatically at the end of 2023, simply because they have not been identified and/or restated or amended in time. This could lead to significant gaps in our environmental law framework that could have knock-on effects on other domestic and assimilated laws because they depend on each other. The UK Government’s better regulation watchdog, the Regulatory Policy Committee, [found that the Impact Assessment](#) for the Bill was ‘[not fit for purpose \(red-rated\)](#)’<sup>1</sup> due to inadequate analysis of the full impacts of the Bill including on businesses, trade & investment and impacts across the devolved administrations.

---

<sup>1</sup> [Meaning the RPC](#) has major concerns over the quality of evidence, analysis and on the quality of the impact assessment that need addresses



SCOTLAND

November 2022

### **Potential implications on environmental standards in Scotland**

We welcome the Scottish Government's [repeated](#) and [clear commitments](#) to maintain or exceed EU environmental laws. We assume that the Scottish Government's intention would be to retain all REUL on Scotland's statute books. However, it is not clear in practical terms how the Scottish Government might be able to retain regulations in effect for Scotland if the UK Government's position is to revoke or amend UK-wide regulations.

In addition, changes in respect of areas solely within UK Government control also have major potential to impact on environmental protections in Scotland – for example, the UK [Habitats Regulations which include protections for our best wildlife sites](#) and vulnerable species and require environmental assessment of plans and projects which may effect those sites, apply in the process for consenting energy projects in Scotland that are over a certain size (50MW). The Offshore Habitats Regulations are also UK-wide. Changes to requirements governing the UK Government's assessment of environmental impacts and responsibilities to protect nature, including any weakening through hasty redrafting, could allow unsustainable developments to go ahead on or around these vitally important nature sites, and could also have a significant impact on Scotland's natural environment.

Another example are the Marine Strategy regulations which places obligations on the UK governments to take steps towards achieving Good Environmental Status (GES), and to monitor and report on this [urgently needed progress](#). Weakening these regulations would mean reducing the obligation on the governments to make further progress towards GES, and to monitor and report on that progress. What is not clear is whether the UK Government could change these regulations without even consulting the DAs. Please see Greener UK's [Committee Stage briefing](#) for more.

It is also unclear what potential interactions there are between the REUL Bill and the Internal Market Act 2020 and the potential collective impacts that might have on the ability and freedom of the devolved nations to retain higher standards in devolved areas than the UK Government. During a [Westminster Hall debate](#), BEIS Minister Dean Russell made various reassurances regarding the devolution settlements and a commitment to not weaken environmental protections, however these reassurances are not reflected within the Bill itself.

### **Resourcing and capacity: implications for the legislative programme in Scotland**

The apparent impact of the 2023 sunset clause is that Scottish Government officials will need to work through a body of thousands of pieces of REUL and implement decisions before a deadline which is a little over a year away. The requirement to process the vast number of Statutory Instruments during the UK's withdrawal from the EU gives a glimpse into what this might look like in terms of capacity from the Scottish Government and potential impacts on the legislative programme in Scotland. The current implications of the REUL Bill look to be even more drastic.

Many [experts](#) have been clear that the large proportion of the UK's environmental laws are retained EU law. There may be a need to review and strengthen these laws, to drive improvements to both the law itself and how it works in practice but change needs to be managed well, undertaken carefully, and with enough time and resource to ensure maximum benefit in strengthening environmental protections and to avoid unintended consequences. However the Bill creates a real risk that there will be poor prioritisation and poor decision-making, especially when resources are finite.



SCOTLAND

November 2022

There is also a risk that REUL will simply be lost due to insufficient time and capacity being available to fully review, or due to confusion over where competency lies. Furthermore, it is highly likely this process would have knock-on impacts on the delivery of the Scottish Government and Parliament's own commitments and legislative priorities – for example crucial promised legislation on agriculture, the natural environment and licensing of driven grouse-shooting and muirburn. Whilst the Scottish Government's commitments to 'an ambitious programme of enhancing nature protections and delivering nature restoration' are welcome and reassuring, we remain deeply concerned that this Bill will undermine their ability to deliver on these commitments.

**Summary of other key issues in the Bill:**

1. The Bill will transfer considerable legislative powers from the UK and devolved Parliaments to the UK and Devolved Executives. UK and Devolved Ministers will be empowered to change REUL via statutory instruments which receive very limited parliamentary scrutiny with no meaningful opportunity for challenge from parliamentarians;
2. In addition the Bill gives UK Government Ministers powers to make changes without Scottish Parliament or Government consent;
3. Clause 15 of the Bill gives UK and Devolved Ministers extremely wide powers to revoke or replace retained EU law (REUL) and to lay replacement legislation either with 'such provision as the relevant national authority considers to be appropriate to achieve the same or similar objectives' or with 'such alternative provision as the relevant national authority considers appropriate'. This subjective judgement of appropriateness, accompanied by such a limited link to the objectives of the original legislation, leaves clear potential for sensible, longstanding protections to be replaced by regulations with entirely divergent aims and outcomes;
4. When replacing REUL, UK and devolved ministers must also not increase the regulatory burden, which is defined to include any financial costs, administrative inconveniences or obstacles to trade, innovation, efficiency, productivity or profitability. The direction of travel that this Bill promotes is therefore abundantly clear – deregulatory. This means that if Scottish Ministers wanted to use this process to strengthen environmental standards, they may be unable to do so; and
5. Clause 16 provides an ongoing power to amend REUL in light of changes to science and technological understanding, but provides no clarity as to the expertise, objectivity or scrutiny of such judgements nor definitions for either.



November 2022

## **Evidence to the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee on the Retained EU Law (Revocation and Reform) Bill**

### **About the Soil Association**

The Soil Association is a membership charity, formed in 1946 by a group of farmers, scientists, doctors and nutritionists who were determined to pioneer a world where we can live in health and in harmony with nature. Our vision is good food for all, produced with care for the natural world. Today, the Soil Association works to develop, innovate and scale-up solutions for sustainable food and farming. We welcome the opportunity to provide our views to this committee.

### **Summary**

The Retained EU Law (Revocation and Reform) Bill could have deep and lasting implications for our natural environment, our food system and our rights as consumers and citizens. By including a 'sunset' provision (Clause 1), it puts at risk hundreds of individual pieces of legislation and regulation which have been built up over decades while the UK was a member of the EU.

The Soil Association shares the concern of other environmental NGOs this Bill is part of a wider drive towards deregulation that contradicts repeated statements from the UK Government that it would deliver a 'green Brexit'.

It is unclear how the timescales envisioned within the Bill for reviewing, amending or repealing such a volume of legislation can realistically be met. This challenge around capacity – for both the UK and Scottish governments – is one of our biggest concerns about this Bill.

The Soil Association has publicly called for the UK Government to withdraw the Bill. We have no objection to a sensible process that examines, updates or improves existing environmental laws, but we do not think this Bill delivers that.

If the Bill is not withdrawn, then any amendments to, or removal of, retained EU law must be subject to proper parliamentary oversight and scrutiny. This must include an agreed process for engagement and consultation with the devolved administrations on any review, amendment or revocation of legislation impacting on the devolved nations. The process should be clearly set out within the Bill.

### **REUL Bill and devolution**

This Bill has major implications for environmental law and the maintenance of standards in areas such as animal welfare and food safety in Scotland, Wales and Northern Ireland.

The Scottish Government has already responded (we comment on the Legislative Consent Motion in the next section), while the Welsh Government has publicly shared its concerns about the potential impact on environmental, food and health standards. The uncertain situation in Northern Ireland is summarised very well in this [policy brief](#) from Dr Jane Clarke (RSPB Northern Ireland), Dr Viviane Gravey and Dr Lisa Claire Whitten (Queen's University Belfast).

[The Scottish Parliament Information Centre \(SPICe\) briefing](#) provides a comprehensive and detailed overview of the Retained EU Law Bill and its implications for devolution. We would like to highlight



November 2022

the point made within the SPICe briefing and by other academics about the limitations of the UK Government Retained EU Law dashboard. We are particularly concerned about the admission from UK Government within the introductory text to the dashboard that it “is not intended to provide a comprehensive account of REUL that sits with the competence of the devolved administrations but may contain individual pieces of REUL which do sit in devolved areas.” Given the length of time and resources it would take to analyse the volume of legislation already listed, this admission that the dashboard is not fully representative of all the individual pieces of law affected makes it very difficult to provide a fully informed assessment of the implications of this Bill for devolved competencies.

We also note the [Ministerial Statement](#) on June 27<sup>th</sup> from the Minister for the Constitution Mick Antoniw on the Welsh Government’s view of the dashboard, which included the point that any primary legislation made in Wales could also be affected by the UK Government’s plans to amend, repeal or replace all RUELE. The same applies in Scotland.

The complexity of whether environmental rules will fall under the scope of the REUL Bill was summarised well in [a blog by Dr Viviane Gravey and Prof Colin T Reid](#), who made the point that it “depends on the history of devolved implementation of EU law and most notably on how EU directives were transposed in the four administrations: using primary or secondary legislation”. This blog also raises concerns about how the REUL Bill deals with regulatory divergence. The Soil Association has previously submitted evidence to the Scottish Parliament’s Rural Affairs, Islands and Natural Environment Committee on UK Common Frameworks and the process for dealing with divergence between the nations of the UK. While we raised some questions about the framework around organic production, we broadly agreed with the structure proposed and the mechanisms in place for matters such as dispute resolution. There is no such system or process in place for managing regulatory divergence under the REUL Bill as it is currently drafted.

With regard to the sunset provision under which any remaining REUL would be removed on December 31<sup>st</sup>, 2023, there is scope within the Bill as drafted for some laws to be subject to a later sunset of 2026. However, this power only appears to be available to Ministers of the Crown and not to the devolved administrations. It is not clear on what basis decisions would be made about which laws to extend to the later sunset date. We remain concerned about this proposed ‘cliff edge’, which not only risks losing crucial protections, but also runs the risk of legislation not currently listed in the REUL dashboard of falling off the statute book by accident at the end of the period.

### **Scottish Government LCM**

The Scottish Government lodged a [Legislative Consent Memorandum](#) on September 22<sup>nd</sup>. Within it, three reasons were set out as to why the Scottish Government should not give consent to the Bill.

1. The Bill’s deregulatory agenda poses risks to important protections and high standards.
2. It significantly undermines devolution.
3. 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.

The Soil Association broadly agrees with the Scottish Government position.



November 2022

It is also worth considering the policy context in Scotland within which this Bill sits. The Scottish Government is consulting on a new Agriculture Bill that is due to be introduced to parliament in 2023, while the Good Food Nation Act passed into law in June this year. A Natural Environment Bill is due to be introduced next year, while a consultation has recently closed into a new Biodiversity Strategy with ambitious targets for on-farm nature restoration by 2030. One of the stated outcomes of the Scottish Government's Environment Strategy (2020) is to ensure "Scotland's nature is protected and restored with flourishing biodiversity and clean and healthy air, water, seas and soils". This is in addition to the statutory 2045 net zero target. All this could be seriously undermined by the REUL Bill.

Soil Association frequently calls upon the Scottish (and UK) Government to do more around regulation of food and farming systems. For example, we have called for an enhanced regulatory baseline and for chemical pesticide usage reduction targets in the upcoming Scottish Agriculture Bill. We share [concerns expressed by academics](#) that the REUL Bill provision that Ministers must not "increase regulatory burdens" when revoking or replacing secondary REUL could lead to an effective regulatory ceiling for the environmental ambitions of the devolved administrations. The Scottish Government committed in the 2021/22 Programme for Government to "maintain or exceed" EU environmental standards, and we would like to see Ministers in Scotland (and Wales) going beyond the level of pre-Brexit standards in many areas.

### **The UK Internal Market Act**

The SPICe briefing section on this topic states that "the UK Internal Market Act 2020 (UKIMA) sits across all UK legislation, whether retained EU law or not... as such, any changes to retained EU law which do not comply with the market access principles of UKIMA will be disapplied in the same way as if the changes were to any other type of legislation." Given the Scottish Government has already voiced significant concern about the UKIMA, we are concerned that the REUL Bill as drafted will put further strain on relations between the UK Government and the devolved administrations.

### **The Trade and Co-operation Agreement**

The post-Brexit Trade and Co-operation Agreement (TCA) between the EU and the UK includes 'non-regression' provisions, which the [House of Commons library](#) said are there to ensure that "protections are not reduced below the levels at the end of the transition period if that would affect trade or investment". There is a despite settlement in the TCA to cover the eventuality of divergence between the UK and EU in areas such as environment policy, where both parties have the right to take countermeasures, subject to arbitration. These measures could include temporary suspension of parts of the TCA, or tariffs, but are not defined beyond that. It is not clear what the implications of legislation falling off or being removed from the statute book might be for the future trading relationship between the UK and the EU. In the event that a significant portion of environmental law is revoked, that could be interpreted as working against the spirit, if not the letter, of the TCA.

### **Specific examples of legislation affected**

**Pesticides:** Many of our most fundamental laws on pesticides are derived from the EU. Regulations on [Maximum Residue Levels \(MRLs\)](#), for instance, establish the maximum concentration of a pesticide residue permitted on food, both for animal and human consumption, and are vital to



November 2022

ensure food safety. The [Plant Protection Products \(Sustainable Use\) Regulations 2012](#) set out the requirements for safe use, storage and handling of pesticides, and included a requirement for the UK to adopt a National Action Plan aimed at achieving a sustainable use of pesticides. Along with the [Plant Protection Products Regulation 1107/2009](#), which outlines the rules for the authorisation of pesticides to be sold, used and controlled within any given community, these regulations allow a basic level of human and environmental protection against pesticides, as well as a legal baseline with which to hold the Government accountable.

**Animal welfare:** A raft of animal welfare legislation could be affected by the REUL Bill. For example, the [Animals and Animal Products \(Examination for Residues and Maximum Residues Limits\) \(England and Scotland\) Regulations 2015](#) ensure farm animals are not treated with hormones or unlicensed or prohibited substances. The loss of protections such as this would not only put our basic animal welfare standards at risk, but it would also risk these substances causing pollution by entering water and soils and ultimately ending up in the food that we eat.

**GMOs:** There are several pieces of legislation relating to GMOs that can be easily identified from the UK Government REUL dashboard, but as indicated above, we are not clear at this stage if this is by any means a comprehensive list. Most GMO regulation is EU-derived. [Regulation \(EC\) No 1830/2003](#) provides a framework for the traceability for products consisting of or containing genetically modified organisms (GMOs) as well as food and feed produced from GMOs. This traceability is vital in cases where products may need to be withdrawn, and for the monitoring of the potential effects of particular products on the environment. It also allows for accurate labelling so that consumers can exercise freedom of choice. All of that would be at risk if this regulation was removed.

**Organic production:** Our understanding is that DEFRA's organic unit are currently looking at 200 of more than 500 pieces of legislation linked to the department. This includes [the Council Regulation \(EU\) 834/2007](#) setting out the requirements for organic production and labelling of organic produce. Soil Association has received assurances from DEFRA that the organic regulations will be retained, but we remain concerned about the sheer volume of legislation being examined and the potential loss of 'horizontal' regulation referred to in the retained organic regulation (for example around animal welfare, water quality and payments for sustainable systems).

**Consumer protections:** Food Standards Scotland (FSS) has [drawn attention to the "major risks" to Scottish consumers](#) if the REUL Bill is progressed in its current form. This included concerns about the obligations on businesses under REUL to label food products for allergens, restrictions on the use of decontaminants on meat (such as chlorine washes on chicken), minimum levels of hygiene and the safety and composition of baby food ([Commission Delegated Regulation \(EU\) 2016/127](#) details the specific compositional and information requirements for infant formula and follow-on formula). This poses clear risks to consumer choice and to human health.

**For further information, please contact:**

David McKay, Head of Policy – Scotland, Soil Association.

## LINK Parliamentary Briefing:

### Retained EU Law Bill

November 2022



Scottish  
Environment  
LINK

#### Retained EU Law Bill

Scottish Environment LINK opposes the Retained EU Law Bill and is deeply concerned over the potential impact in devolved areas. The Bill is deregulatory by design and poses significant risks to our natural environment. In addition, the Bill will unnecessarily set a looming deadline to protect existing laws, which risks existing legislation falling out of use should the Scottish Government fail to identify and act upon all relevant legislation in time.

The Retained EU Law Bill represents the single biggest potential modification of environmental law in the UK in recent history. It puts at risk hundreds of laws that are crucial to conserving and restoring the natural environment, as well as to protecting public health and creating a sustainable economy. We are also concerned at the timescales in the Bill, as there is just over one year until the first sunset of retained EU law, which will amount to hundreds of environmental regulations.

We say “hundreds” because it is impossible to be more precise. REUL encompasses legislation made over the course of decades. The Cabinet Office’s attempt to identify REUL has not been comprehensive, and as recently as early November it was admitted that 1400 relevant pieces of legislation had been absent from the official dashboard.

At least 570 pieces of Retained EU Law (REUL) relating to the environment have been identified by the Cabinet Office, but a complicating factor is that it is unclear how many of these laws have devolved implications. This is particularly significant because the Bill as drafted creates a much harsher cliff-edge in devolved areas than in reserved.

The Bill contains a sunset provision that will see any piece of REUL automatically be revoked on 31 December 2023 unless action is taken to retain, replace or amend the legislation. UK Ministers will have the power to set a later sunset of 2026. However, as currently drafted this power is not available to devolved administrations. There is a significant danger that legislation is not identified in time and that environmental protections will fall off the statute book by accident, rather than design.

The process of identifying all relevant legislation is therefore of paramount importance. However, experience shows that this will be complex and time consuming. REUL is a significantly bigger challenge than the comparatively modest EU Exist Statutory Instrument programme, which itself required significant civil service resource within DEFRA to implement.

LINK is therefore extremely worried about the Bill’s impact on civil service capacity at a time when a number of crucial pieces of environmental legislation are being taken forward by the Scottish Government.

In addition, the UK Habitats Regulations – our most important wildlife protections – apply in Scotland under some circumstances. Revoking or weakening these protections could have negative consequences for Scotland’s wildlife and wild places.

#### About

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

**LINK Parliamentary Briefing:**

**Retained EU Law Bill**

November 2022



Scottish  
Environment  
LINK

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899), core funded by Membership Subscriptions and by grants from NatureScot, Scottish Government and Charitable Trusts.  
Registered Headquarters: 5 Atholl Place, Perth, PH1 5NE  
Advocacy Office: Dolphin House, 4 Hunter Square, Edinburgh, EH1 1QW

## **Written Submission by SCOTSS to the Constitution, Europe, External Affairs and Culture Committee on the Retained EU Law (Revocation and Reform) Bill**

### **Background**

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional Trading Standards managers representing every Scottish local authority trading standards service.

The Society liaises with local council colleagues across the UK and engages with government and others around the operation of the consumer protection landscape, providing leadership and consistency to Scotland's 31 trading standards teams. We aim to educate, coordinate, and support.

Local authority Trading Standards services are responsible for the enforcement of a wide range of consumer and trading laws. This includes both devolved and reserved legislation.

### **Overview**

SCOTSS is concerned that the “sunset clause” in the Retained EU Law (Revocation and Reform) Bill (“REUL”) risks causing the loss of a wide range of crucial Trading Standards legislation which protects people, businesses, animals and the environment from both physical and financial harm. A number of these laws are devolved to Scotland, particularly around the topics of animal feedstuffs, animal welfare and human health, and so are directly relevant to discussion of the Bill in the Scottish Parliament. Many others – covering topics such as product safety, scams, consumer rights, intellectual property and weights and measures – are reserved to Westminster but affect Scottish communities daily through the enforcement work of local authority Trading Standards services, and so are of interest to the Scottish Parliament and its committees.

We have general concerns about the process surrounding the REUL Bill: for example the fact that if legislation that has not been considered is disapplied via the sunset clause in December 2023, the law has in effect been significantly changed without Parliamentary scrutiny or impact assessments. However, we recognise that the committee is hearing evidence from legal and parliamentary experts who will deal with these issues with greater expertise than us. Accordingly, we restrict this submission to discussion of Trading Standards technical matters.

### **Devolved Matters**

SCOTSS shares the concern expressed by a range of bodies and individuals that the timescale in the REUL Bill is much too short to enable proper scrutiny of all the legislation that is in scope for the sunset clause taking effect in December 2023. The fear is that the lack of attention that can be paid will result in a loss of vital protections contained in a variety of legislation.

The main areas of affected Trading Standards law in the devolved sphere are:

- Regulation of the safety and quality of animal feedstuffs
- Upholding animal health and welfare standards
- Matters affecting human health around controls on tobacco and vaping products
- Environmental protections such as control of Volatile Organic Compounds
- Fertiliser and Pesticide standards

We understand that primary legislation such as Acts of Parliament are exempt from the REUL Bill sunset clause, but that all subordinate legislation that implements EU requirements and all retained direct EU legislation are covered by the clause. Therefore, the vast majority of the affected Trading

Standards legislation is subject to the clause. See below for a brief commentary on the devolved topic areas. Note however that the UK Government's REUL "dashboard" states:

"This catalogue is provided by the UK Government and is therefore not intended to provide an authoritative account of REUL that sits with the competence of the Devolved administrations. However, it may contain individual pieces of REUL which do sit in devolved areas"<sup>1</sup>.

This seems to us to be a problematic approach, with some Scottish law included but probably most Scottish REUL missing. We are not aware of a comprehensive Scottish list being held anywhere so there is a danger of some pieces of legislation falling to the sunset clause by accident.

**Controls on animal feedstuffs** play a crucial role in ensuring that the food chain in Scotland operates safely and effectively. Accordingly these provisions are fundamental to daily life in Scotland. Trading Standards works closely with Food Standards Scotland to enforce these requirements through local inspections, sampling and investigations. Officers also work collaboratively with feed manufacturers, wholesalers and farmers, providing legal guidance and specific advice to ensure compliance. We understand that virtually all the legislation underpinning this system is in scope for the sunset clause as it is retained direct EU law or Scottish subordinate legislation.

Trading Standards work on **Animal Health and Welfare** ensures acceptable standards are met, particularly in relation to farm animals. A wide range of EU-related legislation regulates such matters as the keeping of farm animals, their transportation, and arrangements for their slaughter at abattoirs. The provisions both ensure the humane treatment of the animals and interact with animal feed laws to sustain a safe food chain for humans. The full "Farm to Fork" journey In Scotland involves the implementation of EU laws. So while some law in this area is exempt from the sunset clause through being primary legislation or not being EU-derived, most of it is under threat from the clause.

Further in relation to animal health are **disease control measures** covering outbreaks of the likes of Avian Influenza, Anthrax, Foot-and-Mouth Disease and Rabies. These measures protect animal and human health and seek to minimise economic damage. Much of this is not EU-related and presumably not subject to the REUL Bill. However, some of it is EU-derived and in danger of disapplication via the sunset clause. This may cause problems in relation to those specific provisions but may also have a negative effect on domestic legislation with which it interacts. Given these complications, the effect of the REUL Bill on animal disease control is very unclear and worrying.

Trading Standards teams play a key role in promoting good health in Scotland through the regulation of the **sale of cigarettes, tobacco and vaping products**. This regime is a complex mix of EU-derived laws and domestic legislation, much of it Scottish. It is aimed at ensuring that such products are not sold to children and that adults are protected from dangerous goods. While some of the domestic legislation is not subject to the sunset clause, other provisions are. As with disease control measures, this risks the important provisions in the EU-derived laws and presents a risk to the effectiveness of the unaffected legislation with which it works in tandem.

Various **environmental protections** are also included in devolved Trading Standards law. An example are controls of **Volatile Organic Compounds (VOCs) in paints and varnishes**, which play an important role in reducing the formation of ground level ozone and promotes improvements in air quality and public health. Unlike the other legislation cited above, this is a more niche topic and not part of the

---

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

normal daily work of Trading Standards teams. However, these provisions are important in underpinning environmental protection and allowing Trading Standards to take action when required.

**Regulation of Fertilisers and Pesticides** is yet another area of law covered by Trading Standards which includes devolved provisions. This body of law is a further complex mix of EU, UK and Scottish legislation and tackles safety and quality issues in relation to these products which have an important role in the Scottish economy through use in agriculture.

### Reserved Matters

Most Trading Standards laws are reserved to Westminster and those that are affected by the REUL Bill may not be directly part of the remit of the committee. However, the possibility that these provisions could be lost in a year's time poses a major threat to the wellbeing of both consumers and businesses in all our Scottish communities. Further, these UK laws work in tandem with devolved legislation and so their loss influences the effectiveness of the devolved provisions. Accordingly, there follows a brief explanation of the main topic areas. Each of these involves vital provisions that if lost would seriously affect Scottish businesses and consumers.

**Fair Trading:** prominent among the affected legislation is the Consumer Protection from Unfair Trading Regulations 2008, which prohibit false descriptions, misleading omissions, aggressive practices and have a general provision that requires businesses to trade fairly. It is no exaggeration to say that these Regulations are the bedrock of the UK's consumer protection regime, and their loss would be a major boon to scammers and any business that seeks to treat consumers badly.

**Product Safety:** while a handful of specific provisions – such as safety of upholstered furniture – are not in scope, the bulk of UK laws that protect consumers from dangerous products are EU-derived. These include toys, electrical products, gas appliances, baby goods, cosmetics, PPE and machinery. The risk to public safety if these provisions are lost is obvious. Further, the Regulations<sup>2</sup> that enable Trading Standards to take action at ports and other importation sites in Scotland is in scope.

**Consumer Buying Rights:** while some rights are “safe” from the sunset clause as they are in the Consumer Rights Act 2015, many others are not. For example, the framework for retail e-Commerce in the UK – including information and cancellation rights for online buyers – is in scope of REUL.

**Weights and Measures:** this regime has its origins in ancient times but still plays a vital role in an effective economy. It ensures that consumers get fair measure at the petrol pump and in the supermarket and goes much further into industrial spheres. Trading Standards work in this area involves daily testing of weighing and measuring equipment that affects many millions of pounds worth of commercial contracts. These laws are widespread, technical and complex and would be particularly difficult to review in the twelve months left until the sunset clause deadline.

**Intellectual Property:** this regime prohibits the sale of fake products to consumers and provides important protections for Scottish businesses in terms of trade marks, copyright, designs and patents.

**Business Protection Regulations:** these provisions prohibit unfair advertising that targets business buyers and provide some important protections for small local businesses with whom local Trading Standards teams in Scotland have regular contact in their role of boosting local economies.

**Others:** a variety of other legislation is covered, including the **Package Travel** etc Regulations which protect millions of British holidaymakers both in the UK and abroad.

---

<sup>2</sup> [Regulation \(EC\) No 765/2008 setting out the requirements for accreditation and market surveillance](#)

## Regulatory Divergence

In addition to the threat to the wellbeing of consumers and businesses in Scotland, the loss of even some of the provisions listed above would also seriously exacerbate a trend that is already happening, i.e. regulatory divergence from the EU. The Chartered Trading Standards Institute's "Brexit Think Tank" Report<sup>3</sup> describes the effects this can have on consumers and businesses in the UK. Some of the areas that have already seen divergence are:

- Cosmetic products: EU technical provisions for safety have changed, with the UK not taking similar steps.
- Product Standards: much of consumer safety law is underpinned by detailed standards for the construction and use of goods and EU approaches are starting to diverge from the UK.
- Online marketplaces: important modernisation of the obligations of these platforms (e.g. the clear identification of whether a seller is in business) in the EU not replicated in the UK.
- Fulfilment houses: a potential "loophole" in the regime on unsafe goods has been tackled by the EU making these businesses liable if no clear importer in the EU. No provisions in UK.

## Conclusion

SCOTSS is very concerned that the REUL Bill sunset clause and its short timescale make scrutiny of the wide range of affected Trading Standards laws impossible, and the loss of these protections would seriously affect Scottish consumers, businesses and communities. This is a loss that would be particularly unwelcome during the ongoing Cost of Living Crisis. We recognise that the Bill allows for a three-year extension to the clause. While even that extension may not provide enough time for proper scrutiny of all affected laws, it would at least create some "breathing space" to allow better consultation and for appropriate Parliamentary time to be allocated in both London and Edinburgh. However, we understand that the sunset extension provisions are not intended to be applied in a "blanket" manner but on a case-by-case basis. One fear arising from that is the possibility that the Trading Standards matters get overlooked while the short time that is left before December 2023 is spent by legislators considered other provisions and applying an extension to those while the Trading Standards legislation falls victim to the sunset clause. This fear is exacerbated by the fact that the list of the REUL "dashboard" is incomplete: as discussed above it omits Scottish laws, plus the recent "discovery" of a further 1400 pieces of UK REUL suggests that there is a real possibility that some reserved law is also missing.

We look to recommend that the committee and the Scottish Parliament give attention to the devolved matters raised in this submission and take whatever action is possible to retain these important public protections. It is hoped that the UK Internal Market Act will not inhibit the Scottish Government and Parliament from taking necessary action in relation to these matters. Further, we recommend that representations are made to the UK authorities regarding the importance of the provisions in reserved Trading Standards retained EU law.

David MacKenzie

Chair, The Society of Chief Officers of Trading Standards in Scotland

25 November 2022

---

<sup>3</sup> See: <https://www.tradingstandards.uk/media/documents/news--policy/brexit-think-tank-2020.pdf>