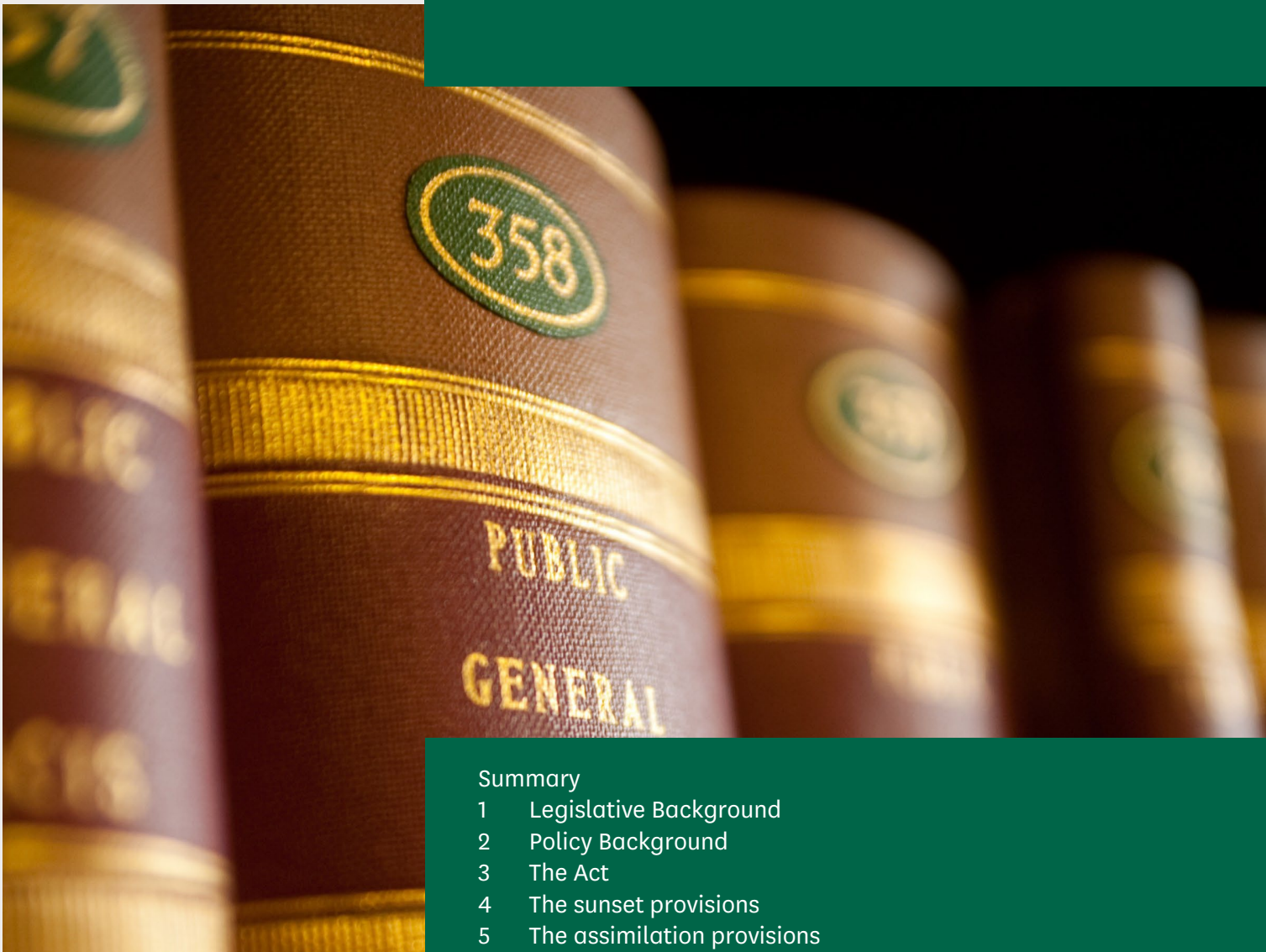


Research Briefing

28 July 2023

By Graeme Cowie

Retained EU Law (Revocation and Reform) Act 2023



Summary

- 1 Legislative Background
- 2 Policy Background
- 3 The Act
- 4 The sunset provisions
- 5 The assimilation provisions
- 6 The interpretation provisions
- 7 The scrutiny provisions
- 8 The delegated powers provisions
- 9 Miscellaneous and final provisions
- 10 Legislative consent and devolution

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclibraryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary	6
1 Legislative Background	8
1.1 How the UK implemented EU law until 2021	8
1.2 Proposals for a “Great Repeal Bill”	10
1.3 The EU (Withdrawal) Act 2018	11
1.4 The EU (Withdrawal Agreement) Act 2020	12
1.5 The Trade and Co-operation Agreement	13
2 Policy Background	14
2.1 Taskforce on Innovation, Growth and Regulatory Reform (TIGRR)	14
2.2 The Brexit Opportunities Unit	16
2.3 Frost review of retained EU law	16
2.4 The Retained EU law dashboard	19
2.5 Policy paper: The Benefits of Brexit	20
2.6 Parliamentary scrutiny of proposals	21
3 The Act	22
4 The sunset provisions	23
4.1 Overview	23
4.2 What is “sunsetting”?	23
4.3 What has already happened to REUL?	24
4.4 The original approach to sunsetting legislation	24
4.5 Section 1 - The Government’s change of approach	27
4.6 Section 2 - Sunsetting of retained direct EU law	28
5 The assimilation provisions	30
5.1 Overview	30
5.2 Section 3 – abolition of supremacy	30
5.3 Section 4 – abolition of general principles of EU law	32

5.4	Section 5 – renaming REUL as assimilated law	33
6	The interpretation provisions	34
6.1	Overview	34
6.2	Section 6 – CJEU and domestic case law	34
6.3	Section 7 – selectively reinstating supremacy	41
6.4	Section 8 – incompatibility orders	42
7	The scrutiny provisions	43
7.1	Overview	43
7.2	Section 9 – modifying and revoking REUL	43
7.3	Section 10 – procedural requirements when changing REUL	45
8	The delegated powers provisions	47
8.1	Overview	47
8.2	Sections 11-13 – the restating and reproducing powers	47
8.3	Section 14 – the revocation and replacement powers	51
8.4	Section 15 – the updating power	53
8.5	Section 16 – Legislative Reform Orders	54
9	Miscellaneous and final provisions	55
9.1	Overview	55
9.2	Section 17 – the REUL Dashboard	55
9.3	Section 18 – the Business Impact Target	56
9.4	Section 19 – consequential provision	58
9.5	Section 20 – provision about regulations	58
9.6	Section 21 – interpretation	60
9.7	Section 22 – commencement	60
9.8	Section 23 – extent and short title	61
10	Legislative consent and devolution	62
10.1	Overview	62
10.2	Legislative consent memorandums and motions	62
10.3	Common ground between Governments	64

10.4	Disagreement about the consent convention	64
10.5	Disagreement about the Bill	64
10.6	Decision to proceed without consent	66
10.7	Unique challenges in Northern Ireland	67
11	Contentious Lords amendments	68
12	Key dates on commencement/implementation	71

Summary

The [Retained EU Law \(Revocation and Reform\) Act](#) received Royal Assent on 29 June 2023. It makes significant changes to the domestic body of law currently known as “retained EU law”.

What is retained EU law?

“Retained EU law” (REUL) is a type of UK domestic law. It was created by the [EU \(Withdrawal\) Act 2018](#) (EUWA), and came into effect at the end of the UK’s post-Brexit transition period (the end of 2020).

The primary objective of REUL was to provide legal continuity and certainty. It sought to minimise any substantive changes in UK domestic law at the point the transition period (and dynamic alignment with EU law) ended. This was achieved by **preserving domestic legislation** that had implemented EU obligations and by **converting parts of EU law** into a domestic equivalent.

Once that post-transition “starting point” had been implemented, it would then be for Parliament and the devolved legislatures to decide whether, how, and to what extent, domestic law and policy should then diverge from that of the EU. Future (mostly primary) domestic legislation would either adapt EU policy frameworks for domestic needs, or replace them entirely.

Retained EU Law (Revocation and Reform) Act

The [Retained EU Law \(Revocation and Reform\) Act 2023](#) makes significant changes to the framework of REUL. At the end of 2023 it will:

- **revoke all or part of 587 legislative instruments** of EU-related origin (though thousands of other legislative instruments will now be kept)
- **revoke all retained directly effective EU law** (for example, rights and obligations formerly conferred directly under EU treaties or directives)
- **revoke the modified principle of supremacy** of EU law (which governs the hierarchy of laws passed before the end of the transition period)
- **revoke the retained general principles** of EU law (which govern the interpretation of REUL)
- **rename** “retained EU law” so that it will be known as “assimilated law”

Additionally the Act:

- **permits and encourages lower courts** more often to **depart from legacy caselaw** of the Court of Justice of the European Union (CJEU)
- **confers broad delegated powers to restate, replicate, revoke and replace** REUL/assimilated law (those powers will expire after 23 June 2026)
- **confers a power to update REUL/assimilated law** in light of technological and scientific developments (these powers will not expire)
- **relaxes the scrutiny rules for modifying or revoking REUL** (making it easier to do using, among other things, pre-existing delegated powers)

Change of approach on the sunset clause

Originally, the Bill proposed to bring about a wholesale revocation of legislation at the end of 2023. This would have affected most (but not all):

- **retained direct EU legislation** (former EU regulations, decisions and tertiary legislation)
- **EU-derived secondary legislation** (mainly statutory instruments made under the [European Communities Act 1972](#), but also those under other Acts that previously implemented the UK's EU obligations)

The original Bill included powers to **delay expiry** and to **preserve** legislation but those decisions would have been for ministers to take by the end of 2023. Critics of this approach said it would lead to legal uncertainty and impose intolerable pressures on government departments/devolved administrations.

At Lords Report Stage, the Government announced a major change in approach. Instead of generically sunsetting legislation, there would be a “list”. A Schedule in the Bill would identify all of the legislative instruments the Government considered no longer to be needed, and these would then expire at the end of 2023. The rest of REUL would remain in place, but be susceptible to repeal under new delegated powers through to June 2026.

Unsuccessful Lords amendments

The House of Lords repeatedly attempted to amend the Bill, so as to increase parliamentary oversight of the expiry and replacement of REUL. There were several Government defeats in the Lords on scrutiny mechanisms for delegated powers, both in general and with a particular focus on environmental standards. However, these amendments were repeatedly rejected by the House of Commons, do not form part of the final Act.

1 Legislative Background

1.1 How the UK implemented EU law until 2021

EU membership and EU obligations

The UK followed EU law (previously known as Community law) since it joined the EEC in 1973.¹ This persisted not just until the UK's withdrawal from the EU (at the end of January 2020) but also for the duration of the post-Brexit transition period (which expired at the end of 31 December 2020).

EU law has a variety of different sources, though the primary source is ultimately the main two EU treaties.² Those provide the authority for various EU institutions to enter into other treaties and to make secondary law, most notably including EU regulations, directives and decisions. Secondary EU legislation may also further delegate decision-making, for example to EU regulatory bodies. Those bodies make what is known as tertiary legislation.

These sources of law are not directly analogous to the domestic distinction between primary and secondary legislation. EU law, even of a secondary or tertiary kind, took precedence over UK primary legislation by virtue of treaty obligations. This hierarchy shaped domestic legislation in important ways.

Where the EU exercised competencies, developments in UK law often tended to be delivered via that EU law or EU-derived domestic legislation. There was simply no need, for example, for a comprehensive domestic agriculture policy, because many decisions were already being made under the EU's Common Agriculture Policy. UK legislation would, however, sometimes "gold-plate" EU laws or consolidate EU-derived rights into specific legislation.

How did the UK give effect to EU law?

The UK gave effect to all directly applicable EU law via [section 2 of the European Communities Act 1972](#) (ECA).³ Most importantly, this section gave

¹ For ease of reading, this paper will refer to the "EU" and take this to include the "European Community" or "EEC", unless the context otherwise requires it.

² The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are the two principal EU treaties, and provide the basis for EU actions and activities. This treaty framework has been successively amended by EU treaties, most recently the Lisbon Treaty, which came into force in 2009.

³ For the arrangements during the post-Brexit transition period, see the (now repealed) [section 1A of the European Union \(Withdrawal\) Act 2018](#).

domestic effect to general principles of EU law, including but not limited to the principles of “supremacy” and “direct effect”.

“Primacy” or “supremacy” of EU law

The principle of “primacy” or “supremacy” of EU law was fully established in the European Court of Justice (ECJ) case of [Costa v ENEL](#) in 1964, some nine years before the UK joined the EEC.⁴ This principle requires EU law to take priority over national law, to the extent that the two are inconsistent.

The UK courts explicitly recognised this principle in the *Factortame* litigation in 1990. In that dispute there was a conflict between the EU treaties and the [Merchant Shipping Act 1988](#). The judicial House of Lords resolved that conflict by disapplying the incompatible domestic legislation.

The primacy of EU law was politically controversial in the UK. Some regarded it as incompatible with the UK’s constitutional tradition of Parliamentary sovereignty. However, as Lord Bridges famously said in [Factortame \(No. 2\)](#):

whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act 1972 was entirely voluntary. Under the terms of the Act of 1972 it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law.⁵

“Direct effect” of certain EU law

The other key principle, to which [section 2\(1\) of the ECA](#) gave effect, was the principle of “direct effect” of EU law. “Direct effect” means that not all EU law requires specific implementing legislation before individuals can rely on it in domestic courts. It has been an established part of EU law since at least the 1963 case of [Van Gen en Loos](#).⁶

In some cases, direct effect is explicitly contemplated under the EU treaties, by virtue of an instrument’s [direct applicability](#). This is the case, for example with EU regulations and, where relevant, EU decisions.⁷ However, direct effect is of broader application, and also covers provisions of the EU treaties, certain treaties entered into by the EU, and (in a more limited [vertical-only form](#)) EU directives.⁸

Other implementation of EU law

EU law was not implemented exclusively via supremacy and direct effect, however. In many cases, there was a need for supporting or implementing domestic legislation. [Section 2\(2\) of the ECA](#) provided a general implementing power, whereby domestic regulations helped to implement EU obligations.

⁴ [Case 6/64 Costa v ENEL](#) [1963] ECR 1.

⁵ [R \(Factortame \(No. 2\)\) v Secretary of State for Transport](#) [1991] 1 AC 603.

⁶ [Case 26/62 Van Gen En Loos v Nederlandse Administratie der Belastingen](#) [1963] ECR 1.

⁷ [Article 288 TFEU](#).

⁸ [Case 41/74 Van Duyn v Home Office](#) [1974] ECR 1337.

This power was critical for implementing EU directives, but also supported implementation of EU treaty obligations, regulations and tertiary legislation.⁹

Although most domestic implementing legislation was made directly under the ECA, not all of it was. Some such law took the form of UK primary legislation (including, notably, the [Equality Act 2010](#)). Sometimes delegated powers contained in other Acts of Parliament were also relied upon.

1.2 Proposals for a “Great Repeal Bill”

In 2017 the (then) UK Government intended that, following the UK’s withdrawal from the EU (and the disapplication of the EU treaties) the [ECA 1972](#) would be repealed. The vehicle for this repeal would be the “Great Repeal Bill” – an Act of Parliament.¹⁰ However, the 2017 white paper, [Legislating for the United Kingdom’s withdrawal from the European Union](#), acknowledged that bare repeal would present major challenges. An absence of saving provision would be especially problematic:

If the Great Repeal Bill did not convert existing EU law into domestic law at the same time as repealing the ECA, the UK’s statute book would contain significant gaps once we left the EU. There are a large number of EU regulations and many other EU-derived laws which form part of our law which, if we were to repeal the ECA without making further provision, would no longer apply, creating large holes in our statute book.¹¹

The intention, therefore, was to legislate to “convert” or “retain” the vast majority of the domestically enforceable law that the UK had accrued by virtue of its membership of the EU.

This new body of law – “retained EU law” – would break the UK’s [dynamic alignment](#) with the EU (it would not automatically track developments in EU law). However, it would provide a post-Brexit starting point: the substantive law would stay the same or very similar for those affected by it. The intention was that Parliament and the devolved legislatures would subsequently decide whether to modify this law, or to repeal or replace it entirely:

In order to achieve a stable and smooth transition, the Government’s overall approach is to convert the body of existing EU law into domestic law, after which Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once we have left the EU. This ensures that, as a general rule, the same rules and laws will apply after we leave the EU as they did before.¹²

⁹ Tertiary legislation being legislation made under the authority of secondary legislation.

¹⁰ The ECA remained in force beyond January 2020, despite its repeal, until the end of December 2020. The post-Brexit transition period required the UK to continue to follow (most of) EU law on the same basis as it had done as a member state. See [section 1A of the EU \(Withdrawal Agreement\) Act 2020](#).

¹¹ Department for Exiting the European Union, [Legislating for the United Kingdom’s withdrawal from the European Union](#), March 2017, para 1.13.

¹² *ibid.* para 1.12.

1.3

The EU (Withdrawal) Act 2018

The proposed “Great Repeal Bill” morphed into the [EU \(Withdrawal\) Act 2018](#) (EUWA). That Act was originally designed to deal with a different situation than the one that eventually transpired. In its original form, it anticipated, and made provision for, what would happen if the UK left the EU without a deal. In those circumstances, major changes would all take place on “exit day” (immediately after the UK ceased to be a member state).

Key features of EUWA

The [EU \(Withdrawal\) Act 2018](#) provided the original framework for retained EU law. Of direct relevance were the following provisions of the Act:

- **Section 1** provided for the repeal of the ECA on “exit day”;
- **Section 2** would thereafter preserve EU-derived domestic legislation, including but not limited to regulations made under [section 2\(2\) of the ECA](#); ¹³
- **Section 3** would thereafter convert directly applicable EU legislation into a domestic equivalent, known as “retained direct EU legislation”; ¹⁴
- **Section 4** would thereafter preserve most, but not all, other directly effective provisions of EU law; ¹⁵
- **Section 5 and Schedule 1** set out the main exceptions and qualifications to the retention of EU law; ¹⁶
- **Section 6** addressed the role of the courts in interpreting REUL, and the future status of CJEU case law; ¹⁷ and
- **Section 7** set out new rules governing the amendability and revocability of different sources of REUL.

The Act also contained time-limited delegated powers (the most notable being in **section 8**). The purpose of those powers was to allow the Government to make changes to REUL, and other domestic law, to deal with

¹³ This would also include consolidating Acts of Parliament that implement EU obligations (like the [Equality Act 2010](#)) and anything done through delegated powers under other primary legislation to the extent that it implemented EU obligations.

¹⁴ This includes EU regulations, EU decisions (so far as directed at the UK) and EU tertiary legislation

¹⁵ This was a “sweeping” provision, which preserves among other things, EU treaty obligations, the direct effects of EU directives, and other directly effective

¹⁶ Most notably, the Charter of Fundamental Rights was excluded, as was the principle of state liability (also known as “Francovich damages”), and EU directives were not, in and of themselves, preserved.

¹⁷ Retained direct EU legislation notably would take precedence over all domestic law enacted before the end of transition, preserving the hierarchy between those instruments. However, REUL would not take precedence over new domestic legislation.

“deficiencies” that would otherwise arise in connection with EU withdrawal. For example, retained legislation might refer to EU agencies that no longer had a role in a post-Brexit UK, or to quotas or restrictions that would no longer be relevant if the UK was no longer part of common EU schemes.

The “deficiencies” or “correcting” power could be used to re-allocate responsibilities to domestic bodies, or to remove completely law that lacked continuing relevance to the UK in a post-Brexit context. The power expired at the end of 2022.

1.4 The EU (Withdrawal Agreement) Act 2020

When the UK reached a withdrawal agreement with the EU, this included a transition period. The UK would be expected to continue to follow almost all EU law, on the same basis as a member state would, until at least the end of 2020. This required [EUWA](#) to be updated, to postpone the “switch-over” date to retained EU law, and anything connected to it.

To that end the [EU \(Withdrawal Agreement\) Act 2020](#) (EUWAA), which also implemented the rest of the Withdrawal Agreement, was enacted shortly after the December 2019 general election.

Postponing key milestones to do with REUL

EUWAA postponed most of the effects of EUWA, so that the REUL “switch-over” would happen at the end of transition (“IP completion day”). This had a knock-on effect on things like delegated powers, which would consequentially “sunset” 11 months later than was previously intended under a no-deal scenario.¹⁸

However, the Government wished to proceed with the repeal of the ECA 1972 on “exit day” rather than at the end of transition. EUWAA therefore had to recreate the effect of the ECA, “as though” it had not been repealed, for the purposes of the transition period.¹⁹

Primacy and direct effect for the Withdrawal Agreement

Although the Withdrawal Agreement is a treaty between the EU and the UK, rather than as such an EU treaty, it shares many of the characteristics of the EU treaties. The enforcement mechanisms for Part 2 of the Agreement (on citizens’ rights) and the Northern Ireland Protocol, in particular, bear a

¹⁸ For example, the [section 8](#) “correcting” power in EUWA expired 2 years after “IP completion day” (by the end of 2022) instead of two years after “exit day”, which would have been the end of January 2022.

¹⁹ [Section 1A EU \(Withdrawal\) Act 2018](#) (inserted by [section 1 of the EU \(Withdrawal Agreement\) Act 2020](#)).

striking resemblance to those found in EU law, and often expressly incorporate EU law and remedies by direct reference.

The UK's domestic implementation of the Withdrawal Agreement also uses similar provisions to those in the European Communities Act 1972. The Withdrawal Agreement is effectively given something akin to supremacy and direct effect in certain contexts, even though that language is not explicitly used.

This is because under [Article 4 of the Withdrawal Agreement](#), the UK must produce, via primary legislation, the “same legal effects” domestically as are produced in EU Member States by the Withdrawal Agreement. Inconsistent domestic law, whatever its source and origins, must be read “subject to” the UK's obligations under the Withdrawal Agreement, and given effect in domestic courts to whatever extent required by the treaty.

1.5 The Trade and Co-operation Agreement

The UK and EU have a Trade and Co-operation Agreement (TCA) which governs their post-2020 trading relationship. The UK implements this agreement through domestic law, primarily through the [EU \(Future Relationship\) Act 2020](#). However, it also relies on other domestic law, in the relevant affected policy areas, to honour its commitments under that agreement. This includes retained EU law, as many of the commitments in the TCA deal with similar policy issues as do the EU treaties and legislation.

Unlike the EU treaties, or the Withdrawal Agreement, the TCA does not give the CJEU jurisdiction to enforce key parts of the agreement in the UK. However, it does include other enforcement mechanisms, designed to protect key commitments and standards such as the level playing field provisions.

Among those commitments are “non-regression” undertakings in relation to employment and environmental law. If changes to labour or environmental protections in either the UK or the EU have the effect of distorting UK-EU trade or investment, by significantly reducing the cost to businesses, this could trigger mechanisms enabling “rebalancing measures” under the level playing field mechanisms.

This could potentially mean the imposition of tariffs by the EU. There are also wider dispute settlement provisions in the TCA that could be invoked where one of the parties is in breach of the treaty provision. These could ultimately lead to retaliatory disapplication of parts of the TCA.²⁰

²⁰ For further detail, see Commons Library, [The UK-EU Trade and Cooperation Agreement: Level Playing Field](#) and [The UK-EU Trade and Cooperation Agreement: governance and dispute settlement](#).

2 Policy Background

2.1 Taskforce on Innovation, Growth and Regulatory Reform (TIGRR)

Commissioning by the Prime Minister

In February 2021, the (then) Prime Minister Boris Johnson commissioned a “Taskforce on Innovation, Growth and Regulatory Reform” (TIGRR), to be led by three Conservative MPs (Sir Iain Duncan Smith, Theresa Villiers and George Freeman). When announcing this Taskforce, the Government [published a policy document setting out its terms of reference](#).²¹ The high-level goal of the review was set out as follows:

The UK’s exit from the EU with a new Trade and Cooperation Agreement presents us with new opportunities to redesign or change how we implement regulation across the economy. As the Government seeks to reignite the economy to help it recover from the impacts of Covid, we should consider all the options available to us to stimulate business dynamism and innovation, ensure that our markets are open and competitive and that businesses can scale up unencumbered by any unnecessary administrative burdens.

The report

[TIGRR published its report in May 2021](#).²² One of its observations concerned the restrictions imposed by EUWA on amending retained direct principal EU legislation (ie EU regulations):

As a result of the ‘onshoring’ exercise to retain regulations at the end of the Transition Period, combined with the EU practice of regulating through prescriptive legislation that is transposed into Member State law, the UK statute book now has a significant amount of inflexible regulation. In many cases this can only be amended by bringing forward primary legislation.²³

The review’s authors argued that, particularly in the context of financial services, Parliament should relocate primary responsibility for developing and changing the relevant law with regulators, rather than Parliament.²⁴

²¹ HM Government, [Taskforce on Innovation, Growth and Regulatory Reform \(TIGRR\) Terms of Reference](#), 2 February 2021.

²² [Taskforce on Innovation, Growth and Regulatory Reform](#), May 2021.

²³ As above, para 84.

²⁴ As above, paras 83-88.

As a “counterweight”, it recommended that MPs widen the remit of and strengthen the House of Commons Regulatory Reform Committee. In particular, it argued the committee should have a greater role in relation to oversight of regulators, and should be resourced accordingly.²⁵

TIGRR also raised concerns about the constraints on lower courts imposed by retained EU case law.

The EU (Withdrawal) Act 2018 severely restricted the ability of the lower courts to depart from EU case law relating to unmodified retained EU law, even if there is a good reason to do so. Government could make the necessary changes to retained EU law to give the UK courts more freedom to make judgements that are in the best interests of UK business. When the Government modifies the substance of a piece of retained EU law, it allows the lower courts more freedom to make judgements, and case law, on it that depart from EU precedent. This is because the provision of the Withdrawal Act that restricts the ability of the lower courts to depart from EU case law only applies if that law has not been modified in substance.²⁶

The Government had, before this report, already relaxed the rules on following precedent at the Court of Appeal (and equivalent) level, using powers inserted into EUWA by EUWAA.²⁷ However, those regulations relaxing the rules do not extend to first instance courts or to tribunals.²⁸

On financial services regulation, specifically, the TIGRR report called for a return to what it called “a common law principles based approach” and a move away from “grand codified schemes” that were “imposed” by EU law²⁹. This appears, at least in part, to have been reflected in the [Financial Services and Markets Bill 2022-23](#), which if enacted would facilitate the repeal and/or replacement of hundreds of EU or EU-derived financial services instruments.

The rest of the report focused on specific policy areas where the authors believed EU laws should be revoked and replaced, including on data protection, energy, transport, science and health research, and agriculture.

Government response

The (then) Prime Minister Boris Johnson welcomed the TIGRR report on 15 June 2021, promising a fuller response at a later date.³⁰ He also announced the establishment of the “Brexit Opportunities Unit” within the Cabinet Office (see **Section 2.2** below).

On 16 September 2021, Lord Frost, (then) a Cabinet Office Minister, wrote to Sir Iain Duncan Smith thanking the TIGRR for their report, and gave the

²⁵ As above, paras 89-102.

²⁶ As above, para 116.

²⁷ See [section 6\(5A-D\) EUWA](#) inserted by [section 26 EUWAA](#).

²⁸ [The European Union \(Withdrawal\) Act 2018 \(Relevant Court\) \(Retained EU Case Law\) Regulations 2020](#) (SI 2020/1525).

²⁹ [Taskforce on Innovation, Growth and Regulatory Reform](#), para 158.

³⁰ HM Government, [Press Release: Prime Minister welcomes independent report on re-imagining regulation in the UK](#), 15 June 2021.

Government's full response.³¹ The response included specific commitments about a review into the future of retained EU law.

2.2 The Brexit Opportunities Unit

In June 2021, the Government announced the creation of the Brexit Opportunities Unit (BOU), based within the Cabinet Office, launching a recruitment exercise for a Director of the Unit. As to the BOU's remit, it said:

The new Cabinet Office unit will play a crucial role in setting the strategy for the Government's ambitious approach to regulation, reviewing and reforming existing policy and regulation, and supporting the scrutiny and introduction of new regulation.³²

The BOU would later be tasked with co-ordinating the cross-government review of retained EU law, including a scoping exercise.

2.3 Frost review of retained EU law

The BOU initiated a government-wide review of retained EU law. This has covered two distinct aspects: the **legal status** and the **substance** of that law. Lord Frost was the lead minister in this area until his resignation from the government on 18 December 2021.

From 8 February 2022 onwards, this work was led by Jacob Rees-Mogg, then Minister of State for Brexit Opportunities and Government Efficiency, and later Secretary of State for Business, Energy and Industrial Strategy.

Formal response to TIGRR

Lord Frost announced, in the Government's formal response to TIGRR, his intention to conduct a review of retained EU law.

As context for this review, the Government argued that the [EU \(Withdrawal\) Act 2018](#) (EUWA) was intended as a stop-gap, rather than a permanent settlement for legacy EU law. The law retained by EUWA "should not remain on the statute books indefinitely where it does not work for the UK":

Too much of our statute book is made up of retained EU law, established only to maximise continuity following Brexit. It should not remain on the statute books indefinitely where it does not work for the UK.³³

³¹ [Letter from Lord Frost to Sir Iain Duncan Smith](#) (PDF), 16 September 2022.

³² HM Government, [Press Release: Search for head of the new Brexit Opportunities Unit begins](#), 16 June 2021.

³³ [Letter from Lord Frost to Sir Iain Duncan Smith](#) (PDF), 16 September 2022, Annex, para 55.

As for **the legal status review**, the response said that the BOU would seek to:

- clarify any uncertainty in relation to the scope of EU law in UK law;
- ensure that Retained EU law is not a separate category of UK domestic law, but normalised within our law with a clear status of either primary or secondary legislation;
- revisit the EU concept of ‘supremacy of EU law’ in the context of retained EU law;
- consider whether to extend the power to depart from retained EU case law to all UK courts; and
- consider how to allow REUL to be challenged.³⁴

On the **substantive content review**, it said:

The review will also consider changes to the substantive content of REUL. We will look at all options for doing so, including the possibility of a tailored mechanism or process for dealing with REUL, which reflects the fact some of these laws, especially those which entered into force after 23 June 2016, have less democratic legitimacy than laws initiated by the UK Government.

The response to TIGRR also indicated these changes would require primary legislation, to amend (among other things) the [EU \(Withdrawal\) Act 2018](#).

Ministerial statement 16 September 2021

[These plans were reaffirmed in an oral ministerial statement](#), delivered by Lord Frost on 16 September 2021. On the **legal status review**, he said:

First, we will conduct a review of so-called retained EU law. By this, I mean the very many pieces of legislation which we took on to our own statute book through the European Union (Withdrawal) Act 2018. We must now revisit this huge, but for us anomalous, category of law. In doing so, we have two purposes in mind. First, we intend to remove the special status of retained EU law so that it is no longer a distinct category of UK domestic law but normalised within our law, with a clear legislative status. Unless we do this, we risk giving undue precedence to laws derived from EU legislation over laws made properly by this Parliament. This review also involves ensuring that all courts of this country should have the full ability to depart from EU case law, according to the normal rules. In so doing we will continue, and indeed finalise, the process of restoring this sovereign Parliament, and our courts, to their proper constitutional positions.³⁵

On the **substantive content review**, he said:

Our second goal is to review comprehensively the substantive content of retained EU law. Some of that is already under way—for example, our plans to reform the procurement rules we inherited from the EU, or the plan announced

³⁴ As above, para 56.

³⁵ [HL Deb 16 September 2021](#) c1532-1534 and [HC Deb 16 September 2021](#) cc1148-1150.

last autumn by my right honourable friend the Chancellor to review much financial services legislation. We will make this a comprehensive exercise.³⁶

He confirmed that this would require primary legislation, but with a view to relying more extensively on delegated and accelerated mechanisms for amendment and repeal of REUL:

I want to be clear: our intention is eventually to amend, replace or repeal all retained EU law that is not right for the UK. That problem is obviously a legislative one. Accordingly, the solution is also likely to be legislative. We will consider all the options for taking this forward. In particular, we will look at developing a tailored mechanism for accelerating the repeal or amendment of this retained EU law in a way which reflects the fact that, as I have made clear, laws agreed elsewhere have intrinsically less democratic legitimacy than laws initiated by the Government of this country.³⁷

Further ministerial statement 9 December 2021

[A further update was made by way of a written statement](#) on 9 December 2021. In that statement, Lord Frost re-iterated his desire to “amend, replace or repeal all the REUL that is not right for the UK”.³⁸

On the **legal status review**, Lord Frost identified seven areas of concern with regard to the continuing role of legacy EU law:

1. the extent to which EU-derived rights (under section 4 of EUWA) “confuse” or “overlay” UK law-derived rights;
2. the continuing role of the retained general principles of retained EU law, and their suitability to interpret domestic legislation in the absence of a continuing treaty relationship;
3. some retained EU law shares constitutional characteristics with primary legislation (with regard to its interpretation, amendment and repeal);
4. the continuing role of supremacy of EU law (albeit in a modified form) and its interaction with the UK’s “long established democratic and parliamentary traditions”;
5. the fact that legacy CJEU case law is treated as binding, giving it a status that is not extended to the case law of other foreign courts;
6. the lack of a domestic mechanism to remove the retained versions of EU instruments (from the UK statute book) if the CJEU has subsequently declared them to be invalid; and
7. the need for updated guidance in relation to courts and the role of EU law in legal education.

³⁶ As above.

³⁷ As above.

³⁸ [HLWS445 9 December 2021](#).

On the **substantive content review**, Lord Frost confirmed that he had:

directed Government departments to establish the content of REUL in policy areas for which they are responsible, and to consult stakeholders as necessary.

He further explained the need for such a scoping exercise:

There is no authoritative assessment by Government of which policy areas are most affected by REUL. This first review will deliver such an assessment, and enable us to establish which sectors of the economy and which departments are most affected by REUL.³⁹

2.4 The Retained EU law dashboard

In June 2022, the UK Government published [the Retained EU law dashboard](#). This dashboard was compiled using data collected in a cross-Whitehall scoping exercise. It categorises REUL by type, policy area, responsible department, and whether it has been modified, revoked or replaced.

The dashboard was described by the Government, on publication, as an “authoritative catalogue” of retained EU law.⁴⁰

By contrast, it has always acknowledged that the dashboard is not “exhaustive”. The dashboard might omit a source of retained EU law if:

- it has not been identified by the cross-departmental scoping exercise; or
- there is uncertainty or disagreement within government as to whether the source actually forms part of REUL.

At launch, the dashboard catalogued just over 2,400 distinct sources of retained EU law. It has since been updated several times, with the assistance of the National Archives. As of early July 2023, the dashboard listed more than 4,900 sources, of which over 1,100 were recognised as having already been modified, repealed or replaced, or as having expired.

Limitations of the dashboard

Following the dashboard’s original publication, the Welsh Government criticised the fact that it did not clearly distinguish whether and when parts of REUL were devolved, and therefore susceptible to amendment or revocation

³⁹ [HLWS445 9 December 2021](#).

⁴⁰ By this, the Government meant if something was on the dashboard, it was confident it formed part of retained EU law. However, that assessment is ultimately one of statutory interpretation, on which domestic courts have the definitive say.

by devolved legislatures or authorities.⁴¹ This remains the case, though the dashboard now shows the territorial application of provisions of REUL.

The European Scrutiny Committee also asked the Government to indicate more clearly how exhaustive its scoping exercise had been for law retained under [section 4 of EUWA](#).⁴²

2.5

Policy paper: The Benefits of Brexit

In January 2022, the Government published a policy paper entitled: [The Benefits of Brexit: How the UK is taking advantage of leaving the EU](#).⁴³

In that document, it set out some further objections to the current scheme of retained EU law. One concern was that REUL was too difficult to amend:

Currently, many changes to these retained EU laws require primary legislation, even if amending technical details that would more usually sit in domestic secondary legislation—for example, certain energy performance certificates are in retained EU law and require primary legislation to change. This means that any changes to this, or other retained EU law, will take a lot longer to deliver, even if minor or technical in nature.⁴⁴

The reliance on primary legislation to make changes was understood as putting too much pressure on Parliamentary time:

The pipeline of primary legislation would dominate the legislative agenda for several Parliaments, reducing the ability to deliver more fundamental domestic reforms. We are determined to maximise the opportunities of Brexit and to rebuild the economy as we emerge from the Covid pandemic. We cannot delay much needed regulatory change, or risk baking in outdated EU law.⁴⁵

The policy paper also set out, in greater detail, some of the intended policy goals of the forthcoming “Brexit Freedoms Bill” or Retained EU Law Bill. These broadly reflected the areas of constitutional concern raised by Lord Frost in previous ministerial statements.⁴⁶

⁴¹ Mick Antoniw, Counsel General and Minister for Constitutional Affairs, [Written Statement: Retained EU Law Interactive Dashboard](#), 27 June 2022.

⁴² European Scrutiny Committee, [Retained EU Law: Where next?](#) (PDF), HC 122, 21 July 2022, para 192.

⁴³ HM Government, [The Benefits of Brexit: How the UK is taking advantage of leaving the EU](#), January 2022.

⁴⁴ As above, page 30.

⁴⁵ As above.

⁴⁶ As above, pages 32-33.

2.6

Parliamentary scrutiny of proposals

The European Scrutiny Committee (ESC) conducted an inquiry into the future of retained EU law in the first half of 2022. It published its report, [Retained EU Law: Where next?](#) in July 2022.⁴⁷ This work was carried out prior to the publication and introduction of the current Bill.

Supremacy and EU general principles/case law

The ESC described it as “regrettable” that the Government “ha[d] not given a firmer indication of what it propose[d] to do” with regard to the supremacy of EU law. It urged further consultation with the ESC before the promised Bill’s introduction.⁴⁸

However, the Committee’s report broadly endorsed proposals to remove the principle of supremacy, emphasising that retained EU law “lacks the democratic legitimacy of an Act of Parliament”.⁴⁹ It expressed similar sentiments about the continuing role of EU general principles and case law.⁵⁰

Delegated powers

The ESC also argued in favour of a “wide amending power” to make changes to retained EU law, while warning that “delegated powers... should, however, be carefully drawn”.⁵¹

Sunset provisions

The ESC endorsed the idea of a “sunset clause” for retained EU law “subject to consultation”, so as to accelerate decision-making about the expiry or retention of retained EU law. However it warned that “careful consideration and sufficient human resources” needed to be given to replacement legislation “to avoid gaps on the statute book and legal uncertainty”.⁵²

⁴⁷ European Scrutiny Committee, [Retained EU Law: Where next?](#) (PDF), HC 122, 21 July 2022.

⁴⁸ As above, para 40.

⁴⁹ As above, para 44.

⁵⁰ As above, paras 132-134.

⁵¹ As above, paras 82-83.

⁵² As above, para 95.

3 The Act

The [Retained EU Law \(Revocation and Reform\) Act 2023](#) received royal assent on 29 June 2023. The corresponding Bill was first introduced in the House of Commons on 22 September 2022.

This briefing paper provides an overview of the final Act, subdividing it into six distinct, but related, parts:

- **Section 4** explains the **sunset provisions** (which govern the expiry, or otherwise, of REUL by the end of 2023);
- **Section 5** explains the **assimilation provisions** (which remove EU law concepts and terminology from domestic law after 2023);
- **Section 6** explains the **interpretation provisions** (which deal with the validity, hierarchy, meaning and effect of REUL/assimilated law);
- **Section 7** explains the **scrutiny provisions** (which make it easier to amend or revoke REUL/assimilated law);
- **Section 8** explains the Bill's key **delegated powers** (which enable REUL to be restated, revoked, replaced or updated by regulations); and
- **Section 9** explains the abolition of the Business Impact Target and final provisions.

Thereafter, the Act is considered more thematically.

- **Section 10** considers the devolution and legislative consent issues associated with the Act's passage.
- **Section 11** summarises the four Government defeats on the Bill in the Lords, and how the disagreements were resolved.
- **Section 12** provides an overview of the key deadlines applicable under the REUL Act, now that it has gained royal assent.

4 The sunset provisions

4.1 Overview

Sections 1 and 2 of the Act provide the main framework for the expiry or “sunsetting” of REUL. The key date is 31 December 2023, after which 587 legislative instruments and an entire class of non-legislative retained EU law will automatically expire.

- **Section 1** and **Schedule 1** deal with the revocation of legislative instruments of both UK and EU origin (originally retained under [sections 2 and 3 of EUWA](#)).
- **Section 2** deals with the revocation of law that has been retained under [section 4 of EUWA](#) (directly effective rights and obligations etc).

The proposed framework for revocation of **legislative instruments** changed fundamentally during the Bill’s Report Stage in the House of Lords. The final Act’s proposals are therefore considerably narrower than those in the original bill.

However, the proposed framework for the revocation of **other retained EU law** (now found in section 2 of the Act) is essentially unchanged.

4.2 What is “sunsetting”?

Sunset clauses are legislative time limits. They make existing laws, or proposed changes in the law, temporary, instead of permanent.

Normally, time limits are used as a means of enhancing democratic decision-making. They can, for example, be used to constrain delegated powers that would otherwise be very broad and permissive. This typically happens in times of acute legal complexity (eg preparing the UK statute book for Brexit) or of emergency (such as the coronavirus pandemic).

The use of sunset clauses in **sections 1 and 2** of the REUL Act is, in important respects, very different. Time limits have been imposed on law and legislation that was previously permanent in character. The sunset provisions in the Act therefore reduce further opportunities for legislative scrutiny over expiry, rather than increase them.

4.3

What has already happened to REUL?

“Retained EU law” came formally into existence at the end of the Brexit transition period (the end of 2020). According to the July 2023 iteration [of the Government’s REUL Dashboard](#), REUL would have included at that time:

- more than 200 distinct pieces of UK primary legislation (EU-derived primary legislation)
- well over 2000 distinct pieces of UK secondary legislation (EU-derived secondary legislation)
- well over 2000 distinct pieces of converted EU legislation (retained direct EU legislation)

The dashboard also indicates that (as of July 2023) just over one fifth of this legislation had subsequently been amended, repealed, replaced or expired. Changes to date have been made by various different methods, including:

- new UK primary legislation (mainly “framework” legislation like the [Agriculture](#) and the [Immigration and Social Security Co-ordination \(EU Withdrawal\)](#) Acts)
- temporary delegated powers under the [EU \(Withdrawal\) Act 2018](#) (most notably the [section 8](#) power to “correct deficiencies”)
- delegated powers contained in other Acts

The [Financial Services and Markets Act 2023](#), which received royal assent in June 2023, also provides for the revocation of several hundred instruments of EU origin that currently regulate the financial services sector.⁵³ Unlike the REUL Act, it has no “hard” sunset date for any of the law and legislation in question, leaving significant discretion over timing to Treasury ministers.

The vast majority of retained EU laws remain on the UK statute book, in some form or another, and mainly in an unmodified form.

4.4

The original approach to sunseting legislation

The original REUL Bill (as introduced in the House of Commons in September 2022, [Bill 156](#)) included an expansive legislation sunset clause. It would have affected most, though not all, of the legislation that forms part of retained EU law.

⁵³ See Commons Library, [Financial Services and Markets Bill 2022-23](#).

What would have expired?

By default, any **EU-derived secondary legislation** (EDSL) and **retained direct EU legislation** (RDEUL) still on the statute book would have expired at the end of 2023, under the Government's original proposals in the REUL Bill.

There was never a definitive list of legislative instruments that counted as EDSL or RDEUL for these purposes. The Retained EU law dashboard likely now (in summer 2023) catalogues most, though not all, of this law. However, when MPs were first asked to approve the Bill, including its original sunset, more than half of the retained EU legislation now on the dashboard had not yet been catalogued.

What wouldn't have expired?

The Bill never proposed to sunset any UK primary legislation preserved as retained EU law under [section 2 of the EU \(Withdrawal\) Act 2018](#). Acts of Parliament, like the [Equality Act 2010](#), would have remained good law even after 2023.

There was also a carve-out in the original sunset clause, to exclude any legislation covered by the [Financial Services and Markets Act 2023](#) (once passed). Several hundred financial services instruments are subject to its separate expiry and replacement regime.

Ministerial mechanisms for preserving legislation

There were ways that EDSL or RDEUL could be kept beyond 2023, by having a minister make regulations. Legislation could be preserved by:

- **exempting** specified instruments from the sunset; and/or
- **delaying the expiry** of specified instruments (to no later than 23 June 2026)⁵⁴.

Additionally, ministers could use powers to **restate** or **replace** EDSL or RDEUL, keeping substantively the same or similar laws on the statute book, but in a new statutory instrument (not forming part of REUL and not being subject to the same interpretive rules).

Unless, and to the extent that, ministers decided to use these powers before the end of 2023, however, all of the affected legislation would simply have lapsed at the sunset date.

Rationale behind the broad sunset clause

The UK Government's rationale for a broad sunset clause was that it would incentivise government departments and devolved authorities to prioritise

⁵⁴ This power was not available to devolved authorities.

substantively reviewing REUL in their respective policy areas. As the then Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy, Dean Russell, put it during the Commons second reading debate:

A sunset is the most effective way to accelerate reform across over 300 policy areas and will incentivise the rapid reform and repeal of retained EU law...

Prior to the date in the Bill, the Government will determine which instruments should be preserved, which should be reformed and which should be revoked.⁵⁵

Concerns raised about the broad sunset clause

The original legislative sunset clause was widely criticised, both within Parliament and by external commentators and campaign groups. Concerns focused principally on the sunset's implications for legal certainty. As the former Treasury Solicitor, Sir Jonathan Jones KC put it in a Hansard Society webinar in October 2022:

The Explanatory Notes... give no indications of any particular legal or policy areas which the Government thinks should either be retained or changed. So at the time of passing this Bill... neither Parliament nor businesses nor anyone else can know what the substantive law will be by the end of 2023...

This could even have led, he said, to legislation being lost by accident, let alone by deliberate government omission:

The default position... is that if no conscious decision is made to keep a particular piece of retained EU law, with or without amendments, or if indeed a piece of retained EU law is missed by accident, it will automatically expire on the sunset date with no further involvement by Parliament at all. At the moment we simply don't know what will happen to any particular law.⁵⁶

The barrister George Peretz KC also argued, in September 2022, that the sunset clause would weaken Parliament's ability to scrutinise Government proposals for substantively replacing retained EU law:

A result of the sunset clause is that Government departments might be tempted to turn up to Parliament in November to December 2023 with whole rafts of replacement revocation legislation... Parliament would otherwise have been in a position of being able to prevent that because changes [would sometimes] require a positive vote in both Houses of Parliament to get it through.

But when Parliament has essentially got a gun to its head, it's faced with a whole pile of legislation about which there may be pretty substantial objections. But the message is unless you get it through, I'm afraid the rules will simply fall away. That makes Parliament's position extremely difficult.⁵⁷

⁵⁵ [HC Deb 25 October 2022 c187](#).

⁵⁶ Hansard Society, [Webinar: Unpicking the Retained EU Law Bill: What does it mean for Parliament?](#), 12 October 2022.

⁵⁷ Monckton Chambers, [Webinar on the Retained EU Law \(etc.\) Bill](#), 28 September 2022.

In written evidence to the Public Bill Committee, the Bingham Centre for the Rule of Law criticised the sunset provisions, for “creat[ing] an artificial emergency” for the UK legal system that would pose:

a material risk to the stability of the UK legal system, its practitioners, and its end users in areas of key policy salience such as environmental protection, health and safety regulation, and social policy.⁵⁸

4.5

Section 1 - The Government’s change of approach

Shortly before House of Lords Report stage, the Government announced a significant change in its approach to the sunset of legislation of EU-origin.

Instead of a sunset clause affecting entire categories of legislation, there would be a Schedule in the legislation. The Schedule would list each of the instruments that were set to expire (whether in whole or in part) at the end of 2023. Unless something was on the list, it would be kept on the statute book.

Explaining the change of approach, the Secretary of State for Business and Trade, Kemi Badenoch, said in a written statement on 10 May 2023:

Over the past year Whitehall departments have been working hard to identify retained EU law to preserve, reform or revoke. However, with the growing volume of REUL being identified, and the risks of legal uncertainty posed by sunset instruments made under EU law, it has become clear that the programme was becoming more about reducing legal risk by preserving EU laws than prioritising meaningful reform. That is why today I am proposing a new approach: one that will ensure ministers and officials can focus more on reforming REUL, and doing that faster.

Today the Government is tabling an amendment for Lords Report, which will replace the current sunset in the Bill with a list of the retained EU laws that we intend to revoke under the Bill at the end of 2023. This provides certainty for business by making it clear which regulations will be removed from our statute book, instead of highlighting only the REUL that would be saved.⁵⁹

Lords Report stage - Government amendments

The Government tabled a series of amendments to the Bill ahead of Report stage in the House of Lords, to give effect to its proposed changes. These changes are reflected in [section 1](#) and [Schedule 1](#) of the final Act. The new Schedule lists 587 legislative instruments, and specifies whether each instrument will expire in whole or only in part at the end of 2023.

The original power to delay the expiry of sunsetted legislation (until as late as 23 June 2026) has been removed completely from the final Act. If the

⁵⁸ [REULB51](#), 16 November 2022.

⁵⁹ [HCWS764](#), 10 May 2023.

Government wants any legislation to expire earlier or later than 31 December 2023, this can still be done using [section 14](#) regulations.

The final Act still includes a power to exempt expiring instruments from the sunset (via regulations). However, this power cannot be used after 31 October 2023. This ensures that, if the Government changes its mind about any of the 587 instruments slated for expiry, they can be kept. The power cannot be used to add new instruments to the Schedule.

Other Lords Amendments

Attempts were made, at Lords Report stage, to enhance Parliamentary scrutiny of the expiring 587 legislative instruments in Schedule 1. Lord Hope proposed that a new Joint Committee should be able to “sift” these instruments. If the Joint Committee concluded that revocation would represent a “substantial change” to UK law, there would need to have been a debate on the floor of both Houses, and a vote to approve its revocation.

Although the Government was defeated on this amendment at Lords Report stage, it was overturned in the House of Commons and was not revisited. This additional scrutiny mechanism therefore does not form part of the final Act.

4.6

Section 2 - Sunsetting of retained direct EU law

Under [section 2](#) of the Act, [section 4 of EUWA](#) would be repealed after 2023.

What does section 4 of EUWA currently preserve?

Whereas [sections 2 and 3 of EUWA](#) currently preserve EU and EU-derived **legislation**, [section 4 of EUWA](#) is a residual, or “sweeper” provision. It preserves certain **legal effects** of EU law, as they stood at the end of transition, rather than, as such, **legislative provisions**. The most notable such preserved legal effects are:

- the direct effect of relevant EU treaty provisions and of other treaties entered into by the EU; and
- the [vertical direct effect](#) of EU directives.

Previous revocation of retained directly effective EU law

Prior to the current Bill, the Government had already passed laws disapplying legacy rights, powers, liabilities, obligations, restrictions, remedies and procedures arising by virtue of [section 4 EUWA](#), but only in specific cases.

One high profile example of this was the [Immigration and Social Security Co-Ordination \(EU Withdrawal\) Act 2020](#). It disapplied EU treaty provisions concerned with the free movement of persons (ie it “ended free movement”).⁶⁰

This Act’s wholesale revocation of retained directly effective EU law

The significance of [section 2](#) of the REUL Act is that it would revoke this legacy law (of EU origin) across the board, not just in specific policy contexts. The revocation is targeted at the “retention rule” itself, rather than the remaining direct effect of specific treaty provisions or specific directives. This distinguishes it from other efforts to remove retained direct EU law from the UK statute book.

Assessing the implications of the repeal of [section 4 of EUWA](#) is more challenging than assessing the revocation of specific EU or EU-derived instruments (as provided by [section 1](#) and [Schedule 1](#)). Whether, or to what extent, specific EU treaty or EU directive provisions were directly effective at the end of 2020 is a question that can sometimes only be answered with some degree of judicial input. [Section 4 of EUWA](#) only preserved effects “of a kind” recognised by the CJEU or domestic courts before the end of the transition period.

The Government’s [Retained EU Law dashboard](#) has sought to capture examples of [section 4 of EUWA](#) retaining rights, powers, liabilities, obligations, restrictions, remedies and procedures. However, it is unlikely, by its very nature, to be exhaustive, as the European Scrutiny Committee observed following the dashboard’s launch.

The domestic effect of law retained by [section 4 EUWA](#) also cannot be understood in a vacuum. This is because EU regulations, EU directives, and domestic implementing legislation, were made **against the backdrop of key EU treaty provisions having direct effect**. Had there been no direct effect for the treaty provisions, those rights might instead have been contained more explicitly in the secondary EU legislation or UK implementing legislation.

No power to exempt rights or obligations

Unlike with [section 1 of the REUL Act](#), there is no power to exempt all or part of the law currently retained by [section 4 of EUWA](#) from expiry at the end of 2023.

However, [section 12 of the REUL Act](#) enables these legal effects to be “reproduced” in specific cases, via regulations, after 2023. This could be used, for example, to enable retained EU regulations to be interpreted the same way as before when they become part of assimilated law in 2024.

⁶⁰ See [Schedule 1 of the Immigration and Social Security Co-Ordination \(EU Withdrawal\) Act 2020](#).

5 The assimilation provisions

5.1 Overview

[Sections 3-5 of the REUL Act](#) are the assimilation provisions. They change the status of retained EU law (REUL), and (from 2024) the name used to describe it.

- [Section 3](#) will remove the EU principle of supremacy or primacy of EU law from the UK statute book (currently [section 5 of EUWA](#) retains it in a more limited form).
- [Section 4](#) will remove the general principles of EU law from the UK statute book (currently [section 5 of EUWA](#) retains these in a limited form).
- [Section 5](#) will rename any “retained EU law” that is still in existence after 2023. It would thereafter be called “assimilated law”.

5.2 Section 3 – abolition of supremacy

The principle of supremacy (or primacy) of EU law continues to exist in a limited domesticated form in UK law, under [subsections 5\(1-3\) of EUWA](#). Section 3 will formally abolish this from 2024 and replace it with a new domestic hierarchy of laws (so far as they concern laws of EU origin).

The position until the end of 2020

Until the end of the post-Brexit transition period, the UK had to give “supremacy” or “primacy” in UK law to EU law over other sources of domestic law. So, for example, any EU regulation or tertiary legislation would take precedence over an incompatible UK Act of Parliament. This was what happened in [Factortame \(No. 2\)](#) when the House of Lords disapplied the [Merchant Shipping Act 1988](#) to the extent it was incompatible with the Common Fisheries Policy.⁶¹

This relationship between EU and domestic law was explicitly contemplated by [section 2\(4\) of the ECA](#). It said that “any enactment passed or to be passed... shall be construed and have effect subject to” EU law.

⁶¹ [R \(Factortame \(No. 2\)\) v Secretary of State for Transport](#) [1991] 1 AC 603.

The post-transition position under EUWA

After the Brexit transition period, the UK was no longer bound by the same suite of EU obligations as an EU member state. Retained EU law was therefore intended to operate in a fundamentally different context than the EU law from which it was derived. It was intended to be domestically amendable in a way that EU law was not.

It was explicitly contemplated that Parliament and the devolved legislatures would take the major decisions to amend or repeal or replace REUL, using domestic legislation.⁶² Had supremacy been fully preserved, rather than kept in a modified form, such decisions would not have been possible. New laws would have continued to be “read down” in light of retained EU law, regardless of what kind it was.

The desire to have “amendability” in the new scheme was reflected in [section 5\(1\) of EUWA](#). It says the EU principle of supremacy “does not apply to any enactment or rule of law passed” after the post-Brexit transition period. [Section 7 of EUWA](#) then set out rules governing the ease (or otherwise) with which domestic delegated powers could be used to modify different types of retained EU law.⁶³

However, the principle of supremacy still applies to domestic legislation passed before 2021. When those laws were originally passed, they were intended to be interpreted and given effect “subject to” the UK’s (then) EU obligations, in conformity with [section 2\(4\) of the ECA](#).

The content of that pre-2021 domestic legislation must be understood in light of that (then) treaty-based relationship. By retaining supremacy in a more limited form, the legislative context of domestic instruments would be preserved more fully, and with it, greater continuity as to their legal effect.

[Section 5\(3\) of EUWA](#) does enable supremacy to be preserved in the context of pre-2021 legislation even if it is subsequently modified. If the principle of supremacy “is consistent with the intention of the modification” then it still applies to the legislation “as modified”.

What changes will section 3 make?

[Subsections 5\(1-3\) of EUWA](#) will be repealed by [section 3 of the REUL Act](#), formally abolishing in UK domestic law the supremacy of EU law (even in its modified form). A new scheme will be put in its place.

Under the new proposals, retained direct EU legislation (including retained EU regulations, decisions and tertiary legislation) will have to be read and given

⁶² Department for Exiting the European Union, [Legislating for the United Kingdom’s withdrawal from the European Union](#), March 2017, para 1.12.

⁶³ This gave rise, for example, to the distinction between retained direct “principal” EU legislation, which was generally (though not always) more difficult to amend otherwise than by an Act of Parliament than retained direct “minor” EU legislation.

effect “so far as possible” compatibly with domestic legislation, or failing that, “subject to” all other domestic legislation. Even if RDEUL is “newer” than domestic enactments, the latter will now take priority. This new rule is the reverse of what happens currently under the (modified) supremacy of EU law.

Retained direct EU legislation (RDEUL) will have a lesser domestic legal status than domestic delegated legislation, whereas at the moment it takes (limited) priority over Acts of Parliament and delegated legislation passed before 2021.

This change will require key areas of domestic law to be reinterpreted after 2023. This will mainly affect the interpretation of retained EU regulations, so far as they have not expired.

This new rule of legal hierarchy is itself subject to two key exceptions.

- Firstly, it does not apply to certain aspects of data protection law. In that context, RDEUL (most notably including the UK’s version of the General Data Protection Regulation or UK GDPR) would continue to take priority in the event of certain conflicts of law.
- Secondly, regulations made under [section 7 of the REUL Act](#) by UK Ministers or devolved authorities, could (de facto) reinstate supremacy in relation to specific situations and instruments. This power to make regulations is a temporary one and expires on 23 June 2026. See **Section 6.3** for further details.

5.3

Section 4 – abolition of general principles of EU law

The changes in [section 4 of the REUL Act](#) are of a similar kind to those in [section 3](#), except that they concern the retention and expiry of the general principles of EU law, rather than the principle of supremacy. Under [section 4](#) the general principles would cease to form part of UK domestic law from 2024 onwards. The requirement to interpret REUL in accordance with those principles would therefore fall away.

The post-transition position under EUWA

[Subsection 6\(3\)\(a\) of EUWA](#) requires REUL to be interpreted by UK courts and tribunals “in accordance with... any retained general principles of EU law”.

The general principles of EU law are interpretive constructs that improve the coherence and consistency of different sources of EU law. They include, non-exhaustively: fundamental rights, proportionality, legal certainty, equality before the law, legitimate expectations, and subsidiarity. In the

environmental policy space, the precautionary principle has also been accepted in CJEU case law as a general principle of EU law.⁶⁴

Implications of repeal of the general principles

The significance of the repeal of the general principles of retained EU law will depend on how much REUL is kept beyond the end of 2023. If relatively little such law is retained, the absence of the general principles might not be expected to make a great deal of difference (except in relation to primary legislation that is EU-derived). It will be more significant, however, if key instruments are preserved or restated. This now appears more likely, given the narrower scope of [section 1 of the REUL Act](#).

It is not clear – from either the Act itself or its explanatory materials – what principles the courts will be expected to use instead of the retained general principles of EU law, when construing the meaning and effect of assimilated law. UK common law principles partly overlap with the EU general principles, and would likely need to adapt to fill any gaps.

It appears, from [section 12 of the REUL Act](#), that assimilated law will, where necessary or desirable, be “restated” in such a way as to recreate the effects of the general principles. However, it is not yet clear how such a restatement would be articulated, or how routinely and how extensively. These decisions would ultimately be those for UK ministers and/or devolved authorities. Many of these decisions will still need to be taken before the end of 2023 if legal continuity is to be ensured.

5.4

Section 5 – renaming REUL as assimilated law

At the end of 2023, the category of domestic law currently known as “retained EU law” will be renamed “assimilated law”. This body of law will include:

- primary legislation that is EU-derived domestic legislation;
- any unexpired subordinate legislation that is EU-derived domestic legislation; and
- any unexpired retained direct EU legislation (RDEUL).

[Section 5 of the REUL Act](#) also provides for related concepts, such as retained EU caselaw, to be referred to as “assimilated” law rather than an EU derivative. [Schedule 2](#) makes related consequential changes in other Acts.

This name change is symbolic, rather than of practical consequence. The name given to this body of law will have no effect on its legal status.

⁶⁴ [Case T-74/00 Artegodan](#) [2002] ECR II 4948.

6 The interpretation provisions

6.1 Overview

[Sections 6-8 of the REUL Act](#), once fully commenced, will make significant changes to the way that UK courts interpret, apply, and resolve conflicts in (what is currently called) retained EU law (REUL). This is partly, but not exclusively, a consequence of revoking retained direct effects, supremacy and the general principles of EU law in [sections 2-4](#) of the Act.

6.2 Section 6 – CJEU and domestic case law

Although the UK has left the EU, the decisions of the CJEU, especially from before 2021, continue to influence the decisions of UK courts. This is because retained EU law must be interpreted in accordance with “retained case law” handed down before the end of 2020. Such case law is, for lower courts, binding, with the position being more complex for higher courts.

[Section 6 of the REUL Act](#) relax the domestic rules on judicial precedent. This will make it easier for appellate courts (like the Court of Appeal in England and Wales or the Inner House of the Court of Session in Scotland) to depart from retained case law.

[Section 6](#) also provides a new mechanism by which first instance courts (like the High Court in England and Wales or the Outer House of the Court of Session in Scotland) or tribunals (like the Upper Tribunal or First-tier Tribunal) can depart from otherwise binding retained case law. These courts and tribunals would do so by referring relevant points of retained EU case law to an appellate court, which could then issue a binding decision about whether lower courts should depart.

The Government’s intention appears to be to encourage domestic courts to depart more often from both CJEU case law and related pre-2021 domestic case law. [The Explanatory Notes to the Act](#) describe UK courts as being “unduly constrained” by the “continuing influence of previous EU case law”.⁶⁵ Professor Catherine Barnard of the University of Cambridge has suggested that [section 6](#) is intended as a “nudge” to the judiciary, observing that judges have been reluctant to depart from CJEU case law since the end of 2020.⁶⁶

⁶⁵ [Explanatory Notes](#) (PDF) para 37.

⁶⁶ Monckton Chambers, [Webinar on the Retained EU Law \(etc.\) Bill](#), 28 September 2022.

Case law during EU membership and the post-Brexit transition

While the EU treaties applied to the UK, domestic courts were obliged to follow the case law of the CJEU. This was a combined consequence of (a) direct effect (b) supremacy and (c) domestic implementation of EU treaty obligations. Arrangements also had to be made to enable “references” to the CJEU where the validity, meaning or effect of EU law was disputed.⁶⁷

Additionally, UK domestic courts would often rule on matters of EU law, or on the validity, meaning and effect of EU-derived law (such as statutory instruments made under [section 2\(2\) of the ECA](#)). The ordinary domestic law on precedent would apply in those cases (eg decisions of the UK Supreme Court would bind the Court of Appeal in England and Wales). But those domestic judicial decisions, themselves, would often be heavily and directly influenced by the wider framework of EU law and CJEU precedent.

What was the post-transition situation under EUWA?

[Section 6 of EUWA](#) mostly broke the UK’s dynamic link with the CJEU, effective from the end of 2020.⁶⁸ No new case law would be binding on UK domestic courts, but they could continue to “have regard” to it so far as it was relevant to matters before them. [Section 6](#) also ended the possibility of direct CJEU references: it was not considered appropriate for that supranational court to adjudicate on **retained** EU law, as REUL is a purely domestic form of law.

Different rules apply to “retained case law” however. “Retained case law” consists of pre 2021 CJEU decisions, and relevant domestic case law, concerned with (what was then) EU law or EU-related domestic law. The default expectation, under EUWA, is that REUL will be interpreted and applied “in accordance with” this case law.

This means that, for non-appellate courts and for tribunals, this case law remains “as binding” now as it was before 2021. It only falls away so far as relevant EU law has been revoked or substantially amended, or if higher courts have already departed from it. By way of illustration, the High Court of England and Wales must still follow:

- relevant CJEU decisions (if handed down before 2021); and
- relevant decisions of the UK Supreme Court and the Court of Appeal (regardless of when they were handed down).

The UK’s “apex” courts are treated differently. The UK Supreme Court (UKSC), and (in Scotland) the High Court of Justiciary (when sitting as a criminal

⁶⁷ [Article 267 TFEU](#).

⁶⁸ The Withdrawal Agreement and the EU (Withdrawal Agreement) Act 2020 expressly preserve, through separation agreement law, a role for the CJEU, most notably in relation to citizens’ rights and the Northern Ireland Protocol. For present purposes this is disregarded. This Act has no effect on the enforcement of the Withdrawal Agreement’s treaty obligations.

appeal court) are not (as such) bound by CJEU decisions, including those handed down before 2021. They are expected to treat pre-2021 precedents in the same way as they would treat their own precedents: as “normally binding” but capable of being departed from. In practice, this means departing from CJEU case law very sparingly.

When do UK apex courts depart from precedent?

Before July 1966, the Appellate Committee of the House of Lords departed from its own judicial precedents extremely rarely. A very high priority was placed on legal certainty, so that individuals could reliably conduct their affairs in light of settled law and legal principles. There was never, however, a statutory test dictating the circumstances in which the final appeal court could depart from its own precedents.

The judicial House of Lords’ relaxed its approach slightly in July 1966, following [a practice statement](#) made by the then Lord Chancellor, Lord Gardiner.⁶⁹ He acknowledged the importance of precedent, and in particular the legal certainty that it afforded individuals. However, he also acknowledged that “too rigid an adherence to precedent” could:

- give rise to injustice in particular cases
- unduly restrict the proper development of the [common] law.

It was therefore proposed, from that point onwards, that the judicial House of Lords would treat its own precedent as “normally binding” but would depart “where it appears right to do so”. Account would always be taken of:

- the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into
- the especial need for certainty as to the criminal law.

Since its creation in 2009, the UK Supreme Court has adopted the same approach as its predecessor, but also without any statutory underpinning for the test. The 1966 practice statement is cited with approval in both the [UKSC Practice Direction 3](#) and the UKSC case of *Austin v Mayor and Burgesses of the London Borough of Southwark*.⁷⁰

[Section 6\(5\) of the EU \(Withdrawal\) Act 2018](#) extends this test to CJEU judgments handed down before the end of 2020. If the UKSC wishes to depart from such a decision, it must adopt the “same test” as it would use when departing from its own precedents. Other appellate courts with the power to depart must also adopt the UKSC’s test.⁷¹

⁶⁹ [HL Deb 26 July 1966 Vol 276 col 677](#).

⁷⁰ [2010] UKSC 28.

⁷¹ See regulation 5 of the [European Union \(Withdrawal\) Act 2018 \(Relevant Court\) \(Retained EU Case Law\) Regulations 2020](#) (SI 2020/1525).

The position of other appellate courts is more complicated. The [European Union \(Withdrawal\) Act 2018 \(Relevant Court\) \(Retained EU Case Law\) Regulations 2020](#) extend, in part, the flexibilities conferred on the UKSC to other appellate courts.

Hence, for example, the Court of Appeal can depart from a CJEU decision, applying the same test as the UKSC would. However, the Court of Appeal remains bound by post-transition UKSC decisions which apply (or modify the application of) any CJEU decisions.⁷²

Changes made by section 6

[Section 6 of the REUL Act](#) makes several distinct but related changes to [section 6 of EUWA](#). Specifically, it:

- confirms in primary legislation that specific appellate courts can depart from legacy CJEU case law;⁷³
- imposes a (non-exhaustive) statutory test for higher courts when deciding whether to depart from CJEU case law;
- imposes a related statutory test for higher courts when deciding whether to depart from retained domestic case law;
- enables first instance courts, and tribunals, to refer points of law arising in retained case law to higher courts for determination; and
- enables law officers to make similar such references, or to intervene in cases concerned with departures from retained case law.

Statutory test for departing from CJEU case law

[Subsection 6\(3\)](#) introduces a new statutory test for higher courts when they are considering whether to depart from pre-2021 CJEU case law. **New subsection 6(5) of EUWA** will mean that, when so considering, the court must “among other things” have regard to three factors:

1. the fact that decisions of a foreign court are not (unless otherwise provided) binding;
2. any changes in circumstances which are relevant to the retained EU case law; and
3. the extent to which the retained EU case law restricts the proper development of domestic law.

⁷² As above, regulation 4(2).

⁷³ These provisions would no longer be contained in the 2020 regulations, made under [section 6\(5A-D\) of EUWA](#).

The Explanatory Notes refer to the March 2021 decision in *TuneIn Inc v Warner Music UK Limited*, indicating that it had inspired these (non-exhaustive) statutory criteria.⁷⁴ In *TuneIn*, the Court of Appeal dismissed various arguments, advanced by TuneIn, that it should depart from legacy CJEU case law (in the context of an intellectual property dispute). Arnold LJ gave several distinct reasons why, in that particular case, such a departure was not warranted, including that:

- the relevant domestic legislation (which was closely related to EU frameworks) had not changed since the end of 2020;
- the relevant international legislative framework had not changed;
- the CJEU had, in the specific context “unrivalled experience” in confronting the relevant issues;
- academic commentary and criticism of the case law did not provide a clear basis for departing;
- the case law of jurisdictions with largely unrelated statutory frameworks (such as Australia, Canada and the USA) was, contrastingly, of no assistance;
- departing from CJEU case law would create “considerable legal uncertainty” in the particular context; and
- there was no coherent and consistent way to depart from some of the case law, but not other parts of it.

In a webinar on the REUL Bill, Philip Moser KC questioned whether there is a meaningful link between the Court of Appeal case and the proposed new statutory test. He pointed out that the relevant statutory words (or similar sentiments) do not appear in the *TuneIn* judgment, and that other important factors mentioned in the judgment (that typically weigh against departing from existing CJEU case law) have been omitted.⁷⁵

Statutory test for departing from retained domestic case law

[Subsection 6\(4\) of the REUL Act](#) introduces a related statutory test for higher courts when they are considering whether to depart from their own retained domestic case law. The (non-exhaustive) list of factors to take into account in those instances are:

⁷⁴ [\[2021\] EWCA Civ 441](#) and [Explanatory Notes](#) (PDF) at para 118.

⁷⁵ Monckton Chambers, [Webinar on the Retained EU Law \(Revocation and Reform\) Bill](#), 28 September 2022.

1. the extent to which the retained domestic case law is determined or influenced by retained EU case law from which the court has departed or would depart;
2. any changes of circumstances which are relevant to the retained domestic case law; and
3. the extent to which the retained domestic case law restricts the proper development of domestic law.

Retained case law reference procedure

[Section 6 of the REUL Act](#) also introduces **new sections 6A-C into EUWA**. They are concerned with the making of “references” (a type of legal proceeding) to a higher court.

What are reference procedures?

Reference procedures are unusual in the UK’s constitutional tradition. The normal course of litigation is for a court of first instance (like the High Court in England and Wales, or a tribunal) to determine a legal dispute, and for its judgment, if contested, then to be appealed to higher courts. If those higher courts conclude that a lower court made the wrong decision, they will overturn it; otherwise they will uphold it.

This approach tends to mean that legal disputes (in the UK) are resolved against a specific set of factual circumstances, rather than in the abstract.⁷⁶

References “short circuit” this normal approach. They allow a (usually preliminary) legal question to be aired and settled by a higher court more directly. The case may then be sent back to a lower court to settle a specific dispute, with the benefit of a binding ruling on the relevant point of law.

The perceived advantage of references is that they can improve the predictability of the law, enhancing legal certainty. Higher courts can issue binding and up-to-date interpretations of the law, which lower courts are then expected to follow. This can overcome problems where precedent is unclear, or no longer “good law” but only capable of being departed from by a higher court.

Conversely, reference procedures can prolong litigation that would otherwise be resolved definitively by lower courts. References can also place greater pressure on higher courts, which have more limited resources and capacity than their first instance counterparts.

⁷⁶ As Lord Kerr put it in January 2019, “In general, it is desirable that legal questions be determined against the background of a clear factual matrix, rather than as theoretical or academic issues of law.” See [Reference by the Attorney General for Northern Ireland \(No 2\)](#) [2019] UKSC 1.

What reference procedures exist at the moment?

There are two notable judicial reference procedures that have shaped the law in the UK in recent decades.

The first is the CJEU's preliminary reference procedure, authorised under [Article 267 TFEU](#). Under that provision, national courts in EU member states can refer questions of EU law to the CJEU for a direct determination. This notably happened in relation to a dispute in Scotland about whether minimum unit alcohol pricing was compatible with the EU law on free movement of goods.⁷⁷ This reference procedure still exists, in UK law, but in a more limited form, for certain disputes arising under the Withdrawal Agreement.⁷⁸

The second notable example is the devolution reference procedure contained in the [Scotland Act 1998](#) the [Northern Ireland Act 1998](#), and the [Government of Wales Act 2006](#).

Devolution references enable certain matters to be heard directly by the UK Supreme Court. This avoids having the same point of law relitigated in appeal courts. An important advantage of a devolution reference is that the UK Supreme Court can issue binding judgments on all three legal systems of the UK. This ensures that similar or identical provisions in the three devolution settlements are interpreted and applied consistently with one another.

How would this Bill's new reference procedure work?

Domestic courts and tribunals would have the power, under [section 6 of the REUL Act](#), to refer upwards a point of law arising on binding retained case law. The reference would be made to a higher court that was legally capable of overturning the relevant retained case law.

That higher court's decision about whether to overturn the case law would then be binding on the lower courts. The original dispute could then be resolved in light of that new decision.

This change would enable retained case law to be departed from without it first having to be litigated in courts or tribunals that have no discretion about whether to follow it.

Under **new section 6A of EUWA**, a reference would be made by the relevant lower court, either on its own initiative or at the request of one or more of the parties to a dispute. A point of law is only referable if (a) the lower court is bound to follow the relevant case law and (b) it is on a point of general public importance.

The higher court must refuse the reference if they consider the points raised either not to be relevant to the proceedings or of general public importance.

⁷⁷ [Case C333/14 Scotch Whisky Association v Lord Advocate](#) [2016] 1 WLR 2283.

⁷⁸ Most notably in relation to the citizens' rights provisions and the Northern Ireland Protocol, both of which incorporate (by reference) specific parts of EU law.

Procedural decisions by a court about seeking, accepting or rejecting a reference would be unappealable. This is broadly consistent with the way that “permission to appeal” decisions are taken under other statutes.

Role of the law officers

[Section 6 of the REUL Act](#) will also allow law officers (senior legal advisors to the UK Government and devolved authorities) to make a similar type of reference, in a slightly different context. **New subsection 6B of EUWA** would allow law officer references to be made within six months of lower court proceedings coming fully to a conclusion. If a law officer believes that a relevant point of retained case law should have been referred, they can refer it in a distinct set of proceedings.

The outcome of such a reference would not impact the original decision, but would be binding on the point of law for future cases. The higher court has no discretion about whether to accept a law officers’ reference.

New subsection 6C of EUWA will allow law officers to intervene in live cases concerned with whether retained case law should be departed from. This statutory power to intervene is similar to those found in the devolution statutes.

6.3

Section 7 – selectively reinstating supremacy

[Section 3 of the REUL Act](#) provides that domestic enactments, whenever passed or made, take priority over retained direct EU legislation (RDEUL). This inverts EUWA’s modified supremacy rule, whereby:

- all RDEUL takes priority over incompatible pre-2021 domestic legislation; and
- pre-2021 domestic legislation is interpreted, so far as possible, compatibly with RDEUL.

[Section 7 of the REUL Act](#) will allow a relevant national authority (ie UK Ministers or devolved authorities), effectively to reinstate the original supremacy rule, to govern the interaction of specific pieces of legislation. The Delegated Powers Memorandum to the Bill described this as a power “to set legislative hierarchies” and to “mitigate unintended consequences associated with the end of [EU] supremacy”.⁷⁹

This power would normally be exercised by making a statutory instrument under the negative resolution procedure.⁸⁰ Any [section 7](#) regulations must be

⁷⁹ [Delegated Powers Memorandum](#) (PDF), page 19.

⁸⁰ If regulations are used to amend primary legislation, the draft affirmative procedure must be used. This would be necessary to give an instrument of retained direct EU legislation precedence over an Act of Parliament, or an Act of a devolved legislature. See [Parts 2-3 of Schedule 5 of the REUL Act](#).

made no later than 23 June 2026. The regulations must specify the relevant instruments for which the supremacy rule would (in effect) be reinstated.

It is not known how extensively this power would actually be used by the UK Government and/or devolved authorities. Therefore it is impossible to assess to what extent the effects of supremacy would be retained despite its formal revocation under [section 3](#).

6.4

Section 8 – incompatibility orders

If a piece of RDEUL cannot be read compatibly with a domestic enactment (under [section 3](#)) or vice versa (under [section 7](#)) a court must, when faced with that conflict, make an “incompatibility order” under [section 8 of the REUL Act](#).

An incompatibility order, in a similar vein to a declaration of incompatibility under [section 4 of the Human Rights Act 1998](#), acknowledges that two sources of law are irreconcilable: that they demand things that are unavoidably inconsistent with one another.

Although [section 3](#) and [section 7 of the REUL Act](#) stipulate which instrument should take priority in those circumstances, the immediate effects of this can be tempered by an incompatibility order. An incompatibility declarator can explain, delay, constrain or remove, the legal consequences that would otherwise arise as a result of one instrument being read “subject to” the other.

These provisions share some similarities with the prospective-only and suspended quashing orders, recently conferred on courts and tribunals by the [Judicial Review and Courts Act 2022](#).⁸¹

⁸¹ See Commons Library, [The Government’s judicial review reforms and the Judicial Review and Courts Bill](#), CBP 9527, 20 April 2022.

7 The scrutiny provisions

7.1 Overview

Primary legislation can modify or revoke any type of retained EU law (REUL). However, not all delegated powers can be used to modify or revoke all types of REUL.

The original rules in EUWA protected certain types of REUL against modification or revocation more strongly than others. Whether or not a delegated power is a “[Henry VIII power](#)” (ie can amend or repeal primary legislation) is used as a proxy for whether it can modify or revoke certain types of REUL.

The REUL Act will change this. [Section 9](#) effectively “downgrades” most of the “more protected” REUL. That law would become easier to modify or revoke via ordinary (non-Henry VIII) delegated powers.

During the passage of the EU (Withdrawal) Bill in 2018, additional scrutiny protections were also added in the House of Lords (via Government amendments). These gave Parliament a greater role if UK ministers proposed to modify or revoke regulations made under [section 2\(2\) of the European Communities Act](#) (ECA). Additional scrutiny can include mandatory explanatory statements, mandatory periods of prior parliamentary scrutiny, and the mandatory use of the draft affirmative procedure instead of the negative resolution procedure.

[Section 10 of the REUL Act](#) would repeal those additional scrutiny requirements, making ECA regulations as easy to modify or revoke as any other delegated legislation.

7.2 Section 9 – modifying and revoking REUL

[Section 9](#) would make it easier to amend or revoke retained direct principal EU legislation (some of the law retained under [section 3 of EUWA](#)) and retained directly effective EU law (retained under [section 4 of EUWA](#)), using delegated powers. It would also reduce the existing level of Parliamentary oversight when the Government proposes to make changes of that kind.

The previous position

[Section 7](#) and [Schedule 8 of EUWA](#) impose a complex range of restrictions on the amendability and revocability of retained direct EU legislation and other retained direct EU law. Those provisions determine whether pre-existing delegated powers can be used, and if so, subject to what forms of scrutiny in Parliament or the devolved legislatures.

When can delegated powers be used to modify or revoke RDEUL?

Among other things, [section 7 of EUWA](#) draws a distinction between retained direct **principal** and retained direct **minor** EU legislation. [Schedule 8](#) then sets out the types of power that can be used to amend those respective types of RDEUL.

- A pre-existing delegated power can (normally) only modify or revoke retained direct **principal** EU legislation, or EU law retained by [section 4 of EUWA](#), if it can also amend primary legislation.
- By contrast, any pre-existing delegated power can modify or revoke relevant retained direct **minor** EU legislation. This is true regardless of whether it can amend primary legislation.

If there is no relevant delegated power – one capable of modifying or revoking REUL in the way desired – primary legislation must be used instead.

Scrutiny of statutory instruments modifying or revoking RDEUL

[Schedule 8 of EUWA](#) also includes scrutiny arrangements for statutory instruments that would modify retained direct EU legislation. If a legacy power is being used to amend retained direct **principal** EU legislation, or law retained by [section 4 of EUWA](#), it currently needs to undergo the same parliamentary scrutiny as if it were being used to amend primary legislation.

This will often mean that a statutory instrument must be approved in draft by Parliament (under the draft affirmative procedure) rather than being made subject to annulment (under the negative resolution procedure).

What would section 9 and Schedule 3 change?

As the Government’s Delegated Powers Memorandum puts it, what is now [section 9 of the REUL Act](#) essentially “downgrades” the EU law that is retained by virtue of [sections 3 and 4 of EUWA](#).⁸² This notably includes downgrading retained EU regulations and retained direct effects of the EU treaties and EU directives. These sources of REUL will become “as amendable” as domestic secondary legislation is at the moment.

This would mean that a wider range of delegated powers could amend this downgraded REUL, and the level of Parliamentary scrutiny for amendments

⁸² [Delegated Powers Memorandum](#) (PDF), page 7.

would be reduced. As the memorandum acknowledges, this would mean in the vast majority of cases that the negative resolution procedure (or devolved equivalent) would apply, rather than the draft affirmative procedure.⁸³

7.3

Section 10 – procedural requirements when changing REUL

Context

According to the Government’s [Retained EU Law Dashboard](#), REUL includes more than 2000 statutory instruments (SIs). The vast majority of these were originally made under [section 2\(2\) of the European Communities Act \(ECA\)](#).⁸⁴ Although those SIs have been preserved, the power under which they were made, and under which they would have been expected subsequently to be modified or repealed, no longer exists. This is because the [EU \(Withdrawal\) Act 2018 \(EUWA\)](#) repealed the ECA.

Members of the House of Lords raised a wide range of concerns about parliamentary oversight of the modification and repeal of EU-derived domestic legislation, when the EU (Withdrawal) Bill was progressing through Parliament. One of the concerns raised was about the potential use of existing delegated powers, in other enactments, to modify regulations made under [section 2\(2\) of the ECA](#).

The (then) Government offered further safeguards at Lords Report Stage, developed further during Ping Pong, which were subsequently contained in [Schedule 8 of EUWA](#) (paragraphs 13-15).⁸⁵ Ministers would face additional parliamentary scrutiny if they used existing delegated powers in other Acts to modify or revoke ECA SIs. Three key safeguards were put in place:

- Firstly, ministers would have to make explanatory statements, justifying the modification or revocation of an SI (paragraph 15).
- Secondly, an enhanced scrutiny procedure may apply, giving parliamentary committees a 28 day window before the SI is laid within which to comment on the proposed modification or revocation (paragraph 14).
- Thirdly, in certain circumstances, the affirmative procedure would have to be used instead of the negative resolution procedure, guaranteeing a parliamentary vote before the SI is modified or revoked (paragraph 13).

⁸³ As above, page 8.

⁸⁴ These are retained under [section 2 of EUWA](#).

⁸⁵ [HL Deb 18 June 2018 c1869](#).

What does section 10 of the REUL Act change?

[Section 10 of the REUL Act](#) repeals these extra safeguards. The current Government argues, in its Delegated Powers Memorandum, that “no tangible benefit” has arisen from them, and that they have put greater pressures on Parliamentary time and resources.⁸⁶

⁸⁶ [Delegated Powers Memorandum](#) (PDF), page 37.

8 The delegated powers provisions

8.1 Overview

[Sections 11-16 of the REUL Act](#) include a suite of related delegated powers. These give UK Government ministers and devolved authorities wide discretion on key decisions about the substance and future of retained EU law (REUL).

- [Section 11](#) confers a power, expiring at the end of 2023 to “restate” any secondary REUL.
- [Section 12](#) confers an almost identical power, thereafter, to “restate” any secondary assimilated law, as well as to “reproduce” sunsetted retained direct EU law, until 23 June 2026.
- [Section 13](#) sets out the flexibilities and constraints that apply to a relevant national authority when exercising “restating” powers.
- [Section 14](#) confers broad powers to “revoke”, “replace” or make “alternative provision” for, secondary REUL.
- [Section 15](#) confers a power to “update” secondary REUL or successor provision in light of technological or scientific developments.
- [Section 16](#) clarifies that Legislative Reform Orders can be used to modify retained direct EU legislation.

8.2 Sections 11-13 – the restating and reproducing powers

[Sections 11-13 of the REUL Act](#) enable REUL and assimilated law to be “converted” into domestic statutory instruments, by way of “restating” regulations. Such statutory instruments could also “reproduce” interpretive principles of REUL that would otherwise have been abolished by [sections 2-4 of the REUL Act at the end of 2023](#).

Who can “restate” REUL or assimilated law?

A “relevant national authority” can exercise the [section 11](#) or [section 12](#) powers. “Relevant national authority” includes UK ministers and/or devolved

authorities. Restating regulations, by default, are made subject to annulment by either House of Parliament (and/or by the relevant devolved legislature).⁸⁷

What law can be “restated”?

[Section 11 of the REUL Act](#) provides that “secondary retained EU law” can be restated (until the end of 2023), whereas [section 12](#) provides that “secondary assimilated law” can be restated thereafter until 23 June 2026. This reflects the change of terminology planned under [section 5](#), as well as the other planned changes to REUL under [sections 2-4](#).

The word “secondary” is important in both provisions. Provisions in primary legislation (mostly) cannot be restated under these new powers. This restriction would prevent, for example, the Equality Act 2010 being “downgraded” from an Act of Parliament to a statutory instrument. Such an Act could only be restated/recategorised via further primary legislation.

However, in some cases, provisions contained in primary legislation may still be regarded as “secondary” REUL or assimilated law for the purposes of the Bill’s restatement powers. This would be the case if subordinate legislation had inserted or modified the provisions in question.

This deals with situations where, for example, a [Henry VIII power](#) was used (when making a statutory instrument). It might also include the exercise of a power in retained direct EU legislation, used to modify primary legislation.

What counts as a “restatement”?

The Act is quite permissive as to what counts as a “restatement” of REUL or assimilated law. However, it seems intended that the policy outcomes of provisions should not change when the restating powers are used. Several specific provisions are relevant.

Firstly, [subsection 13\(2\)](#) clarifies that the restatement can use different “words or concepts” from the original instrument(s) or law.

Secondly, [subsections 11\(8\) and 12\(10\)](#) indicate that restatement can potentially include “codification” of aspects of retained EU law that are not contained in legislative instruments (including direct effect, supremacy, general principles and retained case law).

Thirdly, [subsection 13\(3\)](#) allows a relevant national authority to make changes they consider “appropriate” as part of a restatement, in order to:

- resolve ambiguities;
- remove doubts or anomalies;

⁸⁷ The draft affirmative procedure applies if a statutory instrument would amend, repeal or revoke primary legislation. See [Schedule 5 para 5\(1\)](#).

- facilitate improvement in the clarity or accessibility of the law (including by omitting anything which is legally unnecessary).

The Delegated Powers Memorandum asserts that these powers “cannot substantively change the policy effect of legislation.”⁸⁸

The barrister George Peretz KC has suggested, in a recent webinar on the Bill, that “if there has been an argument in the textbooks” about what a provision of (retained) EU law means, the restatement powers could be used to choose “whatever interpretation takes [a minister’s] fancy”. However he added:

There must doubtless be some outer limit to what counts as a restatement and which will have to be policed by the courts and they may, I suspect probably will, take a restrictive view of that, if what actually seems to have happened looks like a fairly substantive change.⁸⁹

What is the legal effect of making a “restatement”?

The effect of a restatement is that the relevant law will be contained in a new legislative instrument. Instead of something being:

- EU-derived domestic legislation (under [section 2 of EUWA](#));
- retained direct EU legislation (under [section 3 of EUWA](#)); and/or
- saved direct EU law (under [section 4 of EUWA](#))

the substantive law would be contained in a domestic statutory instrument. The law in question would no longer be part of REUL (if restated before the end of 2023), or assimilated law (if restated after 2023).

The exercise of the restatement powers (in [sections 11 or 12](#)), and the exercise of the revocation/replacement powers (in [section 14](#)) is mutually exclusive. This is because the powers to revoke and replace only apply to something that is still REUL/assimilated law. Once REUL/assimilated has been restated, it is no longer REUL/assimilated law. The restatement power also cannot be used repeatedly, for the same reason.

Henry VIII powers

[Subsection 13\(5\)](#) stipulates that the restatement powers in [sections 11 and 12](#) are Henry VIII powers, as they can modify any enactment. The Government has explained that this flexibility exists to enable restated law to be consolidated or codified in primary legislation, where appropriate.⁹⁰

⁸⁸ [Delegated Powers Memorandum](#) (PDF), page 21.

⁸⁹ Monckton Chambers, [Webinar on the Retained EU Law \(Revocation and Reform\) Bill](#), 28 September 2022.

⁹⁰ [Explanatory Notes](#) (PDF), para 198.

What would “reproducing” EU principles involve?

If something ceases to be retained EU law, it is no longer to be interpreted and given effect in conformity with the direct effect, supremacy, general principles or case law of retained EU law.

However, a restatement can “recreate” the effects of these EU principles, in a more limited form. [Subsections 11\(4-6\) and 12\(4-8\)](#) of the REUL Act allow for this, treating this as a type of “restatement” of REUL.

As the Delegated Powers Memorandum explains (emphasis added):

Although the [then clause 12] power can to some extent reproduce the “effects” of supremacy, it cannot reproduce supremacy itself. The power is prevented from providing that **all** enactments are subject to what is restated. The power cannot recreate EU interpretation rules, but instead must rely on traditional domestic statutory techniques and rules of interpretation to achieve the same policy outcomes.⁹¹

Professor Catherine Barnard has provided an example of how the reproduction of principles might work in practice. [Article 157 TFEU](#) protects equal pay between men and women. But those preserved rights and obligations will expire under [section 2 of the REUL Act](#) at the end of 2023. Professor Barnard has argued that [subsection 11\(6\)](#) could be used not just to preserve the direct effect of Article 157 TFEU beyond 2023, but also, in effect if not in name, to give it supremacy over any conflicting provisions of the Equality Act 2010.⁹²

Legislative scrutiny

Ministers would normally have the choice whether to make [section 11 or 12](#) regulations under the draft affirmative or the negative resolution procedure.⁹³ The draft affirmative procedure must be used, however, if the proposed statutory instrument would amend primary legislation (see [Schedule 5](#)).

[Schedule 5](#)’s sifting arrangements also apply if ministers propose to use the negative procedure. The sifting process requires the UK Government to justify its decision not to use the draft affirmative procedure, and gives committees of both Houses of Parliament the opportunity to register a (non-binding) objection to that decision. For more information about the sifting process, see the discussion in **Section 9.5** below.

⁹¹ [Delegated Powers Memorandum](#) (PDF), page 21.

⁹² Monckton Chambers, [Webinar on the Retained EU Law \(Revocation and Reform\) Bill](#), 28 September 2022.

⁹³ Separate arrangements apply for approval of statutory instruments involving devolved authorities. See Schedule 3.

8.3

Section 14 – the revocation and replacement powers

Whereas [sections 11-13](#) are concerned (largely) with preserving secondary retained EU law and its effects after the 2023 sunset, [section 14](#) is concerned with its removal or outright replacement. It also makes equivalent provision for secondary assimilated law from 2024 onwards.⁹⁴ As with [sections 11 and 12](#), the powers are exercisable by a relevant national authority.

Outright revocation

[Subsection 14\(1\)](#) would allow any secondary retained EU law to be revoked without replacement provision. This provisions applies not just to the 587 instruments listed in [Schedule 1](#), and could (theoretically) impact in excess of 4000 instruments in total.

The power to revoke, under [subsection 14\(1\) of the REUL Act](#), would supplement, rather than displace, powers in other enactments capable of revoking any part of REUL.

Options for replacing secondary REUL/assimilated law

If the relevant national authority wishes to replace the REUL or assimilated law provision they are revoking, they could do so using either of two other powers in [section 14](#).

Replacement regulations

[Subsection 14\(2\)](#) would allow secondary REUL to be revoked, and then replaced with new domestic secondary legislation. It is for the relevant national authority to determine what “appropriate” provision should be included, but it must “achieve the same or similar objectives” as the measures being revoked.

Alternative provision

More broadly still, [subsection 14\(3\)](#) would allow a relevant national authority to make “alternative provision” having revoked a piece of secondary REUL. This means that the replacement for REUL could still be of a legislative character, but not pursuing the “same or similar objectives”.

The Delegated Powers Memorandum recognises that “alternative provision” could be made where the “overarching objective of a policy” is not the same as it was before.⁹⁵

⁹⁴ See [subsection 14\(10\)](#).

⁹⁵ [Delegated Powers Memorandum](#) (PDF), page 29.

Constraints on section 14 regulations

There are certain things that [section 14](#) regulations would not be able to do:

- create new delegated powers, criminal offences or monetary penalties;
- levy taxes;
- create a new public authority; and
- increase the overall regulatory burden

However regulations would be able to:

- recreate delegated powers, criminal offences and monetary penalties of a similar kind to those being revoked;
- confer functions and discretion on any person;
- charge fees; and
- establish voluntary schemes (which are not to be regarded as new regulatory burdens).

The power to make regulations under [section 14](#) will expire on 23 June 2026.

Legislative scrutiny

If the [section 14](#) power is being used to further delegate a power or to create a criminal offence, the draft affirmative procedure must be used for the proposed regulations. The same is also true if “alternative provision” is being made at the same time as revocation of the REUL/assimilated law (see [Part 2 of Schedule 5](#)).

Otherwise, regulations can be made either by the draft affirmative procedure or the negative resolution procedure. As with [sections 11 and 12](#), the sifting arrangements in [Schedule 5](#) also apply whenever ministers propose to use the negative resolution procedure (see [Section 9.5](#) below).

The Government insists that [section 14](#) is not a [Henry VIII power](#), because it can only amend subordinate legislation.⁹⁶ While this is technically correct, there could be knock-on effects for primary legislation. This is because regulations might revoke subordinate legislation that, itself, made textual amendments to primary legislation. There is no requirement to use the draft affirmative procedure in those cases.

⁹⁶ [Delegated Powers Memorandum](#) (PDF), page 28.

8.4

Section 15 – the updating power

Retained EU law is not a dynamic body of law. Instead, it is a “snapshot” of EU law, as it stood, at the end of the post-Brexit transition period (after 31 December 2020). It does not automatically update to track developments in EU law.

Some of the more detailed provisions in EU law, however, change frequently (under delegated authority) and then have direct effect in member states. This allows (for example) the European Commission to keep pace with developments in technical standards, without having to use the more time-consuming [ordinary legislative procedure](#) each time. When the UK followed EU law, these changes were often also tracked using section 2(2) of the ECA.

The UK Government has identified “a number of areas” where it is desirable “to update REUL on a regular basis” to maintain its effectiveness. To this end, [section 15 of the REUL Act](#) will allow a relevant national authority to “update”:

- secondary retained EU law (before 2024);
- secondary assimilated law (thereafter); and
- regulations made under [sections 11, 12 and 14 of the REUL Act](#).

These instruments can be updated to “take account of changes in technology or developments in scientific understanding”.

The Delegated Powers Memorandum sets out the rationale for this new delegated power:

The Retained EU Law substance review showed a lack of subordinate legislation making powers with the scope to make technical amendments to REUL for these purposes. This is because while the UK was an EU member, departments had previously relied upon section 2(2) European Communities Act 1972 for implementation or on the direct effect of UK law. The power conferred by section 8 of EUWA, used in some instances by the government to make these kinds of changes, is due to expire on 31 December 2022 (and was, in any case, limited to remedying specified deficiencies in REUL). In the absence of these, departments have been left without the ability to update these technical standards and regulations. This power seeks to address this.⁹⁷

The Explanatory Notes suggest that the [section 15](#) power “is not intended to make significant policy changes” and is “only intended to make relevant technical updates”.⁹⁸

The Delegated Powers Memorandum stresses that the updating power is impliedly limited in important respects. It cannot subdelegate, create or

⁹⁷ [Delegated Powers Memorandum](#) (PDF), page 31.

⁹⁸ [Explanatory Notes](#) (PDF), para 57.

widen criminal offences, levy or increase taxes, make retrospective provision, or amend either the devolution statutes or Human Rights Act 1998.⁹⁹

Legislative scrutiny

As with [section 14](#), and for the same reasons, the Government maintains that [section 15](#) is not a Henry VIII power (see **Section 8.4** above).

Any [section 15](#) regulations would be approved under the negative resolution procedure (or devolved equivalent).

8.5

Section 16 – Legislative Reform Orders

Context

[Legislative Reform Orders](#) (LROs) are a type of delegated legislation made under the Legislative and Regulatory Reform Act 2006. They exist for the purposes of removing or reducing regulatory “burdens”.

LROs attract their own special form of legislative scrutiny, under which instruments must often be laid in draft 40 (or sometimes 60) days before they are made, and certain consultation and reporting must take place.

Sometimes a “[super-affirmative](#)” procedure applies to LROs, under which a Committee can make recommendations about a proposed order, with a view to securing changes to it before it is presented for approval.

Previously, the scrutiny for LROs was carried out by the [Regulatory Reform Committee](#), but this was transferred to the [Business, Energy and Industrial Strategy Committee](#) in May 2021. They are now scrutinised by the [Business and Trade Committee](#), following further machinery of government changes.

Relevance to this Act

Prior to this Act, there was what the Government described as “uncertainty” about whether LROs could be used to modify retained direct EU legislation (RDEUL).¹⁰⁰ The Government therefore sought to amend the 2006 Act to confirm that this is permitted. The Act also clarifies that, if an LRO would modify RDEUL, the normal 2006 Act procedures, rather than EUWA’s scrutiny procedures, apply to the instrument in question. No other changes would be made to the existing LRO process.

The LRO scheme does not extend to devolved areas in Scotland or Northern Ireland, though it can do in Wales with the consent of Welsh Ministers.

⁹⁹ [Delegated Powers Memorandum](#) (PDF), page 32.

¹⁰⁰ As above, page 38.

9 Miscellaneous and final provisions

9.1 Overview

The remaining sections in the REUL Act make provision of a more general character or are “standard” clauses in a Bill of this kind:

- [Section 17](#) relates to various reporting requirements and the Retained EU law dashboard
- [Section 18](#) abolishes the Business Impact target;
- [Section 19](#) confers on Ministers a power to make consequential provision;
- [Section 20](#) and [Schedules 4 and 5](#) govern the making of regulations under the REUL Act;
- [Section 21](#) covers interpretation of key provisions in the REUL Act;
- [Sections 22-23](#) cover commencement, territorial extent, and the short title.

9.2 Section 17 – the REUL Dashboard

[The Retained EU law dashboard](#) was created without any statutory underpinning. It was conceived as an information tool, rather than something of direct legal consequence. As Lord Callanan – the Government minister responsible for the REUL Bill in the Lords – put it: “the dashboard has no legal status as such; it is just a list of retained EU law”.¹⁰¹

Updates to the dashboard have not (to date) followed a regular pattern. The Government has indicated, however, that it intends to update it on broadly a quarterly cycle.

In the House of Lords, several peers argued that the REUL dashboard should be put on a statutory footing. This would, say argued, help to ensure that the government’s programme of retained EU law reform can be regularly scrutinised. Although amendments were debated at Committee and Report stage, they were not pressed to any decision until Third reading.

¹⁰¹ [HC Deb 22 May 2023 c608](#).

The issue was revisited at Lords Third reading. Conservative backbench peer Baroness Noakes tabled a group of related amendments, to which the Government acquiesced. The main amendment now forms [section 17 of the REUL Act](#).

Within 30 days of each six-monthly reporting period the UK Government is now under a statutory obligation to do two things.

- Firstly, they must update the REUL dashboard.
- Secondly, they must prepare, lay and publish a written report updating Parliament on its REUL reform programme.

The six-monthly reports must, among other things:

- summarise the data on the REUL dashboard (noting any updates);
- set out the progress made in reforming REUL during the relevant reporting period; and
- set out the Government’s plans for subsequent reporting periods, including highlighting any REUL that it plans to revoke or reform.

There will be six reporting periods in total. The first reporting period ends on 23 December 2023. The final reporting period will elapse on 23 June 2026, the date on which the key delegated powers in the REUL Act expire.

If, for whatever reason, the Government fails to comply with its reporting obligations, there is an additional duty imposed on the Secretary of State to explain why this has happened, and to publish that explanation and lay it before Parliament.

9.3

Section 18 – the Business Impact Target

[Section 18 of the REUL Act](#) implements the Government’s commitment to abolish the Business Impact Target (BIT).¹⁰² It repeals [sections 21 to 27 of the Small Business, Enterprise and Employment Act 2015](#) (SBEEA) which set out requirements relating to the calculation and reporting on the BIT. The Government has said that “the BIT is not fit for purpose, as it limits the way in which regulation can be scrutinised”.¹⁰³

[Section 18](#) also makes minor and consequential amendments, such as moving and updating relevant definitions in legislation. It comes into force two months after royal assent (ie on 29 August 2023).

¹⁰² See HM Government, [The Benefits of Brexit: How the UK is taking advantage of leaving the EU](#), January 2022.

¹⁰³ [Explanatory Notes](#), para 64.

What were Business Impact Targets (BITs)?

BITs were a form of mandatory Government reporting on the economic impact of new regulation. They were created under the 2010-15 Coalition Government, with the intention that Government departments would assess and seek to minimise the cost of regulation to business.

Under SBEEA, the Government had to choose and publish, within a year following a general election, a target for the cost to business of changes in regulation, over both the term of a Parliament (five years) and an interim target covering the first three years of it.¹⁰⁴ After setting this BIT, the Government then had to publish an annual update setting out its progress.¹⁰⁵

Recent changes had been made to the reporting requirements for the BIT. The final report for a BIT (in the previous Parliament) would have fallen due no more than two months after a new Parliament has begun, whereas previously it had to be published before Parliament was dissolved.¹⁰⁶

Government concerns about the BIT

The Government raised concerns about the BIT scheme when setting the target for the current Parliament (in December 2020). Business Minister Lord Callanan said at the time that the BIT framework was not suitable for pursuing the Government's aspiration of achieving "the right regulatory balance between supporting excellent business practice and protecting workers, consumers and the environment".

A "holding target" of zero was set, to allow the Government to consult with businesses about a more appropriate framework. The initial commitment was to revise the BIT in light of the findings of that consultation and a wider review of the framework itself.

In July 2021, the Department for BEIS published a consultation on "[Reforming the Framework for Better Regulation](#)".¹⁰⁷ This examined the scope, methodology and reporting of the BIT, and explored options for reform: to adjust, change, replace or remove the BIT.

Proposals to abolish the BIT

The Government published the responses to the consultation on 31 January 2022, alongside a policy paper ([The Benefits of Brexit: How the UK is taking advantage of leaving the EU](#)). The policy paper set out the Government's intention to:

¹⁰⁴ [section 21\(1\) SBEEA](#).

¹⁰⁵ [section 23 SBEEA](#).

¹⁰⁶ See the [Schedule of the Dissolution and Calling of Parliaments Act 2022 at paras 27-31](#) amending SBEEA.

¹⁰⁷ Department for BEIS, [Reforming the Framework for Better Regulation. A Consultation](#), July 2021.

remove the Business Impact Target in its current form, which focuses too narrowly on net direct costs to business. To ensure a smooth transition, there will be another year of reporting under the Business Impact Target while the Government works on the replacement metrics and assessment. As part of this drive for a more rigorous approach, we will also reform the impact assessment that government departments complete to explain their rationale for regulating and ensure that they succinctly and accessibly capture key information.¹⁰⁸

The Cabinet Office and the Better Regulation Executive are in the process of developing the replacement to the BIT.¹⁰⁹

9.4 Section 19 – consequential provision

[Section 19 of the REUL Act](#) is a boilerplate provision, granting a power to make consequential provision following the passage of an Act.¹¹⁰ It would allow a Minister of the Crown or a devolved authority to make updates to other legislation in light of the passage of this Act.

Although the Government has identified consequential amendments that need to be made (to EUWA and to the [Direct Payments to Farmers \(Legislative Continuity\) Act 2020](#)), and has included these in [Part 2 of Schedule 3](#), it has acknowledged that others may not yet have been identified.

These regulations would be made by negative resolution unless they amend primary legislation, in which case the draft affirmative procedure would be used (see [Part 2 of Schedule 5](#)).

9.5 Section 20 – provision about regulations

Although [section 20](#) is concerned with the making of regulations, it mainly serves to sign-post provision elsewhere in the Bill, especially [Schedules 4 and 5](#).

[Subsection 20\(1\)](#) clarifies that all of the other delegated powers in the Act include power to make:

- different provision for different purposes or areas; and
- supplementary, incidental, consequential, transitional, transitory or saving provision.

¹⁰⁸ HM Government, [The Benefits of Brexit: How the UK is taking advantage of leaving the EU](#), January 2022, page 28.

¹⁰⁹ [Impact Assessment](#), Retained EU Law (Revocation and Reform) Bill, para 38.

¹¹⁰ It is comparable with [section 23 of EUWA](#), [section 41 of EUWAA](#) and [section 39 of the European Union \(Future Relationship\) Act 2020](#).

[Subsection 20\(4\)](#) clarifies that, just because a power to make regulations might lapse (ie after 23 June 2026) that does not mean the regulations themselves, made before then, lapse.

Schedule 4 – Devolved regulations

[Subsection 20\(2\)](#) of the REUL Act gives effect to [Schedule 4](#). It contains a standard set of provisions governing the powers and scrutiny arrangements for devolved authorities under the Bill.

The Schedule confirms that Scottish Ministers, Welsh Ministers and Northern Ireland departments are limited to making provision within their respective devolved competences when exercising delegated powers under the Bill.

There are also boilerplate consent, consultation and joint exercise provisions governing the making of regulations in devolved areas. Those provisions notably do not restrict the power of UK ministers to make regulations in areas of devolved competence without devolved consent (on which see [Section 10](#) below).

Schedule 5 – Scrutiny of statutory instruments

[Subsection 20\(3\) of the REUL Act](#) gives effect to [Schedule 5](#). It governs the type of legislative scrutiny that would be given to statutory instruments made under delegated powers in the Bill.

The most notable feature of the Schedule is the sifting arrangement. It applies when a Minister of the Crown proposes to exercise powers under [sections 11, 12 or 14](#), and has a choice about whether to use the draft affirmative procedure or the negative resolution procedure.

If a Minister wishes to use the negative resolution procedure for an instrument, the instrument must first undergo a “sifting” process. It bears a close resemblance to those sifting processes included in EUWA and the EU (Future Relationship) Act 2020.

The Sifting Process

If a Minister proposes to use the negative resolution procedure, they must make a statement explaining why and must lay a memorandum before both Houses to that effect. The “proposed negative” instrument must also be laid in draft before both Houses.

Committees of both Houses would then be given a ten-sitting day window within which to consider the choice of procedure for the instrument.

If both House’s committees endorse the Minister’s choice of procedure, the Minister can proceed on that basis.

If either committee recommends that the Minister should use the draft affirmative procedure instead, the Minister then has a choice. They can either

“upgrade” the instrument to a draft affirmative, or they can make a statement explaining why they have chosen to use the negative resolution procedure anyway.

Devolution and sifting

As with EUWA, parallel statutory sifting arrangements are included for the Senedd Cymru. Equivalent provision does not exist (also consistent with EUWA) for the Scottish Parliament and Northern Ireland Assembly.

9.6 Section 21 – interpretation

An index of expressions used in the REUL Act is contained in [section 21](#). This includes, for example, the definition of a “relevant national authority”. That phrase serves as short-hand in the Act for a Minister of the Crown or devolved authority, or (in some cases) both acting jointly.

However, most of the important words and phrases used in the Act are defined (at least in part):

- elsewhere in the Act;¹¹¹
- in the EU (Withdrawal) Act 2018;¹¹² or
- in the Interpretation Act 1978.¹¹³

9.7 Section 22 – commencement

The penultimate section of the Act deals with the commencement of different provisions. The vast majority of provisions in the final Act came into force immediately following royal assent.¹¹⁴ The exceptions are as follows:

- [sections 3 and 4](#) (the abolition of supremacy and general principles of EU law) are to be commenced by regulations. Presumably, this must happen no later than the end of 2023. Otherwise, the relevant minister’s failure to commence the provisions could be construed as frustrating Parliament’s intention.
- [section 6](#) (on the status of CJEU case law and introducing domestic reference procedures) is also subject to commencement regulations.

¹¹¹ eg “secondary retained EU law” in section 11.

¹¹² eg “retained case law” in [section 6\(7\) of EUWA](#).

¹¹³ eg “Northern Ireland legislation” in [section 24\(5\) of the Interpretation Act 1978](#).

¹¹⁴ subsection 22(1).

Unlike [sections 3 and 4](#), these changes are not necessarily timebound, and could plausibly be commenced separately.¹¹⁵

- [section 8](#) (concerned with incompatibility orders) is closely connected to [section 3](#) and the abolition of supremacy. It will similarly be brought into force by commencement regulations. Given that incompatibility orders would only become relevant when the supremacy of EU law is revoked, it seems likely that [section 8](#) would be commenced concurrently with, or some point after, [section 3](#).
- [section 18](#) (concerned with the abolition of the Business Impact Target) automatically comes into force two months after Royal Assent.

[Subsection 22\(4\)](#) allows UK Ministers or a devolved authority to make transitional, transitory or saving provision in connection with the entry into force of the Act.

[Subsection 22\(5\)](#) clarifies the operation of the 2023 sunset. It makes clear that direct effect, supremacy, and general principles of EU law continue to have effect, on the same basis as they do now, until the end of 2023. If legal disputes are initiated after 2023, but are brought in relation to pre-2024 situations, those key principles of retained EU law will still apply.

9.8

Section 23 – extent and short title

The final section of the Act confirms that it is of UK-wide application, having effects across England and Wales, Scotland and Northern Ireland. It also confirms the Act's short title: the [Retained EU Law \(Revocation and Reform\) Act 2023](#).

¹¹⁵ The barrister Jack Williams has observed that these changes could plausibly be commenced before the end of 2023, and do not depend on the other changes coming into force. See Monckton Chambers, [Webinar on the Retained EU Law \(Revocation and Reform\) Bill](#), 28 September 2022.

10 Legislative consent and devolution

10.1 Overview

It is constitutional convention that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the devolved legislature(s). Consent is sought where, and to the extent that, primary legislative provision:

- could have instead been made by the devolved legislature, and/or
- would materially alter the competence or functions of devolved institutions.

In the Explanatory Notes to each Government Bill before the UK Parliament, the UK Government usually indicates which provisions it believes engage the legislative consent convention.¹¹⁶

The UK, Scottish and Welsh Governments all agreed that the REUL Bill engaged the consent convention. No devolved assessment could be made of the Bill in Northern Ireland in the absence of a power sharing Executive.

10.2 Legislative consent memorandums and motions

Scotland

The Scottish Government recommended, throughout, that the Scottish Parliament should withhold its consent for and oppose the passage of the REUL Bill. The Scottish Parliament opposed the REUL Bill on three separate occasions, calling for it to be scrapped. See the resolutions of:

- 28 November 2022 ([S6M-06984](#))
- 21 February 2023 ([S6M-07997](#))
- 6 June 2023 ([S6M-09375](#))

¹¹⁶ On the legislative consent convention generally, see Commons Library, [Devolution: the Sewel Convention](#).

The Scottish Government published two legislative consent memorandums:

- [Legislative Consent Memorandum \(LCM\) of 8 November 2022](#) (on the Bill as introduced in the Commons)
- [Supplementary LCM of 24 May 2023](#) (on the Bill as amended in the Lords)

The Constitution, Europe, External Affairs and Culture Committee scrutinised both memorandums, and published two reports.¹¹⁷ Holyrood's Delegated Powers and Law Reform Committee also published two reports in connection with the Bill and the matter of legislative consent.¹¹⁸

Wales

The Welsh Government recommended, throughout, that the Senedd should withhold its consent for and oppose the passage of the REUL Bill. The Senedd withheld consent for the REUL Bill, rejecting two legislative consent motions:

- 28 March 2023 ([NDM8226](#))
- 6 June 2023 ([NDM8286](#))

The Welsh Government published five LCMs:

- [LCM of 3 November 2022](#) (on the Bill as introduced in the Commons)
- [Supplementary LCM of 21 December 2022](#) (on the Bill as amended in Commons Committee)
- [Supplementary LCM of 6 February 2023](#) (on the Bill as amended at Commons Report stage)
- [Supplementary LCM of 10 March 2023](#) (on the Bill as introduced in the Lords)
- [Supplementary LCM of 26 May 2023](#) (on the Bill as amended in the Lords)

These memorandums were scrutinised by the Senedd Legislation, Justice and Constitution Committee. It published its scrutiny report on the memorandum [on 22 February 2023](#).¹¹⁹

¹¹⁷ Constitution, Europe, External Affairs and Culture Committee, [Legislative Consent Memorandum for the Retained EU Law \(Revocation and Reform\) Bill \(UK Parliament legislation\)](#) (PDF), SP Paper 318, 15 February 2023 and [Supplementary Legislative Consent Memorandum for the Retained EU Law \(Revocation and Reform\) Bill \(UK Parliament legislation\)](#) (PDF), SP Paper 395, 8 June 2023.

¹¹⁸ Delegated Powers and Law Reform Committee, [Legislative Consent Memorandum: delegated powers relevant to Scotland in the Retained EU Law \(Revocation and Reform\) Bill](#) (PDF), SP Paper 296, 16 January 2023 and [Supplementary Legislative Consent Memorandum: delegated powers relevant to Scotland in the Retained EU Law \(Revocation and Reform\) Bill](#) (PDF), SP Paper 385, 30 May 2023.

¹¹⁹ Legislation, Justice and Constitution Committee, [Report: The Welsh Government's Legislative Consent Memoranda on the Retained EU Law \(Revocation and Reform\) Bill](#), 22 February 2023.

10.3 Common ground between Governments

It was common ground (between the UK, Scottish and Welsh Governments) that certain provisions of the Bill engaged the legislative consent convention. Those provisions concerned:

- the expiry of legislation in devolved areas;
- the creation of new delegated powers in devolved areas; and
- the modification of certain existing delegated powers in devolved areas.

It was also accepted that the clause about Legislative Reform Orders (LROs) engaged the convention in Wales, as LROs can extend substantively to devolved matters in Wales. They cannot in Scotland or Northern Ireland.

10.4 Disagreement about the consent convention

The Scottish and Welsh Governments argued, however, that the convention was much more widely engaged, and covered clauses concerning:

- the expiry of directly effective REUL, the supremacy principle and the retained general principles;
- certain provisions relating to judicial treatment of retained caselaw; and
- other provisions affecting the powers of Scottish and Welsh Ministers, and of UK ministers in devolved areas.

The main source of disagreement about scope concerns the fact that the EU (Withdrawal) Act 2018 is an enactment “protected” against modification by the devolved legislatures. The UK Government argues that this means provisions in this Bill making changes to that Act do not engage the consent convention.

The Scottish and Welsh Governments, on the other hand, have argued that these changes impact the devolved competence of their respective legislatures, and have more than an incidental or consequential effect on the law as it operates in devolved areas.

10.5 Disagreement about the Bill

Both the Scottish and Welsh Governments strongly opposed the Bill. They raised several very similar concerns with this Bill as they have with other pieces of Brexit-related legislation.

UK ministers making regulations in devolved areas

The REUL Act grants UK ministers delegated powers to make laws in devolved areas. This includes powers:

- to exclude instruments from the sunset Schedule
- to restate retained EU legislation
- to restate assimilated legislation and replicate effects of retained EU law
- to revoke or to revoke and replace retained EU legislation
- to update retained EU legislation
- to make consequential, transitional, transitory and saving provision in relation to the Act

Both the Scottish and Welsh Government have long argued that these kinds of power should only be exercised by UK ministers with devolved consent, and that statute should embed safeguards to that effect. This, they argue, would better protect the ability of the devolved legislatures to hold the executive to account for decisions made in devolved policy areas. The Scottish Government argued in its November legislative consent memorandum that there is precedent for including consent requirements, including in the Coronavirus Act 2020.¹²⁰

The UK Government has legislated for concurrent powers without legislative safeguards before, including in the EU (Withdrawal) Act 2018 itself.

The UK Government has argued that there is a need for flexibility in this area, and has stressed that it would not “normally” legislate in devolved areas without the agreement of the devolved authorities (echoing the language of the Sewel convention in relation to primary legislation).

UK ministers also introduced amendments to the Bill in the House of Lords to extend certain powers, initially only to be conferred on UK ministers, to devolved authorities too (in relation to consequential, transitional, transitory and saving provision). These were described in the supplementary delegated powers memorandum as “exceptional”.¹²¹ These were criticised by the Scottish Government as being:

only the bare minimum required to ensure the Scottish Ministers have the necessary tools to prevent unintended consequences for the devolved, Scottish statute book.¹²²

¹²⁰ Scottish Government, [Legislative Consent Memorandum](#) (PDF), 8 November 2022, para 48.

¹²¹ [Supplementary Delegated Powers Memorandum](#) (PDF), 11 May 2023, para 12.

¹²² [Supplementary LCM](#) (PDF), 24 May 2023, para 27.

Deregulatory impact

Both the Scottish and Welsh Governments raised concerns about the wider deregulatory impact of the Bill. In its original Legislative Consent Memorandum, the Scottish Government said:

[Retained] 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.¹²³

Whilst criticisms were made most pointedly at the original legislation sunset clause, they were not confined to it. The Scottish Government said in its Supplementary LCM that the changes announced by Kemi Badenoch had “removed a substantial risk” in the original Bill, but that the delegated powers, and the sunseting of REUL’s interpretative framework, posed continued uncertainties.¹²⁴

The devolved governments also raised concerns about the lack of consultation by the UK Government with them about the 587 instruments to be included in the revocation Schedule. The Schedule includes instruments in devolved areas, about which specific concerns have been raised.¹²⁵

Both Governments also raised concerns about the potential deregulatory interaction between the delegated powers in the REUL Act and the operation of the UK Internal Market Act 2020 and common frameworks.¹²⁶

10.6

Decision to proceed without consent

The UK Government decided, in May, to proceed with the Bill notwithstanding the fact that consent had been withheld by the Scottish and Welsh Parliaments.

A practice has emerged in the House of Lords, whereby if consent is withheld for a Bill by one of the devolved legislatures, a Government minister will draw attention to the fact, and explain, ahead of Third reading, why the Government wishes to proceed regardless (if indeed that is what it plans to do). Lord Callanan said the following in relation to the REUL Bill:

We acknowledge the concerns of both Parliaments regarding the Bill and the potential impacts on devolved areas. However, it is right and constitutionally appropriate that the REUL Bill applies UK-wide. This will ensure that the benefits of Brexit can be realised by citizens and businesses throughout the

¹²³ Scottish Government, [Legislative Consent Memorandum](#) (PDF), 8 November 2022, para 44.

¹²⁴ As above, para 25.

¹²⁵ As above, para 26. See also [Letter from the Counsel General for Wales to the Chair of the Legislation, Justice and Constitution Committee](#) (PDF), 2 June 2023.

¹²⁶ Welsh Government, [Legislative Consent Memorandum](#) (PDF), 3 November 2022, para 89.

whole United Kingdom. The Government therefore intend to proceed with the Bill without their consent. As noble Lords will be aware, the ongoing absence of the Northern Ireland Executive and the Assembly means that it has not been possible to seek legislative consent from the Northern Ireland Assembly on this Bill.

I reassure the House that it was never our intention to proceed with the Bill without consent in place. Our preference would have been to secure legislative consent Motions from the devolved legislatures. The Government have sought to engage proactively with the devolved Administrations on the REUL Bill since March last year. We have listened to their concerns and sought to make meaningful changes to the Bill in response. This includes the amendment to the sunset and the conferral of the powers to make consequential and transitional, transitory and savings provisions to the devolved authorities and devolved Ministers.

The decisions of the Scottish Parliament and the Senedd, while regrettable, will never mark the end of our engagement with the devolved Administrations on retained EU law. We remain committed to supporting sustained engagement with them on the REUL Bill and the REUL reform programme going forward.¹²⁷

10.7 Unique challenges in Northern Ireland

The legislative consent process depends upon the preparation and publication, by the devolved authority, of a legislative consent memorandum. Without this, there is nothing for the devolved legislature's committees to scrutinise, and no formal mechanism for articulating a view on whether legislative consent for a UK Bill should be granted.

The Northern Ireland Assembly has not been fully functioning since the 2022 Assembly elections, as agreement cannot be reached to the formation of a new Executive. As a result, the legislative consent convention is inoperative in Northern Ireland at present.

Nevertheless, the REUL Act has significant implications for Northern Ireland. This is, in part, because retained EU legislation is an important mechanism by which the UK's obligations under the Northern Ireland Protocol and the Windsor Framework are given effect.

In its original form, the Bill presented more acute challenges in this context, as there was no legislative "backstop" to prevent the expiry of domestic legislation associated with the UK's international obligations. With the new revocation Schedule, however, this issue has become less pressing.

Had there been a functioning Executive, the UK Government would have sought legislative consent for a wider range of clauses in Northern Ireland than it did for Scotland and Wales. This was set out in the Annex to the Explanatory Notes to the Bill.

¹²⁷ [HL Deb 22 May 2023 cc602-3](#).

11

Contentious Lords amendments

The House of Lords has the opportunity to amend a bill sent to it by the House of Commons. If it decides to make changes to a bill, they must then be agreed by the House of Commons before the bill can become law. The exchange of messages, as the two Houses seek to find agreement, is colloquially known as “ping-pong”.

Normally, Government amendments made in the Lords can be expected to be agreed to by the House of Commons. However, ping-pong can become more protracted on amendments in respect of which the Government was defeated in the Lords, such as those brought forward by opposition or crossbench peers.

Despite the concessions made around the legislative sunset clause, there were four Government defeats at Lords Report stage. All four of these were overturned, and none of them form part of the final Act.

Further scrutiny of automatic expiry of legislation

The crossbencher and former Deputy President of the UK Supreme Court, Lord Hope, moved an amendment at Lords Report stage, to which the Lords agreed on a division. It would have increased the level of Parliamentary scrutiny applicable to the expiry of the 587 instruments listed in [Schedule 1](#) of the final Act.¹²⁸

Under his proposal, a Joint Committee would have “sifted” the 587 instruments, and highlighted any, the revocation of which would represent a “substantial change to current UK law”. If so highlighted, an instrument could only expire at the end of 2023 if it had been debated on the floor of both Houses, and both Houses had approved the revocation of the instrument in question.

This proposal was not pressed further after the House of Commons rejected it on 24 May 2023.

Further scrutiny of expiry of retained direct EU law

The crossbencher and barrister Lord Anderson tabled an amendment with a view to increasing Parliamentary oversight over the expiry of retained direct

¹²⁸ Amendment 2 at Lords Report stage, later forming part of Lords Amendment 1.

EU law (rights and obligations etc. currently preserved by section 4 of EUWA).¹²⁹

The mechanism would have required the UK Government, and the devolved authorities, positively to identify and to report on the directly effective law that it had decided not to restate, reproduce or replace, at the end of 2023. The deadline for reporting this would be the end of October 2023. It would then be open to the UK Parliament, or to a devolved legislature if appropriate, to resolve that some or all of the law in question should be retained, in the two-month window. If a “retain” resolution was passed, the law in question would then not expire at the end of 2023.

The amendment was made on a division in the House of Lords, but overturned in the House of Commons on 24 May 2023 and was not revisited.

Enhanced scrutiny of delegated powers

Lord Hope proposed an amendment to apply additional Parliamentary scrutiny to key delegated powers in the Bill (essentially a variation [on super-affirmative procedure](#)). If a minister planned to use the powers to restate, replicate, revoke or replace any legislative instruments, the additional scrutiny rules would apply.¹³⁰

If, in the assessment of a Joint Committee, the proposed statutory instrument would (a) make substantial changes to UK law or (b) had not been adequately consulted on at least six weeks prior to its introduction, then it could only be made following a debate and vote on the floor of both Houses. The proposal also provided a mechanism by which MPs and peers could seek to amend the text of the draft statutory instrument before it could be made.

The House of Commons rejected this amendment at the Government’s urging. Two further attempts were made by the Lords to amend the Bill, on narrower propositions. These concerned only the revocation and replacement powers (not the restatement or reproduction powers) and using a Commons-only committee instead of a Joint Committee to carry-out the scrutiny function. However, these proposals were again rejected by the House of Commons and do not form part of the final Act.

Environmental protection/non-regression

Lord Krebs moved an amendment at Lords Report stage directed towards preventing an erosion of environmental and food safety standards.¹³¹ Under the original amendment, regulations to restate, replicate, revoke, replace or update retained EU law could not be used if they would:

¹²⁹ Amendment 15 at Lords Report stage, later forming Lords Amendment 6.

¹³⁰ Amendment 76, later Lords Amendment 42.

¹³¹ Amendment 48, later Lords Amendment 15.

- reduce levels of environmental protection;
- reduce protection of consumers in relation to safety, composition or labelling of food; or
- conflict with the UK's obligations under various environmental agreements in international law.

The amendment included related duties to consult certain bodies when making the assessment about levels of protection and conflicts.

The House of Lords added the new clause on a division, but this was overturned in the House of Commons. Further attempts were made, with narrower amendments focused exclusively on environmental protection, but those were also rejected by MPs. As such, Lord Krebs's proposals do not form part of the REUL Act.

12

Key dates on commencement/implementation

The REUL Act became law on 29 June 2023. Most of the provisions in the Act came into force on royal assent, but some come into force later, or depend on further implementing regulations.

29 August 2023

[Section 18 of the REUL Act](#), abolishing the Business Impact Target, will come into effect in late August 2023, two months after royal assent.

31 October 2023

[Section 1 of the REUL Act](#) includes a power to remove instruments from the revocation Schedule. This power cannot be exercised after 31 October 2023.

31 December 2023

The REUL Act's sunset comes into effect at the end of 2023. This will be the date when:

- the legislation listed in [Schedule 1](#) will expire (the 587 instruments)
- any remaining retained direct EU law will expire (under [section 2](#))
- the modified principle of supremacy of retained EU law will lapse (under [section 3](#))
- the retained general principles of EU law will expire (under [section 4](#))
- any retained EU law that still exists will thereafter be referred to as assimilated law (under [section 5](#))

23 June 2026

Certain powers in the REUL Act are temporary, and will expire in June 2026:

- the restating and replication powers ([sections 11-13](#))
- the revocation powers ([section 14\(1\)](#))
- the replacement powers ([section 14\(2-3\)](#))

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)