

# **Public Law Project briefing for House of Commons Consideration of Amendments: Retained EU Law Bill**

**May 2023**

## Summary and recommendations

1. The Retained EU Law Bill sets out the process for how retained EU law will be either repealed or brought into UK law.
2. We welcome many of the amendments made to the Bill in the House of Lords during report stage, particularly the Government's removal of the Clause 1 "sunset", and we urge MPs to retain these crucial safeguards both of Parliamentary scrutiny and against unchecked executive power.
3. However, while we support the attempts to mitigate the harsher effects of the powers in the Bill, we remain concerned that many vital rights and protections - including the right to equal pay - are still at risk of being amended by ministers by statutory instrument, thereby eluding scrutiny by Parliament.
4. Further, the Bill's broad delegated powers remain. Even subject to the checks proposed by the Lords, the Bill still grants significant powers to ministers to rewrite any item of Retained EU Law – including those now exempt from the sunset. Provisions which would create considerable legal uncertainty also remain.
5. PLP makes the following recommendations (with numbers for Amendments referring to the revised list of 12<sup>th</sup> May<sup>1</sup>):
  - **Sunset provisions: Preserve Amendment 2 to Clause 1, and Amendment 15 to Clause 4, in the name of Lord Anderson of Ipswich, so that only identified laws, approved by Parliament, are revoked.**
  - **Delegated powers: Preserve Amendments 76, in the name of Lord Hope of Craighead, and 48, in the name of Lord Krebs. These constrain the exercise of the broad delegated powers in Clauses 13, 14 and 16 by, respectively, requiring sifting of regulations by a Joint Committee of both Houses, and by ensuring that replacements to retained EU law do not regress on environmental and food standards.**

## The sunset provisions

6. The Bill as introduced contained two so-called sunsets which would have automatically repealed huge swathes of UK law at the end of 2023 unless the government chose to keep particular laws. The first, in Clause 1, applied to EU-derived legislation. The second, in Clause 4, applied to the directly enforceable rights, powers, remedies and protections retained by section 4 of the EU

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<sup>1</sup><https://bills.parliament.uk/publications/51086/documents/3399>

Withdrawal Act 2018.

7. In response to widespread concerns about the risks posed by the sunset provisions, the Government tabled amendments to remove the sunset in Clause 1 (Amendment 1). Peers welcomed this removal, describing it as a “victory for common sense”.<sup>2</sup> However, as Lord Hope of Craighead emphasised, simply including a list of laws to be revoked (Amendment 64) does not in itself ensure Parliamentary scrutiny. Amendment 2 (to Amendment 1) requires the list of legislation to be referred to a Joint Committee for sifting, in order to facilitate debate on pieces of listed legislation that ‘substantially’ change UK law. We urge MPs to retain this Amendment and to follow the Lords’ lead in placing control over this process in the hands of Parliament.
8. We further welcome the passing of Amendment 15 to address the sunset in Clause 4. The sunset in Clause 4 affects important rights and protections, such as the right to equal pay for equal work and work of equal value, derived from Article 157 of the Treaty of the Functioning of the European Union. That right is more powerful than the right to equal pay under the Equality Act 2010, and is an important part of the protections currently available against pay discrimination. Amendment 15 requires the Government to identify the rights, powers and liabilities retained by Section 4 of the EU (Withdrawal) Act 2018 that it wishes to revoke. These can then be debated and saved by Parliament and the devolved legislatures.
9. Amendments 2 and 15 alleviate some of the concerns around sunset. The Government amendment to reverse the operation of the sunset alone would still leave Parliament powerless to prevent the disappearance of rights and protections. While the tremendous administrative burden on government and the significant risk of error cannot be eliminated, these Amendments offer crucial mitigations and safeguards for both sovereignty and certainty.
10. **PLP recommends that MPs preserve the changes to the sunsets in both Clauses 1 and 4, in the form of Amendments 2 and 15, in the name of Lord Anderson of Ipswich, so that only identified laws, approved by Parliament, are revoked.**

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<sup>2</sup> HL deb 15 May 2023, vol 830, col 18

## Mass deletion of regulations

11. The latest Government amendments provided a schedule of approximately 600 laws for revocation which will be subject to the draft affirmative procedure. This list identifies hundreds of pieces of legislation for revocation, covering a vast range of topics of critical public importance. Examples include:
- **Pesticide residues:** Consumer protection (Commission Implementing Regulation (EU) 2019/533 of 28 March 2019 concerning compliance with 1950 maximum residue levels of pesticides and providing for assessment of the consumer exposure to pesticide residues)
  - **Cod sustainability:** Animal and environmental welfare (Regulation (EU) 2016/2094 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks)
  - **Conviction information:** Criminal justice (Regulation (EU) 2019/816 of the European Parliament establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons)
12. **PLP again recommends that MPs preserve the changes to the sunsets in both Clauses 1 and 4, in the form of Amendments 2 and 15, in the name of Lord Anderson of Ipswich, so that Parliament is able to scrutinise and approve each piece of legislation to be revoked.**

## Delegated powers

13. The Bill's suite of broad delegated powers remains unaltered with the exception of two Amendments agreed upon in the Lords. Of the delegated powers, Clause 16 is the most notable in giving Ministers the power to revoke some retained EU law, and either:
- not replace that provision,
  - replace it with something to achieve similar objectives, or
  - replace it with something which would pursue different objectives altogether.
14. These powers cannot be used to enhance rights and protections, only to deregulate. Unamended, Ministers would be able to make these changes to the law by statutory instrument with minimal parliamentary oversight, with no opportunity for amendment, and without consultation.

15. A few examples of the type of law which could be revoked and replaced in this way are:

- the GDPR (which was the result of several years of consultation, gestation and implementation)
- the Working Time Regulations 1998<sup>3</sup> (which set maximum weekly working time and provide the right to holiday pay), and
- the Strategic Environmental Assessment Directive 2001<sup>4</sup> (which requires public plans and projects to be subject to an assessment of their environmental impact).

Under these powers, Ministers could tweak or even completely rewrite these laws with no consultation, very little parliamentary debate and no opportunity for amendment.

16. Therefore, we support and urge MPs to retain Amendments 76, in the name of Lord Hope of Craighead, and 48, in the name of Lord Krebs. Amendment 76 requires the sifting of regulations made under Clauses 13, 14 and 16 by a Joint Committee of both Houses. If this Committee finds that the draft regulations substantially alter retained EU law or that the Government has not carried out sufficient consultation, the instruments must be debated by Parliament.

17. Amendment 48 ensures that instruments replacing retained EU law do not regress on current environmental and food protection standards. While we welcome the Lords' agreement on the need to maintain high standards in this substantive area of law, we regret that a similar Amendment, Amendment 50 in the name of Lord Collins of Highbury, was not agreed upon. Amendment 50 sought to ensure that instruments replacing retained EU law did not weaken employment rights, and instead maintained health and safety standards for employees. We urge MPs going forward to push for greater Government commitment to the protection of workers' rights.

18. We also remain concerned about the lack of an explicit requirement for the legislative consent of devolved authorities when exercising the powers in Clauses 13, 14 and 16. Despite the assertions of the Minister of State in the Lords that the Government is "committed to ensuring that the provisions in the Bill, including its powers, are consistent with the devolution settlements and work for all parts of the UK",<sup>5</sup> we maintain that the principles of co-operation and respect demand stronger protection.

19. Handing Ministers wholesale powers to rewrite the law is constitutionally inappropriate. PLP recommends that Parliamentarians should:

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<sup>3</sup> SI 198/1833

<sup>4</sup> /42/EC (& implementing regulations)

<sup>5</sup> HL Deb 15 May 2023, vol 830, col 73

- **Preserve Amendments 76, in the name of Lord Hope of Craighead, and 48, in the name of Lord Krebs. These constrain the exercise of the broad delegated powers in Clauses 13-16 by, respectively, requiring sifting of regulations by a Joint Committee of both Houses, and by ensuring that replacements to retained EU law do not regress on environmental and food standards.**

## Legal uncertainty

20. As well as providing for inappropriate ministerial powers, the Bill would also create considerable legal uncertainty. The Bill would abolish the principle of supremacy of retained EU law (Clause 5), as well as other principles for interpreting retained EU law (Clause 6), and lower the threshold for departing from precedent (Clause 8). These provisions would unsettle caselaw, may give rise to expensive and unnecessary litigation, leaving individuals, businesses and public authorities unclear as to their legal rights and obligations.

21. While we maintain many of our concerns about legal certainty and the need for significant changes to the law to be made by Parliament before departing from retained EU case law, we welcome the Government's replacement of the obligation for senior courts to accept references from lower courts on retained case law with a discretion to do so (Amendment 24).

**For further analysis of the Bill, please see PLP's briefings for House of Lords [Second Reading](#) and [Committee Stage](#) of the Bill.**

## Contact

Isabelle Agerbak  
Policy and Parliamentary Lead  
i.agerbak@publiclawproject.org.uk

Saba Shakil  
Research Fellow  
s.shakil@publiclawproject.org.uk

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