



SCOTLAND

November 2022

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

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

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

Summary

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

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

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

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

Potential impacts of the Bill's 'sunsetting' provisions

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



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

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

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

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

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

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

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

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



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Potential implications on environmental standards in Scotland

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

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

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

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

Resourcing and capacity: implications for the legislative programme in Scotland

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

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



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

Summary of other key issues in the Bill:

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