

Retained EU Law (Revocation and Reform) Bill

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

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

About the AIC

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

Five Sectors
Working in support of modern sustainable commercial agriculture

Animal Feed Crop-Protection Fertiliser Grain & Oilseed Seed

Six Assurance Schemes

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

ONE POLICY TEAM

Background

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

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

Retained EU Law

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

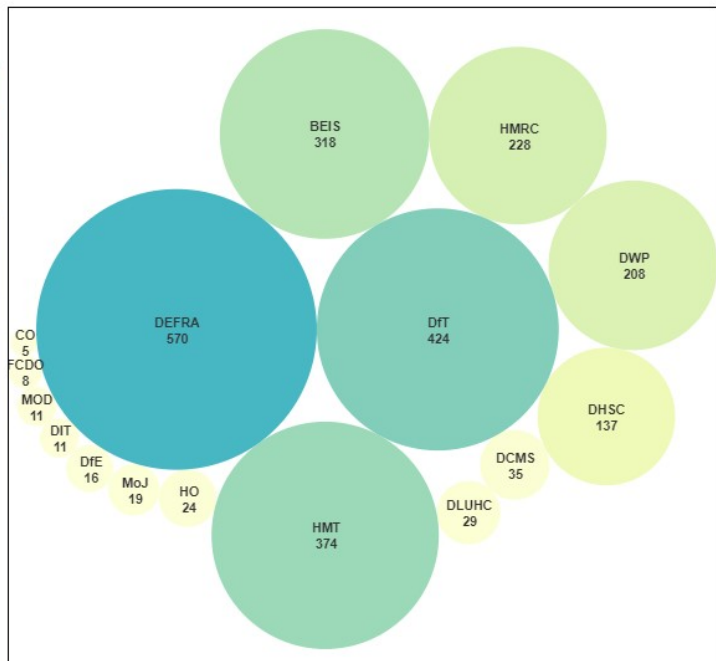


RETAINED EU LAW - PUBLIC DASHBOARD

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

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

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



Agricultural Considerations

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

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

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

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

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

Devolved Considerations

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

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

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

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

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

Conclusion

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