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

About the Soil Association

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

Summary

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

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

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

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

If the Bill is not withdrawn, then any amendments to, or removal of, retained EU law must be subject to proper parliamentary oversight and scrutiny.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

REUL Bill and devolution

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

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

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



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

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

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

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

Scottish Government LCM

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

1. The Bill’s deregulatory agenda poses risks to important protections and high standards.
2. It significantly undermines devolution.
3. The Scottish Government believes that the sunset approach brings significant risk to the coherence of the statute book, and that the proposed 2023 date for sunset is impractical and unachievable, imposing unrealistic burdens on both government and parliamentary resources to complete the necessary work to preserve REUL in the available time.

The Soil Association broadly agrees with the Scottish Government position.



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

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

The UK Internal Market Act

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

The Trade and Co-operation Agreement

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

Specific examples of legislation affected

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



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

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

GMOs: There are several pieces of legislation relating to GMOs that can be easily identified from the UK Government REUL dashboard, but as indicated above, we are not clear at this stage if this is by any means a comprehensive list. Most GMO regulation is EU-derived. [Regulation \(EC\) No 1831/2003](#) provides a framework for the traceability for products consisting of or containing genetically modified organisms (GMOs) as well as food and feed produced from GMOs. This traceability is vital in cases where products may need to be withdrawn, and for the monitoring of the potential effects of particular products on the environment. It also allows for accurate labelling so that consumers can exercise freedom of choice. All of that would be at risk if this regulation was removed.

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

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

For further information, please contact:

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