

RETAINED (EU) LAW (REVOCATION AND REFORM) BILL

Overview

There are 44 animal welfare laws that have come across under the European Union (Withdrawal) Act 2018 that need to be filtered and assessed or these will no longer apply. The majority of the 44 laws are devolved but the Bill is unclear as to how the Scottish Government can ensure that any laws with reserved powers are carried over and not lost. Also with animal welfare laws that are devolved, a very tight time period to assess all these laws is given (December 2023) and this could see laws being lost due to time issues. The filtering process to ascertain if a retained EU law should be maintained is unclear. Defra, with responsibility for 570 laws which contain the UK's high animal welfare and environmental standards, has the hardest task. It will have to decide which are reserved before negotiating with the Scottish Government which ones they wish to keep. Defra and the Scottish Government will have to agree which ones are devolved and under the competence of Scotland. There may well be a split between the Scottish Government position, of trusting and wishing to keep the devolved EU derived animal welfare laws and the UK Government view of mistrust of EU derived laws so that each needs to be assessed. This could lead to a large widening of standards between the two countries, and conflict on the Common Frameworks process and the interpretation of the Internal Markets Act 2020. The Scottish and Welsh Governments have already recommended withholding of consent on this Bill due to their concerns on its impact.

Bill Impact on Scotland

The Bill's impact in Scotland is enormous. All EU derived legislation was carried over into UK and Scottish legislation by a series of primary or secondary laws depending on whether they were Regulations, Directives or Decisions. When the UK left the EU on 31st December 2020 all the animal welfare legislation in Table 1 had been carried over into Scottish and UK legislation and was only amended from a technical perspective, such as deleting language relating to the European Commission. Legislation was transferred under the principle that it was part of the legislative library, in some cases for nearly 50 years, and was therefore relevant and important to maintain. The Retained EU Law (Revocation and Reform) Bill works in the opposite principle. It deletes all legislation that has been transferred across unless it is proven to be useful. It also does so within a prescribed timetable and without any clear vetting or transparent audit process.

There are 570 pieces of legislation that are managed by Defra¹, responsible for the largest number of EU derived laws and so has the greatest burden in sifting and assessing these laws. 44 of these laws promote the welfare of animals. Thirteen of the 44 were Directives that are devolved and so have been implemented into Scottish legislation subsequent to their adoption and 31 were Regulations and Decisions. 18 of these could be devolved, 13 fall into reserved legislation. Legislation was transferred across on a piecemeal basis by Defra and the Scottish Government between 2018 and 2020 and it is fair to say that the quick time period did result in technical small legislative mistakes being made. Ironically this two year time period is longer than the 12 month period prescribed under this Bill for the Scottish Government to undertake the same process..

The largest body of animal welfare legislation concerns farm animals with 18 relevant EU laws adopted. All except the animal health ones are all devolved. For instance the five laws setting standards on the way farm animals are reared and produced such as laying hens, veal calves, meat chickens and pigs and the laws on how animals are transported and killed. Legislation covering consumer information, such as mandatory labelling of the provenance of eggs and beef, is also devolved. The legislation setting standards on the management of wildlife is devolved such as the hunting, trapping and protection of habitat and legislation.

¹ <https://public.tableau.com/views/UKGovernment-RetainedEULawDashboard/REULMap?%3AshowVizHome=no>

However there is a large body of animal welfare legislation that is reserved. TAWC estimates these as 13 laws. For instance the bans on use of veterinary products such as the use of hormones in cattle, including BST, is reserved. Other EU derived animal welfare laws that are reserved include those part of international treaties such as the law to prohibit the import of wild caught birds, the import ban on seal products owing to welfare concerns on the manner in which these animals are kept and killed. The use of animals in research and testing is also reserved.

The 44 animal welfare provisions that are being considered under the REUL Bill brought in some of the most totemic and important changes in animal welfare in Scotland such as the prohibition of the conventional battery cage for laying hens, the sow stall ban, the veal crate ban, the end of cosmetics testing on animals and the banning of GMOs and cloned animals. EU retained laws brought in standards and protection for the management of wild animals, stopping the imports of wild caught birds and ending the use of growth promoters in farming. These could all be at risk under this process.

Four Main Issues

There are four main issues impacting on the Scottish regulatory landscape. Firstly the devolved animal welfare laws that the Government will have to carry over if they wish to, which has to be completed by December 31 2023. The time issue will be very pressing to get all the devolved legislation through in time. The Bill makes no postponement of that deadline open to DAs which seems to be penalising the devolved Governments. Indeed during the Bill Committee in the Commons the Government refused to allow that deadline to be extended even though an extension is open to the UK Government. The UK Government's only solution was that it would act on behalf of the Scottish Government for devolved legislation should the 2023 deadline be missed.

Secondly, the impact the Scottish Government can have on those animal welfare laws that are reserved to the UK Government so that these are carried over. The date for this could be extended to December 2026 but it is unclear how the Scottish Government will engage in this process. If it is through the Common Frameworks process there is no agreement on process between the two Governments to resolve disputes so it is unclear how this differences will be resolved. Thirdly the REUL Bill could have large constitutional consequences on devolution itself (Wales LCM note para 83 footnote 2²). Many of the powers in the REUL Bill are solely for Ministers of the Crown not Ministers of the Scottish Government. For instance the extension of the sifting deadline from 2023 for a further three years is not a power given to the Scottish Government who have to complete their sifting by December 2023. Finally the REUL has large implications on how products are produced and moved within Great Britain and it is not clear how it works with the Common Frameworks programme³ and the Internal Markets Act 2020.

Implications arising from the potential deadlines introduced by the Bill

Clause 1 of the Bill sets out that the filtering process to assess the legislation will stop on 31 December 2023. Clause 2 allows for it to be postponed no later than 31 December 2026. However this power is only for the UK Government not the Scottish Government which has to complete all its filtering process by 2023. As Defra has over 570 laws to be sifted and it is envisaged that the majority of these are devolved, the Scottish Government will have to sift all those in under 13 months. 44 of these are animal welfare laws (Table 1). There are only around 170 parliamentary sitting days before the first deadline for the Scottish Government to consider which works out as a rate of over three pieces of legislation a day to meet that deadline. This is clearly not feasible and could result in relevant legislation being lost due to time constraints and lack of proper scrutiny. However if the Scottish Government intends to restate all EU retained legislation, there may be a fast-track solution to the time issue. There have been indications at 2nd Reading in Westminster that the Government will consider extending the sunset clause but this would only apply to reserved issues⁴. TAWC would support this as an interim measure, as it believes that it is practically impossible to filter and assess all the legislation in the allocated time frame and this risks good legislation being lost.

² <https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>

³ <https://www.gov.uk/government/collections/uk-common-frameworks>

⁴ [https://hansard.parliament.uk/commons/2022-10-25/debates/246DE276-1887-475F-8016-DB81309C6D81/RetainedEULaw\(RevocationAndReform\)Bill](https://hansard.parliament.uk/commons/2022-10-25/debates/246DE276-1887-475F-8016-DB81309C6D81/RetainedEULaw(RevocationAndReform)Bill)

What Scottish Government could do

The Minister of the Crown has no limits under this Act in their power to bring in Regulations that are consequential from the Act (Clause 19). The process of tabling secondary legislation is clearly laid out under Schedule 3 but there is no clear process laid out for how each individual Ministry will approach the pieces of reserved legislation that come under it. Nor has the Government made this clear only stating that the process is down to each Ministry to undertake. As Defra has 570 relevant pieces of legislation, 13 of which are relevant to implementing our animal welfare and health standards and are reserved, a clear and transparent process is needed to be followed.

TAWC would recommend the Scottish Government undertook its own assessment of REUL particularly on which of the 2,417 laws that come under the REUL are devolved. Should this not be undertaken the Government risks leaving that decision to the UK Government which may have a different view. There have been instances in the past few years on what animal welfare legislation is devolved and what is reserved so it is important that there is not a land grab by the UK Government on legislation. Scottish Ministers should clearly lay out which legislation they believe are devolved and a timetable for considering these laws. Should the Scottish Government wish to simply restate all these laws, which is in their power to do so, this could be completed in a timely manner by December 2023. The Scottish Government could then agree if there is any devolved legislation they wish to amend or reject and fully involve the Scottish Parliament in discussion on these laws.

Clause 2 of the Bill states the measures do not apply to any law specified in regulations from a national authority but it is not clear from the Bill how the UK Government will undertake this process or for measures that are reserved, such as the import ban on dog and cat fur, how they will ensure that the views of the Scottish Parliament are taken into account when the process of filtering the legislation occurs. The Scottish Government should clarify this process with the UK Government.

Wider Impact

The REUL Bill could have large constitutional consequences on devolution itself (para 83 footnote 2 Wales Government LCM⁵). Many of the powers in the REUL Bill are solely for Ministers of the Crown not Ministers of the Scottish Government. For instance the extension of the sifting deadline from 2023 for a further three years is not a power given to the Scottish Government who have to complete their sifting by December 2023. Finally the REUL has large implications on how products are produced and moved within Great Britain and it is not clear how it works with the Common Frameworks programme⁶ and the Internal Markets Act 2020.

The Bill does not have any impact on those devolved areas of animal welfare legislation that the Scottish Government may want to improve post Brexit but where those intervene with the operation of the internal GB market these may interact with the Internal Markets Act 2020 and the Common Frameworks Programme where those products are circulated to other countries in Great Britain.

⁵ <https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>

⁶ <https://www.gov.uk/government/collections/uk-common-frameworks>

Table 1 Summary of the 44 pieces of retained EU animal welfare laws and which are reserved and devolved

	EU Legislation <i>Directives</i>	International agreements	Devolved ?	Main goals
Farm Animals <ul style="list-style-type: none"> • <u>General protection</u> • <u>Laying hens</u> • <u>Meat chickens</u> • <u>Veal calves</u> • <u>Live transport</u> • <u>Pigs</u> • <u>Slaughter</u> • <u>Bans on BST</u> • <u>Farm subsidies</u> • <u>Country labelling</u> • <u>Poultry meat</u> • <u>Beef labelling</u> • <u>Egg labelling</u> • <u>Organic Production</u> • <u>Horse identification</u> • <u>Feed and food law</u> 	98/58 1999/74 2007/43 2008/199 1/2005 2008/120 2016/336 1099/2009 1305/2013 1307/2013 1169/2011 543/2008 566/2008 1097/90 5/2001 834/2007	OIE Guideline OIE Guideline OIE Guideline	Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	Baseline standards on farm welfare Prohibits battery cage for laying hens Minimum standards on chickens Prohibits veal crate and white veal Maximum transport times for farmed animals Prohibits sow stalls Standards on slaughter of farmed animals Stops use of growth promoting hormones Agriculture Act animal welfare schemes Labels products on country of origin Sets terms for poultry labelling Sets terms for beef labelling Mandatory labelling of eggs Sets standards for organic food production Identification of equines Controls on the production of food and feed
Wildlife <ul style="list-style-type: none"> • <u>Trade in endangered species</u> • <u>Whaling</u> • <u>Habitat protection, hunting and trapping</u> • <u>Wild birds protection</u> • <u>Driftnet bans</u> • <u>Seal import ban</u> • <u>Zoos</u> • <u>Traps management</u> • <u>Wild bird import ban</u> • <u>Invasive alien species</u> • <u>Fur labelling</u> 	338/97 812/2004 92/43, 82/72 2009/147 1239/98 2015/1850 1999/22 3254/91 139/2013 1143/2014 1007/2011	CITES IWC Bern Convention Bern Convention Bern Convention	No No Yes Yes No No Yes Yes No No Yes	Implements CITES to manage the trade in endangered species and products Bans trade in whale products Sets rules on wild animal protection, humaneness of hunting and trapping Protects and regulates hunting of wild birds Bans use of driftnets to protect marine life Bans seal products due to inhumaneness Licensing and management of zoos Regulates use of traps for wild animals Stops imports of wild caught birds Prevents import & spread of alien species Labels fur products
Animals in science <ul style="list-style-type: none"> • <u>The use of animals in research, testing</u> • <u>EC party to ETS 123</u> • <u>Updates ETS 123</u> • <u>REACH</u> • <u>Plant Protection Products</u> • <u>Biocidal Products</u> • <u>Cosmetics</u> • <u>Novel foods</u> 	2010/63 1999/575 2003/584 1907/2006 1107/2009 528/2012 1223/2009 258/1997*	OIE Guideline Council of Europe	No No No No No No No Yes	Regulates use of animals in laboratories for research, testing and education Makes UK member of Council of Europe's Convention on the use of animals in laboratories Sets rules on testing using animals for chemical production and use Sets rules using animals for biocidal/plants Bans the use of animals in testing for cosmetics and its marketing of such products Regulates the production of GMO animals
Pets <ul style="list-style-type: none"> • <u>Non commercial trade dogs, cats,</u> • <u>Pet Imports</u> • <u>Commercial trade</u> • <u>Imports on dog and cat fur</u> 	576/2013, 577/2013 2013/31 92/65 1523/2007		Yes Yes Yes No	Manages the cross border movement of pet cats and dogs Limits the commercial trade in cats and dogs Bans the import of dog and cat fur and its sale