

# CIOB Policy Briefing – Retained EU Law (Revocation and Reform) Bill

Policy briefing – Last Updated May 2023

## Introduction

The Chartered Institute of Building (CIOB) has created this briefing to inform members and the wider built environment community of the details, and potential implications, of the proposed Retained EU Law (Revocation and Reform) Bill which was introduced as draft legislation in Parliament on 22 September 2022.

Over the past year much speculation has been floating around about the actual implications of the Bill. Whilst the impact of the Bill will be felt mostly in sectors outside of the scope of the built environment, we hold several concerns relating to the potential scrapping of crucial employment, health & safety and environmental law without suitable alternatives in place. Furthermore, we cover the Bill's journey to date and how it will change the landscape of Retained EU Law.

CIOB has been working alongside the Royal Institute of British Architects (RIBA), Royal Town Planning Institute (RTPI) and the Royal Institution of Chartered Surveyors (RICS) to raise awareness of our joint concerns around the draft Bill. A letter has also been issued to the Secretary of State for Business and Trade, Kemi Badenoch MP, accessible [here](#).

### 1. Key Details of the Bill

Title: Retained EU Law (Revocation and Reform) Bill

Long Title: A Bill to revoke certain retained EU law; to make provision relating to the interpretation of retained EU law and to its relationship with other law; to make provision relating to powers to modify retained EU law; to enable the restatement, replacement or updating of certain retained EU law; to enable the updating of restatements and replacement provision; to abolish the business impact target; and for connected purposes.

Jurisdictions: England, Northern Ireland, Scotland and Wales

Sponsoring Department: Department for Business, Energy and Industrial Strategy (BEIS) and Department for Business and Trade (DBT)

Current Stage (as of 4 May 2023): House of Lords Report Stage (15 May 2023)

Next Stage: House of Lords Third Reading (date TBC)

Link: <https://bills.parliament.uk/bills/3340>

Bill (brought from the Commons):  
<https://bills.parliament.uk/publications/49409/documents/2750>

Explanatory Notes: <https://publications.parliament.uk/pa/bills/cbill/58-03/0156/en/220156en.pdf>

Impact Assessment: [https://publications.parliament.uk/pa/bills/cbill/58-03/0156/REUL\\_%20Bill\\_Impact\\_%20assesment\\_15-12-22.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0156/REUL_%20Bill_Impact_%20assesment_15-12-22.pdf)

## 2. Background

In September 2022, the Department for Business, Energy & Industrial Strategy (BEIS) published the Retained EU Law (Revocation and Reform) Bill 2022 and introduced it to the UK Parliament. The Bill seeks to provide a domestic law basis for amending or revoking any currently retained EU laws that were put in place post-Brexit.

According to the official announcement from BEIS "*Retained EU Law is a category of domestic law created at the end of the transition period and consists of EU-derived legislation that was preserved in our domestic legal framework by the European Union (Withdrawal) Act 2018.*"<sup>1</sup>

This announcement also set out that the Retained EU Law (REUL) was never intended to sit on the statute book indefinitely and that the Bill will abolish the special status of this law to enable the Government, via Parliament, and through secondary legislation, to amend more easily, repeal and replace this law. According to data from the REUL dashboard, there are an estimated 3,700 pieces of complex law<sup>2</sup> (although sources differ on this number with the Royal Society for the Prevention of Accidents having stated that the number is closer to over 4,000)<sup>3</sup> which would need to be assessed and then revoked, reformed, amended or retained by the deadline date of 31 December 2023.

The published impact assessment that accompanies the Bill establishes that there are around 21 sectors in the UK economy, across 300 specific policy areas that will be affected by the draft legislation.<sup>4</sup> However, it is worth noting that while the Bill sets out a framework to reform, revoke, amend or retain existing REUL, it does not define specifically which laws have been identified in each of the above categories. With that in mind it is hard to say exactly how the built environment will be affected by this legislation, although it is worth considering the extent to which the industry could be impacted by the lengthy process that the Government will need to go through in order to understand which laws to repeal or which laws to amend or remove. Indeed, at present, it appears the Government is also unsure about the impact of this legislation as the estimated 3,700 pieces of legislation has recently been revised upwards from an initial estimation of 2,000. The revision came with an acknowledgement that this will need to be reviewed quarterly as more laws are being discovered. Therefore it is likely that we will not know the true impact of this legislation until much closer to the deadline date for sunseting which is deeply concerning.

It is worth noting that while a deadline has been set for all of the remaining REUL to be assessed and actioned (31 December 2023), the Bill does provide a mechanism for the UK Government to extend this deadline until 2026 for specified, more complex, pieces of REUL.

### Sunseting Retained EU Law – Scrutiny and Timescales

As mentioned, the Bill contains a variety of methods that the UK Government can employ in its quest to assimilate REUL into UK law. Some of these include:

- Sunseting retained EU law removing it from UK law;
- Assimilating retained EU law into existing or new UK based legislation;
- Removing the need for appeal courts to be bound by EU case law;
- Making substantial modifications to retained EU law;
- Abolishing business impact targets and;
- Ensuring that all future tax laws are included within the UK finance bill and not in EU law.

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<sup>1</sup> BEIS, [The Retained EU Law \(Revocation and Reform\) Bill 2022](#), 22 September 2022

<sup>2</sup> Financial Times, [UK review of EU laws expanded after 1,000 pieces of legislation added](#), 30 January 2023

<sup>3</sup> Royal Society for the Prevention of Accidents, [Time for change: Reshaping Britain's Safety Laws](#)

<sup>4</sup> BEIS, [Retained EU Law \(Reform & Revocation\) Bill](#), 26 September 2022

Primarily, in all instances, the Bill will downgrade EU legislation so that it can be amended by secondary legislation, which is not subject to the same level of parliamentary scrutiny as primary legislation in that it will not have to go through an amendment process in either the House of Commons or House of Lords.

There are very real concerns with this process as this will enable the Government to change crucial laws relating to employment and other areas without proper parliamentary scrutiny. Creating this precedent now could lead to worrying implications for industries further down the line. Since the Grenfell Tower fire, the built environment has been working hand-in-hand with government to create greater regulation of the industry and avoid similar tragedies. The ultimate goal of this regulation has been to ensure that users (and creators) of the built environment are kept safe and that there is accountability for historic mistakes to protect leaseholders from undue building remediation costs. While we understand that, at present, the new building safety regulations put in place by the Building Safety Act 2022 will not be subject to review we are concerned that similar powers to revoke or remove law without proper scrutiny could be used as a tool to slash regulations that are perceived to add 'red tape' to the building process in the future. It would be beneficial for government to offer a guarantee that these powers to sunset law without due process are not available for use beyond the scope of this bill.

Another key concern that we have is the proposed timescales that this will need to be completed in. Currently, the estimated sunset date of 31 December 2023 only provides the Government with a short period of time to assess and amend any laws that will be retained or assimilated into UK law. We acknowledge that the REUL dashboard does provide a list of the laws that will be affected, broken down by relevant government department, as well as a progress bar showing the percentage of law in that category which has been dealt with so far. However, this does not provide certainty to the industry as the worry for many is the timeframe in which the remaining decisions need to be made is far too short. For instance, Tony Danker, CBI's Director-General called for the Government to rethink the speed in which the Bill is being passed, stating that ending all REUL by the end of 2023 is creating huge uncertainty for UK firms and the rush will end in mass confusion and disruption.<sup>5</sup> Additionally, according to the Financial Times, senior Whitehall officials are warning that the task at hand for civil servants will put a huge strain on government bureaucracy.<sup>6</sup>

Furthermore, given the timeframes available, the Government will not place priority on consultation and scrutiny from affected industries. To ensure that crucial economies continue to operate during this period of fluctuation, ample notice and consultation must be carried out with affected industries to understand the extent to which any delays or legislative gaps may affect day-to-day operations. It must be noted that, at present, professional bodies like RICS, RTPI, CIOB and RIBA are in the midst of responding to a vast number of government consultations on building safety in relation to the secondary legislation surrounding the Building Safety Act 2022. Therefore, resourcing and proper scrutiny must be considered further in any sunset exercise by the end of 2023 as this will cause additional pressure on industry bodies who are able to provide expert opinions on the impact of these laws.

### 3. Affected Areas

Whilst we acknowledge that the actual impact of the Bill across the built environment is very much unknown it is worth highlighting some areas that are being understood as areas of greatest risk.

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<sup>5</sup> CBI, [Is the UK stuck in a rut on growth? – speech by CBI Director General at University College London](#), 23 January 2023

<sup>6</sup> Financial Times, [UK review of EU laws expanded after 1,000 pieces of legislation added](#), 30 January 2023

## Employment Law

One of the potentially most impacted areas will be current employment law. At present, much of the UK's employment law is derived from REUL including areas such as rights to equal pay, working time and paid holiday guarantees, employee information and consultation rights and many rights established for agency workers.

Labour and employment law commentator Littler has summarised some of the concerns of abolishing crucial employment law including:

- The removal of important underlying employment rights.
- Employment laws being removed, amended or replaced too quickly, without proper understanding of the implications or parliamentary scrutiny, creating 'bad law'.
- The creation of a legal vacuum, which the European Union Withdrawal Act was aimed to prevent, causing legal uncertainty.
- Greater litigation to either resolve the raft of uncertainties or to re-open previously settled areas of law.<sup>7</sup>

Broadly the concerns surrounding the Bill are shared across various industries, namely the lack of proper scrutiny, and potential legal gaps that may be created, amongst others. It is worth noting that there has been considerable concern amongst parliamentarians for the implications that the removal of some employment rights could have on many workers particularly women working part time. To address this a cross-party group of MPs including David Davis MP, Caroline Nokes MP, Hilary Benn MP and Stella Creasy MP have lobbied for an amendment that would give Parliament the power to decide on which REUL would be assimilated into UK law not ministers.<sup>8</sup>

## Health & Safety Regulations

In addition, we wish to draw attention to the potential impacts on health and safety regulations within the built environment. According to a recent article in Construction Management magazine<sup>9</sup> some of the existing legislation that could be dropped includes the Construction (Design and Management) Regulations 2015, Management of the Health and Safety at Work Regulations and the Workplace Health and Safety at Work Regulations. These are crucial pieces of legislation that have helped drive forward a step change in the way that workplace health and safety in the built environment is managed. Over the past decade, significant steps have been made to ensure that the built environment is a safer place for its constructors and users. There are serious risks that this hard work could be undone if due care is not taken to ensure that equal (or improved) legislation is put in place by 31 December 2023.

In fact, a coalition of safety groups has been established to oppose any cuts to health and safety regulations. These include the RoSPA, the Institution of Occupational Safety and Health (IOSH), British Occupational Hygiene Society (BOHS), British Safety Council (BSC), International Institute of Risk and Safety Management (IIRSM), British Safety Industry Federation (BSIF) and the Chartered Institute of Environmental Health (CIEH). The group currently represents more than 100,000 individuals and 10,000 safety organisations.<sup>10</sup>

## Environmental Law

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<sup>7</sup> Littler, [What Does the Retained EU Law \(Revocation and Reform\) Bill Mean for UK Employment Law?](#), 26 January 2023

<sup>8</sup> People Management, [Retained EU law reform could be an 'absolute disaster' for working women, charity warns](#), 16 January 2023

<sup>9</sup> Construction Management, [Retained EU Law Bill could put construction safety back by decades](#), 25 January 2023

<sup>10</sup> Construction Management, [Safety groups urge rethink on sunseting EU laws](#), 30 January 2023

One of the key areas that could be the most affected by the Bill is the raft of REUL pertaining to the environment. According to the REUL dashboard the Department for Environment, Food and Rural Affairs will have the largest number of REULs to sift through with 1,781 notes on the dashboard. When compared to the next largest number, currently claimed by HM Treasury with 452. So far only, 27 pieces of REUL have been unchanged, amended or repealed showing the scale of the challenge for the most affected departments.

According to a report from Wildlife and Countryside Link, the largest environment and wildlife coalition in England, comprising of around 68 organisations, the potential adverse costs to the environment of removing or weakening environmental laws could cost the UK more than £82bn over a 30-year period.<sup>11</sup> Whilst it can be assumed that many of the laws needed to avoid this cost will be retained it is worth noting the potential consequences on the UK economy if the Bill is not dealt with correctly.

-Update- In April 2023 rumours emerged that the Government plans to backtrack on a number of key areas within the Bill. The Bill, due to enter its report stage in April, has now been removed from the parliamentary agenda and early reports suggest that this is because the Government now shares concerns over the initial timetable set out for sunseting some 4,000 pieces of retained EU Law. Instead, a new approach is being suggested where the Government will focus on producing a list of the laws to be repealed with any that remain staying on the statute book indefinitely. Initial suggestions hint that the current list contains around 800 laws to be reviewed. It is unclear what will happen to these 800 retained laws, but we will be sure to update this briefing after any further updates.

#### 4. Our Asks

Organisations from across the built environment have come together to call on government to commit to a number of key asks to ensure that the built environment and its important regulations are protected during the sunseting process. These key asks include:

- Consultation with key industries – There are serious risks that the process of deciding which laws to keep, repeal or amend could be rushed to fit in with an already tight deadline. This could come at the expense of consulting with the industries that these laws have continuously supported. The Government must commit to consulting with stakeholders from key industries before any decisions to sunset take place.
- Advanced warning - To ensure that further economic instability is not created we encourage the Government to communicate with professional bodies and industry leaders early in the process to establish a line of clear communication so that we can disseminate information about the sunsetted law to our members and the wider industry.
- Precedent – As stated above, a guarantee must be put in place from government stating that the power to amend, repeal or revoke law without oversight from parliament will not extend beyond the scope of this bill.

For further information please contact:

David Parry, CIOB Parliamentary & Public Affairs Officer  
e: [dparry@ciob.org.uk](mailto:dparry@ciob.org.uk)  
t: +44 (0)1344 630 875

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<sup>11</sup> Wildlife and Countryside Link, [What price deregulation? The economic costs of the Retained EU Law Bill](#), 18 January 2023