

Retained EU Law (Revocation and Reform) Bill

Equality Impact Assessment

1. Introduction

1. Under section 149(1) of the Equality Act 2010, public authorities, when exercising their functions, including developing policy and making policy decisions, have a duty to consider the need to:
 - a. eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010,
 - b. advance equality of opportunity between those who share protected characteristics and those who do not, and
 - c. foster good relations between those who share protected characteristics and those who do not.
2. The protected characteristics are: age; disability; race; religion or belief; sex; sexual orientation; pregnancy and maternity; and gender reassignment. It also applies to the protected characteristic of marriage and civil partnership, but only in respect of the first aim of the equality duty (eliminating unlawful discrimination).
3. This equality analysis is undertaken by the Brexit Opportunities Unit in the Cabinet Office. The scope of this analysis is limited to the potential impacts arising from the Retained EU Law (Revocation and Reform) Bill.

Overview of the Retained EU Law (Revocation and Reform) Bill

4. The intention of the Retained EU Law (Revocation and Reform) Bill is to make it easier to amend, repeal and replace retained EU law (REUL).
5. The Bill will allow the Government to deliver its commitment to put the UK statute book on a more sustainable footing by reclaiming the sovereignty of Parliament by ending the special status of REUL.
6. These reforms will reduce excessive and unnecessary EU red tape that burdens businesses and reduces efficiency, consequently pushing up prices and negatively affecting the cost of living.
7. Building on the commitments set out in the Benefits of Brexit paper published in January 2022 and set out in the Queen's Speech in May 2022, the Retained EU Law (Revocation and Reform) Bill will:
 - a. Repeal REUL (within a defined scope) on a specific sunset date, subject to an extension;
 - b. Remove the principle of the supremacy of EU law from UK law on the same date as the sunset;
 - c. Facilitate an easier departure from retained case law;

- d. Provide a mechanism for the UK and Devolved Law Officers to intervene in cases regarding retained case law where relevant;
 - e. Downgrade the status of retained direct EU legislation (RDEUL); and
 - f. Create bespoke powers to amend REUL.
8. Alongside these measures, the Bill amends the Legislative and Regulatory Reform Act (2006) and facilitates the repeal of the Business Impact Target (BIT).

2. Consideration of Equality Impact

Sunset of EU-derived legislation

9. In order to ensure that REUL ceases to exist on the UK statute book, the Bill creates a sunset mechanism that will, unless it is otherwise assimilated into domestic law, revoke a large proportion of REUL outright. The sunset date will be the end of 2023 [with a possibility of extension up to 23 June 2026]. The Bill enables REUL to be assimilated using powers in the Bill to repeal and replace REUL, to restate REUL or to preserve REUL that would ordinarily be subject to the sunset. REUL not in scope of the sunset, for example REUL in primary legislation, will be automatically assimilated, rather than revoked.
10. Assimilated REUL will be stripped of the interpretative features of EU law which were retained by the EU (Withdrawal) Act 2018. Assimilation will ensure the smooth transition from REUL into domestic law. The process will reduce legal complexity by enabling the move to a single UK statute book with consistent principles and interpretation.

Impact

11. Due to the scope of the sunset, it is possible that certain rights and protections contained in pieces of REUL could be sunset. Given the Government's stated position that it is not seeking to reduce rights and protections, we consider that the relevant departments will choose to preserve these rights and protections using the powers in the Bill where there are concerns that rights might otherwise be lost. If these rights were to sunset, even though GB flagship legislation on equalities will remain, a sunset of these retained rights could, theoretically, lead to a loss of protection against discrimination if no action is taken by departments to address that loss. This is highly unlikely and the Government is committed to upholding high standards in equalities and does not intend to allow necessary protections to fall. The delegated powers in the Bill - including the preservation power - will enable such rights to be maintained. We have mitigated equality risks related to this measure, as set out below.
12. The Rt Hon Elizabeth Truss MP stated on the 22nd of September 2020 that, "as a Government, we are determined that everyone in the UK should be free to live their lives and fulfil their potential regardless of their sex, gender identity, race or

disability.¹ In a statement made on the 26th May 2022, she also commented that, “this country can only grasp its full potential by ensuring everyone, regardless of their background or where they live, has the opportunity to succeed.”²

13. In addition, the sunset of REUL will only affect secondary legislation and retained direct EU legislation, but will not impact REUL contained within Acts of Parliament. The equalities protections within scope of the PSED which are REUL, including equal pay protections and provisions against disability, race and sex discrimination, are largely contained in the Equality Act 2010 which is domestic primary legislation and will not be repealed. Therefore, rights which protect groups with protected characteristics against discrimination will continue.
14. A full list of retained EU law is publicly available via the REUL dashboard.³ The scope of REUL that will be subject to the REUL sunset is defined by clauses 1, 2 and 3 of the Bill. REUL contained within Acts of Parliament and Acts made by the devolved legislatures will be exempt from the sunset and will be assimilated on the sunset date. Primary legislation will be exempt and assimilated as it stands, regardless of whether any secondary legislation amending it is captured by the sunset.
15. Regardless, to ensure that any subsequent policy changes do not have an adverse effect, departments will be able to maintain the effects of their current policy in specific cases where the sunset creates unintended consequences.
16. The Bill will contain a restatement power so that departments can codify into domestic legislation rights and other EU interpretative effects which the government considers are appropriate to keep. Although this power is to be used at the discretion of departments, we expect it will be used to restate any equalities protections that would otherwise fall away.
17. Any REUL that is restated or codified before the end of 2023 will be assimilated and will therefore no longer be within the scope of the sunset. This will provide a method by which departments may ensure that aspects of REUL that would otherwise be repealed or revoked on the sunset date, continue to operate after that date. Departments affected could also make a proactive statement during the Bill’s passage that they intend to assimilate all REUL where continued alignment with EU policy concepts is required to uphold protection against discrimination on the basis of any of the protected characteristics.
18. Finally, the Bill will include a mechanism to extend the 2023 sunset date in the event that the necessary secondary legislation cannot be prepared in time or the government encounters unforeseen circumstances that interrupt parliamentary business. There will be a power in the Bill which is capable of codifying the interpretative effects of supremacy, DEERs and GPs into assimilated law after the end of 2023. This mitigates the risk of indirect discrimination arising should

¹ [Government Equalities Office Update, statement made on 22 September 2020, UIN HCWS462](#)

² [Government launches taskforce to boost women starting fast-growing companies - GOV.UK](#)

³ REUL dashboard, published 22nd June 2022. <https://www.gov.uk/government/publications/retained-eu-law-dashboard>

departments have insufficient time to comprehensively consult and assess the impacts of their REUL reform and prioritise the REUL they want preserve ahead of the sunset date. We anticipate that legislation related to the rights of protected groups will be preserved by departments.

Abolition of Supremacy of Retained EU Law

19. The supremacy of retained direct EU legislation (RDEUL) is a principle derived from European Court of Justice (CJEU) case law and was retained under the EU Withdrawal Act 2018 (EUWA) in relation to laws made before the end of the transition period.
20. The principle, as it has been retained by EUWA, means that domestic laws, including Acts of Parliament made before 31 December 2020, are subordinate to EU law passed or made before that day. To address this, the Bill will remove this principle by the end of 2023 and ensure domestic law will take precedence over retained direct EU legislation (RDEUL).

Impact

21. The removal of the principle of supremacy will mean the repeal of directly effective EU rights which flow through section 4 of EUWA. Consequently, the Bill also sunsets any remaining REUL that applies via section 4 EUWA. This measure could theoretically lead to a loss of protection against discrimination in the unlikely event that the relevant department made a decision not to preserve the rights in this area that flow into our domestic law through section 4. Although any changes to rights and protections are dependent on future policy, the Government has no intention of allowing these rights to fall.⁴ We therefore do not believe this measure poses any practical risk to equality for this reason and the mitigations outlined below.
22. The Bill includes a restatement power so that departments can codify into domestic legislation rights which the UK Government considers it is appropriate to keep. Alternatively, the revoke and replace power will enable authorities to replace secondary REUL with alternative provision. In some situations, these alternatives could be made in such a way as to maintain the current levels of protection.
23. This provides assurance that ending the effect of Section 4 rights, will not mean the blanket removal of individual rights which protect against discrimination. Rather, the codification of rights in specific policy areas will provide legal clarity, by creating a single date at which all interpretive effects of EU law (supremacy, section 4 rights, general principles) will end. This will also provide certainty that the supremacy of EU law no longer applies in the UK.

⁴ See paragraph 12.

Interpretation of Retained EU Law (Case Law)

24. The Bill will give domestic courts more discretion to depart from retained case law. This will facilitate easier departure from retained case law, using the following measures:
- a. Create new tests for domestic higher courts to apply when considering departure from retained case law, to facilitate easier departure;
 - b. Give lower courts and the UK and Devolved Law Officers powers to seek rulings from higher courts on whether to depart from retained case law;
 - c. An entitlement for the Attorney General, other UK Law Officers and in matters relating to their devolved competence, devolved Law Officers to be notified where a higher court is considering departure from retained case law, and to become a party to proceedings.

Impact

25. There is retained case law relevant to the rights of protected groups. In principle, the provisions facilitating easier departure by the courts from this case law, may have an impact on such rights. Although no concrete equality risk for any protected group was found, the following mitigates any potential risk arising.
26. The clauses in the Bill do not overturn individual precedents. Nor is the doctrine of precedent affected by the Bill, since the lower courts must still follow the decisions of the higher courts. The Bill expands the routes through which points of law may be put to the Higher Courts and will make it easier for the Higher Courts to depart from retained case law.
27. However, the Courts will still be required to uphold other requirements which may be relevant to case law in this area such as those under the section 3 of the Human Rights Act (HRA) to interpret legislation consistently so far as possible with, rights in European Convention on Human Rights (ECHR).
28. Additionally, the Bill's restatement power will enable departments to codify the effects of retained case law into legislation if they consider it appropriate to do so to resolve ambiguity, remove doubt or to facilitate improvement in clarity.

Status of Secondary Retained EU Law

29. REUL is composed of different types of EU legislation. This includes retained direct EU legislation (RDEUL), which accounts for approximately 50% of REUL that was transposed onto the UK statute book. At present, retained direct principal EU legislation (such as retained EU Regulations) has the status of primary legislation for the purposes of amendment. This means it can only be amended by primary legislation or by delegated powers which can amend primary.⁵

⁵ REUL dashboard, published 22nd June 2022. <https://www.gov.uk/government/publications/retained-eu-law-dashboard>

Impact

30. The Bill will downgrade retained direct principle legislation (RDEUL) for the purposes of amendment from primary to secondary status. This will mean that this body of law can be amended or repealed more easily.
31. No equality risk was found in relation to this measure.

Powers to amend Retained EU Law

32. The powers created by this Bill will provide the Government with the tools to amend the different categories of REUL. The Government will ensure that only regulation that is fit for purpose and suited for the UK will remain on the statute book.
33. The powers to amend REUL include the following:
- a. **Power to restate retained EU law.** This power will allow Ministers to codify the current policy effect achieved by REUL and retained interpretive principles (i.e. case law, DEERs, general principles and consistent interpretation) into domestic legislation, without using EU law concepts or language. This will allow Ministers to maintain current policy effects in certain specific areas where the Government considers this to be appropriate. It will facilitate limited amendments to both domestic primary and secondary legislation and is only capable of acting on REUL. Through the restatement, the law will no longer be considered REUL. It will be available for use on REUL up to the sunset.
 - b. **Powers to restate assimilated law or reproduce sunsetted EU rights, powers, liabilities etc.** This power achieves a similar policy effect as the power to restate retained EU law, except that it acts on “assimilated law” and can operate after the sunset date. Through the restatement, the law will no longer be considered assimilated law. The power itself will be available for use on assimilated law up to 23 June 2026.
 - c. **Powers to revoke or replace.** A power to enable departments to revoke secondary REUL and, if desired, replace it in domestic legislation with reformed policy more suited to the UK. The power is restricted in the sense that it cannot increase the overall regulatory burden. The power will be capable of acting on assimilated secondary law after the sunset up to 23 June 2026.
 - d. **Power to update.** A power to make such modifications of any secondary REUL (or assimilated secondary law after the sunset) which are necessary to take account of relevant scientific or technological advancements .
 - e. **Compatibility power.** This power will enable the Government to specify the legislative hierarchy between specified pieces of legislation. Specifically, it will be able to give priority to certain individual pieces of legislation which the Government has explicitly decided to preserve using the preservation power. The power will be available until 23 June 2026.
 - f. **Power to remove or reduce burdens under RDEUL.** This would amend the definition of “legislation” in the Legislative and Regulatory Reform Act 2006 (LLRA) to explicitly include “any RDEUL”.

- g. **Preservation power.** This power will preserve specified REUL that would otherwise be subject to the sunset, by stripping its remaining EU interpretive effects, such as the application of general principles of EU law and DEERs. The preservation power will allow for pieces of REUL to be added to a list to preserve them beyond the sunset date. The REUL listed for preservation will be 'assimilated' on the sunset date and will be subject to traditional domestic rules of interpretation and will be considered domestic law.
- h. **Extension power.** This power would enable the Government to extend the sunset date for specified pieces of legislation, to a date no later than 23 June 2026.

Impact

- 34. No equality risk was found in relation to the delegated powers themselves. However, the Government recognises the importance of reducing our regulatory burden whilst maintaining our high standard in rights and protections. We also recognise the potential for policy divergence in the United Kingdom. Although neither pose a specific equality risk to protected groups, we have put the following safeguards in place to mitigate any possible equality risk arising.
- 35. The power to repeal, revoke or replace will provide departments with the tools to amend their retained EU law and will be limited to those reforms that do not add to the overall regulatory burden.
- 36. We also consider that regulatory divergence is manageable through the UK Internal Market Act 2020 (UKIM) and existing Common Frameworks. The Cabinet Office will also reinforce the need to manage regulatory divergence through internal processes. Conversations have been had across Whitehall to ensure that the provisions in this Bill do not change the impact of the UKIM Act. Particularly, UKIM's framework to protect businesses and consumers by preserving the free trade of goods and services and the recognition of professional qualifications throughout the United Kingdom. Therefore, If REUL relevant to the sale of goods and services sunsets in one part of the UK but not others, or is amended differently in different parts of the UK in a relevant way, then the Market Access Principles are likely to apply. Despite the Continuity Act, this would still apply to Scotland and should changes take effect, these may be in scope of UKIM.

Repeal of the Business Impact Target

- 37. The repeal of the Business Impact Target (BIT) forms part of the Governments' response to the 'Better Regulation Framework' consultation, which determined that the BIT is not to not be fit for purpose because it may limit the way in which regulation can be scrutinised. To address this, the Bill will repeal the BIT.
- 38. The replacement BIT is being developed by the Cabinet Office, in conjunction with the Department for Business, Energy and Industrial Strategy's Better Regulation Executive. As part of this policy development process, they will conduct their own Equality Analysis as relevant.

5. Conclusion

39. This section sets out the overarching assessment of the Bill. As part of the assessment, we have considered whether the provisions in the Bill could constitute conduct prohibited by the Equality Act.

Due regard to direct and indirect discrimination

40. The measures in the Bill do not constitute direct discrimination.

41. However, the EU law concepts that will be removed by the Bill underpin substantive rights in equality law. While GB equalities legislation is extensive, there is a possibility that the removal of the principle of supremacy of EU law and the sunset of EU-derived legislation may lead to a lowering of protection against discrimination, in the unlikely event that specific rights related to the protected characteristics aren't retained in any form. However, we do not anticipate this to occur, as it is neither the purpose of this Bill nor the intention of this government to remove necessary protections.

42. For context, the sunset of EU-derived legislation, may sunset rights and protections contained in pieces of REUL. There is no single area of the Bill that is targeted at equalities legislation or protections, due to the general application of the Bill. Moreover, the repeal of the principle of supremacy of EU law sunsets any REUL that applies via section 4 EUWA, some of which provides protection against discrimination. As stated in paragraph 41, we do not anticipate that protections will ultimately be reduced, due to the mitigations outlined in paragraphs 11-18 and paragraphs 21-23, which relate to the government's publicly stated views on equality and the Bill's restatement power.

43. As departments take more detailed decisions about REUL reform we will update this analysis to take account of these decisions and further quantify any risks of discrimination, so that further mitigations, if necessary, can be put in place.

44. Although no potential risk to equality was identified outside of supremacy and sunset, both of which have been mitigated and are unlikely to have practical equality risks, we have provided safeguards for other measures to prevent any possible equality risk arising. With these mitigations in place, we consider any identified impacts are justified and proportionate within the context of achieving the legitimate aim of reclaiming the sovereignty of Parliament.

Advancing equality of opportunity and fostering good relations

45. This assessment did not identify areas for advancing equality of opportunity between people who share a protected characteristic and those who do not or fostering good relations between people who share a protected characteristic and those who do not. This is due to the 'enabling' nature of the Bill and as such is out of scope for the Bill's policy. Therefore, this point is not addressed elsewhere in this assessment.

Future developments

46. The Cabinet Office will continue to work with legal stakeholder groups throughout the delivery of the Bill to ensure that, if any adverse impacts come to light from the Bill, those impacts are identified and mitigated as far as possible. Should circumstances change throughout the legislative and implementation phases for each part of the Bill, the Government will seek to capitalise on positive impacts and mitigate negative impacts as part of the ongoing requirement to fulfil its public sector equality duty under the Equality Act.

5. Arrangements for review

47. The Retained EU Law (Revocation and Reform) Bill is an enabling Bill. As a result, once it receives Royal Assent, work on reform will continue by departments. This means that they will review their REUL, prioritise areas for reform and lay Statutory Instruments where appropriate. The process may include designing policy and services, conducting stakeholder consultations and supporting individuals who may be impacted by reform.

48. Throughout all these stages, the relevant department will seek to identify any new impacts on people with protected characteristics, including by monitoring and assessing the progress of each policy's implementation, and by engaging with relevant stakeholders and representative groups of those with protected characteristics.

6. Declaration

Given the advice above, we are recommending that the Minister make the following declaration:

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.