

RETAINED EU LAW (REVOCATION AND REFORM) BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Retained EU Law Revocation and Reform) Bill as brought from the House of Lords on 22nd May 2023.
- 2 These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to Bill Number 89, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendment 1(*) was tabled in the name of the Minister and amended by Lord Hope of Craighead.
- 6 Lords Amendments 2 to 4 , 7 to 10, 17 to 23, 27 to 41, 43 were tabled in the name of the Minister.
- 7 Lords Amendment 16* was tabled in the name of Baroness Noakes and was supported by the Government.
- 8 Lords Amendments 42* was tabled by Lord Hope of Craighead and Lord Anderson of Ipswich, and Lords Amendment 15* was tabled by Lord Krebs, and was opposed by the Government.
- 9 Lords Amendment 5* was tabled by Baroness Chapman of Darlington, and Lords Amendments 11* and 13* were tabled by Lord Hope of Craighead and Lord Anderson of Ipswich, and both amendments were supported by the Government. Lords Amendments 12* and 14*, consequential upon Lords Amendments 11* and 13*, were tabled in the name of the Minister.
- 10 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendments to Clauses 1 to 2 : Sunset of EU derived subordinate legislation and retained direct EU legislation.

Lords Amendments 1(*), 2, 3, 4, and 5*

- 11 Lords Amendments 1(*), 2, 3, 4 and 5*, enact changes to the first two clauses of the Bill, in order to change the scope and operation of the sunset, by replacing a revocation of a broad, unspecified body of retained EU law with a mechanism that revokes only legislation listed in a new Schedule. As before, the revocation will occur at the end of 31 December 2023.
- 12 **Amendment 1(*)** so far as it was moved by the government, introduces new subsections to Clause 1 that lay out the new operation of the sunset and introduce the new Schedule which lists the legislation to be revoked at the end of 2023. Lord Hope of Craighead tabled an amendment to the government amendment inserting three subsections into Clause 1 at the end of the subsections inserted by the Government. Lord Hope’s amendment to the government amendment requires that the legislation listed in the Schedule be referred for consideration to a Joint Committee of both Houses. The sunset may only take effect once a period of 30 days has elapsed after the referral and the revocation has been approved by both Houses. If, following consideration of the Schedule, the Joint Committee considers that the revocation of any legislation listed represents a substantial change in the law, a Minister of the Crown must arrange for it to be debated and voted on in both houses before 31 December 2023. Only if both Houses of Parliament approve its revocation will it be revoked at the end of 2023. The Government amendment as amended by Lord Hope’s amendment now forms Amendment 1(*).
- 13 **Amendments 2, and 3**, also moved by the government, relate to the conferral of a power on relevant national authorities to dis-apply the sunset in respect of any legislation specified in the Schedule that would otherwise sunset at the end of 2023 (“the preservation power”). This power broadly corresponds with a preservation power that was formerly in clause 1(2) of the Bill as brought forward from the House of Commons. The power is only exercisable until 31 October 2023 and is subject to the affirmative procedure.
- 14 **Amendment 4** moved by the Government, relates to the power to exempt things from the original version of the clause 1 sunset which has now been superseded by the changes to the scope and functioning of clause 1 made by amendments 1 to 3.
- 15 **Amendment 5***, was an opposition amendment supported by the government to remove what was clause 2 “extension of sunset under section 1” (as contained in the Bill brought from the House of Commons). Clause 2 comprised a power to extend the sunset in Clause 1 to 23 June 2026 for specified instruments or a specified description of legislation. Given the changes to the scope and functioning of the sunset enacted by the preceding amendments this clause is no longer needed.

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Lords Amendments to Clause 3: Sunset of retained EU rights, powers, liabilities etc

Lords Amendment 6

- 16 **Amendment 6**, tabled at Lords Report Stage. This amendment removes what was Clause 3 and replaces it with a new clause 2.
- a. **Amendment 6** would replace the repeal of Section 4 of the European Union (Withdrawal) Act 2018 (“EUWA”) at the end of 2023 with a mechanism to remove any rights, powers, liabilities, obligations, restrictions, remedies and procedures retained by that section at the end of 2023. The mechanism set out by Lords Amendment 6 would allow UK and Devolved Authority Ministers to set out in a statement each right, power, liability or other matter retained by section 4 of EUWA that the Minister has decided not to restate using the powers in the Bill and intends to be revoked at the end of 2023. The right or other matter identified in the Minister's statement will not be revoked at the end of 2023 if both Houses of Parliament, the Scottish Parliament, Senedd Cymru or the NI Assembly (as the case may be) resolve that it should be retained. Otherwise any right or other matter identified in the statement will be revoked at the end of 2023.
 - b. Consequently only rights or other matters identified in the statement and that the Houses of Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly (as the case may be) do not resolve to retain will be revoked at the end of 2023.

Lords Amendments to Clause 4 : Abolition of supremacy of EU law

Lords Amendment 7 and 8

- 17 **Lords amendments 7 and 8** remove reference to Section 183A of the Data Protection Act 2018 from clause 4 of this Bill. The reference has been removed as Section 183A is to be inserted into the Data Protection Act by the Data Protection and Digital Information Bill, which is not anticipated to receive Royal Assent in this parliamentary session and so section 183A will not exist when this Bill becomes an Act.

Lords Amendments to Clause 6: “Assimilated Law”

Lords Amendments 9 and 10

- 18 **Lords amendments 9 and 10**, moved by the Government, rename two further terms related to retained EU law so that after the end of 2023 “retained EU law governing the CAP direct payment schemes” will be known as “assimilated law governing the CAP direct payment

schemes”, and “retained direct EU CAP legislation” will be known as “assimilated direct CAP legislation”. This is consistent with the other changes being made by the “Assimilated law” clause. .

Lords Amendments to Clause 7: Interpretation and effect of retained EU law: Role of Courts.

Lords Amendments 11*, 12, 13* and 14

- 19 These amendments were tabled to provide the higher courts more general discretion to decline a reference from a lower court or tribunal on points of law arising from retained case law, even if the point of law criteria for a reference to be accepted are met. This will bring about more efficient administration of justice.
- a. **Amendment 11*** seeks to preserve the court’s discretion to refuse to accept a reference on a single point of law, which is a necessary safeguard against abuse.
 - b. **Amendment 12** is a consequential amendment on amendment 11.
 - c. **Amendment 13***, as with amendment 11, this amendment seeks to preserve the court’s discretion to refuse to accept a reference on two or more points of law, which is a necessary safeguard against abuse.
 - d. **Amendment 14** is a consequential amendment on amendment 11.

Lords Amendments to create new clause: Environmental protection and food standards.

Lords Amendment 15*.

- 20 This amendment creates a new clause which places several conditions relating to environmental protections and food standards which UK Ministers or Devolved Authorities must meet when intending to use the powers under clauses 12, 13, 15 and 16 on retained EU law or assimilated law (post-2023). This includes ensuring environmental protections and consumer protections relating to food safety and labelling will not be reduced and that the proposed new regulations do not conflict with existing international environmental agreements.
- 21 The new clause also includes a new procedural requirement which the relevant national authority must meet in order to be eligible to exercise the powers under clauses 12, 13, 15 and 16. This comprises a consultation requirement, under which an authority must seek advice from relevant stakeholders and publish a report as to why environmental and consumer protections would not be reduced under proposed new regulations.
- 22 The new clause will also insert a new subsection into section 4 of the Food Standards Act 1999 introducing a requirement for the Food Standards Agency to include an assessment of the impact of regulations made under powers in clauses 12, 13, 15 and 16 on areas of concern to consumers relating to food, such as food labelling and safety, in its annual report under

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that section of the 1999 Act.

- a. Subsection (1) sets out that no regulations are to be made under clauses 12, 13, 15 and 16 of the Bill unless the relevant national authority is satisfied that they do not reduce the level of environmental protection or the level of protection of consumers in relation to the safety, composition or labelling of food under the retained EU law to which new provisions may relate. Subsection (1) also provides that a relevant national authority must be satisfied that any regulations do not conflict with the relevant international environmental agreements set out in subsection (4).
- b. Subsection (2) sets out a requirement to consult and publish a report relating to the proposed use of the powers as they apply to environmental protections and food standards. Before any such regulations can be made the relevant national authority must seek advice from persons who are independent and have relevant expertise as well as, where appropriate, from the Office for Environmental Protection, Environmental Standards Scotland, a devolved environmental governance body or another person exercising similar functions, the Food Standards Agency and Food Standards Scotland. The relevant national authority must also publish a report setting out how it has taken account of advice from such persons and how the proposed regulations do not reduce the level of environmental and consumer protections referred to in subsection (1).
- c. Subsection (3) inserts a new subsection into the Food Standards Act 1999 which introduces a requirement to include an assessment of the implementation of the powers contained in clauses 12, 13, 15 and 16 of the Bill on areas of concern to consumers relating to food, such as food labelling and safety, in its annual report under section 4 of that Act.
- d. Subsection (4) lists the “relevant international environmental agreements” for the purposes of subsection (1).

Lords Amendments to create new clause: Retained EU Dashboard and Report

Lords Amendment 16*

- 23 **Amendment 16***, inserts a new clause into the Bill. This clause requires the Secretary of State to update the retained EU law dashboard and report on the revocation and reform of retained EU law in periods up to 23 June 2026.

Lords Amendments to Clause 19 to 23: Final Provisions

Lords Amendments 17 and 18

- 24 **Amendment 17** extends the consequential power in clause 19 to devolved authorities.
- 25 **Amendment 18** is consequential on amendment 17.

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Lords Amendments 19 to 27

- 26 **Amendment 22** provides that the new clause inserted by amendment 16 will commence on Royal Assent.
- 27 **Amendment 24** extends the power to make transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill, the revocation of anything under section 1, or anything ceasing to be recognised or available as a result section 4 to devolved authorities.
- 28 **Amendments 19 to 21, 23, 25 and 26** are consequential on amendment 24.
- 29 **Amendment 27** removes an exception to the original clause 1 sunset which has now been superseded by the changes made to clause 1 by amendments 1(*) to 5*.

Lords Amendments to Clause 22

Lords Amendments 28 and 29

- 30 **Amendment 28** ensures that any amendment, repeal or revocation made by the Bill has the same extent within the United Kingdom as the provision to which it relates.
- 31 **Amendment 29** ensures that any amendment, repeal or revocation made by the Bill has the same extent within the United Kingdom as the provision to which it relates.

Lords Amendments to create new Schedule : Sunset of Subordinate Legislation and Retained Direct EU Legislation

Lords Amendment 30

- 32 **Amendment 30**, moved by the government, inserts a new **Schedule 1** in the Bill that contains a list of the legislation to be revoked by clause 1 at the end of 2023. It lists 587 instruments of retained EU law subject to the sunset and identifies the extent to which each is to be revoked.
- 33 This Schedule 1 contains the list of subordinate legislation and retained direct EU legislation due to be revoked at the end of 31 December 2023 by virtue of, and subject to the parameters of, Clause 1.
- 34 As per Clause 1 of this Bill, the legislation listed in this Schedule will be revoked only to the extent that they are stated in this Schedule. Part 1 sets out subordinate legislation that will be revoked and part 2 sets out retained direct EU legislation that will be revoked.
- 35 An explanation of what each piece of subordinate legislation and retained direct EU legislation listed does, and why it is being revoked, can be found on gov.uk here: <https://www.gov.uk/government/publications/schedule-of-retained-eu-law>

Lords Amendments Schedule 1: “Assimilated law”: Consequential amendments

Lords Amendment 31-33

- 36 **Lords amendments 31 to 33**, moved by the Government, are consequential on the Assimilated Law clause. Consequential amendments to change references from “retained EU law” (and related terms) to “assimilated law” (and related terms) are made to the following Acts: Interpretation Act (Northern Ireland) 1954; Interpretation Act 1978; Scotland Act 1998; Northern Ireland Act 1998; Government of Wales Act 2006; Legislative and Regulatory Reform Act 2006; Interpretation and Legislative Reform (Scotland) Act 2010 ; Legislation (Wales) Act 2019 ; Direct Payments to Farmers (Legislative Continuity) Act 2020

Lords Amendments to Schedule 4: Regulations: procedure

Lords Amendments 35 to 36, 37, 38, 39, 40, 41, 42* and 43 to 72, 76 and 77

- 37 **Amendment 35** amends Schedule 4 and is consequential on amendment 24.
- 38 **Amendment 36** amends Schedule 4 and is consequential on the amendment to remove clause 2 and the amendment to extend the power to make regulations under clause 19 to the devolved authorities.
- 39 **Amendment 37** amends the Schedule and is consequential on amendment 24.
- 40 **Amendment 38** provides for the power in Clause 1 to be subject to the draft affirmative procedure.
- 41 **Amendment 39** is consequential on the extension of the power to make consequential provision to devolved authorities.
- 42 **Amendment 40** is consequential on the removal of the power to exempt things from the original version of the clause 1 sunset which has been superseded by the changes to the scope and functioning of clause 1 made by amendments 1 to 3.
- 43 **Amendment 41** makes a procedural provision in light of the government’s amendment to extend the consequential power in clause 19 to devolved authorities.
- 44 **Amendment 42*** applies novel scrutiny procedures to regulations made under clauses 12, 13 and 15. The scrutiny procedure applied is not dissimilar to the super-affirmative procedure, under which Parliament may make amendments to a proposed instrument.
- 45 Under this amendment, regulations proposed to be made under clauses 12, 13 and 15 cannot be made unless a proposal for the regulations has been laid before each House of Parliament, the proposal has been referred to a Joint Committee of both Houses and 40 sitting days have elapsed since the referral to the Joint Committee. If the Committee finds that the regulations represent a substantial change to the REUL or assimilated law being acted on, or that there has not been a public consultation lasting at least 6 weeks before the draft regulation was laid before Parliament, a Minister of the Crown must arrange for the instrument to be debated

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and voted on in each house before the end of the 40 days since referral of the instrument to the Joint Committee. The regulations must incorporate any amendments agreed by both Houses. Where amendments are agreed to by only one House, the regulations cannot be made until the other House has debated and voted on a motion to agree or disagree with the amendments.

46 **Amendment 43** is consequential on amendment 24.

Financial Effects of Lords Amendments

47 Insignificant administrative expenditure would be incurred by the Government in complying with the duties imposed by the new Clauses inserted by Lords amendments 15* and 16*. Otherwise, there are no financial implications related to the Lords amendments.

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