

## Retained EU Law (Revocation & Reform) Bill

<b>Lead department</b>	Department for Business, Energy and Industrial Strategy
<b>Summary of proposal</b>	The Government have introduced legislation intending to make it easier for departments to remove, amend or replace Retained EU Law (REUL). The Bill also seeks to make additional changes to improve the functionality of the UK court system.
<b>Submission type</b>	Impact assessment (IA) – 29 September 2022
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	2023
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-CO-5223(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	18 November 2022

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Not fit for purpose</b>	The IA is not fit for purpose. The Department has not sufficiently considered, or sought to quantify, the full impacts of the Bill. In addition, the IA does not include a consideration of the impact on small and micro businesses (SMBs) consistent with Better Regulation.

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision	Qualifying regulatory provision
<b>Equivalent annual net direct cost to business (EANDCB)</b>	NQ	Unable to validate
<b>Business impact target (BIT) score</b>	NQ	
<b>Business net present value</b>	NQ	
<b>Overall net present value</b>	NQ	

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Red</b>	The Bill enacts a sunset on all REUL on 31 December 2023 (potentially over 2,400 REULs), with a process to consider retaining and/or changing a portion of these REULs. Changing or sunseting each piece of legislation could impact on many businesses significantly. The IA does not provide an assessment of the potential impact of sunseting such legislation, nor does the Department commit sufficiently to providing an impact assessment for changed or sunsetted REUL as decisions are made, in lieu of an assessment today. Without an assessment, the EANDCB impact of the Bill may never be calculated or understood.
Small and micro business assessment (SaMBA)	<b>Red</b>	The Department has included a range of statistics describing the structure of the UK economy, including outlining the presence of small and microbusinesses (SMBs). However, the IA has incorrectly interpreted some of these figures and does not consider adequately the impact of the Bill on sectors where the majority of economic activity is derived from SMBs, and which may also be subject to a large degree of REUL (e.g., Agriculture, Forestry and Fishing).
Rationale and options	<b>Weak</b>	The Department has not made a sufficient case to support regulatory intervention in the form of sunseting REUL. The IA must provide a stronger argument for why the sunseting of REUL is necessary, as opposed to merely setting a deadline to complete the review and change of REUL, including appropriate and robust evidence to support this position. While the IA includes an option in addition to the preferred one, the Department has not considered the impacts of it in any detail. The IA should attempt to provide a fuller assessment of the impacts of this additional option to enable it to be compared with the preferred one.
Cost-benefit analysis	<b>Very weak</b>	The Department has not undertaken any substantive analysis to support the Bill. In addition, the IA is missing any reference to analysis undertaken for REUL previously amended or removed. The IA does include some discussion of the risks and uncertainty of the Bill, but this discussion is limited.

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

Wider impacts	<b>Weak</b>	The IA includes a brief consideration of the wider impacts of the Bill, including some reference to consumer, innovation and public sector impacts. However, the IA needs to strengthen its consideration of these impacts, as well as considering the impacts on trade and investment, the distributional impacts, and the impacts across the devolved administrations.
Monitoring and evaluation plan	<b>Very weak</b>	The Department does not commit to a post-implementation review of the impacts of the Bill. The IA needs to consider what monitoring and evaluation (M&E) could be put in place to assess the impact of the measures that will be retained, amended or sunset.

## Response to initial review

As first submitted, the IA was not fit for purpose as it failed to consider adequately the full impacts of the Bill, in line with RPC primary legislation guidance. In addition, the Department had not included a suitable assessment of the impact on SMBs across the UK economy, or the impact of regulation (and deregulation) upon them or any potential mechanisms to mitigate the impact on SMBs. Specifically, the RPC highlighted, in its initial review, that the IA had not:

- provided a clear baseline position, with respect to the overall number of REUL that was in scope of the Bill and would, potentially, be retained, amended or sunset;
- clarified whether other legislation that is in progress, will have impacts on some of the REUL contained in the overall figure of over 2,400 pieces of REUL as presented in the IA. The Department was not clear on how the different legislation would interact with the Bill;
- discussed, or set out, any examples of the REUL that is likely to be sunset, despite the Department having previously published extensive assessments of candidate REUL that could be changed or removed;
- used the approximately 20 per cent of REUL that has already been removed, amended or replaced, to make a better estimate of how much REUL remains to be considered and, by extension, estimate, or better illustrate, the possible impacts. The Department had not drawn upon any evidence or analysis, which was used to support those prior legislative changes, to provide an indication of the potential impacts associated with amending/replacing more;
- provided a more considered assessment of the full range of impacts of the Bill including, where possible, quantification of the REUL already dealt with or being dealt with elsewhere, in accordance with the RPC's guidance on primary legislation; and
- included, in line with RPC SaMBA guidance, an assessment of the impacts upon SMBs<sup>3</sup>.

In the Department's revised IA, there has been little attempt to rectify these red-rateable concerns, with limited additional text having been added to try to strengthen consideration of the full impacts of the Bill (including some text on the future review of sunset and amended REUL in the M&E section of the IA), as well as additional text added in consideration of the current disproportionate impact of regulation on SMBs.

---

<sup>3</sup> <https://www.gov.uk/government/publications/rpc-case-histories-small-micro-business-assessment-august-2019>

## Summary of proposal

There are still over 2,400 individual pieces of REUL that the UK Government are reviewing to retain in UK law, to amend to suit the UK better, or to remove. At present, many pieces of REUL would require primary legislation to make such changes. Since the decision to leave the EU, only a limited amount of REUL has been removed or replaced, in part due to the time involved in making the appropriate legislative changes. Therefore, the Government have introduced this legislation, intended to make it easier for departments to remove, amend or replace REUL still in place.

Three options are presented in the IA: option 1 is the do-nothing option; option 2 - to legislate and introduce a sunset date of 31 December 2023; and option 3 – to legislate but with a later (and currently unspecified) sunset date. The preferred option 2 includes a wide package of reforms:

1. Establish and run an administrative programme for departments to review each piece of REUL, and to make recommendations to: sunset it; restate it as domestic law; or to preserve it as “assimilated law”; by 31 December 2023.
2. Take powers to update, re-state, repeal, revoke or replace REUL.
3. Downgrade the status of retained direct EU legislation for the purpose of amendment.
4. End the supremacy of EU law by 31 December 2023, including ending the application of directly-effective EU rights and general principles of EU law in the UK.
5. Giving domestic courts more discretion to depart from retained case law, which includes CJEU judgments.
6. Make changes to Legislative Reform Orders to explicitly include REUL as eligible legislation by amending s1 of LRA 2006.
7. Remove the business impact target by amending sections of the SBA Act 2015.

The IA states that the main costs arising from the preferred option are the resources needed by: government departments to review and to make recommendations about REUL; businesses from costs associated with any amended or replaced REUL; and costs relating to the courts. Meanwhile the benefits are stated as being the time efficiencies gained across government from it being easier to remove/amend current EU legislation, as well as the benefit to consumers and business from no longer facing unnecessary regulatory burdens. All impacts discussed in the IA remain unquantified at this time. The Department has not provided any monetised estimates to give an indication of the likely scale of the impacts arising from the policy.

## EANDCB

The Better Regulation Framework (BRF) sets out the basis for the assessment and scrutiny of regulatory provisions. The BRF states that:

*“Where government intervention requires a legislative or policy change to be made, departments are expected to analyse and assess the impact of the change on the different groups affected – which should generally take the form of an impact assessment.”<sup>4</sup>*

We have assured ourselves that the Retained EU Law (Revocation and Reform) Bill is a regulatory measure and contains regulatory provisions<sup>5</sup> because, among other policies, it enacts:

*“A sunset clause that will revoke the majority of REUL contained in domestic secondary legislation and retained direct EU legislation on 31 December 2023.”<sup>6</sup>*

We acknowledge the Bill’s intention for there to be a process whereby Government departments decide whether REUL should be updated, restated, repealed, revoked or replaced; and further, the Bill creates a power to extend the sunset date up to 23 June 2026. This means that there is a high degree of uncertainty about the eventual fate of each REUL.

Nevertheless, the default position for each of the potentially 2,400 REUL is that they will be sunsetted on 31 December 2023, without further government action (about which there is significant uncertainty). Therefore according to the BRF, for such enacting legislation, the Department should undertake proportionate analysis of the impact for the sunsetting of each of the 2,400 regulatory measures.

### **Identification and quantification of impacts**

The IA provided<sup>7</sup> has clearly not attempted to assess the impacts of sunsetting REUL and hence it is the RPC’s independent view that the EANDCB (and the small and micro business assessment – see below) is not fit for purpose for any of these 2,400 regulatory measures, and is red-rateable.

It is reasonable to expect that, where a potentially material impact on businesses and civil society groups is caused by the sunsetting of a REUL, the BRF principle is upheld - that departments are expected to analyse and assess the impacts in the

---

<sup>4</sup> BRF, page 5.

<sup>5</sup> As defined by Section 22(3) of the SBEE Act 2015.

<sup>6</sup> REUL Bill IA, page 2.

<sup>7</sup> The IA provides only a limited assessment of the potential impacts of the Bill and has not included any indicative analysis of the potential impacts. Although, the IA does include data outlining the size and scope of sectors with a significant amount of REUL present, given the scale and amount of legislation which may be enacted, the Department must provide a more considered assessment of the full range of impacts of the Bill, in accordance with the RPC’s guidance on primary legislation.

form of an impact assessment. Further, such analysis should help to prevent unintended consequences occurring from either deliberate or accidental sunset. In this regard, we agree with the Department when it says:

*“...there is a potential risk of unintended harmful consequences if pieces of REUL are amended or sunset without proper review...”<sup>8</sup>*

Therefore, to be consistent with the principles of the BRF, a proportionate assessment of the impacts should be made for each changed or sunsetted REUL, regardless which form of subsequent government intervention or inaction occurs, whether the implementation of that decision would usually require the production of an IA or not. In addition, and to be consistent with the BRF, the resulting IAs should also be subject to independent RPC scrutiny (according to the normal BRF criteria).

In the revised IA for this Bill, the Department has volunteered:

*“...IAs may be required wherever there are material policy changes brought about through legislation. We are also exploring a range of approaches for handling sunset REUL, which may include a summary IA.”*

The Department has suggested that IAs may be required upon a material policy change, however, given the significant number of REULs that could be sunsetted, there is the potential for significant harmful impacts without a firm commitment to properly assess the impacts of these changes in each case. Therefore, we are not reassured that the principles of Better Regulation are upheld by the proposed approach, nor that the EANDCB impact from this Bill will ever be calculated or understood.

Lastly, the IA should also clarify how the review of REUL takes into account intertwined or connected UK laws, which are derived from EU laws but are, ultimately, separate. The Department should specify whether the review of REUL will assess the risk to UK laws that depend on EU laws if the latter are sunset, including assessing the associated costs.

### **Counterfactual/baseline**

While the IA states that the scale of REUL will be “more than 2,400” pieces of legislation, the Department does not establish a sufficiently clear baseline position for the amount of REUL that is in place, or that will be expected to be in place were the Bill not to be enacted. The Department must establish clearly the baseline of what REUL is still in place and establish the counterfactual from which the assessment of the impacts of this Bill is made, especially in light of recent uncertainty (as noted during parliamentary proceedings on the Bill), that the scale of unreformed REUL is much larger than originally anticipated.

---

<sup>8</sup> REUL Bill IA, page 31.

Further, the IA refers to other legislative vehicles that are seeking to remove and/or replace REUL in specific policy areas, such as the HM Treasury-led Financial Services and Markets Bill (FS&M, which addresses REUL in the financial services sector). While the IA clarifies that the FS&M Bill will not be affected by this Bill, it also suggests that a future Finance Bill will be responsible for further changes to REUL governing the financial services sector. However, given that any future Finance Bill is yet to be introduced (with only a finite window of time before the sunset date), the Department cannot guarantee that such changes will occur via that legislative vehicle and therefore may still remain in scope of this Bill and the sunset clause.

## **SaMBA**

### **Scope**

The IA includes figures outlining the presence of small and micro businesses (SMBs) across different sectors in the UK economy, covering the number of businesses, as well as the levels of employment and turnover. The Department uses these figures to argue that the number of SMBs in the sectors most likely affected by REUL are comparatively small with regard to the economy overall (i.e. the case is made that, as more SMBs are present in other sectors, the impact on those with more REUL regulating them is less). However, this approach to interpreting the impact upon SMBs is misleading, as it focusses only on the spread of the number of SMBs across the economy, rather than considering the importance of SMBs within specific sectors. For instance, the figures included in the IA indicate that over 80 per cent of employment and turnover in Agriculture, Forestry and Fishing is held by SMBs. This suggests that while such firms may only account for a small share of all SMBs in the UK, they are the driving force behind that sector (which also is identified as having the highest proportion of REUL). The Department needs to provide a better consideration of the impact of REUL upon SMBs, in particular for SMBs in sectors with a high prevalence of REUL and where SMBs account for a significant proportion of economic activity, businesses and/or employment (such as Agriculture, Forestry and Fishing).

In addition, the IA discusses how legislative and regulatory uncertainty can have a negative impact upon business. The Department should consider discussing whether regulatory uncertainty created by the sunset period, may have a disproportionate impact upon SMBs.

### **Exemption for SMBs**

The Department has not addressed whether, as part of the process of determining which pieces of REUL will be retained, amended or sunset, how much consideration will be given to exempting SMBs from any retained or amended REUL. If the objectives of the policies can still be achieved with these businesses being exempt, then this should be considered.

## Exemption for MSBs

As with the consideration of exemption for SMBs discussed above, the IA should discuss whether, as part of the process to decide what pieces of REUL will be retained, there will be a process for assessing whether it should be retained for medium-sized businesses (MSBs). This would align with the principle behind the Government's recent announcement<sup>9</sup> that, from October 2022, Departments should first look to exempting MSBs (in addition to the consideration already necessary for SMBs) from new regulation.

## Rationale and options

### Rationale

The Department does not make a clear or well evidenced case for regulatory intervention through the introduction of a sunset date. While the IA states that there is a large amount of REUL still in effect, it does not illustrate how the introduction of an automatic sunset date would allow departments to alleviate disproportionate regulatory burdens more effectively than they would otherwise through evaluating REUL in the normal course of their business.

### Options

The Department has presented only three options in the IA: a do nothing, the preferred option where the sunset date is at the end of 2023 and a final option where the sunset date is later. While the IA provides an explanation for why the earlier sunset is preferred, it does not provide evidence to support the arguments made. The IA would be improved through clarifying what analysis has been undertaken to support this position. In addition, the IA would be improved further if consideration of this third option was carried on throughout the IA, enabling readers to understand the comparative differences (e.g., in expected costs and benefits) between the two sunset dates.

## Cost-benefit analysis

### Evidence and data

While the IA highlights that around 20 per cent of known REUL has already been amended or removed, the Department does not draw upon any evidence or analysis, which was used to support these legislative changes, to provide an indication of the potential impacts associated with amending/replacing the remaining REUL. The Department has not provided clear or robust evidence to support a number of statements made in the IA, including those relating to the rationale for intervention. The IA needs to provide sufficient evidence to support the rationale for intervention and inform the assessment of the potential impacts.

---

<sup>9</sup> <https://www.gov.uk/government/publications/better-regulation-framework/medium-sized-business-regulatory-exemption-assessment-supplementary-guidance>

### **Assumptions, risk and sensitivity**

The Department presents a limited consideration of the assumptions and risks of the policy, only briefly considering the risks relating to parliamentary capacity to process REUL reforms and associated legislation. The IA makes an implicit assumption that businesses in general, will stop undertaking activities linked to their compliance with current REUL in the event that it is repealed. The IA needs to consider the likelihood that businesses will retain operating practices even in the event of UK regulation no longer necessitating it (this may be due to substantial sunk costs, a desire to maintain high standards, a desire to maintain access to the EU market or as a means to differentiate themselves from competitors).

## **Wider impacts**

### **Innovation**

The IA includes a very brief consideration of the impacts upon innovation, notably the potential positive impact that innovation may have on UK productivity. It mentions that government departments have identified areas where regulation may be limiting innovation, but only provides a few limited examples. The IA should discuss the examples mentioned in more detail, setting out how regulation is currently limiting the innovation of affected areas, as well how this will feed through into improved economic growth. The IA should also consider whether any of the REUL promotes innovation and the potential negative impact on UK productivity of sunseting it.

### **International trade and investment**

The Department has not considered the impacts upon trade and investment. The IA notes briefly that the sunset period, and the accompanying uncertainty, may have an impact upon the rate of inward investment to the country. The IA should expand upon this brief reference to the impacts upon investment, considering the implications for the UK economy and businesses if it were to occur.

### **Consumer and distributional impacts**

The Department repeatedly makes reference to the likely positive impact upon consumers from removing or amending REUL but does not go into detail on the mechanism through which this is likely to occur. The IA states that reducing the regulatory burden may support households in lowering the cost of living, where the Department points to some examples of where it expects consumers to see benefits. The IA needs to consider, for policy areas such as those highlighted (e.g., General Data Protection Regulation - GDPR) whether businesses, if no longer faced with complying with that regulation, would experience a significant enough saving to be able to pass this on to consumers. The IA should include a clear articulation of how a reduction in regulation would benefit consumers, while considering if deregulating may have detrimental impacts on consumers if the policy is one seeking to safeguard consumers (e.g., GDPR).

### **Public sector impacts**

The IA discusses briefly the impacts on departments from having to identify, consider and ultimately to recommend either to amend, replace or let REUL sunset. While the Department identifies that the spread of REUL across departments is not even, it does not go on to discuss any further impacts upon departments responsible for a significant proportion of REUL or the departmental resources required. In addition, the IA does not consider the impact on the legislative capacity of Parliament to process a potential increase in statutory instruments that would be necessary to facilitate this. Further, the IA should consider what impact this diversion of activity towards dealing with REUL may have on business-as-usual regulatory work.

### **Clarification of alignment with devolved administrations**

The IA discusses briefly that the devolved administrations would have the power to decide whether to restate REUL as domestic law, and how this creates the potential for policy divergence to occur. The IA should be improved through clearly explaining the expected approach to REUL across the devolved administrations as well as the implications of any regulatory divergence for businesses and the extra resources required.

## **Monitoring and evaluation plan**

The Department has given insufficient consideration to what monitoring and evaluation (M&E) activities could be undertaken to assess the impacts of this legislation at a later date. With the potential for a significant proportion of REUL to be removed from UK law without further IAs being undertaken (e.g. that which could fall away after the sunset date), it would be useful for the Department to set out clear expectations regarding post-implementation reviews for the removal of such measures. In addition, given the broad scope of REUL, the Department should also consider developing a central M&E framework for assessing the impact of removing/amending REUL from which individual M&E plans can be designed as appropriate.

### **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC Gov UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).