Cyswllt Amgylchedd Cymru | Wales Environment Link

Call for evidence on Retained EU Law (Revocation and Reform) Bill

December 2022

Summary

Wales Environment Link is deeply concerned about the REUL Bill, which has major implications for environmental protection, food standards, animal and human welfare and worker's rights law as well as for legal certainty for all in Wales. Retained EU Law (REUL) includes some of the most important and powerful legislation we have to protect the environment and nature, such as the Habitats Regulations[1], air quality and water regulations[2] and regulations on environmental assessment. As stated by the Counsel General[3], the Bill

> "…risks the reduction of standards in important areas including employment, health and the environment."

The REUL Bill is a blunt instrument that does not allow for a sensible, consultative process to examine, update and improve the laws in these areas, but puts vital protections and standards at risk. We are therefore calling on the UK Government to withdraw the Bill.

1. **What impact is the Bill likely to have on the functioning of environmental law in Wales? Please provide examples of those impacts if possible.**
2. **The Bill contains a sunset clause. What are the views on this clause and, in particular, how this would apply in Wales?**

We will answer these two questions together. REUL in Wales exists in a huge number and variety of statutory instruments. Some are specific to Wales, while some apply to

[1] Conservation of Habitats and Species Regulations 2017

[2] For example the National Emission Ceilings Regulations 2018, Water Environment (Water Framework Directive) (England and Wales) Regulations 2017/407 and the Bathing Water Regulations 2013/1675 which, in part, implement - the Water Framework Directive 2000/60/EC and the Bathing Water Directive 2006/7/EC

[3] https://gov.wales/power-grab-fears-over-new-uk-government-legislation

England and Wales and others to the whole of the UK. The sunset provision in clause 1 of the Bill means that, unless other action is taken to retain, replace or amend REUL, it will automatically be revoked on 31 December 2023. While there is scope for some laws to be subject to a later sunset of 2026, the power to extend the sunset (to 2026) is only available to Ministers of the Crown and not to devolved administrations.

It is not clear, at present, whether and how Welsh Government might retain laws in effect for Wales if the UK Government's position is to revoke or amend England and Wales, or UK wide regulations, or the implications for Wales if English regulations are revoked entirely or significantly amended but Wales wishes to retain its regulations. It is of significant concern that there is not a complete list of REUL that is caught by the Bill, as stated by expert academics Dr Viviane Gravey from Queen's University Belfast and Professor Colin Reid from the University of Dundee

> "it is difficult, if not impossible, to fully gauge what the impact of the Bill will be on devolved competences as the scope of Retained EU Law itself is unclear".

Nor is it clear what impact the Internal Market Act 2020 might have on the ability and freedom of the devolved nations to retain higher standards in devolved areas than the UK Government. During a Westminster Hall debate held to consider the impact of Retained EU law on the Scottish Devolution Settlement on 19th October 2022, BEIS Minister Dean Russell sought to reassure Scottish MPs

> "I want to assure the House that the Government are committed to ensuring that the Bill works for all parts of the UK. We have carefully considered how it will impact each of the four nations, in close discussion with the devolved Governments, and it is of paramount importance that our legislatures function in a way that makes certain that we can continue to work together as one. The Government recognise the importance of ensuring that the Bill is consistent with the devolved arrangements, and we remain committed to respecting the devolution settlements and the Sewel convention…. We are not changing the constitutional settlement…. Environmental protections will not be weakened.

> We want to ensure that environmental law is fit for purpose and able to drive improved environmental outcomes[4]…. If the Scottish Government want to preserve legislation within their competency, the UK will respect it.[5]"

However, this is not clearly contained within the Bill. In fact, complexity notwithstanding, the apparent impact of the 2023 sunset clause is that government officials will need to work through a body of thousands of pieces of REUL[6] and implement decisions before a deadline which is barely a year away (and with no announced plans to change if the Bill takes longer to reach Royal Assent). We are very concerned about the requirement to process the vast quantity of REUL, and to make it operational in a domestic context, after Brexit has given a glimpse of what this looks like in terms of impacts on Welsh Government workload and capacity to drive forward its own legislation. The extent of the powers within the Withdrawal Act were far less than within the REUL Bill[7], and current implications of the REUL Bill look yet more drastic.

3. What are your concerns, if any, about the protection of the environment in Wales if the Bill was enacted?

The Welsh Government has stated that there is a risk REUL will simply be lost due to insufficient time being available to fully review, or due to confusion over where competency lies. Furthermore, due to Welsh Government teams having to absorb this vast, new workload, there will be an impact on the delivery of Welsh Government's own commitments and legislative priorities – for example the promised, and already delayed, Bill on environmental governance, principles and nature recovery targets and the Clean Air Bill. Dealing with the REUL Bill will mean more precious time lost when nature in Wales needs us to move further and faster.

In addition to the risks to regulations that are within the competence of the Welsh Government and the Senedd (whether it exists as Wales-only or shared legislation) it is important to note that changes in respect of areas solely within UK Government control also have major potential to impact on environmental protections in Wales –

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[4] https://hansard.parliament.uk/Commons/2022-10-19/debates/300E533E-0C71-44BC-A140-028019516462/details#contribution-3CD6C4C2-B588-4976-9917-FB50ECE00E5E

[5] https://hansard.parliament.uk/Commons/2022-10-19/debates/300E533E-0C71-44BC-A140-028019516462/details#contribution-74D97EBA-D66C-4F02-ACB2-A78CD12C1C0E

[6] The UK Government estimates that there are over 2,400 pieces of legislation on its REUL dashboard, but this does not include REUL made by Welsh Ministers (Senedd Research Service briefing https://research.senedd.wales/media/fqfhrteg/22-67-eng-web.pdf)

[7] And not everything had to be changed, nor within less than a year, since the powers granted were not sunsetted and remain available.

for example, the UK Government is responsible for consenting energy projects in Wales that are over a certain size (50MW on land, 350 MW at sea). Changes to the rules governing the UK Government's assessment of environmental impacts and responsibilities to protect nature, for example, could also have a significant impact on Wales' natural environment.

It is important to emphasise that Wales' own legislation – including the Environment (Wales) Act and the Well-being of Future Generations (Wales) Act – was passed in the context of the framework of largely EU-derived environmental laws from which we currently benefit. The delivery of objectives within this legislation, for example the objective of the Sustainable Management of Natural Resources – to maintain and enhance the resilience of ecosystems and the benefits they provide – depend upon the tools within this framework. For example, the protection and management of Special Areas of Conservation and Special Protection Areas; the strategic or project-based assessment of environmental impacts of plans and projects; River Basin Management Plans; and high-level marine strategy.

WEL is a strong advocate for new and better environmental laws – for example to set targets for air quality and nature recovery and establish robust domestic governance and enforcement. The Welsh Government, also, has recognised the need to do more – not less – and made clear commitments in the aforementioned areas. Our view is that the existing body of law needs to be strengthened and enhanced, rather than abandoned and replaced. Any proposals to amend existing law (including REUL) should be carefully justified and considered in the Welsh context.

Clause 15 of the REUL Bill gives ministers extremely wide powers to revoke or replace REUL and to lay replacement legislation (it has been described as a 'do whatever you like' provision). It states that Ministers must not increase regulatory burden in replacing REUL – with regulatory burden defined as including financial cost, administrative inconvenience and an obstacle to trade, innovation, efficiency, productivity or profitability. Should this be passed it risks severely undermining Wales' objectives to the severe detriment of the environment.

4. Are there any amendments that could be made to the existing draft of the Bill that would address any of the above concerns in relation to Wales? If so, what are they?

WEL strongly believes this Bill is unnecessary and should be withdrawn. As noted above the significant pressure it imposes to review such a large body of essential law in a short timescale would put many of our crucial environmental protections at risk. If the Bill is not withdrawn, substantial amendment is needed, to address – to name but a few points:

- the significant amount of power that is given to Ministers without parliamentary oversight;
- the lack of clarity around the powers and responsibilities of devolved governments and parliaments;
- the unworkable sunset provisions, and crucially clause 15 which means any future legislative changes are significantly constrained and it would be impossible to strengthen protections.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.



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