



Chartered Institute of Ecology and Environmental Management

Position Statement on the Retained EU (Revocation and Reform) Law Bill

22 February 2023

Background

The Retained EU (Revocation and Reform) Law Bill (hereafter referred to as the REUL Bill) was introduced to Parliament on 22 September 2022.

The Bill proposes “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”.

Government ambitions for nature and environment

The UK Government last year signed the CBD COP15 Kunming-Montreal Global Biodiversity Agreement¹. The agreement, amongst other goals, aims to protect 30% of land and sea for nature by 2030, to halt the decline of nature by 2030, and to ensure that humanity is living in harmony with nature by 2050. These are big ambitions, which we wholeheartedly support.

¹ <https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>

The UK Government has further added to these ambitions with its own targets and ambitions with the Environmental Improvement Plan (IEP23)² which builds on the 25-Year Environment Plan³, and has at the same time set out interim targets and the significant improvement test⁴.

The UK's wildlife continues to decline according to the State of Nature 2019⁵ report. The latest findings show that since rigorous scientific monitoring began in the 1970s there has been a 13% decline in average abundance across wildlife studied and that the declines continue unabated. And the Office for Environmental Protection's progress report on the 25-Year Environment Plan⁶ shows that unfortunately the Government has made little progress against its own ambitions.

The UK ranked 189 out of 240 countries and territories when measured for how intact our nature and biodiversity are, making the UK among the world's most nature-depleted countries⁷.

The REUL Bill has the potential to further exacerbate and accelerate biodiversity declines.

Concerns and challenges

CIEEM has a number of serious concerns about the REUL Bill. Firstly, this Bill is in contradiction to the ambitions of the COP15 agreement. Given how challenging the interlinked climate and biodiversity crises are, the UK Government needs to be highly ambitious and innovative in retaining and developing appropriate legislation. We need to retain the most impactful and effective pieces of legislation we currently have – and improve them.

The REUL Bill could impede the UK's ability to meet the COP15 agreement it successfully helped to negotiate. The implementation text which sits alongside the Global Biodiversity Framework calls on governments to update their national biodiversity strategies and action plans to align with the new Global Biodiversity Framework. The REUL Bill in its current format could work against these provisions, in particular the UK ambitions under the framework to protect 30% of land and sea by 2030, which could be impacted given the importance of European level protection through the National Site Network (including Special Areas for Conservation (SACs) and Special Protection Areas (SPAs)). The Government has claimed high levels of environmental ambition and global leadership yet is proposing removal or significant weakening of the most important pieces of environmental legislation that have slowed (but not halted) the loss of biodiversity.

EU-derived legislation

Items of EU-derived legislation that are at risk that are of particular concern with respect to the protection and enhancement of wildlife, the natural environment and biodiversity include (but are not limited to):

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133967/environmental-improvement-plan-2023.pdf

³ <https://www.gov.uk/government/publications/25-year-environment-plan>

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133059/Review_of_environmental_targets_Outcome_of_the_Significant_Improvement_Test.pdf

⁵ <https://www.rspb.org.uk/our-work/state-of-nature-report/>

⁶ <https://www.theoep.org.uk/report/progress-improving-natural-environment-england-20212022>

⁷ <https://www.nhm.ac.uk/our-science/data/biodiversity-indicators.html>

- The Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as the Habitats Regulations) – which provide the principal protection for Internationally important designated sites for nature conservation in the UK and protection for European protected species (EPS). We note that EPS in Scotland are only protected under the Habitats Regulations and not additionally under the Wildlife and Countryside Act 1981 – so if the Habitats Regulations were repealed those species would have no protection at all.
- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) – which require environmental impact assessment of projects likely to have a significant effect on the environment.
- The Environmental Assessment of Plans and Programmes Regulations 2004 (as amended) – which require a Strategic Environmental Assessment (SEA) of certain plans and programmes with the potential to cause a likely significant effect on the environment.
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 – which sets out standards and requirements to ensure that all water bodies are raised to ‘good ecological status’ or better.
- Various pieces of domestic legislation that implement limits to emissions of air pollution and which prescribe limits for ambient air pollution by transposing the EU Air Quality Directive and National Emission Ceilings Directive.

Should the above be allowed to expire due to the arrival of the REUL Bill’s sunset deadline at the end of 2023, crucial safeguards for the natural environment would disappear, and the most important processes that mandate scrutiny of potentially environmentally damaging plans and projects would fall away.

In addition to the loss of legislation is the loss of case law. The loss of case law and principles and their interpretive effects could have far-reaching effects if not addressed.

Of the above-listed legislation, CIEEM is only aware that the Habitats Regulations are being actively reviewed by Government prior to the arrival of the proposed sunset deadline.

The Habitats Regulations

The Bill could undermine nature conservation, where if the Habitats Regulations were to be revoked or key aspects repealed or significantly reformed, the UK’s most effective legal protections for important habitats and species, and the legal framework, including the assessment of impacts on protected sites requirements could be lost.

The Habitats Regulations Assessment (HRA) follows a rigorous and accepted process, which includes assessment of in-combination effects, application of a precautionary principle and ensures that impacts on the National Site Network are mitigated if unavoidable.

The next level of protection for Sites of Special Scientific Interest (SSSI) largely relies on the Statutory Nature Conservation Bodies (SNCB) being consulted via the planning system or direct application to the SNCB for consent to undertake potentially damaging operations. Furthermore, the Wildlife and Countryside Act 1981 does not consider the effect of plans on SSSIs.

If, with the loss of the Habitats Regulations, the National Site Network (SACs, SPAs and Ramsar sites) were to be subject to the current SSSI protection, an additional burden would be placed on the SNCBs and create a risk that site protection could be compromised. The removal of this whole component of assessment as a result of the Bill may result in poorer planning and the potential disregarding of impact sources.

Overall, the Habitats Regulations represent the UK's compliance with international environmental treaties, obligations and commitments – including the Bern, Ramsar and Bonn Conventions – and therefore retention of this key law for nature is vital.

Economic costs and impacts

The Secretary of State for the Environment has told her civil servants to retain laws by default⁸, but we understand this is not a simple undertaking and will require considerable time and resources – and is still no guarantee of retention. In the interim the gaps in legislation will lead to uncertainty and confusion for businesses (including planning, development and construction) and the ecology profession. Furthermore, it will add pressure on already overstretched local authorities⁹ and government departments¹⁰.

The Government's own EU Law dashboard¹¹ says that Defra has 1,781 pieces of law to review. It would be a monumental task to transfer all these laws, nevermind to review them. And even with retention, hundreds of statutory instruments will be needed, along with impact assessments, and there is currently no clear process or guidance in place for this. It is unworkable that the Bill progresses in its current form.

CIEEM is unsure why the REUL Bill needs to progress with such speed and with the immediate sunset. We understand that legislation needs to be reviewed, but a past review's of the Habitats Regulations have concluded that they are working well and not frustrating economic growth. These protections facilitate economic growth by ensuring that it is sustainable and within environmental limits.

There have been a number of reviews – including the 2011 Red Tape Challenge, the 2012 Review of the Implementation of the Birds and Habitats Directives in England¹², and the 2015 EU review of the Birds and Habitats Directives¹³ — which found that well implemented environmental planning laws are compatible with development. Overall, the reviews concluded that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained. Where costs and delays for developers do arise, the reviews point to these issues stemming from poor implementation.

Research has shown that, over 30 years, the weakening of the Habitats Regulations alone could lead to a loss of public benefits worth £1.04 billion and that weakening of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 could lead to a loss of public benefits worth £28.3 billion¹⁴.

⁸ <https://www.parliamentlive.tv/Event/Index/ab423697-e22f-4fa4-b343-792d9071dceb>

⁹ <https://www.alge.org.uk/local-planning-authorities-biodiversity-net-gain/>

¹⁰ https://greeneruk.org/sites/default/files/download/2023-02/REUL_Bill_Lords_second_reading_briefing_Greener_UK_and_Link.pdf

¹¹ <https://www.gov.uk/government/publications/retained-eu-law-dashboard>

¹² <https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>

¹³ https://ec.europa.eu/environment/consultations/nature_fitness_check_en.htm

¹⁴ <https://www.wcl.org.uk/docs/The%20economic%20costs%20of%20the%20Retained%20EU%20Law%20Bill%2018.01.22.pdf>

A competent and expert ecological profession is essential to achieving the Government’s biodiversity and nature ambitions, and in addressing the climate and biodiversity crises. Undermining environmental laws and creating uncertainty will not help in attracting new entrants into the profession, especially as we try to make the profession more diverse and inclusive.

Devolved country impacts

The Bill could have major implications for environmental law and legal certainty in Northern Ireland, Scotland and Wales. Concerns have been raised by the devolved governments, legislatures and stakeholders, including, Welsh Government¹⁵ with recent research outlining their main concerns¹⁶. Academics in Northern Ireland and Scotland from Queen’s University Belfast and University of Dundee have also set out the uncertainty of the process for devolved nations, and what the impact this will have on the environmental competences¹⁷.

Devolved administrations wishing to retain crucial environmental protection mechanisms derived from the EU would need to invest substantial civil service and legal resources in replacing the missing protections.

Recommendations

CIEEM welcomes initiatives to review and further improve EU-derived law, but amending and refining such a large body of complex environmental rules requires a great detail of care and attention, and by extension can only be realistically achieved over a much longer timespan – and one that allows for consultation with expert stakeholder groups, and which seeks to improve upon the current position without any backsliding on nature protections.

- It is vital that the REUL Bill includes safeguards to prevent damaging deregulation that may undermine national and international commitments (e.g. Bern Convention) to environmental protection and improvement. Many of the UK’s international commitments are interwoven within EU-derived laws and depend on the regulatory requirements within them.
- The Government should adopt a different approach to reviewing REUL. This could include a consultative process that examines, updates and improves environmental laws. The Bill should put in place powers to create progressive – and block regressive – environmental law.
- The Government needs to be clear on the fate of EU-derived case law in order to give clarity and certainty to businesses and others.
- The Government must consider the new Environmental Principles Policy Statement¹⁸ in its decision-making regarding REUL.
- The Government should prioritise its environmental commitments in the Environment Act 2021 and new Environmental Improvement Plan, including the actions and policies necessary to deliver nature’s recovery by 2030, and those ambitions set out in the 25-Year Environment Plan.

¹⁵ <https://www.gov.wales/power-grab-fears-over-new-uk-government-legislation>

¹⁶ <https://research.senedd.wales/research-articles/unfettered-authority-the-retained-eu-law-revocation-and-reform-bill-in-wales/>

¹⁷ <https://www.brexitenvironment.co.uk/2022/10/10/reul-bill-devolution/>

¹⁸ <https://www.gov.uk/government/publications/environmental-principles-policy-statement/environmental-principles-policy-statement>

- The Government should seek and take account of advice from independent experts and environmental governance bodies such as environmental professionals and the Office for Environmental Protection. This will ensure that the review of REUL includes expert advice from outside of Government.
- The sunset arrangement for December 2023 is inviting chaos. The sunset clause puts the chances of meeting legally-binding climate and nature targets into disarray, and will create uncertainty for vulnerable businesses, the long-term sustainability of our economy and could lead to further environmental losses. The sunset clause should be removed.
- Government must consider the links and interactions between other current legislative reforms – including the Levelling Up and Regeneration Bill and Energy Bill – that have the potential to additionally impact environmental protections.

CIEEM welcomes further discussion and collaboration with Government and others on developing and improving environmental legislation that is vital for addressing the climate and nature crises.

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