

HOUSE OF LORDS

Select Committee on Constitution

13th Report of Session 2022–23

Retained EU Law (Revocation and Reform) Bill

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Select Committee on the Constitution

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Declaration of interests

See Appendix 1.

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Retained EU Law (Revocation and Reform) Bill

Introduction

1. The Retained EU Law (Revocation and Reform) Bill was introduced in the House of Commons on 22 September 2022 and brought to the House of Lords on 19 January 2023. Second reading took place on 6 February 2023 and committee stage is scheduled to begin on 23 February 2023.
2. The European Union (Withdrawal) Act 2018 provided for a ‘snapshot’ of EU law in place on the day of the UK’s exit from the EU on 31 December 2020 to remain part of UK law as ‘retained EU law’. These laws continued to have force in the United Kingdom, unless repealed or replaced by later UK legislation.¹
3. In the Government’s words, the Bill “facilitates the amendment, repeal and replacement of [retained EU law] by the end of 2023, and assimilates [retained EU law] remaining in force after that date by removing the special EU law features attached to it.”² The Bill does this by:
 - establishing a sunset date of the end of 2023³ by which most retained EU law will no longer have effect in UK law;
 - repealing the principle of supremacy of EU law;
 - transforming any retained EU law that remains after the end of 2023 into “assimilated law”;
 - facilitating departures from retained EU case law;
 - modifying the way in which retained EU law is interpreted;
 - creating powers to amend, repeal and replace retained EU law by secondary legislation, and;
 - repealing the Business Impact Target.⁴

Delegated powers

Skeleton legislation

4. The Bill has been described by the Delegated Powers and Regulatory Reform Committee as “hyper-skeletal”.⁵ It gives UK ministers and ministers of the devolved administrations the power to revoke, restate or replace a

1 [Explanatory Notes to the Retained EU Law \(Revocation and Reform\) Bill](#), paras 10 and 13

2 [Explanatory Notes to the Retained EU Law \(Revocation and Reform\) Bill](#), para 14

3 “The end of 2023” is not further defined in the Bill.

4 Department for Business, Energy & Industrial Strategy, ‘The Retained EU Law (Revocation and Reform) Bill 2022’ (22 September 2022): <https://www.gov.uk/government/news/the-retained-eu-law-revocation-and-reform-bill-2022> [accessed 17 February 2023]

5 Delegated Powers and Regulatory Reform Committee, *25th Report of Session 2022–23*, (HL Paper 147), para 63.

large volume of EU law.⁶ It also provides UK ministers and ministers of the devolved administrations with the option of doing nothing, and allowing EU law in certain policy areas to be automatically revoked.

5. In its report on the Bill the Delegated Powers and Regulatory Reform Committee said:

“The normal way of changing the law to deliver significant policy change is by Act of Parliament, following consultation, debate, amendments and (if at all) with targeted and proportionate delegated powers. This Bill takes a radically different approach ... considerable swathes of [retained EU law] will automatically expire at the end of 2023 unless Ministers decide otherwise. The Bill gives the widest powers to Ministers to amend or replace it. It is a blank cheque placed in the hands of Ministers.”⁷

6. In *The Legislative Process: The Delegation of Powers* we said:

“Skeleton bills inhibit parliamentary scrutiny and we find it difficult to envisage any circumstances in which their use is acceptable. The Government must provide an exceptional justification for them.”⁸

7. **The Bill empowers ministers to decide the future of a significant amount of law across a wide range of policy areas with little parliamentary scrutiny. We reiterate our conclusion that the Government must provide an exceptional justification for the use of skeleton legislation, particularly where it can be described as “hyper-skeletal”. *The House may wish to seek further justifications for the Bill’s broad delegations of powers to ministers.***

Clauses 12, 13 and 15

8. Clauses 12 and 13 empower “a relevant national authority”⁹ to restate, respectively, secondary retained EU law (until the end of 2023) and secondary assimilated law (until 23 June 2026).¹⁰ This may be done if the relevant national authority considers it appropriate in order to resolve ambiguities, remove doubts or anomalies or improve clarity or accessibility.¹¹
9. Clause 15 contains broader powers. It empowers relevant national authorities until 23 June 2026 to revoke secondary retained EU law and:
- not replace it;¹²

6 The latest version of the Government’s retained EU law dashboard mentions that it contains over 3,700 pieces of legislation. Cabinet Office, ‘Retained EU Law—Public Dashboard’: <https://public.tableau.com/app/profile/governmentreporting/viz/UKGovernment-RetainedEULawDashboard/Guidance> [accessed 17 February 2023]

7 Delegated Powers and Regulatory Reform Committee, *25th Report of Session 2022–23*, (HL Paper 147), para 13

8 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 58

9 A “relevant national authority” means a UK minister, a devolved authority or a UK minister and devolved authority acting jointly. See [clause 21\(1\)](#).

10 The Bill defines “secondary retained EU law” as (a) any retained EU law that is not primary legislation and (b) any retained EU law that is primary legislation the text of which was inserted by subordinate legislation. “Secondary assimilated law” refers to the same categories of law, but after the end of 2023. See [Retained EU Law \(Revocation and Reform\) Bill](#), clauses 6, 12(2) and 13(2).

11 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 14 (3)

12 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 15(1)

- replace it with another measure which they consider “appropriate and to achieve the same or similar objectives”;¹³ or
 - “make such alternative provision as the national authority considers appropriate”.¹⁴
10. The powers under clause 15(2) and (3) include the ability to confer functions and discretions, to create criminal offences or impose monetary penalties that correspond to or are similar to those created by secondary retained EU law, and to charge fees. While the replacement provision under subsection (2) must achieve the same or similar objectives as the measure it replaces, that under subsection (3) may seek to achieve different objectives.¹⁵ Regulations under clause 15(3) are subject to the affirmative resolution procedure.¹⁶
 11. The Delegated Powers and Regulatory Reform Committee has recommended that clauses 12, 13 and 15 be removed from the Bill.¹⁷ It has described clause 15 as “the most arresting clause in the Bill for its width, novelty and uncertainty” because it gives ministers “an extraordinarily wide discretion in relation to thousands of pieces of secondary [retained EU law].”
 12. The Secondary Legislation Scrutiny Committee has recommended that clauses 12, 13 and 15 be subject to an enhanced scrutiny mechanism, including a power for Parliament to modify those statutory instruments.¹⁸
 13. **The powers in clauses 12, 13 and 15 are significant. That in clause 15(3) is particularly powerful since it provides a relevant national authority with the ability to alter the direction of a wide range of policy with little constraint. The appropriateness of this power and the level of parliamentary control applied to it merit serious consideration.**

Parliamentary scrutiny

14. Regulations made under the Bill which modify primary legislation are subject to the draft affirmative procedure,¹⁹ as are regulations made under clause 15(3) and any regulations which confer a power to make subordinate legislation or create a criminal offence.²⁰ All other regulations are subject to the negative resolution procedure.²¹
15. In our report on the European Union (Withdrawal) Bill we were concerned about the delegation of broad powers to change retained EU law when “only a narrow range of matters are subject to the affirmative procedure”. We concluded:

“The narrowly-circumscribed set of circumstances for which affirmative procedure is required is constitutionally unacceptable. If the regulation-making process is deemed acceptable by Parliament for the use of

13 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 15(2)

14 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 15(3)

15 [Delegated Powers Memorandum to the Retained EU Law \(Revocation and Reform\) Bill](#), p 28

16 [Retained EU Law \(Revocation and Reform\) Bill](#), Schedule 4, para 7(2)(d)

17 Delegated Powers and Regulatory Reform Committee, [25th Report of Session 2022–23](#) (HL Paper 147), paras 45, 46 and 62

18 Secondary Legislation Scrutiny Committee, [Losing Control?: The Implications for Parliament of the Retained EU Law \(Revocation and Reform\) Bill](#) (28th Report, Session 2022–23, HL Paper 145), paras 37 to 39 and 45.

19 [Retained EU Law \(Revocation and Reform\) Bill](#), Schedule 4, paras 5(1) and 7(2)

20 [Retained EU Law \(Revocation and Reform\) Bill](#), Schedule 4, para 7(2)(c)

21 [Retained EU Law \(Revocation and Reform\) Bill](#), Schedule 4, paras 4 and 5

these powers, the Bill should provide for the application of affirmative procedure in relation to any measure which involves the making of policy.”²²

16. **We reiterate our concerns about applying the negative resolution procedure to regulations which alter policy in areas previously governed by retained EU law. We recommend that the affirmative procedure is used for all regulations under the Bill which involve making policy.**
17. Schedule 4 establishes a sifting procedure for regulations under clauses 12, 13 and 15.²³ This enables a committee of the House of Commons or the House of Lords to recommend that regulations under these clauses which are proposed to be subject to the negative procedure should be upgraded to the affirmative resolution procedure.
18. This replicates the sifting procedure established for measures under the European Union (Withdrawal) Act 2018.²⁴ In our report on that Bill, we welcomed the establishment of the sifting committee but recommended that the House “may wish to consider whether a joint committee should be established with this function”²⁵ and that the sifting committee should have the power, subject to the view of the House, to decide the appropriate scrutiny procedure for an instrument.²⁶ Neither of those recommendations was taken up, though in practice a recommendation by either committee to upgrade the procedure has in each case been accepted by the Government.²⁷
19. **We welcome the inclusion of a sifting mechanism in this Bill. The House may wish to consider whether the sifting arrangements in place for proposed negative instruments under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020 would also be appropriate in the case of this Bill.**
20. Clause 11 removes previously existing procedural requirements in connection with the amendment or revocation of subordinate legislation made under section 2(2) of the European Communities Act 1972.²⁸
21. In its Delegated Powers Memorandum, the Government justifies the removal of these requirements by stating:

“no tangible benefit has been identified as a result of these extra requirements, and in practice they add a layer of complexity which makes it difficult for users of legislation containing section 2(2) ECA provisions that are being amended to determine which scrutiny procedures apply and it takes up valuable Parliamentary time.”²⁹

22 Constitution Committee, *The European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69), para 219

23 *Retained EU Law (Revocation and Reform) Bill*, Schedule 4, paras 7 and 8

24 The sifting procedure also exists in the *European Union (Future Relationship) Act 2020*.

25 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69), para 226

26 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69), para 227

27 Secondary Legislation Scrutiny Committee, *Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform) Bill* (28th Report, Session 2022–23, HL Paper 145), para 54

28 *Retained EU Law (Revocation and Reform) Bill*, clause 11

29 *Delegated Powers Memorandum to the Retained EU Law (Revocation and Reform) Bill*, p 37

22. *The House may wish to seek assurances that the procedural requirements being removed by clause 11 are proposed for removal because there is no procedural need for them, and not for reasons of expediency.*

Use of “appropriate”

23. Seven clauses in the Bill enable ministers and the relevant devolved authorities to exercise powers when they consider it “appropriate” to do so.³⁰ We have previously criticised the use of “appropriateness” as a test for the use of powers, particularly when it involves a policy choice.³¹
24. The powers in clause 15(2) and (3) appear to involve significant policy choices. Clause 15(2) allows the relevant national authority to replace secondary retained EU law with provision with “the same or similar” objectives—there may be doubt as to the extent to which the objectives of the replacement provision is “the same or similar”. Clause 15(3) allows a complete change of policy.
25. Clause 16 empowers a minister to update regulations to take account of technological or scientific developments. It is difficult to determine the boundary of this power and, unlike other powers in the Bill, it is not sunsetted.
26. We also note that clauses 19 and 22 provide powers to make consequential, transitional, and saving provision, including Henry VIII powers, subject to the “appropriateness” test.
27. **The House may wish to consider the acceptability of “appropriateness” as a test for the use of powers under clauses 15(2) and (3) and 16.**

Sub-delegation

28. The Bill allows for sub-delegation of power. Clause 15(4)(a) states that regulations made under clause 15 “may confer a power to make subordinate legislation that corresponds or is similar to a power to make subordinate legislation conferred by secondary retained EU law revoked by the regulations (and may not otherwise confer a power to make subordinate legislation)”.³²
29. The Delegated Powers and Regulatory Reform Committee has said of sub-delegation that: “[c]onferring a delegated power on ministers to sub-delegate power is potentially a more egregious erosion of democratic accountability than a simple delegation to a minister to make secondary legislation.”³³ That Committee concluded:

“[w]here the government seek a legislative sub-delegation of power in a bill, the power should be limited and specific, and its exercise, and the exercise of sub-delegated powers, should be subject to parliamentary scrutiny.”³⁴

30 Clauses 12(6), 13(5) and (6), 14, 15(2) and (3), 16, 19(1) and 22.

31 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69) para 167

32 *Retained EU Law (Revocation and Reform) Bill*, clause 15(4)(a)

33 Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report, Session 2021–22, HL Paper 106), para 111

34 *Ibid.*

30. **We share the concerns of the Delegated Powers and Regulatory Reform Committee that the sub-delegation of power potentially erodes democratic accountability and should only be used in very specific and limited circumstances.**

Criminal offences

31. As noted above, clause 15(4)(c) empowers relevant national authorities to create criminal offences by regulations. Clause 12(4)(d) empowers them to impose monetary penalties. The powers may be used only if the criminal offence or monetary penalty “corresponds or is similar to” that contained in the secondary retained EU law revoked by the regulations.³⁵ The relevant national authority may not use this power to impose taxation.³⁶
32. In *The Legislative Process: The Delegation of Powers* we concluded that it is “constitutionally unacceptable” to use delegated legislation to create criminal offences.³⁷
33. **We reiterate our conclusion that the use of delegated legislation to create criminal offences is in general constitutionally unacceptable. Clause 15(4) should be amended so that the power may not be used to create criminal offences.**

Devolution

Use of powers in areas of devolved competence

34. The Bill empowers “relevant national authorities” to restate, revoke, or replace retained EU law and assimilated law.³⁸ UK ministers may make regulations that affect areas of devolved competence. There is no requirement to consult the relevant devolved authorities when exercising these powers.
35. The Scottish and Welsh governments have both expressed concern about these provisions and have recommended that the Scottish Parliament and Senedd Cymru do not grant legislative consent to the Bill.³⁹
36. In *The Legislative Process: The Delegation of Powers*, we concluded:
- “[W]here UK ministers seek a power to amend devolved legislation, they must be subject to a statutory requirement to consult the relevant devolved administration.”⁴⁰

35 [Retained EU Law \(Revocation and Reform\) Bill](#), clauses 15(4)(c) and (d)

36 [Retained EU Law \(Revocation and Reform\) Bill](#), clauses 15(4)(f)

37 Constitution Committee, *The Legislative Process: the Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 50

38 [Retained EU Law \(Revocation and Reform\) Bill](#), clauses 12, 13 and 15

39 Scottish Government, ‘Legislative Consent Memorandum: The Retained EU Law (Revocation and Reform) Bill’ (8 November 2022), paras 46 and 51: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/retained-eu-law-revocation-and-reform-bill/legislative-consent-memorandum.pdf>; Welsh Government, ‘Legislative Consent Memorandum: The Retained EU Law (Revocation and Reform) Bill’ (3 November 2022), paras 84 and 93: <https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>. The Scottish Parliament Constitution, Europe, External Affairs and Culture Committee has described the approach to consent mechanisms for the exercise of delegated powers in devolved areas by UK ministers as “ad hoc and inconsistent” and expressed concern about the lack of a consent requirement in the Bill: *Legislative Consent Memorandum for the Retained EU Law (Revocation and Reform) Bill (UK Parliament legislation)*, 1st Report, 2023, SP Paper 318, para 243: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/CEEAC/2023/2/15/97a5c192-b398-47a4-a6b5-3a084387cd49/CEEACS062023R1.pdf>

40 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 70.

37. In our report on the Trade (Australia and New Zealand) Bill, we welcomed a statement from the minister that “the Government are committed to not normally using this Bill’s powers without the consent of the devolved Administrations, and we will never use them without consulting the devolved Administrations first.”⁴¹ We also welcomed a requirement in the Levelling-up and Regeneration Bill for the Government to consult the devolved administrations when making regulations containing provision within devolved competence.⁴²
38. There is a risk that regulations made to restate, revoke, or replace retained EU law and assimilated law could interfere with common frameworks.⁴³ In our report on the Levelling-up and Regeneration Bill, we concluded:
- “It is an essential feature of the common framework system that it allows frameworks to be modified by agreement and provides for a dispute avoidance and resolution mechanism if agreement is not reached. We are concerned that delegated powers provided for in [the Bill]—which do not take account of the common framework system—risk undermining ... policy agreed by consensus through that system.”⁴⁴
39. **We reiterate our position that UK ministers should make regulations in areas of devolved competence only after consulting the relevant devolved administration. In instances where common frameworks—a vital part of a co-operative union—are engaged, it is important that policy agreed by consensus through the common framework system is not undermined.**
40. *We recommend that the Bill is amended to require UK ministers to consult the relevant devolved administration before making regulations that affect areas of devolved competence. It would be welcome if the Government were to commit not normally to use the powers under the Bill in areas of devolved competence without having obtained the consent of the relevant devolved administration.*

Sewel convention

41. There is disagreement between the UK Government, the Scottish Government and the Welsh Government on which clauses require legislative consent.⁴⁵ In *Respect and Cooperation: Building a Stronger Union for the 21st Century* we said:

41 HL Deb, 9 January 2023, col 1234; Constitution Committee, *Trade (Australia and New Zealand) Bill* (11th Report, Session 2022–23, HL Paper 135), para 19

42 Constitution Committee, *Levelling-up and Regeneration Bill* (12th Report, Session 2022–23, HL Paper 140), para 23.

43 Following the UK’s exit from the EU, the UK Government has been working with the devolved administrations to develop common frameworks. They are intended to agree a common approach where powers returned from the EU intersect with areas of devolved competence. Cabinet Office, ‘UK Common Frameworks’ (19 December 2022): <https://www.gov.uk/government/collections/uk-common-frameworks> [accessed 17 February 2023]

44 HL Deb, 9 January 2023, col 1234; Constitution Committee, *Trade (Australia and New Zealand) Bill* (11th Report, Session 2022–23, HL Paper 135), para 27

45 *Explanatory Notes to the Retained EU Law (Revocation and Reform) Bill*, pp 43–45; Scottish Government, ‘Legislative Consent Memorandum: The Retained EU Law (Revocation and Reform) Bill’ (8 November 2022), para 40: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/retained-eu-law-revocation-and-reform-bill/legislative-consent-memorandum.pdf>; Welsh Government, ‘Legislative Consent Memorandum: The Retained EU Law (Revocation and Reform) Bill’ (3 November 2022), para 80: <https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>

“[a]t present when the Government considers consent is not required from a devolved legislature and proceeds to give effect to this view, there is no parliamentary scrutiny of that determination. In future we recommend that the Government should justify its approach to the House at the beginning of the Bill’s consideration.”⁴⁶

42. We reiterated this recommendation in our report on the Levelling-up and Regeneration Bill.⁴⁷
43. *We reiterate our recommendation that when there is disagreement between the Government and a devolved administration as to whether the legislative consent process is engaged the Government should justify its approach to the House at the beginning of a bill’s consideration. In the case of this Bill, it should do so at the earliest opportunity.*

Legal uncertainty

44. The constitutional principle of the rule of law includes a principle of legal certainty. This enables individuals to abide by the law and provides confidence to those entering into contracts or other legal relations with individuals. Legal certainty provides for predictability.
45. The Bill automatically revokes all retained EU law contained in secondary legislation at the end of 2023, unless steps are taken to avoid the revocation. Identifying all such legislation has proved difficult.⁴⁸ It is therefore possible that legislation may inadvertently be revoked at the end of 2023.
46. This problem may be exacerbated by the short timeframe in which to identify and review these measures to determine which should be preserved and which should be revoked, restated, or replaced. In its report on the Bill the Delegated Powers and Regulatory Reform Committee said: “The Government need to explain ... what is behind the headlong rush and the impending and arbitrary end-of-year deadline.”⁴⁹
47. Further matters give rise to the risk of legal uncertainty, including:
- Clause 2 allows for the sunset date—at the end of 2023—to be extended in respect of a specific instrument or description of legislation by regulations made by a UK minister until no later than 23 June 2026.⁵⁰ The Hansard Society refers to this as creating a “patchwork quilt of sunset dates across different policy areas, resulting in even greater legal complexity”.⁵¹

46 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 139

47 Constitution Committee, *Levelling-up and Regeneration Bill* (12th Report, Session 2022–23, HL Paper 140), para 19.

48 The second iteration of the Government’s Retained EU Law Dashboard identified over 1,000 additional pieces of retained EU law not previously included. Cabinet Office, ‘Retained EU Law—Public Dashboard’: <https://public.tableau.com/app/profile/governmentreporting/viz/UKGovernment-RetainedEULawDashboard/Guidance> [accessed 17 February 2023]

49 Delegated Powers and Regulatory Reform Committee, *25th Report of Session 2022–23*, (HL Paper 147), para 17

50 *Retained EU Law (Revocation and Reform) Bill*, clause 2

51 The Hansard Society, ‘Five Problems with the Retained EU Law (Revocation and Reform) Bill’ (24 October 2022), p 7: https://assets.ctfassets.net/n4ncz0i02v4l/92Se5TjP16LbAeBIKGCQE/fe6a83322be99844cefd6d2bae363377/5_Problems_with_the_REUL_-_Revocation_and_Reform-Bill_-_Oct_2022.pdf [accessed 17 February 2023]

- It is possible that retained EU law was implemented by secondary legislation in one part of the United Kingdom but by primary legislation in another. This could entail the automatic revocation in one part of the UK of measures to implement an EU obligation that is preserved in another. This may give rise to confusion.
- There is no requirement for the UK Government to communicate which provisions of retained direct EU law or retained secondary EU law have been revoked by the end of 2023. This may limit opportunities for Parliament to monitor whether any EU-derived subordinate legislation has been inadvertently revoked.
- There may, for example, be difficulties in determining whether a power to create a criminal offence or a monetary penalty “corresponds or is similar to” that in secondary retained EU law. Legal uncertainty may also arise from the ability of the Law Officers to refer a point of law on an issue related to retained case law after proceedings before the court have concluded.⁵²
- Clause 4 abolishes the principle of the supremacy of EU law⁵³ from the end of 2023 and instead stipulates that retained direct EU legislation must be read and given effect to in a way that is compatible with all domestic law. Where the two conflict, domestic law is to take precedence.⁵⁴ Clause 5 abolishes general principles of EU law⁵⁵ from the end of 2023⁵⁶ and establishes that assimilated law will be interpreted in line with domestic enactments.⁵⁷ It is difficult to predict the effect of these provisions on the interpretation of retained direct EU legislation and assimilated legislation. In particular, the abolition of general principles of EU law may give rise to inconsistency, with some legal provisions interpreted in line with general principles of EU law and others interpreted in line with domestic law.
- Under clause 7, a higher court “may depart from its own retained domestic case law (i.e. decisions of UK courts interpreting provisions of EU law) if it considers it right to do so having regard” to, among other things, “the extent to which the retained domestic case law restricts the proper development of domestic law”. “Proper development” is not

52 Clause 7(8)

53 “The principle of the supremacy of EU law is a concept developed by the Court of Justice of the European Union (CJEU). The principle provides that, where the domestic law of a Member State conflicts with EU law, the latter takes priority.” [Explanatory Notes to the Retained EU Law \(Revocation and Reform\) Bill](#), para 25

54 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 4(1)

55 “General principles of EU law have been developed by the CJEU in its case law. The case law provides that they may be used as an aid to the interpretation of the EU Treaties and EU legislation, and may be relied upon directly by individuals against EU institutions or national authorities acting incompatibly with them. There is no definitive list of general principles recognised in the CJEU case law, but examples include the protection of fundamental rights, and the equality principle.” [Explanatory Notes to the Retained EU Law \(Revocation and Reform\) Bill](#), para 28

56 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 5

57 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 4(1)

defined, making it difficult to predict in which circumstances a court will depart from retained domestic case law.⁵⁸

48. **Legal certainty is a fundamental tenet of the rule of law. *The House may wish to ask the Government how it intends to mitigate the legal uncertainty caused by the Bill.***

The UK's obligations under international law

49. Concerns have been raised as to how the Bill will interact with the UK's international law commitments, particularly those in the Northern Ireland Protocol, the Treaty on the Withdrawal from the European Union and the Trade and Cooperation Agreement.⁵⁹
50. The UK might, through the inadvertent failure to preserve or restate certain provisions of retained secondary EU legislation or retained direct EU legislation, find itself in breach of its international obligations.
51. In our report on the United Kingdom Internal Market Bill we concluded:
- “The rule of law requires a state to comply with its obligations in international law as in domestic law ... Any breach of international law threatens to undermine the rule of law and international confidence in future treaty commitments made by the UK government.”⁶⁰
52. The Government committed during the passage of the Bill through the House of Commons to “take action required to ensure that the necessary legislation is in place to uphold the UK's international obligations.”⁶¹ This included a commitment to update the retained EU law dashboard accordingly.⁶²
53. ***The House may wish to seek specific assurances from the Government about the action it proposes to take to ensure that the UK upholds its obligations in international law in the context of the automatic sunseting.***

58 [Retained EU Law \(Revocation and Reform\) Bill](#), clause 7(4). The interpretation of “proper development of domestic law” has also been raised by the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee: *Legislative Consent Memorandum for the Retained EU Law (Revocation and Reform) Bill (UK Parliament legislation)*, 1st Report, 2023, SP Paper 318, para 265: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/CEEAC/2023/2/15/97a5c192-b398-47a4-a6b5-3a084387cd49/CEEACS062023R1.pdf>

59 For example, a joint briefing from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland raised concerns about the impact of the Bill on Article 2 of the Northern Ireland Protocol, which includes a commitment to keep pace with the Equality Directives listed in Annex I to the Protocol and with other relevant EU equality legislation. Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ‘NIHRC/ ECNI Briefing on the Retained EU Law (Revocation and Reform) Bill’ (17 January 2023), paras 2.3 and 3.8: <https://nihrc.org/publication/detail/nihrc-and-ecni-briefing-on-the-retained-eu-law-revocation-and-reform-bill> [accessed 17 February 2023]

60 Constitution Committee, *United Kingdom Internal Market Bill* (17th report, Session 2019–21, HL Paper 151), para 137.

61 HC Deb, 18 January 2023, [col 402](#) ; HC Deb, 25 October 2022, [col 189](#)

62 HC Deb, 18 January 2023, [col 402](#)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Drake (Chair)
 Lord Anderson of Ipswich
 Baroness Andrews
 Lord Falconer of Thoroton
 Lord Foulkes of Cumnock
 Lord Hope of Craighead
 Lord Howard of Lympne
 Lord Keen of Elie
 Lord Mancroft
 Lord Strathclyde
 Baroness Suttie
 Lord Thomas of Gresford

Declarations of interest

Baroness Drake (Chair)
No interests declared
 Lord Anderson of Ipswich
No interests declared
 Baroness Andrews
No interests declared
 Lord Falconer of Thoroton
No interests declared
 Lord Foulkes of Cumnock
No interests declared
 Lord Hope of Craighead
No interests declared
 Lord Howard of Lympne
No interests declared
 Lord Keen of Elie
No interests declared
 Lord Mancroft
No interests declared
 Lord Strathclyde
No interests declared
 Baroness Suttie
No interests declared
 Lord Thomas of Gresford
No interests declared

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Alison Young, University of Cambridge, acted as legal advisers to the Committee. They declared no relevant interests.

