

Retained EU law in planning and environment cases



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Retained EU Law (“REUL”)

The concept of REUL introduced by the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020.

The 2018 Act provides for the retention of the following as ‘REUL’:

1. “EU-derived domestic legislation” – s.2
2. “Direct EU legislation” – s.3
3. Any “rights, powers, liabilities, obligations, restrictions, remedies and procedures” that are “of a kind recognised by the [CJEU] or any court or tribunal in the United Kingdom” before exit day – s.4



What was the effect of REUL under the 2018 Act?

The original policy approach to the retention of EU law post-Brexit was to preserve it wholesale, with an understanding that it would then be open for government to decide on changes to the retained law over time with “*full scrutiny and proper debate*” (Cm 9446, March 2017)

Section 6(3) set out how questions relating to the “*validity, meaning or effect of any retained EU law*” are to be decided, and provided that they would be answered:

- (i) In accordance with any “*retained case law*” and any “*retained general principles of EU law*”, and
- (ii)(ii) having regard (among other things) to the limits, before Brexit, of EU competences.



REUL Bill

The REUL Bill originally presented in parliament in autumn 2022 contained a number of significant measures to axe REUL from the domestic legal system, incl. sunset provisions. The sunset clauses would have had the effect of sunseting all “EU-derived subordinate legislation” and “retained direct EU legislation” at the end of 2023 (extendable until 2026), unless actively preserved through regulations made by a relevant national authority.

Sunset provisions were cut from the Bill in May 2023

Instead: sunset schedule at Schedule 1 of the REUL Act – with “*virtually nothing of any importance*”



Retained EU Law (Revocation and Reform) Act 2023





- Renaming REUL as 'assimilated law': s.5
- Repealing the supremacy of EU law: s.3
- Ministerial powers to restate, revoke and replace secondary REUL: ss.11-16
- Repeal of directly effective EU rights and obligations: s.2
- Abolition of general principles of EU law: s.4
- Changes to precedent and the application of caselaw: s.6
- Reporting requirements and the REUL dashboard: s.17



Thank you

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