

Committee(s): Policy and Resources Committee	Dated: 21/09/2023
Subject: Retained EU Law (Revocation and Reform) Act	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	2, 6, 7
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Remembrancer	For Information
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Summary

This report summarises the Retained EU Law (Revocation and Reform) Act, which was first introduced into the Commons in September 2022 and received Royal Assent on 29 June 2023. Act revokes certain specified pieces of Retained EU Law (REUL) at the end of 2023 and grants the Secretary of State powers to restate, revoke, replace or update REUL until 23 June 2026. It places a duty on the Secretary of State to regularly update the Government's REUL Dashboard and publish reports on the revocation and reform of REUL. The Act also abolishes the principle of the supremacy of EU law and other general principles of EU law and facilitates domestic courts to depart from retained case law. Most of the Act's substantive provisions came into force on 29 June with Royal Assent. Further consequential provisions will be brought into force by regulations which have not yet been made.

Recommendation(s)

Members are asked to note the report.

Main Report

Summary of the Act

1. The purpose of the Retained EU Law (Revocation and Reform) Act 2023 is to enable the amendment of retained EU law (REUL) and to remove the special features that it has in our domestic legal system. To achieve this, the Act:

- a) Revokes 587 instruments of REUL listed in Schedule 1 to the Act and assimilates all REUL remaining on the statute book by the end of 2023;
 - b) repeals the principle of supremacy of EU law from UK law by the end of 2023;
 - c) facilitates domestic courts departing from retained case law;
 - d) provides a mechanism for UK Government Law Officers to intervene in cases regarding retained case law, or to refer them to an appeal court, where relevant;
 - e) repeals directly effective EU law rights and obligations in UK law by the end of 2023;
 - f) abolishes general principles of EU law in UK law by the end of 2023;
 - g) establishes a new priority rule requiring retained direct EU legislation (RDEUL) to be interpreted and applied consistently with domestic legislation;
 - h) downgrades the status of RDEUL for the purpose of amending it more easily;
 - i) creates a suite of powers that allow REUL to be revoked, replaced, restated, updated, removed or reformed, provided that this does not increase the regulatory burden in relation to a particular subject area;
 - j) imposes a duty to update the REUL dashboard; and
 - k) imposes a duty to periodically report to Parliament on REUL reforms and set out plans for further reform.
2. The reforms implemented by the Act were first announced in the Queen's speech in May 2022. The policy approach of the Act was originally set out in the Benefits of Brexit Report published by the Government in January 2022 and the Government's announcement of a review into the substance and status of REUL in September 2021.

Parliamentary Response

3. The Bill faced fierce criticism from across both Houses. Until the relatively late stages of its Parliamentary progress, the Bill had provided for all REUL to be revoked at the end of 2023 unless preserved by Ministers. This approach, provided for in the Bill's "sunset clause", was met with controversy. Opponents of the Bill highlighted uncertainty regarding the total number of REUL instruments that were listed on the Government's REUL Dashboard. The number of instruments identified increased by around 1,000 between the Bill's Third Reading in the Commons and Second Reading in the Lords. Concerns regarding the ongoing identification of all laws subject to the sunset clause were said to underline the need for more time to identify REUL and enable businesses to prepare for regulatory changes when unreserved REUL was due to fall away at the end of 2023.
4. The sunset clause was heavily criticised by a wide range of businesses and industry bodies, which raised concerns that the 2023 deadline would create legal uncertainty and increase regulatory burdens. There was particular concern among political and legal commentators that the clause provided insufficient time to undertake the required legislative review, such that laws might be lost at the end of the year without having been reviewed. Written evidence submitted by the Remembrancer's Office together with other City business and trade bodies, at Committee stage in the House of Lords highlighted these concerns and recommended an extension to the 2023 deadline, to allow a more considered and targeted approach and minimise the risks to businesses and investment.

5. In the Lords, peers sought to extend the 2023 deadline by several years and tabled many further amendments to exclude from the sunset clause specific regulations, ranging from consumer, environmental and copyright protection, to protection against unfair commercial practices. In response to the concerns raised by businesses and trade, the Government tabled amendments at Report stage to replace the sunset clause with a list of 587 instruments of REUL to be revoked at the end of the year, along with powers for Ministers to restate, revoke, replace or update REUL until 23 June 2026.
6. Speaking to the amendments, Government Minister Lord Callanan told peers that the Government had “listened to the concerns” of the House and that the change in approach would “provide the legal clarity and certainty” that had been called for. He argued that the new approach would “efficiently and cleanly remove superfluous legislation without taking up disproportionate amounts of parliamentary time.” Lord Hope of Craighead (Crossbench) called the removal of the sunset clause “a victory for common sense,” as “the scheme laid down in the Bill was never going to work within the time given to it.”

Conclusion

7. Following criticism from peers and from business and trade industry bodies, the Government amended the Bill to remove the controversial “sunset clause” which would have automatically revoked all REUL at the end of 2023. The Act will instead at the end of the year revoke 587 instruments of REUL, which are specified in a schedule to the Act. This addresses the concerns raised in both Houses and by a wide range of stakeholders that the automatic revocation of REUL would cause legal uncertainty and unnecessary regulatory burdens for business and trade.

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