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To: All Peers

28 February 2023

My Lords,

**RETAINED EU LAW (REVOCATION AND REFORM) BILL - COMMITTEE STAGE
DAY ONE**

I am very grateful to noble Lords for their contributions on the first day of Committee for the Retained EU Law (Revocation and Reform) Bill on 23 February. In this letter, I and my noble friend Lord Callanan would like to address points and questions raised which we committed to providing a written response to.

Product Safety Review

I thank the noble Baroness Crawley for her question on the Government's product safety review, during the debate. The Government remains committed to protecting consumers from unsafe products. From toys to cosmetics, these products are essential to our daily lives and ensuring they are safe underpins both consumer confidence and competitive markets. Having left the EU, we now have an opportunity to ensure we design a framework that is responsive to the challenges of the future. We have been engaging with business and consumer groups since our call for evidence in 2021, and have fed stakeholder insights into our consultation, which is being finalised for publication.

Definition of regulatory burden and clause 15(5)

A number of your Lordships raised questions and concerns about clause 15(5) and the requirement that the use of the power does not increase the overall regulatory burden.

I would like to take the opportunity to clarify that it is possible for additional regulations and higher standards to be introduced through the powers to revoke or replace, so long as the package of reforms contained within each statutory instrument does not increase the overall regulatory burden for that particular subject area.

For example, through removing unnecessary or unsuitable regulations or consolidating

multiple regulations into one, it will be possible to add new regulations with higher standards, provided that the overall regulatory burden is not increased. Therefore, it will be possible for a single instrument made under the power in clause 15 to increase the regulatory burden, so long as this increase is offset by a decrease of regulation in the same subject area.

It will be for the relevant Minister or devolved authority to decide if they are satisfied that the use of the power does not increase the overall regulatory burden in a subject area. Therefore, decisions on whether regulations add to the overall regulatory burden will take place on a case by case basis and it will be an "in the round" consideration that encompasses the vector of considerations in clause 15(10).

There is no definition of regulatory burden in the Bill, as the Government considered that such a definition could unnecessarily constrain departments given the considerable variety in what is covered in regulations across Government. However, we considered it helpful that the Bill sets out a non-exhaustive list of what could be considered a regulatory burden. This includes among other things, financial costs, and administrative inconveniences. However, this list is non-exhaustive, and does not preclude departments from considering other factors. In addition, provision for voluntary schemes or requirements are not considered regulatory, as creation of and participation in such schemes or meeting of such requirements is not mandatory.

I hope that this clarification reassures noble Lords that clause 15(5) does not impose a regulatory ceiling nor does it mean that higher standards cannot be introduced under this clause.

REUL Bill Impact Assessment (IA) and IAs for changes to Retained EU law

I thank the noble Baroness Brinton and the noble Baroness O'Grady of Upper Holloway for their comments on impact assessments. In keeping with the Better Regulation Framework (BRF), an Impact Assessment (IA) was completed into the economic impact of the Retained EU Law (REUL) Bill. This IA provided an objective assessment of the overall costs and benefits of the Bill. This was sent for independent scrutiny by the Regulatory Policy Committee (RPC) and has subsequently been published on the Bill's page on the Parliamentary website.

The Government has committed departments - as set out in the Bill IA - to carry out proportionate analysis where they use the powers in the Bill to make substantive changes to REUL following the principles as laid out in the Better Regulation Framework and the Green Book. For example, where SIs are used under the powers in the Bill to make substantive changes to REUL, and impacts on business exceed the existing £5m de-minimis threshold, a full IA will be completed and submitted for independent scrutiny by the RPC. In these cases, IAs will give a clear picture of the impacts of all related changes in a given statutory instrument. Collectively, the production of IAs across statutory instruments should help provide an overall picture of the impacts of changes made using the powers in the Bill.

Retained EU law Dashboard

During the debate, several of your Lordships raised questions about the Retained EU law Dashboard¹ and the Government's intention for future updates. Types of Retained EU law that are listed on the dashboard include EU-derived domestic legislation and retained direct EU legislation (which includes former EU regulations). Therefore, it includes legislation that has been brought onto the UK statute book via section 3 of EU Withdrawal Act 2018 (EUWA). It is possible to look at a breakdown of EU derived domestic legislation or retained direct EU legislation via the EU Withdrawal Act by looking at the 'REUL Explorer' tab on the dashboard, but the majority of REUL is secondary legislation.

The Dashboard has undergone extensive quality assurance by policy, and legal officials across Government to ensure all legislation is represented accurately within each Department. Officials have ensured that the data presented uses a consistent set of categories to define the different elements of retained EU law. This process will be replicated for all future Dashboard updates.

It presents an authoritative catalogue of retained EU law, not a comprehensive list of retained EU law. We will continue to work across government to develop this catalogue of where EU-derived legislation remains on our statute book and the data will be updated throughout 2023, as we identify further legislation, or as retained EU law is amended, repealed or replaced.

Throughout this process, the Government has engaged The National Archives in the development of the dashboard. The National Archives was responsible for publication of retained direct EU legislation, under Schedule 5 of the European Union (Withdrawal) Act 2018. They operate [legislation.gov.uk](https://www.legislation.gov.uk) and maintain the Government's legislation database.

For EU Exit the National Archives compiled an archive of European Law for the UK at exit and at the end of the transition period, spanning Treaties, International agreements, Directions, Regulations, Decisions, Complementary legislation, Case law, Consolidated Acts and EFTA documents.

The Dashboard was last updated in January. It is the Government intention to publish the next update in March and is committed to continue to update it throughout 2023. Departments are continuing in their search for REUL, aided by the work of The National Archives, and we anticipate an increase in the volume of REUL in the next publication. Where possible, this will also reflect the ownership of REUL across the new departments created by the Prime Minister on 7 February 2023.

Retained EU law and the creative industries

The noble Baroness Brinton raised a question about powers in the Bill covering the creative industry. The powers contained in this Bill will empower departments to unleash

¹ The Retained EU Law Dashboard is available online at <https://www.gov.uk/government/publications/retained-eu-law-dashboard>

innovation and propel growth across every area of our economy. Where Ministers see fit, they have the power to preserve retained EU law from the sunset relating to creative industries. This includes Ministers in the devolved governments.

Preserving and reforming Retained EU law using the Bill powers

The noble Baroness Andrews asked about the different ways the powers in the Bill could be used to preserve, extend or reform retained EU law. Clause 1 of the Bill contains the preservation power which can be used by departments to preserve the black letter law of any piece of retained EU law ahead of the sunset. Anything preserved will be subject to clauses 3-6 of the Bill which repeal retained EU interpretive effects. Departments can then use other powers in the Bill to reform that piece of assimilated law until the majority of the powers expire in 2026. Similarly, departments could use the extension power in Clause 2 of the Bill to extend specific pieces of retained EU law, without interpretive effects, until 23 June 2026. Departments could then use the other powers in the Bill to reform assimilated REUL. If departments wish to reform retained EU law in 2023 they can use the powers to revoke or replace and then that reformed piece of law will no longer be subject to the sunset.

I hope noble Lords find these responses to be useful. I am copying this letter to all Peers who took part in Thursday's debate and I am arranging for copies to be placed in the Libraries of both Houses.



BARONESS BLOOMFIELD OF HINTON WALDRIST