



Department for  
Energy Security  
& Net Zero

Lord Callanan  
Parliamentary Under Secretary of  
State at the Department for Energy  
Security & Net Zero

**Department for Energy, Security  
& Net Zero**

To: All Peers

3 March 2023

My Lords,

**DAY 2 AND 3 OF COMMITTEE STAGE FOR THE RETAINED EU LAW (REVOCATION  
AND REFORM) BILL**

I am grateful to all members of the House for the detailed debate during the second and third days of Committee Stage for the Retained EU Law (Revocation and Reform) Bill. My noble friends Lord Benyon, Baroness Neville-Rolfe, Baroness Bloomfield, and I are writing this letter to address points and questions raised.

**Aviation Consumer Policy Reform Consultation**

The noble Baroness, Lady Randerson and the noble Lord, Lord Collins of Highbury, asked about a Department for Transport consultation relating to flight compensation. The Aviation Consumer Policy Reform Consultation, published in January 2022, sought views on a range of potential reforms with the overall aim of protecting consumers and ensuring fairness for both passengers and businesses.

One of the proposals in the consultation considered reform for compensation for delayed UK domestic flights, by linking compensation to the cost of the ticket; similar to rail. As part of that proposal, it looked at introducing compensation for delays under three hours (which is not currently available), so that more passengers would be entitled to compensation.

The consultation sought views on a range of complex consumer policy issues, and it is important that we ensure all responses have been considered and analysed. The Department of Transport will publish a response setting out next steps to that consultation in due course.

The summary of responses published in July 2022 to which the noble Lord, Lord Collins of Highbury referred was a summary of responses to a separate consultation: Chapter 5 of the Aviation 2050 consultation (published December 2018). That summary of responses concluded by setting out the Department for Transport's approach to a new Aviation Passenger Charter to provide passengers with information on their rights, which was also published in July 2022.



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## **Interpretive effects and case law**

I would like to address, in particular, queries raised by the noble Baroness, Lady Hayman of Ullock, the noble Lord, Lord Anderson of Ipswich, the noble Lord, Lord Fox, and the noble Baroness, Lady Chapman of Darlington, regarding interpretive effects and case law.

Retained EU law (REUL) which is either not in scope of the sunset or has been preserved from the sunset, will be subject to the reforms in clauses 3 to 6 of the Bill which end the special status of retained EU law on the statute book. Therefore, from the first of January 2024 that body of law will be known as assimilated law. The Bill is building on the proud history of the UK legal systems, by removing retained principles and measures which provided continuity when we left the EU but were not intended to remain on the statute book indefinitely. It would be wrong to simply maintain these principles and categories of rights which are unclear, or hard to identify, and in many cases overlap with provision elsewhere in UK domestic law, creating confusion. Law should be easily accessible and relied on to mean what it says without being qualified by complex, obscure or general glosses, or requiring extensive research to understand. The Government is intent on bringing clarity to the statute book, and for citizens and businesses so that they are clear as to the rights that they rely on.

Clause 3 of the REUL Bill will repeal rights, powers, liabilities, obligations, restrictions and remedies retained under section 4 of the EU (Withdrawal) Act 2018. Clause 4 abolishes the principle of supremacy, and clause 5 will abolish general principles of EU law as aids to interpretation of the UK statute book, to the extent that these principles were retained by the 2018 Act. With the removal of the principle of supremacy, the duty to interpret national legislation consistently with EU law, or the Marleasing principle, will be removed. Instead the Bill will require retained direct EU legislation to be read and given effect consistently with domestic enactments. From the end of 2023 our domestic courts should no longer apply the retained EU principles of interpretation which the Bill is removing, when they are interpreting and applying assimilated law. Instead, we expect them to apply domestic principles of interpretation including rules of interpretation provided for in the Bill (for example, clause 4 of the REUL Bill gives priority to domestic legislation over retained direct EU legislation).

The compatibility power in clause 8 of the REUL Bill, and the restatement powers in clauses 12 and 13 will enable the Government to maintain any existing policy effects which are specifically produced by the application of retained EU-derived principles of interpretation, where this is desirable. Regulations made under these powers will use traditional domestic drafting techniques to ensure that these effects are expressed clearly and accessibly in domestic legislation. This approach will provide legal clarity. Consequently, it would not be desirable to add an extension power to clause 3 of the Bill, which would perpetuate the complex, unclear status quo. The 2023 deadline will drive the identification and codification of relevant rights and desirable policy effects into domestic statute. In the interest of prudence, if there is further provision required after that time, the powers in clause 8 and 13 are available until 2026.



This is an ambitious programme by the Government to ensure that the statute book is clear, accessible, and that UK legal principles and rights are safeguarded in domestic statute. A comprehensive review of all retained EU law on the UK statute book began in September 2021, and work is well underway by departments to assess line by line, the desired policy intent and effects of retained EU law on the statute book and to ensure that REUL that needs to be preserved, is preserved.

Turning to the interaction with retained case law. Retained case law is not being sunset. However, the repeal of section 4, and the removal of supremacy and general principles by clauses 3 to 5 will mean that after the end of 2023 the effects of these features of EU law would not be expected to be read in to relevant retained case law, when our domestic courts are interpreting and applying assimilated law. However, where there is a restatement of case law concerning the application of principles being removed by clauses 3 to 5 of the Bill (using the powers in clauses 8, 12 or 13), it would be expected that courts would continue to consider relevant case law where it is clear from the restatement that that is the intention.

Clause 7 of the Bill makes further provision as regards other retained case law which does not relate to the EU-derived interpretive effects removed by clauses 3 to 5. It provides measures to facilitate departure from retained case law in a way which will ensure that our domestic law continues to evolve as suitable for the UK domestic context. The restatement powers (clauses 12 and 13) explicitly allow for the codification of any retained case law where Ministers consider it is important to remove the possibility of departure alongside the expectation that the courts will consider the express intent of restatement of the effects already discussed.

## **Exclusions and Commons Frameworks**

The noble Baroness, Lady Chapman of Darlington, the noble Baroness, Lady Andrews, and the noble Lord, Lord Hope of Craighead, raised some points about the ability to exclude a specific category of law from the sunset under the power in Clause 2.

I would like to make clear that the power to extend under clause 2 of the Bill does not enable Ministers to exempt any retained EU law from the sunset date. However, the power does give a Minister of the Crown the power to extend the sunset date for specified pieces or descriptions of retained EU law. The extended date cannot be later than 23 June 2026. If extended, REUL that is not preserved or reformed before 23 June 2026 will sunset either on that date, or an earlier date specified in the extension SI.

The legislation to be extended will need to be specified either by stating its full title in the extending Statutory Instrument or by specifying a description of the legislation. A “specified description of legislation” is not defined in the Bill. It will be a judgement for Ministers to make. However, this could encompass a description of legislation in scope of the Common



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Frameworks. For example, legislation in scope of the Food and Feed Safety and Hygiene Provisional Common Framework.

The noble and learned Lord, Lord Thomas of Cwmgiedd raised a question on a technical, legal point, asking that the Government set out the methodology that was used to ensure that everything—whether it be by directive, by tertiary legislation or by any other way—has been identified. My officials will arrange to send further information on this in due course.

I hope noble Lords find these responses to be useful, I look forward to continuing to work with you all to deliver this important legislation and further discussing these critical issues as the Bill moves through Parliament. I am placing a copy of this letter in the Libraries of both Houses.

Yours Sincerely,

**Lord Callanan**