

BVA comments on Retained EU Law (Revocation and Reform) Bill

Who we are

- 1) The British Veterinary Association (BVA) is the national representative body for the veterinary profession in the UK with over 19,000 members. BVA represents, supports, and champions the interests of vets in this country.
- 2) BVA Scottish Branch brings together representatives of local veterinary associations, BVA's specialist divisions, government, and research organisations in Scotland. The Branch advises BVA on the consensus view of Scottish members on local and United Kingdom issues.
- 3) We are grateful for the opportunity to submit evidence to the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee's on the Legislative Consent Memorandum for the [Retained EU Law \(Revocation and Reform\) Bill](#).

Introduction

- 4) The Retained EU Law (Revocation and Reform) Bill, was presented to the House of Commons for its first reading on Thursday 22 September 2022. Its purpose is to overhaul the body of UK domestic law known as "retained EU law" (REUL), which came into existence after the post-Brexit transition period at the end of 2020.

Summary of the Bill

- 5) The Bill would repeal a large section of what is currently retained EU law and any laws which are retained beyond the end of 2023 will be retitled as "assimilated law". It also establishes a process to make it easier to restate, amend, or repeal EU derived legislation through the use of secondary legislation. The Bill would also abolish the current principle of supremacy of EU law and courts will be required to interpret REUL in a manner which is compatible with domestic law as far as possible. Among the key provisions introduced by the Bill will be the "sunsetting", or automatic repeal, of the majority of REUL at the end of 2023. The bill makes provision for the sunset clause to be extended, up to 23 June 2026.
- 6) Under the proposals in the Bill it would become easier for courts to depart from retained EU case law, by creating a new power for the courts to make Incompatibility Orders where a provision of retained direct EU legislation is incompatible with any domestic enactment. It will create new powers for Ministers and devolved authorities to restate or revoke (with or without replacement) retained EU law by Regulation.

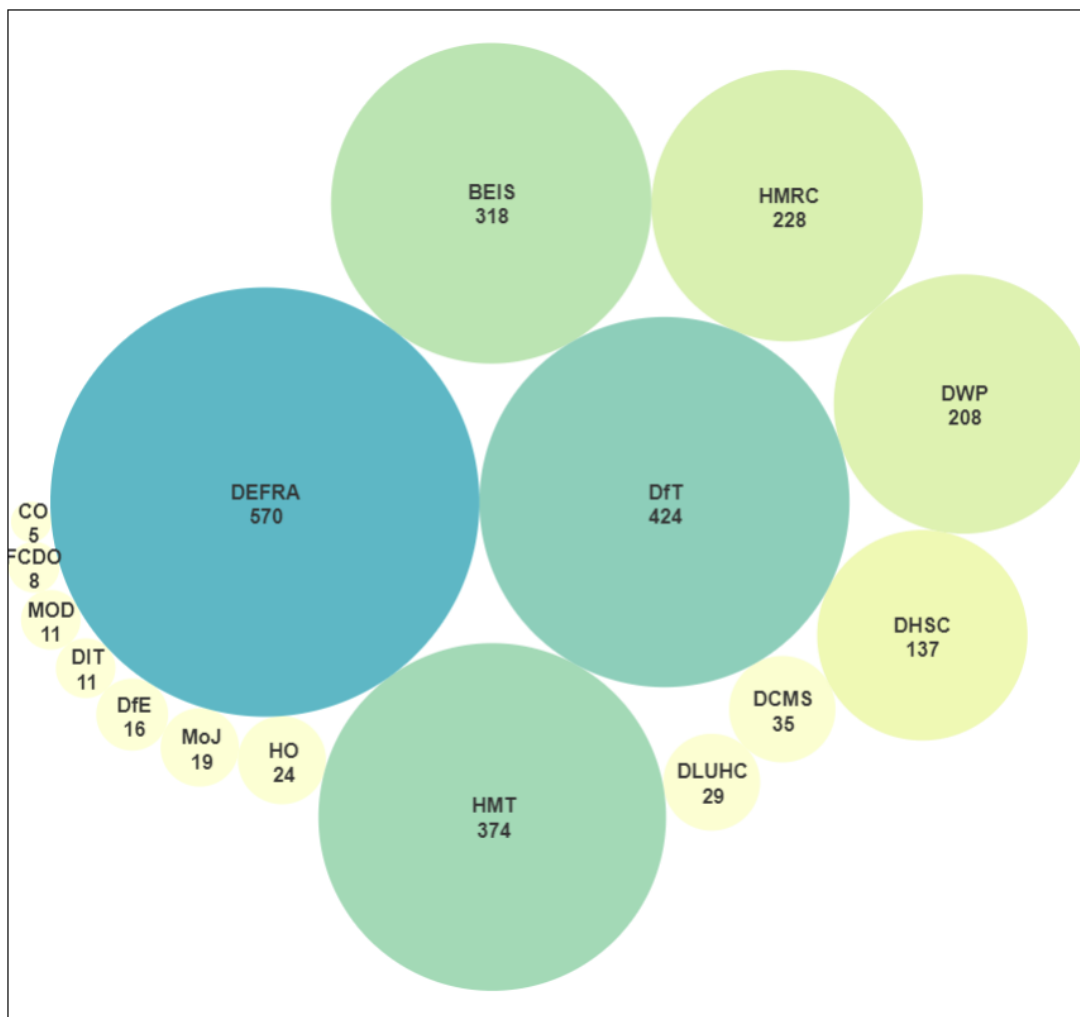
Our thoughts

- 7) We acknowledge the need to review parts of the existing regulatory regime in light of the UK's departure from the EU, to ensure the regulatory framework is optimal to the specific needs of the UK. Any opportunities that may have arisen as a result of the UK leaving the EU should be grasped. However, we have concerns that the proposed Bill is setting up a process for doing so which could create uncertainty and reduce Parliamentary oversight, both in Westminster and Holyrood, of important animal health, animal welfare, public health, food and feed safety regulations.

Government resources

- 8) There is currently a large volume of retained EU law in force in the UK, covering a very wide range of areas. The responsibility for reviewing and replacing legislation would fall

disproportionately within the areas of interest to the veterinary profession: animal health, animal welfare, public health, food and feed safety regulations.



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Source: Cabinet Office: Retained EU Law – Public Dashboard¹

- 10) Of the 2417 pieces of EURL listed on the UK Government - Retained EU Law Dashboard², 570 fall within the competence of Defra. More than any other department, Defra would need to initiate the most significant programme to meet the requirements of the Retained EU Law (Revocation and Reform) Bill. Therefore, vital capacity will be diverted from other necessary business unless proportionate additional resources are allocated to this work.
- 11) A high proportion of UK Government animal health policy is enacted via EU legislation in the form of either Directives or Regulations. As well as addressing exotic diseases, such as rabies, avian influenza (AI), foot-and-mouth disease (FMD) and African horse sickness, the legislation includes measures to address endemic diseases such as bovine tuberculosis. Prevention and containment of the latter require systematic measures including targeted surveillance, movement controls and 'stamping-out'. It will be vital for the conclusion of future trade deals to build confidence in our regulatory regime and structures as these will be evaluated by foreign

¹ <https://public.tableau.com/app/profile/governmentreporting/viz/UKGovernment-RetainedEURLDashboard/Guidance>

² Ibid.

authorities when deciding if the UK is able to export its goods into their territories.

- 12) Close attention also needs to be paid to the potential consequences for public health stemming from the possible introduction of zoonotic diseases if an adequate regulatory regime and subsequent controls are not put in place.
- 13) Additionally, non-Defra regulation will impact veterinary areas. For example, much of the food and feed safety regulation which is overseen by official vets will be counted as Department of Health and Social Care EURL as this is overseen by the Food Standards Agency and Food Standards Scotland. Veterinary businesses will be affected alongside businesses in other sectors of the UK economy, including areas such as employment law, company law, taxation and data protection.
- 14) To achieve improved or at least equivalent regulatory outcomes, every single piece of regulation that is due to be discarded under the Bill should be properly reviewed including a stakeholder consultation to establish whether it should be retained, amended or completely replaced. In our view, it is not feasible to carry out such a process within the proposed timeframe.
- 15) We are concerned that there is a high risk of losing important regulatory protections with significant societal benefits if the process is not undertaken with due care. A project of such magnitude should also look to result in the development of improved regulatory approaches, but this will require stakeholder consultation and review. The proposed timeframe is unlikely to allow for this to take place.
- 16) A further concern is the development of gaps in the regulatory framework which can result in uncertainty for businesses and in turn, inefficient allocation of resources. We are also concerned that whole-sale withdrawal of EU legislation could lead to misalignment in the regulatory regime applicable in Northern Ireland and the rest of the United Kingdom.
- 17) Finally, we are also concerned that already very stretched departmental resources will be re-directed away from other important policy areas, something that may be exacerbated in light of potential public spending restraint.

Devolution

- 18) The policy areas that are of interest have been framed largely by EU membership and devolution. The National Audit Office note that approximately 80% of Defra's areas of responsibility are currently framed by EU legislation.³ Similarly, 80% of Defra's functions are in devolved areas of policy. Agriculture, fisheries, and the environment are all devolved areas of policy.⁴
- 19) EU directives and regulations have provided for common approaches across the UK. It is uncertain how this legislation would interact with devolution. However, there is the potential that this could allow for considerable policy differentiation within the UK in areas where EU law has previously provided a common legal framework. Essentially in each case, the appropriate Minister in England, Scotland and Wales could amend legislation. Allowing different standards could lead to confusion for farmers, transporters, businesses and vets which could potentially compromise animal welfare. In our [Brexit report](#), BVA noted:⁵
- 20) "... in a post-Brexit UK we believe that structures should be put in place to ensure ongoing cooperation and collaboration. Our overarching call is therefore for the four parts of the UK to continue to work together for the good of animal health and welfare, and public health."
- 21) Managing the interaction with devolution will be vital. We would seek assurances from

³ <https://www.nao.org.uk/wp-content/uploads/2017/12/Implementing-the-UKs-exit-from-the-European-Union-the-Department-for-Environment-Food-Rural-Affairs.pdf>

⁴ <https://www.nao.org.uk/wp-content/uploads/2017/12/Implementing-the-UKs-exit-from-the-European-Union-the-Department-for-Environment-Food-Rural-Affairs.pdf>

⁵ <https://www.bva.co.uk/resources-support/practice-management/brexit-and-the-veterinary-profession/>

government that common frameworks that have been developed will be capable of providing a forum where divergence can be managed. Managing these frameworks will be an additional resource demand on Defra. Frameworks are usually led by individual UK Departments. Almost half the Frameworks cover the work of Defra which deals with both environment and agriculture, the two areas with the largest overlap of EU and devolved competences.⁶

Parliamentary oversight

- 22) The Bill includes a transfer of considerable legislative powers to Ministers to modify or revoke regulations. We are concerned that this has the potential to result in new policies that have not undergone a sufficient level of both Parliamentary scrutiny and stakeholder consultation. Consultation with subject matter experts is an important recognised tool to avoid unintended consequences, as well as adverse impacts on affected organisations, professions, businesses and the general public.
- 23) The deadlines proposed under the Bill can possibly only be achieved by granting such sweeping powers to Ministers to modify and revoke existing regulations. However, rather than justifying such powers which undermine principles of Parliamentary scrutiny and prudent policymaking it raises questions and concerns over the appropriateness and knock-on effects of the sunset provisions.

Stakeholder involvement

- 24) BVA, as a key representative body for a profession extensively affected by the provisions in the Bill, will be expected to and will want to liaise with Defra and other government departments as they undertake their own assessments of REUL. However, in order to be in a position to do so we will be required to dedicate significant resources to an internal review of REUL, given that a large number of the laws affected by the Bill have an impact on the work of the veterinary profession.
- 25) This will result in us having to cut down or drop work on other issues of importance to BVA members and by association the wider public. There is a significant danger that this will result in a reduced ability to engage on other relevant issues and lead to a weakening of the role we can play. We therefore see a need to extend the timeframes or remove the “sunsetting” provisions altogether.

⁶ <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-constitution-europe-external-affairs-and-culture-committee/correspondence/2022/common-frameworks-after-brexite>