

C L I F F O R D
C H A N C E

UK RETAINED EU LAW (REVOCATION AND REFORM) BILL
WHAT HAPPENS TO RETAINED EU LAW?
NOVEMBER 2022

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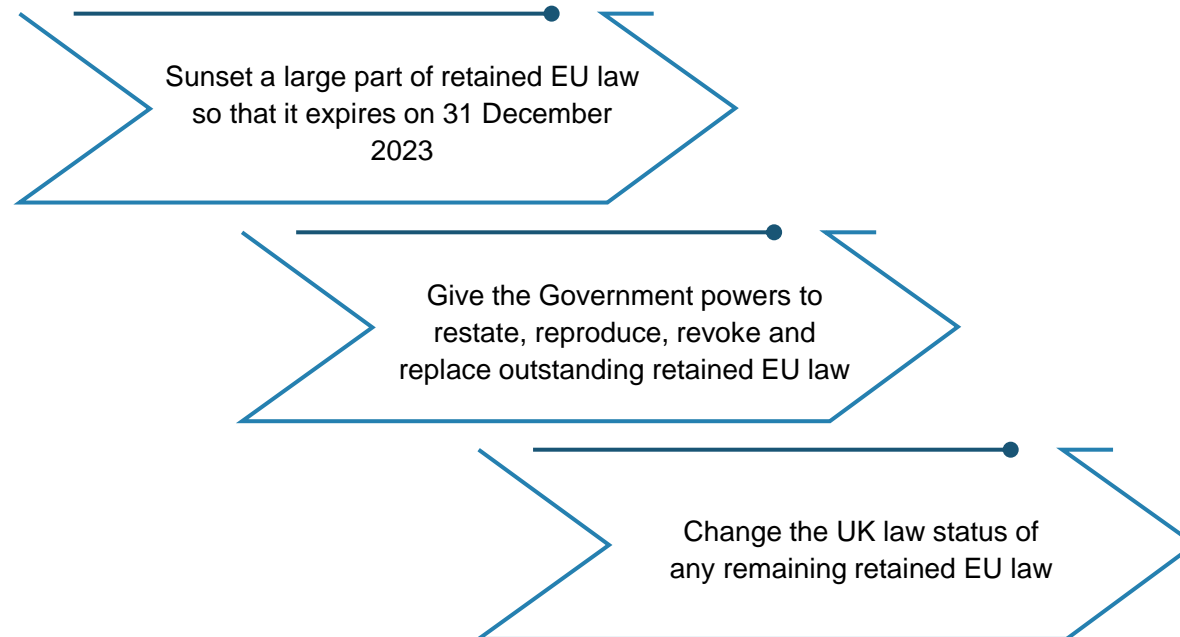


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INTRODUCTION

The 'Brexit Freedoms Bill' will give the Government new tools to revoke and replace retained EU law

The Retained EU Law (Revocation and Reform) Bill introduced into Parliament in September will:



The REUL Bill complements the Financial Services and Markets Bill introduced into Parliament in July which gives the government powers to revoke, amend and restate retained EU law relating to financial services or markets.

Notes: This briefing assumes that the REUL Bill and the FSM Bill are enacted in the form introduced into Parliament. For more information, see our briefings, *UK Financial Services and Markets Bill: enacting the future regulatory framework* (July 2022, available [here](#)) and *UK Retained EU Law (Revocation and Reform) Bill: impact on financial services* (October 2022, available [here](#)) and our Topic Guide on the FSM Bill, available [here](#) on our [Financial Markets Toolkit](#),

WHAT IS RETAINED EU LAW?

The EUWA aimed to ensure legal certainty after the end of the Brexit transition period

The European Union (Withdrawal) Act 2018 provided for:

- the retention of most EU law, as it applied in the UK on 31 December 2020, as part of UK law,
- subject to amendments made by 'exit instruments' to ensure that retained EU law worked appropriately after the UK left the EU.

Retained EU law comprises:

- EU-derived domestic legislation, such as UK primary or secondary legislation implementing EU legislation;
- retained direct EU legislation, such as EU regulations, decisions and binding technical standards and other EU tertiary legislation directly applicable in the UK;
- retained EU rights, etc., such as directly effective rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law; and
- retained general principles of EU law and 'retained case law' (both EU and UK) which continue to apply for the purpose of interpreting retained EU law.

(See the Government's Retained EU Law Dashboard [here](#) identifying 2,400 pieces of retained EU law)

Retained EU law has a particular status in UK law

- Some retained EU law can only be amended or revoked by new primary legislation (e.g., retained direct principal EU legislation and statutory instruments implementing EU legislation adopted under the European Communities Act 1972).
- The principle of supremacy of EU law applies to UK legislation adopted before the end of the transition period (e.g., UK legislation is generally invalid if it contravened EU law obligations).
- General principles of EU law and retained case law continue to apply for the purposes of interpreting retained EU law.
- The UK courts are restricted in departing from retained EU case law when interpreting retained EU laws (although the higher courts can do so).
- There are constraints on the use of powers to make statutory instruments where they would affect retained direct principal EU regulations and retained EU rights, etc.

But it was always envisaged that Parliament would eventually introduce new frameworks for changing retained EU law

WHAT DOES THE REUL BILL DO TO RETAINED EU LAW?

Sunsets retained EU law from end 2023

- From end 2023, the REUL Bill will revoke all:
 - EU-derived subordinate legislation; and
 - retained direct EU legislation.
- The Government can delay this up to 23 June 2026 (the 10th anniversary of the Brexit referendum), e.g., where it needs more time to consider whether to restate or replace some legislation.
- The Government can exclude legislation from the sunset mechanism where it decides to preserve the legislation as part of UK law.
- The sunset mechanism does not apply to legislation covered by Schedule 1 of the FSM Bill.
- From end 2023, the REUL Bill will also revoke all retained EU rights, etc. (including those covered by the FSM Bill). There is no power to delay this revocation.

Gives the Government powers to restate, reproduce, revoke and replace outstanding retained EU law

- Until 23 June 2026, the Government will have separate powers to restate and to revoke and replace all secondary retained EU law, i.e.:
 - any retained EU law that is not primary legislation; and
 - any retained EU law that is primary legislation the text of which was inserted by subordinate legislation,including secondary retained EU law that becomes assimilated law at end 2023 (see below).
- However, replacement legislation cannot increase the overall regulatory burden.
- Until 23 June 2026, the Government will also have powers to make regulations reproducing the effect of retained EU rights, etc. revoked under the REUL Bill.
- Legislation restating, reproducing or replacing retained EU law is not itself retained EU law (or assimilated law after end 2023).
- The Government will have a limited ongoing power to update legislation restating, reproducing or replacing retained EU law (and any secondary retained/assimilated EU law) to take account of changes in technology or developments in scientific understanding.

WHAT DOES THE REUL BILL DO TO RETAINED EU LAW? (CONTINUED)

Changes the UK law status of any remaining retained EU law

From end 2023:

- The REUL Bill will end the residual supremacy of EU law: all remaining retained direct EU legislation must be read subject to domestic enactments (unless regulations say otherwise).*
- General principles of EU law will be abolished as part of UK law.
- Any remaining retained EU law will become 'assimilated law':
 - The EUWA will be amended to replace references to retained EU law with references to assimilated law.
 - Regulations may also amend the EUWA to rename other bodies of law (e.g., retained direct EU legislation and retained case law).
 - Retained case law will continue to be relevant to the interpretation of assimilated law (subject to the other changes made by the REUL Bill).

In addition (possibly from before end 2023):

- The higher courts will have greater freedom to depart from retained case law when interpreting retained EU law (or assimilated law after end 2023).
- The lower courts and Government law officers will be able to refer questions on retained case law to higher courts.
- Government law officers will be able to intervene in court proceedings on questions of retained case law.
- The courts will be able to make orders dealing with incompatibility between domestic enactments and retained direct EU legislation (including retained direct EU legislation that becomes assimilated law at end 2023).
- The REUL Bill will remove some constraints on making statutory instruments affecting retained EU law (or assimilated law after end 2023).

*Subject to the specific provisions of the Data Protection Act 2018 relating to the relative priority of data protection legislation in retained EU law and domestic legislation.
UK RETAINED EU LAW (REVOCATION AND REFORM) BILL

WHAT HAPPENS TO RETAINED EU LAW UNDER THE REUL BILL?

Type of retained EU law	Sunset at end 2023?	Sunset can be extended up to 23 June 2026 ?	Can be excluded from sunset?	Can be restated or reproduced?*	Can be revoked and/or replaced?*	Potential outcomes
EU-derived domestic legislation						
Primary legislation (not inserted by subordinate legislation)	x	N/A	N/A	x	x	Unchanged
Primary legislation (inserted by subordinate legislation)	x	N/A	N/A	✓	✓	Retained Restated
Subordinate legislation	✓†	✓	✓	✓	✓	Replaced OR
Retained direct EU legislation	✓†	✓	✓	✓	✓	Revoked
Retained EU rights, etc.	✓‡	x	x	✓	x	Reproduced OR Revoked

*The additional powers under the REUL Bill to restate/reproduce or revoke/replace retained EU law expire on 23 June 2026.

†Sunset mechanism does not apply to legislation covered by Schedule 1 FSM Bill and the UK regulators' rules. Legislation covered by Schedule 1 FSM Bill may also be revoked under that Bill and (with the exception of binding technical standards) may also be amended and restated using powers under that Bill.

‡Retained EU rights, etc. derived from legislation covered by Schedule 1 FSM Bill may also be revoked under that Bill.

There may be other powers to amend or revoke retained EU law before it is revoked under the REUL Bill, e.g., using legislative reform orders or powers to amend subordinate legislation under other primary legislation.

Any retained EU law remaining after end 2023 becomes assimilated law.

See above for the impact of the REUL Bill on retained general principles of EU law and retained case law.

GLOSSARY

Assimilated law	Any remaining retained EU law that is assimilated into domestic law after end 2023 under the REUL Bill.*
Binding technical standards	Regulatory and implementing technical standards that form part of UK law under the EUWA and amendments to those standards by the UK regulators.
EU-derived subordinate legislation	Subordinate legislation made under section 2(2) of the European Communities Act 1972 to implement EU Treaty obligations or made, or operated immediately before IP completion day, under other powers for the purposes of implementing EU Treaty obligations.*
EU tertiary legislation	Binding technical standards and other delegated and implementing acts under EU regulations, decisions or directives.†
EUWA	European Union (Withdrawal) Act 2018.
FSM Bill	Financial Services and Markets Bill.
IP completion day	31 December 2020 (11pm UK time).†
Relevant national authority	A Minister of the Crown or a devolved authority (or a Minister and a devolved authority acting jointly).*
Retained case law	Principles laid down by and decisions of EU and UK courts before IP completion day so far as relating to retained EU law.†
Retained direct EU legislation	EU regulations, EU decisions, EU tertiary legislation and certain other EU provisions that form part of UK law under the EUWA.†
Retained direct principal EU legislation	EU regulations other than EU tertiary legislation that are retained direct EU legislation.†
Retained general principles of EU law	General principles of EU law, as effective in EU law immediately before IP completion day, and so far as applying to retained EU law.†

GLOSSARY

(CONTINUED)

Retained EU law	EU-derived domestic legislation, retained direct EU legislation, retained EU rights, etc. and other provisions that form part of UK domestic law under the EUWA.†
REUL Bill	Retained EU Law (Revocation and Reform) Bill.
Secondary retained EU law	Any retained EU law that is not primary legislation and any retained EU law that is primary legislation the text of which was inserted by subordinate legislation.*
Retained EU rights, etc.	Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law by virtue of section 4 EUWA.†
Subordinate legislation	An instrument made under primary legislation or an instrument made on or after IP completion day under any retained direct EU legislation.*
UK regulators	The Financial Conduct Authority, the Prudential Regulation Authority and the Payment Systems Regulator.
UK regulators' rules	Rules made by the UK regulators, including any generally applicable requirements and directions imposed by the Payment Systems Regulator.

Notes: *See REUL Bill for full definition. †See EUWA for full definition.

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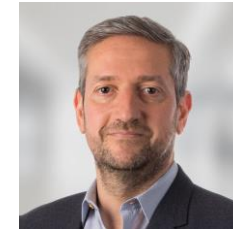
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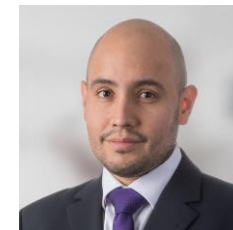
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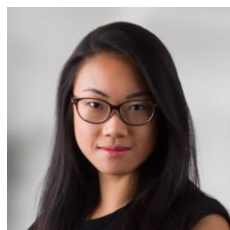
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