Retained EU Law (Revocation and Reform) Bill

House of Commons

Written Evidence to the Public Bill Committee

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Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. This evidence is submitted to the Public Bill Committee during its consideration of the Retained EU Law (Revocation and Reform) Bill ("**the Bill**"). The Bill proposes several ways to deal with the retained EU law ("**REUL**") still in force in the UK.[1]

3. This evidence has three sections.

   a. First, we outline our concerns with the Bill as a whole. This includes the Government's decision to draft a "skeleton" Bill; the undemocratic effect of the sunset clause combined with extensive executive powers in the Bill; the lack of clarity in the full extent of law in scope; the lack of policy accompanying the Bill; and the impact on devolved administrations and areas of law. **JUSTICE opposes the Bill proceeding and urges Government to reconsider the Bill's skeletal approach to reforming REUL**.

   b. Secondly, and notwithstanding our overall concerns with the Bill as a whole, we highlight several specific issues with the way the executive is empowered within the Bill. We urge the sunset clauses (Clauses 1, 2, and 3) be removed from the Bill. We additionally suggest amendments to the powers in Clauses 12, 13, 15 and 16 to restate, amend, revoke or update retained EU law. **Our most acute concern is with Clause 15**, through which the executive could significantly change the objective, substance and impact of REUL with very little constraint or scrutiny. **We propose amendments which would limit the powers in Clauses 12, 13, 15 and 16 to ensure secondary legislation, with limited Parliamentary scrutiny, is not used to make substantial policy changes.**

   c. Thirdly, we examine the power of higher courts to depart from precedent, both EU case law and domestic case law. We consider the mandatory factors listed in Clause 7 to be imbalanced, without any adequate attention having been given to the impact of legal uncertainty on businesses, organisations and individuals. **We recommend including the importance of legal certainty as a mandatory factor in the courts' consideration.**

[1] As preserved by ss 2, 3 and 4 of the European Union Withdrawal Act 2018

4. Primarily, JUSTICE urges reconsideration of *how* we extricate ourselves from the huge amount of REUL in the UK after decades of it becoming enmeshed in our domestic law and legal system. The current Bill prioritises speed and executive control of the task, rather than prioritising accountable, transparent law-making which is subject to Parliamentary scrutiny. JUSTICE strongly recommends the latter to ensure change is democratic and understood by the public who will be impacted by it.

A. Overarching concerns with the 'skeleton' Bill

5. Skeleton legislation was described last year by the Delegated Powers and Regulatory Reform Committee ("**DPRRC**") as primary legislation "*where little of the policy is included on the face of the bill"* but nevertheless Parliament is asked *"to pass primary legislation so insubstantial that it leaves the real operation of the legislation to be decided by ministers*".[2] It has been widely condemned as undemocratic: it reduces any Parliamentary scrutiny to a bare minimum, left only with "*delegated legislation which Parliament cannot amend but only accept or reject, with rejection being a rare occurrence and fraught with difficulty*."[3] The DPRRC warned that "*the abuse of delegated powers is in effect an abuse of Parliament and an abuse of democracy*".[4]

6. In response to the DPRRC's 2021 report, then leader of the House of Commons, Jacob Rees-Mogg, agreed that the frequent use of skeleton bills during the period of the pandemic did not "*necessarily provide a model example of how Parliament would like to see legislation brought forward*" and that he would "*encourage*" the more minimised use of delegated powers where possible, taking account of the guidance given by the committee.[5] Further, the Government generally agreed that if broad powers were to be sought, draft secondary legislation ought to be provided in time to allow Parliament to assess how the powers would be used, stating "*we will continue to ensure that draft instruments are made available wherever possible*".[6]

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[2] House of Lords, Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, HL Paper 106 12th Report of Session 2021–22, pp 3 and 26. See further the sister report of the House of Lords' Secondary Legislation Scrutiny Committee *Government by Diktat: A call to return power to Parliament*, HL Paper 105 20th Report of Session 2021–22

[3] Ibid, p3. As of June 2022, only 16 statutory instruments have been rejected since 1950 and the House of Commons has not rejected one since 1979. Though forms of scrutiny exist, such as the affirmative procedure for regulations, it has been commented that "Regulations put before the Commons are given the level of consideration which it would be an exaggeration to describe as cursory." Lord Judge, 'A Judge's View on the Rule of Law' (Annual Bingham Lecture London, 3 May 2017). In 2013-2014 sessions the average length of debate on scrutiny of secondary legislation was 26 minutes (see Lord Judge, ibid, see Ruth Fox and Joel Blackwell, *Devil is in the Detail: Parliament and Delegated Legislation* (Hansard Society 2014), 80). The recent Product Safety and Metrology (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/696), for example, composed of 619 pages but were debated for only 52 minutes. See Alexandra Sinclair and Joe Tomlinson, *Plus ça change? Brexit and the flaws of the delegated legislation system*, Public Law Project, 13 October 2020) p 21.

[4] DPRRC report 2021, p4.

[5] Letter from Jacob Rees-Mogg to Lord Blencathra, Lord Hogdson and Baroness Taylor (19 October 2020)

[6] ibid.

7. The current Bill could not be further from this direction of travel. As the following paragraphs explain, it features extensive executive powers to legislate in a hugely vast and varied area of law, meanwhile no draft secondary legislation has been made available. JUSTICE is unaware of a more skeletal bill having been laid before Parliament.

Extensive powers vested in the executive, including the sunset clause

8. The extent of the executive power in this Bill is, in JUSTICE's view, unprecedented, due to the vast and varied nature of the law in scope, and the extent of the powers delegated to the executive.

9. In scope of the Bill is most REUL, which was preserved following the UK's exit from the EU to prevent a cliff edge in the law.[7] This ensured legal certainty and reduced the legislative burden of leaving the EU in the short term, to allow for consideration of what EU law should and should not be kept following our departure in the medium term to long term.

10. The Bill affects almost all such law; the only exception is EU-derived *primary* legislation, such as the Equality Act 2010; this is not directly impacted by the Bill. However, all other REUL is in scope, including EU-derived domestic secondary legislation, directly effective EU legislation (mostly EU regulations), and other principles, rights, obligations etc from EU case law and other directly effective instruments (eg treaties). This includes primary legislation which was itself amended by REUL. This is a vast amount of law impacting a huge variety of important and disparate areas, including healthcare-related products, medical technology, food, vast amounts of environmental protections (eg to air, water quality, invasive species) human tissues, blood safety and quality, chemical production, and employment rights (eg parental leave, equal pay, holiday pay), to name a few.

11. Under the Bill, ministers can decide whether to keep, change or lose thousands of laws not only by proactively creating regulations, but also through mere inaction. Clauses 1 and 3 contain the Bill's sunset clauses, which will revoke all REUL in scope which is not saved by ministers, by the end of 2023 (or a later specified date for specified legislative instruments with a longstop of 23 June 2026). The cliff edge that the sunset clause creates for such large swathes of law and the businesses, consumers, workers and individuals who rely upon it is unprecedented. JUSTICE is unaware of a previous example in UK history of such vast legislative change to so many aspects of our society occurring by a sunset clause.

[7] By ss 2, 3 and 4 European Union (Withdrawal) Act 2018

12. The Government states that the aim of the sunset clause is to "*accelerate reform and planning for future regulatory changes, benefiting both UK business and consumers sooner*".[8] Such an accelerated approach to vast legislative change however comes at a democratic price: the executive does not merely have a free "licence to legislate"[9] but even more concerningly has the power to do nothing and thereby delete law without any parliamentary scrutiny whatsoever.

13. By comparison, if ministers wish to revoke REUL currently, they are subject to enhanced parliamentary scrutiny: mandatory explanatory statements, mandatory periods of prior parliamentary scrutiny, and the mandatory use of the draft affirmative procedure.[10] These enhanced scrutiny provisions were inserted during the passage of EUWA 2018 precisely because Parliament considered such enhanced scrutiny to be necessary and proportionate given the vast and varied nature of REUL and the potential impact of changes. However, Clause 11 of the current Bill removes these requirements.

14. Ministers may choose to save instruments from the sunset clause by disapplying it(Clause 1(2)) or using powers bestowed on them by the Bill to restate, revoke or replace REUL (Clauses 12, 13 and 15). The powers are extraordinarily broad, including the ability to replace any secondary REUL with an alternative provision, which does not need to have even similar objectives, simply when ministers consider it to be "appropriate" (Clause 15(3)). This can even include the imposition of new criminal offences, so long as they "correspond or [are] similar to" offences in the instrument being replaced (Clause 15(4)(c)). However, Parliamentary scrutiny of new criminal offences made under this provision will be limited by both time and the fact that Parliament cannot amend secondary legislation but must "take it or leave it".[11]

15. Finally, and most concerningly, the sunset mechanism itself places a further pressure on parliamentary scrutiny of secondary legislation, given that the consequence of rejecting any secondary legislation may be no legislation at all. This puts a gun to the head of the usual "take it or leave it" possibilities available to Parliament, conditions that JUSTICE cannot see as being conducive to democratic law-making.

[8] Explanatory notes, p4
[9] The Scrutiny of Delegated Powers Committee described skeleton bills as "little more than a licence to legislate" in *Delegated Powers and Deregulation,* 29th Report of Session 1998-99, para 23
[10] Schedule 8 of EUWA 2018, paras 13 to 15, as amended during passage of the Bill.
[11] As highlighted in the DPRRC report.

Lack of policy

As the House of Lords Constitution Committee heard in 2018, bills can arrive in skeleton form because the "*Government have committed themselves to doing something and do not know quite what to do*"[12] leading to "*lots of regulation because [the policy] has not been worked out yet*."[13] As Mark Fenhalls KC pointed out in his oral evidence to the Committee on 8 November 2022, there is a stark contrast between the areas of REUL which are being reformed discretely alongside stated policy aims, and the dearth of information otherwise. "*We cannot understand why financial services are the subject of such a responsible, measured approach, which does not seem to apply to consumer protection, cosmetic and household cleaning product safety, water and air standards, and so forth. If the Government could take the same measured response, sector by sector, that would be a more sensible and less risky way to proceed.*"[14] This is in reference to the Financial Services and Markets Bill, currently before Parliament, which provides a framework for reforming REUL relating to financial services, an area of REUL which is consequently exempted from the sunset clause in this bill.[15]

16. The task of going through the REUL and deciding what the UK should keep, change or lose is an enormous one. This Bill however has been laid without any clear substantive policy for the public to understand what will actually happen in discrete areas of policy if this Bill is passed. On the task of reviewing REUL, Lord Frost stated the policy intention was to "*amend, replace or repeal all the REUL that is not right for the UK*"[16]. What this means, however is still unclear and open to an infinite number of interpretations. The policy paper '*The Benefits of Brexit'* which followed in January of this year, provides extremely scant, high level policy which cannot be meaningfully scrutinised by the public. For example, with respect to environmental law, it simply states that "*We are reviewing and reforming the estimated 80% of our environmental law that came from the EU to ensure it is rational, cohesive and fit for the UK's unique economy and natural environment*".[17] Beyond such platitudes of being "right" or "fit" for the UK, there has been no meaningful way in which the public or parliamentarians can understand:

    a. What REUL the Government does not think is "right" or "fit" for the UK;

[12] Select Committee on the Constitution, *The Legislative Process: The Delegation of Powers*, 16th Report of Session 2017-19 - published 20 November 2018 - HL Paper 225, Lord Newby, para 52
[13] Baroness Smith of Basildon, Para 51
[14] House of Commons, Retained EU Law (Revocation and Reform) Bill (First sitting), PBC Deb (Bill 156) Tuesday 8 November 2022, Col 28
[15] Clause 22(5)
[16] Lord Frost, Brexit Opportunities: Review of Retained EU Law, HLWS445 9 December 2021.
[17] HM Government, Cabinet Office, The Benefits of Brexit: How the UK is taking advantage of leaving the EU, January 2022.

b. Why they think this i.e. what are the criteria that the 'fitness' of REUL is being judged against in each area of policy;

c. What the impact of the policy will be. We note that the Impact Assessment accompanying the Bill is unavoidably broad, and of little assistance in this regard;[18]

d. How the interests of members of the public, organisations and businesses will be balanced against each other when a conflict occurs, in different areas of policy;

e. When there will be an opportunity for individuals, organisations and businesses to be consulted.

This lack of policy only deepens the democratic deficit in the skeleton Bill: Parliamentarians are being asked not to just grant one or two, or even a handful of "licence(s) to legislate"[19] but thousands without even a basic understanding or outline of what will happen thereafter.

Lack of clarity of what REUL is in scope

17. Moreover, the full remit of what law is even in scope of the Bill, and therefore "on the chopping block" remains is unclear. The explanatory notes refer to "*over 2,400*" pieces of REUL, whilst the online REUL Dashboard, created to provide a central resource for the public of REUL, catalogues a total of 2,417 instruments. However, the dashboard's catalogued REUL is not comprehensive. This was conceded by Jacob Rees-Mogg at second reading, who admitted the 2,400 areas of law on the dashboard are "*not necessarily the full list*."[20]

18. On the first day of oral evidence to the Public Bill Committee, it was reported that 1,400 pieces of REUL had been further identified by Government departments, in addition to the 2417 already on the Dashboard.[21] Meanwhile, the Marine Conservation Society has identified that the following regulations are REUL within the scope of the Bill but do not appear on the dashboard:

[18] For example, its assessment of the sunsetting provisions is extremely vague, and absent any clear policy statements about how specific rights and protections will be protected in REUL, it goes little further than to conclude the Government must be trusted not to do so. "Due to the scope of the sunset, it is possible that certain rights and protections contained in pieces of REUL could be sunset. Given the Government's stated position that it is not seeking to reduce rights and protections, we consider that the relevant departments will choose to preserve these rights and protections using the powers in the Bill where there are concerns that rights might otherwise be lost. If these rights were to sunset, even though GB flagship legislation on equalities will remain, a sunset of these retained rights could, theoretically, lead to a loss of protection against discrimination if no action is taken by departments to address that loss." Equality Impact Assessment from the Cabinet Office, p 7

[19] DPRRC report 2021, para 59

[20] This was from the back benches as Mr Rees-Mogg had resigned from his Ministerial post. However, it can be treated with considerate weight given his significant involvement with the Bill.

[21] George Parker, 'UK plan to scrap all EU laws suffers new setback', Financial Times (8th November 2022)

a. The Conservation of Offshore Marine Habitats and Species Regulations 2017

b. The Environmental Damage (Prevention and Remediation) (England) Regulations 2015

c. REACH Test Methods Regulation 2008

d. The civil aviation (working time) regulations 2004[22]

19. Taking the last of these listed regulations as an example, they contain several rights and protections for crew members working in civil aviation,[23] whose ability to do their job competently affects millions of individuals every year. Given they have not even been identified by the Government thus far, they could realistically have been left unidentified by 31 December 2023, and unintentionally repealed. This would leave crew members without the rights and protections it contains (e.g. their annual leave entitlement, their maximum annual working times, and adequate rest), and passengers without the safety such rights and protections provide them. Such a change to the law would, extraordinarily, be done without any policy justification *or even consideration* by the Government.

20. **Furthermore, there is no possibility in the Bill to elongate the time available to identify REUL**. The only powers are to disapply the sunset (Clause 1(2)) or to elongate the period before sunset up to a maximum of 23 June 2026 (Clause 2(1)). However, **both require that the extension or exemption specify the instrument or provide a description of legislation.**

21. The result is that the Bill, through the sunset clause, may delete unidentified law, unintentionally. This would not only be an incompetent and undemocratic way of repealing law, but would also cause significant legal uncertainty in such circumstances. Not only will the public not have a full list of the law which is being considered ahead of the sunset date, they will not have a complete list of the law that has been deleted once 31 December 2023 has past. And yet, they will be expected to live within the law in their businesses and private lives. This offends key principles of legal certainty inherent in the rule of law. As identified by Lord Bingham, the rule of law means "the law must be accessible and so far as possible intelligible, clear and predictable".[24]

22. Concern about such legal uncertainty has already been expressed by several organisations, including the Trades Union Congress, the RSPB, the Civil Society Alliance, and Wildlife Trusts

[22] Sandy Luk, 'Analysis: the Retained EU Law Bill' (Marine Conservation Society, 11 October 2022)
[23] The Civil Aviation (Working Time) Regulations 2004 implement the provisions of Council Directive 2000/79/EC concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Worker's Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (OJ L 302, 1.12.2000, p. 57).
[24] *The Rule of Law* (2010)

have said in a joint statement: "*We are concerned that if passed into law, it could cause significant confusion and disruption for businesses, working people and those seeking to protect the natural environment*."[25] Stressing the impact on business, in oral evidence to the Bill Committee Mark Fenhalls KC explained that businesses and financial services organisations had already expressed concerns about the Bill and that international clients were asking: "Why would we do any business with the UK"—until 2024 on the current timescales—"if we don't know what the rules and regulations are going to be around all these issues?"[26]

The impact on devolved administrations

23. Finally, JUSTICE is concerned about the impact of the Bill on areas of devolved competence. The exercise of cataloguing REUL which has preceded this Bill, and resulted in the REUL Dashboard, has been a central Government one, not done in partnership with devolved governments.[27] In fact, both the Scottish and Welsh Governments have withheld consent for this legislation.[28] The impact on devolved institutions has not been adequately considered, especially as there is no clear evidence at this stage what REUL devolved administrations need to consider in the next 12 months. There is no comprehensive record of what devolved law will be wiped from the statute book if no action is taken by the devolved governments or central government come 31 December 2023.

24. This uncertainty is even more concerning since the sunset clause is being imposed unilaterally on devolved administrations, regardless of their capacity to identify, consider and decide what should be revoked, restated or amended. Mick Antoniw, General Counsel of Wales, has expressed concern at the capacity of the Welsh Government to undertake such an exercise, during a period of considerable pressures on Government when there are more pressing issues, such as the cost of living crisis.[29]

25. Furthermore, the sunset will apply unilaterally to REUL passed by devolved administrations, e.g. regulations passed pursuant to an EU Directive in an area of devolved competence.[30] Furthermore, the Clause 2 option to extend the sunset up to 23 June 2026 for specified legislation

[25] Rowena Mason, Rishi Sunak urged to scrap 'undemocratic' proposals to axe 2,400 laws, *The Guardian* (24 October 2022)
[26] PBC Deb (Bill 156) 8 November 2022, col 28
[27] REUL Dashboard explicitly states it is "not intended to provide an authoritative account of REUL that sits with the Competence of the Devolved Administrations."
[28] Letter from Angus Robertson to Grant Shapps (8 November 2022); Mick Antoniw MS, 'Written Statement: The Retained EU Law (Revocation and Reform) Bill' (Wales Government, 3 November 2022) < https://gov.wales/written-statement-retained-eu-law-revocation-and-reform-bill> accessed 11 November 2022.
[29] Mick Antoniw MS, 'Written Statement: The Retained EU Law (Revocation and Reform) Bill' (Wales Government, 3 November 2022)
[30] But not "an instrument that is Northern Ireland legislation", see Clause 1 (5).

is only open to central government ministers, not to devolved authorities. Meanwhile, there is no limitation on the powers of central government ministers to revoke, restate or amend legislation in areas of devolved competence. As such, not only will devolved law be automatically deleted (if not saved or replaced) at the end of next year, but ministers of the Crown can unilaterally change it.

26. Angus Robertson has stated "*[b]y allowing UK Government ministers to act in policy areas that are devolved and to do so without the consent of Scottish Ministers or the Scottish Parliament, is in direct contradiction to devolution and, in particular, the Sewel convention…*"[31] In his oral evidence to the Committee on 8 November 2022, he went further stating: "*The internal market Act is having an insidious and erosive effect on devolution; in contrast, this Bill is a direct assault on devolution*."[32] Meanwhile Mick Antoniw described the bill as giving UK government ministers "*unfettered authority to legislate*".[33]

27. Moreover, how Northern Ireland's position will be accommodated is extremely unclear: the concurrent Northern Ireland Protocol Bill and the fact that the Northern Irish Assembly and Government are not functioning mean its position requires careful and separate consideration which is not given in the Explanatory notes nor on the face of the Bill. In oral evidence to the Committee, Dr Viviane Gravey pointed to the concern that the Bill's removal of the primacy of EU law contradicted the Northern Ireland Protocol bill, also before the commons, which maintains and reaffirms this primacy. How these will fit together has yet to be explained.[34]

28. JUSTICE acknowledges the statement in the explanatory notes that the Government "*remains committed to respecting the devolution settlements and the Sewel Convention*",[35] however the absence of any limitation of central Government ministers' powers over areas of devolved law in the Bill undermines that statement. The simple fact is that the sunset clause has the potential to delete devolved law without the consent of devolved administrations, whilst there are sweeping powers for central government to act in devolved policy areas.

Conclusions

29. There is insufficient clarity on the policy, process and full extent of the law that will be impacted by this legislation, despite the widespread impact it could have on the law. Nevertheless, whilst

[31] Letter from Angus Robertson to the UK Government, 8 November 2022.
[32] PBC Deb (Bill 156) 8 November 2022, col 77
[33] Written statement, 3 November 2022
[34] PBC Deb (Bill 156) 8 November 2022, col 83
[35] Explanatory notes to the Retained EU Law (Revocation and Reform) Bill, p8.

providing so little information the Bill asks Parliament, preemptively, to write the executive a license to legislate at an extraordinary scale, whilst imposing unnecessary time limits on the task. JUSTICE considers this to be contrary to the Bill's stated aim "*to firmly re-establish our Parliament as the principal source of law in the UK*" as well as being a manifestly undemocratic way of changing the law. As Sir Jonathan Jones KC, former head of the Government Legal Service, has commented in relation to this Bill, "Good law-making takes time - for civil service, Ministers, parliament, proper analysis & consultation".[36]

30. Given the above **JUSTICE opposes the Bill in its entirety**.

31. Notwithstanding our concerns with the premise of the Bill, we have detailed several observations about specific clauses in the Bill below

B. Specific Concerns: Executive Powers

The sunset clauses

If the Bill is to proceed, we are strongly of the view that it should not proceed with the sunset clauses in Clauses 1, 2 and 3, for all the reasons set out above. The sunset clause goes further than to vest in the executive the power to reconsider REUL. It adds:

a. Arbitrary deadlines for Government departments, lacking any evidence that 31 December 2023 or indeed 23 June 2026, are based on a time estimate of how long the exercise will take, in light of the size of the task and the Government's capacity.

b. A huge and unnecessarily rushed task for government departments many of whom are occupied with pressing needs in other areas, including the anticipated budget cuts;

c. The potential for unidentified law to be deleted from the statute book unintentionally;

d. The associated risk of widespread legal uncertainty in the months before, and potentially the months and years after, the sunset date;

e. Zero Parliamentary scrutiny of what is lost by an arbitrary date;

f. Time-pressured parliamentary scrutiny of what will be "kept" and how, which as the sunset date approaches will reduce the realistic extent to which Parliament can scrutinise any

[36] Twitter post, @SirJJKC (10 November 2022)

draft secondary legislation (in light of the processes already being insufficient) to a mere tick box exercise;

g. An unacceptable deletion of law which impacts devolved competencies and which may have even been passed by devolved administrations.

32. Revocation of laws should not happen by default. In JUSTICE's view the sunset provisions should be removed so that any REUL which ministers wish to delete will have to be proactively revoked, rather than being passively deleted through inaction. This will avoid unintentional deletion of law, and ensure far greater legal certainty for the public.

Suggested amendments: *Page 1, line 1, leave out Clause 1* *Page 2, line 4, leave out Clause 2* *Page 2, line 12, leave out Clause 3*

Clauses 12, 13 and 14

33. Clause 12 provides the power to restate secondary REUL up to the point of the sunsetting provisions, whilst clause 13 provides for the power to restate "assimilated law" after the sunsetting provisions. Assimilated law is a term coined in Clause 6 of the Bill, and refers to REUL after 31 December 2023, when any remaining REUL, which is not revoked or automatically deleted by the sunset clause, will cease to have any special status, and will simply be "assimilated" domestic law. Clause 14 sets out the extent of the powers contained in Clauses 12 and 13.

34. The explanatory notes state that the power to restate "*does not allow the function or substance of the legislation to change nor introduce substantive policy change*".[37] However, as currently drafted, the Clauses allow for the following changes:

a. **Clause 14(2) permits the use of different "*words or concepts"*** from the original instrument in the restatement.

[37] Explanatory notes, p7

b. **Clause 14(3) permits "*any change*" considered "*appropriate*" for three reasons:** in order to resolve ambiguities; remove doubts or anomalies; or facilitate improvement in the clarity or accessibility of the law (including omitting anything which is legally unnecessary).

c. **Restatements can impact primary legislation**, if the secondary REUL (or after sunset, secondary assimilated law) being restated itself amended primary legislation. This means Clauses 12 and 13 can be used as Henry VIII powers. Any restatements which do amend primary legislation are automatically subject to the affirmative procedure.[38] Anything else under clause 12 or 13 can be subject to the negative resolution procedure, subject to a sifting process.[39]

d. **Restatement can seemingly be partial**: ministers can "*restate, to any extent*" any secondary law. The inclusion of this phrase is particularly important in light of the sunset clauses; if a restatement only includes part of an instrument of REUL, the remaining law would seemingly fall to be automatically revoked under the sunset provision in Clause 1.

e. **Restatements can also restate the "effect" of direct EU law, rights, principles and obligations, including the principle of supremacy itself** (Clause 12 (4-6)). Clause 13 (4-8) extends this power to assimilated law after 2023, when all such EU law, rights, principles and obligations, including the principle of supremacy, will have already been abolished by Clauses 3-5 of this Bill. This is effectively the ability to reintroduce principles not so that they have effect at-large, but so that their effect is reproduced in a certain legislative context, with respect to the restated instrument and other specified instruments.[40]

Example: the right to parental leave

35. The right to parental leave is a creature of EU law, implemented in the UK by the Maternity and Parental Leave etc Regulations 1999.[41] It did not exist in UK law before that point, as distinct from maternity or paternity leave. It entitles parents, after they have been in their job for one year, to be absent from work to care for a child.[42] They are also entitled to return to the job on terms and

[38] Schedule 3 para 7(2)
[39] The sifting process, first introduced by the EUWA 2018, allows ministers to propose the negative procedure, whilst providing committees of both houses with a draft of the instrument and a memorandum explaining why the procedure is considered appropriate. However, even if the negative procedure is not agreed by either committee to be appropriate, the minister can proceed in any event. See Schedule 3 para 8 of the Bill.
[40] Which must be specified; see Clause 14(4): regulations under Clause 12 or 13 "(a) may make provision about the relationship between what is restated and a relevant enactment specified in the regulations, but (b) subject to that, may not make express provision about the relationship between what is restated and other enactments".
[41] Implementing EU Council Directive 96/34/EC (OJ No.L145, 19.6.96, p.4).
[42] Reg 13 of the Maternity and Parental Leave etc Regulations 1999 (MPLR 1999); for up to 4 weeks per year per child, and up to a total of 18 weeks per child, reg 14.

conditions not less favourable than those applicable had they not been absent.[43] The regulations do allow employers to postpone requested parental leave, but in narrow circumstances. Several requirements must be met first: the operation of the business must be unduly disrupted; the employer has identified another time they can take the same amount of leave within 6 months; and the employer gives those reasons to the employee in writing.[44]

36. As currently drafted, Clause 12 or 13 could be used to change the substance of the right.

    a. Regulations could partially restate obligations. For example, the ability of employers to postpone leave could be restated, but the detailed requirements could be omitted if they were deemed "*legally unnecessary*".

    b. Regulations could purportedly "*clarify*" the test to postpone the leave, currently "*unduly disrupted*", using different words and concepts which could weaken it. For example, simply "*disrupted*" or even "*causes inconvenience*".

37. The "what ifs" in the above example are necessary since there is no explicit policy statement in this area of law; the public and Parliament are none-the-wiser on what the Government seeks to change and what it seeks to keep of all the EU employment rights featured in REUL. Critically the above changes could be made under the negative resolution procedure, as the right to parental leave is secured in secondary legislation and not primary legislation, thereby bypassing meaningful scrutiny of Parliament.

Recommendations and suggested amendment:

38. We encourage the Government to produce draft secondary legislation to give a better idea of how the powers will be used. We also suggest that the drafting could and should better reflect the stated intention of the restatement powers: not to change the function or substance of the legislation nor to introduce substantive policy change.

Page 16, line 27, after subsection (3), insert –

"(d) A restatement may not cause the function or substance of the legislation to change nor introduce substantive policy change".

[43] Reg 18 MPLR 1999
[44] Schedule 2 MPLR 1999

Clause 15

39. Clause 15 allows ministers to revoke or replace REUL. Clause 15 powers are extremely broad and go significantly further than the powers in Clause 12 and 13, as follows:

    a. **Clause 15 provides a power to revoke REUL without replacing it.** Therefore, there is no need for the sunset clause and automatic deletion. Revoking through Clause 15 would furthermore ensure a record of what is being deleted.

    b. New legislation under Clause 15 can be different to the REUL it is replacing:

        i. It could be **significantly different** under Clause 15(2), which would confer a power to make whatever alternative law a minister "*considers appropriate*" to achieve the "*same or similar objectives*". Note that the objective need not be identical, only similar, and having a similar objective does not mean the policy through which that objective is achieved is similar.

        ii. It could be **entirely different** under Clause 15(3), which simply empowers a minister to *"make such alternative provision as the relevant national authority considers appropriate*". There is no requirement for the alternative provision to be the same or similar to the REUL it replaces.

    c. **The overall effect of the changes cannot "*increase the regulatory burden*"** to the subject area (Clause 15(5)). The definition of burden is wide, from an "*administrative inconvenience*" to criminal sanctions (Clause 15(10)).

    d. **However, there is no restriction on the extent which "*burdens*" can be decreased**, or any restriction on the extent to which the protections those burdens offer others can be decreased.

    e. **Criminal offences may be created** in these replacement regulations as long as they "*correspon[d]*" or are "*similar to*" a criminal offence in the REUL being replaced (Clause 15(4)(c)).

    f. **The power to make subordinate legislation may be conferred** as long as it "*corresponds*" or are "*similar to*" power in the REUL being replaced (Clause 15(4)(a)).

    g. **Monetary penalties may be imposed** as long as the cases "*correspon[d]"* or are "*similar to*" the cases in which the REUL being replaced imposed monetary penalties (Clause 15(4)(d)).

h. **There is no limit on fees that could be imposed**: the fees chargeable do not have to "*correspon[d*]" or be "*similar to*" the fees chargeable in the REUL (Clause 15(4)(e)).

i. **Regulations could confer any functions on any person, including discretions**, subject to the constraints on the power to make subordinate legislation (above) (Clause 15(4)(b)).

j. **Replacements can impact primary legislation**, if the secondary REUL (or after sunset, secondary assimilated law) being placed itself amended primary legislation. This means Clause 15 can be used as a Henry VIII power.

k. Whilst some replacements are automatically subject to the affirmative procedure: those which amend primary legislation, confer a power to make subordinate legislation or create a criminal offence; or are made under Clause 15(3),[45] **anything else under clause 15(2) can be subject to the negative resolution procedure,** subject to a sifting process.[46]

l. **Other than the broad parameters specified above, the only other limitations to the use of the Clause 15 powers are that the replacement regulations cannot** impose taxation or establish a public authority (Clause 15(4)(f)).

Examples

1) The right to parental leave

40. Taking the example of parental leave discussed above, the changes suggested in relation to Clause 12 and 13 could without question be made under Clause 15, since the procedural requirements on employers could easily be described as a "burden" under Clause 15: they require the employer to analyse if his business will be unduly disrupted; to identify another time they can take the same amount of leave within 6 months; and provide those reasons to the employee in writing.

41. However, Clause 15 could empower ministers to go even further. Ministers could decide to replace employers' power to postpone leave with the power to refuse leave, interpreting it as having a "*similar objective*" of creating provision for parental leave whilst protecting businesses from being unduly disrupted. This would reduce the burdens on businesses, and therefore be permissible,

[45] Schedule 3 para 7(2) of the Bill
[46] The sifting process, first introduced by the EUWA 2018, allows ministers to propose the negative procedure, whilst providing committees of both houses with a draft of the instrument and a memorandum explaining why the procedure is considered appropriate. However, even if the negative procedure is not agreed by either committee to be appropriate, the minister can proceed in any event. See Schedule 3 para 8 of the Bill.

despite significantly curtailing the rights of employees. Since this would be under Clause 15(2), such regulations would not require the affirmative procedure.

42. Ministers could further decide to radically overhaul the right to parental leave under Clause 15(3), simply if they "*conside[r it] to be appropriate*". Alternative provision would not need to have a similar objective; the only restriction would be not imposing regulatory burdens.

43. Therefore, such regulations could reform parental leave as much as they choose, but only in one direction: reducing the financial cost and administrative burdens for employers, with no protection for the rights of employees, nor indeed any obligation to consider the protective impact parental leave has on children and families.

44. Regulations under Clause 15(3) could therefore abolish the right to parental leave. Short of abolishing the right, the regulations could:

    i. Significantly limit those entitled, for example those who work part time, those working in small businesses, or requiring the person to have worked for the employer for longer than the current one year requirement;

    ii. Reduce or even eliminate the right to return to a job "on terms and conditions not less favourable than those applicable had they not been absent";

    iii. Reduce the amount of time parents are entitled to per year (4 weeks) or in total per child (18 weeks);

    iv. Reduce the additional flexibility of leave available to parents of children entitled to disability living allowance.[47]

2) Product safety

45. When there are no specific regulations which govern the safety of a specified product, the General Product Safety Regulations 2005 apply, which are REUL.[48] They impose responsibilities on producers and distributors of products, which benefit the health and safety of all consumers.

46. These regulations have already been changed since the UK exited the EU, under the powers in the EUWA 2018 to "prevent, remedy or mitigate any failure of retained EU law to operate effectively" or "any other deficiency" in REUL, which themselves were heavily debated and

[47] Schedule 2
[48] These regulations were made to implement the EU Directive 2001/95/EC on general product safety

controversial powers during the passage of the Act.[49] The amending statutory instrument[50] removed references to the EU market and "member states", changing such references to the UK market and the UK.

47. These changes have already had a significant consequence for businesses who previously were "distributors" within the EU market; these businesses are now importers into the UK market.[51] Consequently, such businesses have greater responsibilities under the regulations than they did previously, as importers are "producers" in the regulations, rather than "distributors".[52]

48. Clause 15 now empowers ministers to make further radical changes not only when there are "failures" or deficiencies" related to our exit from the EU, but wherever they consider it appropriate.

49. This could therefore not be limited to the change in status of some importers, but could extend to all the safety obligations applicable to producers and distributers of products in the UK.[53] This could even extend to changing the criminal offences found in the regulations, to make them less burdensome on those who produce and distribute products.[54] Again, Clause 15 imposes no protective constraint for the benefit of consumers; the only constraint instead is not to increase regulatory burdens.

3) Child witnesses whose age is unclear in criminal proceedings

50. EU-derived secondary legislation has improved the protection of child witnesses in criminal courts of England and Wales. Directive 2011/36/EU directed member states to provide protections for child victims of human trafficking in court (often known as 'special measures', for example giving evidence by video link), and when the age of the child was unclear, the child should be presumed eligible.[55] Given that victims of human trafficking often lack complete paperwork through no fault

[49] S. 8 EUWA 2018; a time limited power for two years after implementation period completion day. During the passing of the EUWA, section 8 was heavily criticised. The Constitution Committee noted that the EUWA failed to distinguish between powers required to make 'necessary amendments to the existing body of EU law' and 'substantive, more discretionary changes" observing that section 8 provided 'considerable scope for significant policy changes to be made'. Constitution Committee, 3rd Report; European Union (Withdrawal) Bill: Interim Report (HL 2017–19, 19) para 44. See further Alexandra Sinclair and Joe Tomlinson, *Plus ça change? Brexit and the flaws of the delegated legislation system*, Public Law Project, 13 October 2020) p18.
[50] The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/696), see Schedule 9.
[51] The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, Schedule 9 para 2 (e) "for the words "importer of the product from a state that is not a Member State into a Member State" substitute " person established in the United Kingdom that places a product from a country outside the United Kingdom on the market".
[52] See reg 7, General Product Safety Regulations 2005. See further Office for Product Safety & Standards, *UK Product Safety and Metrology Guidance for the market of Great Britain (England, Scotland and Wales) – what's changed from 1 January 2021?* (January 2021)
[53] For example the requirement to investigate complaints, or test products, see General Product Safety Regulations 2005, para 7 (4)
[54] See reg 20
[55] Articles 13 and 15

of their own, this presumption is a logical measure. It is also a humane measure which ensures protection of the most vulnerable victims in our criminal justice system.

51. Directive 2011/93/EU subsequently made similar requirements of member states to improve their protections of children subject to sexual abuse.[56] Whilst eligibility for special measures for children existed in England and Wales before this directive, the presumption for children whose age is unclear did not.

52. Pursuant to these Directives, regulations were passed[57] which amended primary legislation on special measures.[58] The primary legislation now contains a presumption that trafficking victims and victims of sexual abuse can be treated as children for the purposes of special measures, if their age is unclear but there is reason to believe they are under 18.

53. As currently drafted Clause 15 would allow a minister to revoke the above added protections (Clause 15(1)), amend them to achieve a "*similar*" but not the same objective (Clause 15(2)) or remove the protection altogether. The decrease in protection for child victims of human trafficking or sexual abuse who have no documentary proof of their age, for example, would place a heavy burden on the child themselves, but not a regulatory burden, whilst leading to a small decrease in administrative and logistical requirements for courts.

Recommendations and suggested amendments:

54. The above examples illustrate the breadth of power available to the executive under Clause 15, and the consequential lack of scrutiny which would be afforded to substantial changes in policy. As set out at the start of this evidence, JUSTICE's primary position is that the Bill confers excessive power in the executive, and should not proceed. However, as a secondary position, we suggest consideration of the following amendments.

Page 17, line 8, delete "or similar" from Clause 15(2).

Page 17, line 9, leave out subsection (3)

These amendments would narrow the powers available to the executive under Clause 15 to effect substantial policy change through Clause 15 regulations.

[56] Articles 18 and 20
[57] Trafficking People for Exploitation Regulations 2013 and the Special Measures for Child Witnesses (Sexual Offences) Regulations 2013
[58] s. 33 of the Youth Justice and Criminal Evidence Act 1999

Page 17, line 38, after subsection (7), insert –

"(8) No provision may be made by a relevant national authority under this section in relation to a particular subject area unless the relevant national authority considers that the overall effect of the changes made by it under this section (including changes made previously) in relation to that subject area does not decrease the protections afforded to those who benefit from the original provision.

This would safeguard against clause 15 regulations decreasing protections for those who benefit from them in legislation, mirroring the wording of the safeguard against clause 15 regulations increasing regulatory burdens in the current draft of the Bill at Clause 15(6).

Clause 16

55. Clause 16 contains the power to update any REUL or any provision made under the powers contained in sections 12, 13 or 15, as the relevant national authority considers appropriate, to take account of changes in technology, or developments in scientific understanding. The power has no time limit, unlike the powers in Clauses 12, 13 and 15 (Clause 12 to 31 December 2023 and Clauses 13 and 15 to 23 June 2026).

56. The power is broadly drawn, and is exercisable over any secondary REUL, including that which amended primary legislation (like the child witnesses example above), meaning Clause 16 could be used as a Henry VIII power. It is unclear why Clause 16 is not subject to the sifting procedure, like Clauses 12, 13 and 15. Instead it is only subject to the negative resolution procedure.[59]

57. Changes in technology may improve processes or systems for some, but negatively impact others. Many scientific advancements are uncontentious, but some are. Using the above example of special measures in criminal proceedings, Clause 16 could be used to impose a requirement for scientific testing of a child's age, rather than using a presumption of eligibility if their age is unclear. JUSTICE hopes this is unlikely, however the recent Nationality and Borders Act 2022 included a provision for ministers to themselves deem what scientific methods are appropriate for age assessments and make regulations specifying such methods.[60] This is despite professional

[59] Schedule 3, para 7(5)
[60] Section 52

organisations expressing significant concern at the reliability of any current scientific testing to determine age.[61]

58. This is not to say all scientific or technological "updates" will require the same amount of scrutiny, but JUSTICE considers it wrong to assume, as the Bill currently does, that they will all be suitable for the negative procedure. JUSTICE considers, at a minimum, that the powers in Clause 16 should be subject to the same sifting scrutiny of both houses as Clauses 12, 13 and 15. Furthermore, in light of the Explanatory notes' suggestion that Clause 16 *"is not intended to make significant policy changes*" we suggest consideration of how the drafting can be tightened to ensure that scientific or technological changes it will impose do not engender significant policy change.

Suggested amendments:

Page 31, line 26, after 13 substitute "or 15" with "15 or 16".

This would include Clause 16 in those statutory instruments subject to the sifting procedure in Schedule 3, para 8 (1) (a).

Page 18, line 28, after subsection (2), insert –

"(3) No instruments under this section shall impose significant mandatory scientific or technological change.

(4) No scientific or technological change may be specified in instruments under this section unless the relevant national authority has:

(i) has taken expert scientific and/or technological advice on the changes proposed; and

(ii) has published alongside the draft instrument, for the purposes of the sifting procedure in Schedule 3, paragraph 8 of this Act, a summary statement of the advice received.

The first of these provisions, (3), would not prevent significant scientific or technological change to be accommodated for or facilitated by regulations under Clause 16, but would prevent such regulations

[61] For example, the Royal College for Paediatrics and Child Health expressed concern about ss.51-52, explaining "There is no single reliable method for making precise age estimates" and "The use of radiological assessment is extremely imprecise and can only give an estimate within two years in either direction, and the use of ionising radiation for this purpose is inappropriate."

making such change mandatory. (4) would impose a duty on ministers to receive expert advice before making changes under Clause 16, which would then be summarised for Parliament ahead of the sifting procedure, to facilitate scrutiny of the changes being made.

C. Specific Concerns: case law in the Courts

Clause 7 (1)-(7)

59. Clause 7 subsections (1) to (7) change the current rules for higher courts on departing from retained case law, either that of the Court of Justice of the European Union (CJEU), or the domestic courts or tribunals applying and interpreting REUL. This is in light of the abolition of the supremacy of EU law in Clause 4 and the provision in Clause 7 subsection (8) onwards which provides lower courts, tribunals and law officers with a reference procedure to a higher appeal court[62] to decide points of law.

60. Following the abolition of the supremacy of EU law (Clause 4), it is inevitable that the courts will need to reconsider case law we have previously regarded as "settled", since it was settled when the EU law was supreme. This reinterpretation of law needs to be carefully done. It must strike a balance between making changes where appropriate, based on our new position outside the EU, and maintaining some consistency and predictability of the law for businesses and individuals who are trying to conduct their work and private lives within the law. This balance will be all the more important before 23 June 2026, when there will already be a certain level of instability not just of legal interpretation in the courts, but regarding the law itself, under the Government's powers in this Bill to restate, revoke or replace large swathes of EU law.

61. The Supreme Court, Scotland's High Court of Justiciary, the Court of Appeal and some other appellate courts are not currently bound by retained EU case law.[63] Currently, the test for when they should depart from retained EU case law is the same test the Supreme Court uses when deciding whether to depart from its own precedent: if it is right to do so.[64] This test has been in

[62] "Relevant appeal courts" are the Court of Appeal, the Supreme Court or the High Court of Justiciary, and other higher "appeal" courts listed in clause 6(7): the Court Martial Appeal Court, the Inner House of the Court of Session, the High Court of Justiciary when sitting as a court of appeal; the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983; the Lands Valuation Appeal Court; the Court of Appeal in Northern Ireland.
[63] Section 6(4) EUWA 2018 provided that the Supreme Court and the High Court of Justiciary were not bound by retained EU case law. The Court of Appeal and the other appellate courts listed above were added by The European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 (SI 2020/1525)
[64] Section 6(5) EUWA 2018

use since 1966, first set out in a House of Lords practice statement[65] and continued in the case law of the Supreme Court.[66]

62. The Bill removes the test of "if it is right to do so" for departing from retained EU case law at Clause 7(3). There is no explicit test to replace it in the Bill; instead the Bill mandates the following as non-exhaustive factors to consider:

    a. the fact that decisions of a foreign court are not (unless otherwise provided) binding;

    b. any changes of circumstances which are relevant to the retained EU case law;

    c. the extent to which the retained EU case law restricts the proper development of domestic law.

63. For domestic law, the test of "if it is right to do so" remains (Clause 7(4)). However, similar mandatory non-exhaustive factors are added:

    a. the extent to which the retained domestic case law is determined or influenced by retained EU case law from which the court has departed or would depart;

    b. any changes of circumstances which are relevant to the retained domestic case law;

    c. the extent to which the retained case law otherwise restricts the proper development of domestic law.

64. In its 1966 practice statement, the House of Lords used similar phrasing to the last factor: "too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict *the proper development of the law*".[67] However, the practice statement balances such a consideration against "the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law".

65. Under the new tests in this Bill however, legal certainty is not mentioned, nor indeed the danger of legal uncertainty as identified since 1966. The mandatory considerations in the Bill are admittedly non-exhaustive and therefore it is open to judges to consider legal uncertainty. However, its omission is concerning since other factors are being given prominence by placing them on a mandatory statutory footing. Moreover, the Bill's explanatory notes cite the recent case

[65] HL Deb 26 July 1966 Vol 276 col 677.
[66] *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28, paras 24-25.
[67] 72 HL Deb 26 July 1966 Vol 276 col 677.

of *TuneIn Inc v Warner Music UK Ltd*[68]and explain the factors "reflect" some of those considered in that case. In 2021 in *TuneIn,* the Court of Appeal considered the power to depart from retained CJEU case law. The factors the Court considered included:

a. changes in the domestic legislation;

b. changes in the international legislative framework;

c. the experience of the CJEU in confronting the relevant issues, for example having done so in a variety of factual scenarios;

d. whether there is a clear basis for departing from the law in academic commentary and criticism;

e. If there is any settled and consistent guidance on the question from the case law of courts outside the EU;

f. if there is a coherent and consistent way to depart from some of the case law, but not other parts of it;

g. and critically, the legal uncertainty which would be created.

66. JUSTICE considers that, in applying the current test to CJEU retained law, the Court of Appeal has produced a careful and considered decision. The resulting judgment shows appropriate deference to Parliament,[69] and an awareness of the need to balance legal certainty with the Court's new ability to depart from CJEU jurisprudence. Despite this, and the explanatory notes citing *TuneIn* positively*,* the *TuneIn* factors are not given statutory footing. Some, like considering a change in the domestic law, could be included in the current drafted factors (as a "change in circumstances" in subsection (b)). Others may be more suited to be discretionary rather than mandatory, such as considering academic criticism, which may or may not be relevant in a particular case. However, JUSTICE considers that the omission of "legal certainty" as a mandatory consideration is unbalanced and erroneous.

67. Indeed, it is odd that the Bill seeks to mandate judges to speculate on what is the "proper" development of the domestic law, without any balance or acknowledgement of the importance of legal certainty in common law jurisdictions which function through precedent. Without such balance, the mandatory factors as currently drafted are highly likely to lead to an influx of litigation.

[68] [2021] EWCA Civ 441

[69] See para 78: "First, there has been no change in the domestic legislation. Now that the UK has left the EU, it will be open to Parliament to amend section 20 of the 1988 Act if it sees fit, subject to the UK international obligations. At present, however, the will of Parliament is that section 20 should remain in its current form."

68. Whilst the disentanglement from EU case law will necessarily involve the courts, and the abolition of the doctrine of supremacy will undoubtedly raise questions of re-interpretation in common law, we consider a better balance could and should be struck between the predictability of the law – for businesses and individuals – and any judicially-led progress of the domestic law away from established precedent.

Suggested amendments:

At page 4, line 33, after subsection (c), insert **–**
"(d) any legal uncertainty which will be created, with regard to the especial need for certainty in the criminal law."

And at page 5, line 3, after subsection (c), insert **–**

(d) any legal uncertainty which will be created, with regard to the especial need for certainty in the criminal law."

These amendments would not amend the test for overturning case law. However, they would widen the statutory criteria to include legal certainty, and highlight the especial need for certainty in criminal law, as highlighted since 1966 in the House of Lords practice statement.