



Retained EU Law (Revocation and Reform) Bill

House of Lords

Consideration of Commons amendments and reasons

Briefing

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Introduction

1. JUSTICE is an all-party law reform, rule of law and human rights organisation. It is the UK section of the International Commission of Jurists. Our previous briefings on the Retained EU Law (Revocation and Reform) Bill (“the Bill”)¹ have highlighted our significant concerns with excessive delegated powers and Parliamentary scrutiny of retained EU law (“REUL”).

Amendment 42

2. In previous drafts, Amendments 42 and 42B proposed a sifting process of draft regulations by a Committee.² Those which represented a “substantial change” to the law would be referred to both Houses to debate, vote on and make amendments to the regulations.
3. The Commons rejected Amendment 42 and the similar Amendment 42B due to the process being inappropriate. Consequently, a new amendment in lieu will be moved by Lord Hope of Craighead on 20 June 2023.³
4. The new amendment **proposes instead of an amending process in both Houses, that an established scrutiny procedure is used, that being the super affirmative resolution procedure**, based on section 18 of the Legislative and Regulatory Reform Act 2006.
5. The new version of amendment 42:
 - a. Applies to draft Clause 15 regulations only (the broadest delegated power in the Bill⁴).
 - b. Requires the Minister to state why replacement or alternative provision is appropriate, to inform the sifting process.

¹ Available at <https://files.justice.org.uk/wp-content/uploads/2023/02/03144428/JUSTICE-Retained-EU-Law-Revocation-and-Reform-Bill-HoL-second-reading-briefing.pdf>

² Originally those under Clauses 12, 13 and 15, then narrowed in Amendment 42B to Clause 15.

³ Available at <https://bills.parliament.uk/publications/51668/documents/3609>

⁴ JUSTICE has repeatedly expressed concern about the breadth of the Government’s powers to amend REUL in Clause 15. That power allows ministers to make changes to REUL with minimal restrictions, and without the need for the objectives to be the same, as long as the Minister considers alternative provision to be “appropriate”. This could lead to substantial policy changes being implemented through these delegated powers, none of which are clear to Parliament during the passing of this current Bill. This has throughout the debates given rise to criticism of the Bill being “*hyper-skeletal*”.

- c. Proposes a Commons Committee, rather than a Joint Committee, to sift and refer regulations which merit “special attention” to the floor of each House.
 - d. Stipulates the Minister must have regard to recommendations of the Committee and resolutions of both Houses.
 - e. Requires, for draft regulations to be approved:
 - i. the affirmative procedure, i.e. approval in both Houses;
 - ii. any revisions by the Minister to be laid before approval;
 - iii. and when the specialist Commons Committee recommends the regulations should *not* be proceeded with, that such a recommendation is rejected by the House of Commons.
6. **The new version does not create a power to directly amend the regulations.**

JUSTICE’s conclusions and recommendation

7. While JUSTICE originally supported the creation of an amendment power in the previous versions, JUSTICE notes the rejection by the House of Commons of that proposal. JUSTICE therefore observes that the new version is a ***proportionate and necessary compromise***:
- a. Parliament can have much needed better oversight of draft regulations through this established process;
 - b. it is being narrowly used for only one delegated power, namely Clause 15; and
 - c. recommendations for amendments to the regulations can be made whilst stopping short of creating an amending power.
8. **In conclusion therefore, JUSTICE urges Lords to vote in favour of this motion and the amendment in lieu.**