



## Retained EU Law (Revocation and Reform) Act 2023

The Retained EU Law (Revocation and Reform) Act 2023 (REUL Act) has now become law. The REUL Act provides a new legal architecture for retained EU law (REUL) in the UK, and will significantly change how REUL is interpreted and applied.

REUL is a category of law that was created by the European Union (Withdrawal) Act 2018 (EUWA) at the end of the post-Brexit transition period on 31 December 2020, based on the EU and EU-derived law that applied in the UK at that time. The REUL Act will remove the special status and EU-derived features of REUL in the UK at the end of 2023, and provides the UK Government with wide-ranging powers to restate, revoke, replace or update REUL until 23 June 2026, as set out further below. In particular, the REUL Act will:

- Remove what the Government refers to as the “interpretive effects” of EU law that remain on the UK statute book. These include directly effective rights and obligations derived from EU treaties and EU directives, the doctrine of the supremacy of EU law, and general principles of EU law (such as the precautionary principle). In fact, the concept of supremacy is reversed such that where there is a conflict between domestic law and retained direct EU legislation, it is the EU-derived legislation that must be read in a way that is compatible with domestic legislation.
- Revoke several hundred pieces of REUL forming part of domestic law at the end of 2023. This aspect of the Act was significantly altered during the parliamentary process: whereas previously, the Act would have automatically sunsetted all REUL, it will now do so only where such legislation has been specified by the Government in the Schedule to the Act or where the Government has specifically exercised the revocation powers provided to it by the Act.

The Government has itself identified that the REUL Act may have significant impacts in areas where regulation relies heavily on EU law (such as Employment, Tax, Competition, Intellectual Property, and Data law), and could give rise to future litigation where parties test whether established regulatory regimes will continue to operate in the same way.

Given the potential impact of the REUL Act across a wide range of industries it is key that clients consider the particular risks and opportunities presented by the Act. Because the revocation and reform of REUL is underway at pace, assessing the impact of the REUL Act on your business should not be delayed. We are uniquely well-placed to advise clients in this area and can deliver bespoke training across a range of sectors.

### What type of law are you dealing with?

This website is a helpful dashboard that can be used to find out what type of legislation you’re dealing with. Select the “REUL Explorer” tab, then search the name of the relevant legislation and the dashboard will show you which type of retained EU law the legislation is.

The website only lists retained EU legislation, and does not list other forms of EU law affected by the REUL Act, such as directly effective rights, EU case law, and general principles of EU Law.

1

Primary legislation (Acts of Parliament and Acts of the devolved legislatures); law flowing from the EU Withdrawal Agreement.

Not affected by the Act: will remain in force.

2

EU-derived subordinate legislation

Retained direct EU legislation

If the government does nothing...

Will now be known as “assimilated law”, but will remain in force.

Unless...

The legislation is specified in the Schedule to the Act, in which case it will be abolished from 31 December 2023

Before 23 June 2026, UK Ministers / devolved authorities exercise their powers to...

The government / devolved authority could alternatively...

Revoke

Under section 14(1), UK Ministers or devolved authorities can revoke REUL.

Replace

Under section 14(2), UK Ministers or devolved authorities can replace REUL with other provision that they consider to be appropriate and to achieve the same or similar objectives. Under section 14(3), UK Ministers or devolved authorities can replace REUL with other provision they think is appropriate, with no requirement for them to be similar to the revoked legislation. They are, however, prevented from imposing regulations that on balance increase regulatory burdens.

Restate

Section 11 permits UK Ministers or devolved authorities to restate REUL by re-writing it in UK statutory language. Restatement should only be done to resolve ambiguities, remove doubts or anomalies or to facilitate improvement in the clarity or accessibility of the law (section 13(3))

Modify

Section 9 and 10 modify other statutes to facilitate their use to amend retained direct EU legislation in the same way that they can be used to amend domestic secondary legislation, extending Henry VIII-type powers.

Update

Section 15 permits UK Ministers or devolved authorities to amend REUL to update it to take account of changes in technology or developments in scientific understanding.

3

Legislation in specific policy areas

In some policy areas, reforms to retained EU law will be set out in separate legislation.

While the REUL Act will have some consequences for Tax matters, most issues relating to Tax, VAT, and excise and customs duties will be dealt with in future Finance Bills. The Financial Services and Markets Act 2023 and the Procurement Bill (once passed) will revoke approximately 500 additional pieces of REUL.

4

EU case law

The REUL Act will abolish all directly effective rights and general principles developed in EU case law, from the end of 2023.

The higher domestic courts will have a new ability to depart from EU case law (which may continue to be persuasive authority, but will lose its precedent value). The Act also introduces a mechanism whereby lower domestic courts can, when considering whether to depart from EU case law, refer matters to higher courts if there is a point of general public importance.

5

General principles of EU law

Directly effective rights

The supremacy of EU law

If the government does nothing...

Abolished from 31 December 2023

Unless...

The UK Minister or devolved authority use the powers provided by section 12 of the REUL Act to restate or reproduce REUL, in order to also codify interpretive effects (such as supremacy) that previously applied to that REUL.

#### Glossary

- Directly effective rights – provisions of EU treaties which are sufficiently clear, precise and unconditional as to confer rights directly on individuals. They can be relied on in national law without being implemented by Parliament. Examples include rights under the Treaty on the European Union and the Treaty on the Functioning of the European Union, including Article 157 of the Treaty on the Functioning of the European Union on the principle of equal pay for male and female workers for equal work.

- General principles of EU law: General principles of EU Law are applied by the CJEU and domestic courts when determining the lawfulness of legislative and administrative measures within the scope of EU law. They are an aid to the interpretation of the EU treaties and EU legislation. Examples include the principles of equivalence, effectiveness, subsidiarity, proportionality, and the ‘polluter pays’ principle.

- The supremacy of EU law: Previously, where a conflict arose between an aspect of EU law and an aspect of law in an EU Member State (national law), EU law prevailed, and the incompatible provisions of domestic law were disapplied. The REUL Act will remove this principle. This means that any provision of retained direct EU legislation must, so far as possible, be read and given effect in a way that is compatible with all domestic law. As a result, cases that were previously decided on the basis of EU supremacy could (from 2024) be decided differently. Likewise, provisions of domestic law that have previously been disapplied could, in some circumstances, ‘switch back on’.