# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# RETAINED EU LAW (REVOCATION AND REFORM) BILL

*Sixth Sitting*

*Thursday 24 November 2022*

*(Afternoon)*

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CONTENTS

Clauses 8 to 10 agreed to.
Schedule 1 agreed to.
Clauses 11 to 15 agreed to, some with amendments.
Adjourned till Tuesday 29 November at twenty-five minutes past Nine o'clock.

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PBC (Bill 156) 2022 - 2023

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**Monday 28 November 2022**

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**The Committee consisted of the following Members:**

*Chairs:* † Sir George Howarth, Sir Gary Streeter

† Bacon, Gareth *(Orpington)* (Con)
† Bhatti, Saqib *(Meriden)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fysh, Mr Marcus *(Yeovil)* (Con)
† Ghani, Ms Nusrat *(Minister for Industry and Investment Security)*
† Glindon, Mary *(North Tyneside)* (Lab)
† Grant, Peter *(Glenrothes)* (SNP)
† Jones, Mr David *(Clwyd West)* (Con)
† Madders, Justin *(Ellesmere Port and Neston)* (Lab)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Nici, Lia *(Great Grimsby)* (Con)
† O'Hara, Brendan *(Argyll and Bute)* (SNP)
† Randall, Tom *(Gedling)* (Con)
† Sobel, Alex *(Leeds North West)* (Lab/Co-op)
Stuart, Graham *(Minister for Climate)*

Huw Yardley, Sarah Thatcher, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 24 November 2022*

*(Afternoon)*

[Sir George Howarth *in the Chair*]

## Retained EU Law (Revocation and Reform) Bill

### Clause 8

Compatibility

2 pm

*Question proposed,* That the clause stand part of the Bill.

**The Minister for Industry and Investment Security (Ms Nusrat Ghani):** It is a privilege to spend the afternoon with you in the Chair again, Sir George.

In certain areas of legislation, for example on data protection, it is likely necessary to specify that certain effects of the existing legislative hierarchy are maintained, to ensure the continuation of the legal regime. The clause therefore establishes a new power to maintain intended policy outcomes by specifying the legislative hierarchy between specific provisions of domestic legislation and provisions of retained direct EU legislation or assimilated direct legislation to maintain the current policy effect.

**Justin Madders** (Ellesmere Port and Neston) (Lab): I have only a couple of questions. As I said, the Opposition consider the clause to be sensible, but will the Minister outline whether any assessment has been done as to what circumstances it is likely to be used in? What steps will the Government take to preserve the intent of the measure after 23 June 2026, when regulations made under the Bill will expire?

**Ms Ghani:** The hon. Gentleman asked about assessment. The REUL reform programme has been under way for more than a year. Departments have been engaged as to the effect of removing EU law principles—such as that the EU is the only one that can create principles and legislation—which is what we are working on. The work will continue to take place.

On the evidence about changing interpretation rules under clause 4, in specific cases—data protection regulation and competition law—removing the principles of interpretation as set out in the EU (Withdrawal) Act 2018 will cause unintended policy consequences as a result of the way that the legislation has been written. The compatibility power will ensure that the relationships between individual pieces of domestic legislation going forward are maintained. We intend that to ensure that our domestic law operates as the UK Government want it to. Each Department will of course be responsible for REUL elements within their portfolio.

*Question put and agreed to.*

Clause 8 accordingly ordered to stand part of the Bill.

### Clause 9

Incompatibility orders

**Alex Sobel** (Leeds North West) (Lab/Co-op): I beg to move amendment 80, in clause 9, page 10, line 36, at end insert—

> "(4A) Within 28 days of the making of an incompatibility order, a Minister of the Crown must, by written statement, set out the Government's view on the incompatibility. The statement must include consideration of the impact the incompatibility order has on rights of and protections for consumers, workers, and businesses, and protections of the environment and animal welfare, and whether the Government intends to produce regulations to revoke, amend or clarify the law in light of the order."

*This amendment requires ministers to set out, through a ministerial statement, their position on an incompatibility order that includes a consideration of the impact it will have on the rights of people.*

**The Chair:** With this it will be convenient to consider clause stand part.

**Alex Sobel:** The amendment would require Ministers to report to Parliament with a written statement in the event that a court made an order to declare that EU law and domestic law are incompatible. As we explained in relation to previous amendments, the Bill could impact on many fundamental rights of citizens in multiple areas of daily life. It could also interfere with important existing environmental protections, which I have explained at length in previous amendments.

The clause might have the effect of a court setting aside laws that guarantee such rights and protections, without giving Parliament any opportunity to ensure they can continue in place. In the interests of transparency and proper scrutiny, the amendment is designed to ensure that Parliament is alerted if that happens, enabling us to scrutinise the court decision and to consider whether we should exercise our rights to legislate to ensure that there is no confusion about Parliament's intentions. It is not my intention to press this amendment to a vote, but I would like the Minister to explain how we can ensure proper scrutiny when such clashes inevitably occur.

**Ms Ghani:** The clause gives the judiciary powers in connection with the ending of the supremacy of EU law. It requires a court or tribunal to issue an incompatibility order where retained direct EU legislation cannot be read consistently with other pieces of domestic legislation. It gives the judiciary broad discretion to adapt the order to the case before it. That includes granting remedies to the effect of the incompatibility.

Courts generally have wide discretion to grant remedies that they may grant in a given case, and the clause is consistent with that principle. Where the court considers it relevant, the order could set out the effect of the incompatible provision in that particular case, delay the coming into force of the order, or remove or limit the effect of the operation of the relevant provision in other ways before the incompatibility order comes into force.

The clause is a matter of judicial process. It grants powers to the courts but does not change any rights or protections in and of themselves, which is a matter for

Parliament in the scrutiny of this Bill. We do not need to create a new scrutiny process for incompatibility orders. A process of "declaration of incompatibility", similar to that set out in clause 9, exists under the Human Rights Act 1998, and no new scrutiny procedure, such as the one proposed by this amendment, has been deemed necessary. Similar court orders could also be made under the European Communities Act 1972, where conflicts arose—again, with no such scrutiny procedure.

Once again, the hon. Member for Leeds North West raised environmental regulations. To repeat myself, we will not weaken environmental protections. The UK is a world leader in environmental protection and, in reviewing our retained EU law, we want to ensure that environmental law is fit for purpose and able to drive improved environmental outcomes. We are committed to delivering our legally binding target of halting nature's decline by 2030. I therefore ask the hon. Gentleman to withdraw the amendment.

**Alex Sobel:** I take on board what the Minister says, although that last comment on the environment is slightly galling considering that on 31 October the Government were meant to bring forward, under their own domestic post-Brexit legislation—the Environment Act 2021—targets on a whole range of areas, including air quality and water quality. It is now 24 November and we still have no targets. If I am a little concerned about the Government's performance here, she should not be surprised, but I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 9 ordered to stand part of the Bill.*

### Clause 10

SCOPE OF POWERS

**Peter Grant** (Glenrothes) (SNP): I beg to move amendment 50, in clause 10, page 11, line 12, leave out paragraph (b) and insert—

"(b) for sub-paragraph (2), substitute—

(2) Power may only be exercised by virtue of sub-paragraph (1) if—

(a) a written statement explaining the modification has been published by the Secretary of State,

(b) the Secretary of State has made an oral statement on the modification to both Houses of Parliament, and

(c) the Secretary of State has published an assessment of the impact of the modification."

The intention of the amendment is to do what Brexit was supposed to do: restore some parliamentary oversight to the way in which the Government make and change legislation in this place. The amendment is pretty self-explanatory. It is not ideal that Ministers are giving extensive powers to chop and change laws as they see fit. If, in exceptional circumstances, it is necessary for them to have those powers, the very least Parliament should expect is that Ministers will be held to account and will explain to Parliament—ideally beforehand, but certainly afterwards—why they have done what they have done and what the impact has been.

If the Minister genuinely believes in improving accountability in this place, she will accept the amendment. In saying that, it is clear that all Ministers—nothing against this Minister—in all Public Bill Committees are under instruction not to accept anything from the Opposition. If we moved an amendment that said, "Today's Thursday", the Government would keep talking until it was Friday and then vote it down.

**Ms Ghani:** I recognise that none of that was directed at me personally, but rather collectively at all Ministers. I beg hon. Members to reject the amendment. The Government recognise the significant role that Parliament has played in scrutinising instruments to date and we are committed to ensuring the appropriate scrutiny of any secondary legislation made under existing delegated powers. We must end the restriction that some existing powers may only be used to amend retained direct principal EU legislation or rights under section 4 of the European Union (Withdrawal) Act 2018 if they are also capable of amending domestic primary legislation.

The hon. Member for Glenrothes suggests that a written ministerial statement made by a Secretary of State is accompanied by an oral statement when an existing power is exercised. I remind him that all statutory instruments that are subject to parliamentary procedure must be accompanied by an explanatory memorandum. These memorandums provide Parliament with the information and explanations required. When powers are exercised by virtue of paragraph 3(1) to schedule 8, explanatory memorandums would be laid as appropriate. Any statutory instrument that reforms retained direct EU legislation made under existing delegated powers will be subject to the proper processes for impact assessments. However, a blanket requirement for impact assessments is not appropriate as some reforms could fall below the de minimis threshold set out in the "Better regulation framework" guidance.

Now that we have left the EU, it is only appropriate for retained direct EU legislation that was not scrutinised or approved by Parliament to be treated in the same way as domestic secondary legislation, which is amendable by existing delegated powers that this Parliament has approved. For those reasons, I ask the hon. Member to withdraw his amendment.

**Peter Grant:** The difference, of course, is that any secondary legislation—even if it is done by the affirmative procedure—goes through a Delegated Legislation Committee in which, at best, three or four of the parties in this House are represented. For the last seven and a half years, the Scottish National party has been represented in those Committees because of the exceptional level of support that it enjoys in our country, but there are Members of Parliament, who collectively represent the interests of a lot of constituents, who never get on to Delegated Legislation Committees. The only chance they get to question the Minister about secondary legislation is if the Minister makes an oral statement before the House. Publishing something is all very well, but Members of Parliament who are not in one of the big three or four parties do not get the automatic right to question Ministers on a written statement—they do get the automatic right to questions Ministers on an oral statement. It is quite clear which way this is going, so I will not detain the Committee by pushing the amendment to a vote. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Brendan O'Hara** (Argyll and Bute) (SNP): I beg to move amendment 51, in clause 10, page 11, line 18, leave out from "paragraph 3" to the end of line 23 and insert

*[Brendan O'Hara]*

"may not be so made, confirmed or approved unless a draft of the legislation has been laid before, and approved by resolution of, (as the case may be) both Houses of Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly."

The amendment is in my name and that of my hon. Friend the Member for Glenrothes. As we have argued since the date of publication, the Bill not only undermines the devolution settlement, but puts at risk workers' rights, product safety, food labelling, the future of the agricultural sector, and the natural environment. Clause 10 allows for all that to happen with the bare minimum of parliamentary scrutiny, allowing everything to be dealt with via secondary legislation, and thereby conveniently avoiding the intense parliamentary scrutiny that these measures most certainly require. Clause 10 would make it easier for the Government to remove our rights and protections by using delegated powers, and therefore circumvent parliamentary scrutiny, avoid transparency and evade accountability to all Members of Parliament. This is the Executive power grab people have been talking about since the day the Bill was published.

When the Bill was published, the Government told everyone who would listen that this was all about the United Kingdom taking back control and asserting the sovereignty of this Parliament, as opposed to—in their words—shady deals being agreed in small committees in Brussels, but it does not feel like that. Who exactly is it that is taking back control here? It is not this Parliament, and it is not Members of this House, because the Government have already gleefully announced that when it comes to retained EU law,

"the amount of parliamentary time that is required has been dramatically reduced."

It seems that for the Government taking back control means putting a group of hand-picked party loyalists on to a Delegated Legislation Committee—a Committee that, as we know, has a built-in Government majority—which will bulldoze through change after change after change, as instructed. The history of DL Committees is not particularly encouraging; in the past 65 years, only 17 statutory instruments have been voted down by a DL Committee—and that has not happened since 1979.

Although there is certainly a role for DL Committees, I do not believe that that extends to them making wholesale, fundamental changes to vast swathes of the law—on matters covering everything from the environment, nature and consumer protection through to workers' rights, product safety and agriculture—just to help the Government avoid proper parliamentary scrutiny. The reason they are avoiding parliamentary scrutiny is that, in their fervour to get rid of any lingering European influence, the wide-eyed zealots at the heart of this dysfunctional Government have arbitrarily imposed a sunset clause for December next year. This is not just the view of the Opposition; it is a widely-held view. Professor Catherine Barnard warned against the lack of parliamentary scrutiny afforded, saying:

"Although there is a process for parliamentary oversight, it will be difficult in the timeframe to ensure that that oversight can be exercised in a manner that enables Parliament properly to scrutinise the measures as they come through."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 16, Q27.]

In his evidence, George Peretz KC warned,

"One of the problems with the effectiveness of parliamentary scrutiny is that although one hears that Parliament has powers… the background against which it is being asked to approve legislation means that if it votes against that legislation, the sunset clause will apply and regulations disappear completely, rather weakening Parliament's ability to do anything."—[*Official Report, Retained EU Law Public Bill Committee,* 8 November 2022; c. 32, Q61.]

2.15 pm

Amendments 50 and 51 seek to avoid that situation by obliging the Secretary of State to deliver both a written and an oral statement, as well as an impact assessment, before exercising any powers to repeal any legislation. How many times over the course of the first two sittings of this Committee did hon. Members raise concerns that, even now, just 13 months out from the date of revocation, the Government are still finding pieces of EU-related legislation? Indeed, 1,400 have been found in the last couple of weeks alone.

There is an almost terrifying inevitability that, in their desire to pile on the bonfire anything and everything that is remotely related to the European Union, mistakes will be made, things will be missed, consequences not thought through and impacts not understood. With the utterly reckless haste of the Government, that is going to happen. Amendment 50 would put a brake on that ideological runaway train, and force the Secretary of State to deliver both a written and an oral statement, as well as an impact assessment.

Amendment 51 should not be problematic to the Government given how much we have been told in the last 24 hours how valued and important Scotland is to this Union. If that is the case, make us an equal partner and let us decide when we want to use legislation to remove laws—and extend the courtesy of affirmative procedure to those other valued and equal partners in the Parliaments in Belfast and Cardiff too—before anything can be scrapped.

**Ms Ghani:** I ask hon. Members to reject the amendment. Clause 10 ensures that appropriate parliamentary scrutiny is applied to the use of existing delegated powers when they are used to amend retained direct EU legislation or section 4 of the European Union (Withdrawal) Act 2018 rights. It is this Government's view that the appropriate procedure applied when amending retained direct EU legislation should be the same as the procedure applied to domestic secondary legislation. Any additional procedure, such as that proposed by the hon. Member, would be disproportionate given the type of legislation retained direct EU legislation is composed of.

It would be wholly inappropriate if, for example, updating individual provisions adding cheese and honey to the simplified active substance list required the approval of both Houses of Parliament, the Scottish Parliament and the Welsh Parliament. Making it easier to use pre-existing powers to amend assimilated retained direct EU legislation, while ensuring it receives the most suitable level of parliamentary scrutiny, will ensure our regulations can be kept up to date, supporting growth across the whole UK.

**Peter Grant:** The Minister referred to domestic secondary legislation. Does she not understand that if a piece of secondary legislation relates exclusively to, for example, a devolved power of Senedd Cymru, as far as this place

is concerned that is not domestic law—it is somebody else's domestic law—and this Parliament should keep out of it?

**Ms Ghani:** I think we have covered the point of domestic law, law in Westminster and the role of Attorneys General. At the moment, we are forced to treat some retained direct EU legislation as equivalent to an Act of Parliament when amending it. It is no longer appropriate for retained direct EU legislation to keep the status of primary legislation when most of it has not had anywhere close to the same level of UK parliamentary scrutiny. I therefore ask the hon. Member for Argyll and Bute to withdraw the amendment.

**Brendan O'Hara:** I will withdraw the amendment, but it is something that we will return to on Report. This is an Executive power grab; it is a weakening of the role and influence of Members of Parliament in favour of the Executive. It is intolerable, and I hope that, when we do get to discuss it on Report, we will have the combined support of the Opposition. This is a dangerous road that we do not want to go down, and something we should avoid at all costs. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed*, That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to debate that schedule 1 be the First schedule to the Bill.

**Ms Ghani:** Hon. Members are already aware that clause 10 modifies powers contained in other statutes that can be exercised to make secondary legislation amending former directly effective EU law. Schedule 1 makes related amendments with similar effect to alter the procedural requirements in relation to other powers to amend retained direct principal EU legislation in line with the changes made in clause 10 to schedule 8 of the European Union (Withdrawal) Act 2018. Schedule 1 also contains amendments that are consequential on the changes to the EU withdrawal Act in clause 10. I commend the clause to the Committee.

*Question put and agreed to.*

*Clause 10 accordingly ordered to stand part of the Bill.*

*Schedule 1 agreed to.*

## Clause 11

### Procedural requirements

**Justin Madders:** I beg to move amendment 81, in clause 11, page 13, line 26, leave out subsections (1) and (2).

*This amendment removes the subsections that omit and replace paragraphs 13, 14, and 15 from the European Withdrawal Act 2018, and thereby leaves intact the existing scrutiny procedure for instruments which amend or revoke subordinate legislation made under s2(2) of the ECA 1972.*

Good afternoon, Sir George. In essence, the amendment would remove the subsections that omit and replace paragraphs 13, 14 and 15 of schedule 8 to the EU withdrawal Act and leave intact the scrutiny procedure inserted for instruments that amend or revoke subordinate legislation made under the European Communities Act 1972.

If Ministers wish to revoke retained EU law, they are currently subject to what I would consider to be an appropriate level of parliamentary scrutiny, with mandatory explanatory statements, mandatory periods of prior parliamentary scrutiny and the mandatory use of draft affirmative procedures. Those enhanced provisions were inserted during the passage of the EU withdrawal Act in 2018 because Parliament considered such enhanced scrutiny necessary and proportionate, given the vast and varied nature of retained EU law and the potential impact of changes that we have debated at length over the past few days. We are talking about important environmental rights, workers' rights and consumer rights. As we can see from the submissions made to the Committee, it appears that social media platforms are also at risk of being inadvertently switched off as a result of the Bill. We therefore think that this enhanced scrutiny is required.

I gather that the Government's response as to why the requirements from the EU withdrawal Act can be watered down is that they believe those procedures have brought no tangible benefit. However, it is difficult to see what the rationale is for reducing the level of scrutiny when Parliament as a whole obviously thought that they were important enough to place in the Act just a few years ago. Could the Minister set out why she considers that a lower level is now appropriate?

I hear what the Hansard Society said about these procedures not having been used extensively thus far, but we are, of course, talking about something of an entirely different order to what we have seen to date. The procedures have mainly been used to maintain the status quo, but we are on a different and possibly uncertain trajectory now. It is clear from the Government's refusal to accept any of our amendments to protect any pieces of regulation that there are going to be dramatic changes as a result of the Bill. Removing the requirement for the affirmative procedure will, once again, see a significant erosion of Parliament's ability to scrutinise and hold Ministers to account when they amend the law. Why should parliamentarians not have greater involvement in the process set out in the Bill?

I have said this a number of times, but we really should aim to do better in the Bill. We should ensure that we are confident that, when changes are made, both Houses are able to scrutinise Ministers' decisions. We will probably be presented, yet again, with arguments as to why we do not need such levels of scrutiny because these laws were foisted on us against our will in the first place, but that is essentially a way of saying that two wrongs make a right. I do not accept that. As I explained extensively on Tuesday, there has been a great deal of involvement on the part of UK politicians and representatives in the development of EU laws. I just do not accept the characterisation of these laws as having been foisted on us as correct.

I am not going to rehash all the arguments at the length I did the other day. I merely reaffirm that scrutiny is important, and when we, as parliamentarians, are faced with such a ministerial power grab, we should be concerned about trying to restrain it in some way. That is what this amendment seeks to do.

**The Chair:** I call the Minister.

**Stella Creasy** (Walthamstow) (Lab/Co-op): *rose—*

**The Chair:** Sorry, I call Stella Creasy.

**Stella Creasy:** Apologies, Sir George, I was waiting for an affirmative action—in the same way I am waiting for an affirmative version of scrutiny from this legislation.

I rise to support amendment 81 because it is the nub of the issue, isn't it? This is exactly what taking back control was supposed to be all about. It was about giving this place the powers that it was claimed had been cruelly taken from us by being part of the European Union. It is a while now, if we are honest, since we had the Brexit debates, but I do not recall a single leaflet that said, "Taking back control to Downing Street. Taking back control to a civil service office that would advise a Minister to pass an SI." Yet, that is exactly what this piece of legislation will do on thousands and thousands of laws that our constituents care about because they have depended on them existing for generations.

I totally understand the challenge for Government MPs. Whether they were elected in 2019 or before, their experience of this Government has been of stability—of confidence in every decision and every piece of legislation that has been introduced. So they have never felt the need to question things or to have a mechanism whereby they could have a voice. What I often hear them loudly saying is, "In Downing Street we trust"—

**Justin Madders:** Whoever is in it this week.

**Stella Creasy:** Whoever is in it at any point—this week, next week, come what may.

The point is that parliamentary scrutiny is not a bad thing. Those of us who are democrats think it is quite a good and healthy thing.

**Paul Blomfield** (Sheffield Central) (Lab): My hon. Friend is making a powerful point. Does she recognise the way this procedure contrasts with the way these laws were originally made? Obviously, under the co-decision making in the European Union, laws are not made only by the Commission, which is characterised as the bureaucrats. They can be passed only with the active engagement and approval of the Council of Ministers, consisting of elected representatives from each member state, and the European Parliament, consisting of directly elected Members. Does it not appear that, when Government Members talk about taking back control, the democratic deficit that they once spoke of, pointing their fingers at Brussels, will now be pointed out here?

**Stella Creasy:** My hon. Friend has alighted on the fundamental challenge here. Obviously, it is a case of Council of Ministers—bad; individual Minister—no problem whatever. That seems to be what this Bill is doing and the process that MPs are setting up. As somebody who is hopeful that—not too long from now—Labour Members will be sitting on the Government side of this room, I still think it is a good idea for Back-Bench MPs to be able to raise questions, to table amendments and to have a voice. I thought taking back control was very much about saying that we did not trust Ministers when they joined a Council, but we did trust them when they had to face parliamentary scrutiny and to be in front of MPs who could ask them questions—difficult or otherwise, approved by the Whips or not. I know that my Whip, my hon. Friend the Member for North Tyneside, will catch my eye at this point. Amendment 81 would restore the scrutiny powers that we all agreed to in the EU withdrawal Act in the end and that were part of a process of giving people in this place more opportunity to influence what would happen next.

There is a practical challenge here. If we have all accepted that we do not even know which laws will be covered, because the dashboard will not be updated until next year, will all of us on this Committee be completely confident when a constituent comes to us and says, "You did X, but your Parliament did Y. Tell me the reason for that. Did you vote for that? Where were you when laws were passed that led to Facebook stopping working in the UK? Where were you when laws were passed that led to pension protections being deleted? What did you say? Did you vote for it? How did you represent me in that process?"—and answer there comes none, because the powers were entirely with Ministers, and the power of scrutiny, which MPs in this place could have saved and given to colleagues, was abandoned?

2.30 pm

It is very concerning to see the Government try to delete paragraph 15, which simply requires them to explain why they thought it was necessary to revoke a piece of legislation. I return to the discussion we had on Tuesday about the Bauer and Hampshire judgments. Some might argue that, because one of those judgments went against the Government, judgments about pension protections were no longer required, but making the Government explain why they have chosen not to retain a piece of legislation that has been part of our pension protections for a number of years does not seem unreasonable. This is the sort of issue that our constituents might well raise if they are directly affected by it. If we multiply that by 4,000, we have 4,000 questions about why we chose to revoke laws.

Paragraph 15 simply asks the Government to set out why. Are we in a place now where Ministers are so worried about being held to account that they cannot even tell us why they are not doing things, let alone why they are doing things? It is one thing to come up with alternative legislation, but given that the Bill will give Ministers powers to change laws by not bringing forward legislation, it is entirely reasonable, in a parliamentary democracy, to ask them to account for why they are not doing things, as well as for why they are.

Government Members may have complete faith and confidence in the ability of current Ministers to make good decisions, and if those Ministers no longer wish to have a piece of legislation, Government Members will not need to question that. If they are confident about that 4,000 times and rising and confident about laws that they do not even know will be affected, so be it. But if they are not—if there is one scintilla of doubt about the fact that their constituents might want them to at least ask a question or seek clarification—the amendment is the mechanism that would allow that to happen. Members—on both sides of the House—give up these controls and parliamentary mechanisms at our peril. Just as courts keep Governments honest, parliamentary scrutiny keeps MPs on their toes, and that can only be a good thing.

**Peter Grant:** I stand to speak in favour of the amendment, although, at best, all it seeks to do is take an entirely unacceptable clause and make it slightly less unacceptable. Clause 11 is about a Henry VIII power; it is about removing protections for this House that were, ironically, forced on the Government by Members of the other House. I am not a great fan of unelected legislatures anywhere—I certainly do not want my country even partly ruled by one—but I have to say to Conservative Members that when the House of Lords is keener on protecting the rights of this House than Government Back-Bench and Front-Bench Members are, the Government really do need to look at themselves in the mirror and ask themselves: are we a democratic Government or are we not?

I support the limited improvements to the clause, but if the amendment falls, I will seek to divide the Committee to exclude clause 11 in its entirety.

**Ms Ghani:** I ask hon. Members to reject the amendment. Unless I was in a different Committee Room, or on a different planet, I think Opposition Members have had every opportunity to raise their voices, because we have heard much from them today and on Tuesday, and we have had much scrutiny as well. Our constituents know exactly what we are doing because it is all noted in *Hansard.*

The amendment would render clause 11 without purpose. Subsections (1) and (2) ensure the removal of additional parliamentary scrutiny requirements, established in the EU withdrawal Act, in relation to the amendment or revocation of secondary legislation made under section 2(2) of the European Communities Act 1972. Subsections (1) and (2) will ensure that when secondary legislation made under section 2(2) ECA is being amended or revoked using other delegated powers, the only parliamentary scrutiny requirements that will apply are those attached to the power being used. These delegated powers have their own parliamentary scrutiny procedure attached, which has been approved by Parliament, ensuring suitable scrutiny will continue to occur.

It is imperative that additional scrutiny requirements are removed, because it is clearly inappropriate that legislation created solely to implement our obligations as a member of the EU enjoys this privileged status. What is more, no tangible benefit has been identified as a result of these scrutiny requirements; as was mentioned, that was referenced in the evidence session by Dr Ruth Fox of the Hansard Society. In practice, they add a layer of complexity that makes it difficult to make amendments to legislation containing section 2(2) ECA provisions.

Removing these requirements reflects the main purpose of this Bill, which is to take a new approach to retained EU law, removing the precedence given in UK law to law derived from the EU that is no longer considered fit for purpose.

**Brendan O'Hara:** The Minister said that we get our voices heard, including in this Committee, and that may well be true for the Government, the official Opposition and SNP members. However, we have heard a lot today about Northern Ireland. When is the voice of the Democratic Unionist party and the Social Democratic and Labour party going to be heard? We have heard a lot about the environment, but where is the voice of the Greens? Where is the voice of Plaid Cymru? Where is the voice of the Liberal Democrats? They will not be heard in a Delegated Legislation Committee. We are not talking about the voice of Parliament, but the voice of a DL Committee, which is very restricted.

**Ms Ghani:** The hon. Member is not being wholly honest. The level of scrutiny of any piece of legislation, not only in Committee but on the Floor of this House and the Floor of the other place, takes place for all items of legislation.

The hon. Member will be well aware of the evidence session we had just a few weeks ago, when we had a number of people from environmental agencies who previously had Green credentials or who were previously Green or Lib Dem candidates. So it is not as if those voices are not heard.

**Peter Grant** *rose—*

**Brendan O'Hara** *rose—*

**Ms Ghani:** I therefore ask the hon. Member for Ellesmere Port and Neston to withdraw his amendment.

**Brendan O'Hara** *rose—*

**The Chair:** I know you were trying to intervene. Do you want to make a speech?

**Brendan O'Hara:** No, I was trying to intervene on the Minister.

**The Chair:** I call Justin Madders.

**Justin Madders:** I think the irony is noted: the Minister says that everyone has their opportunity to speak and then does not give way to interventions.

**Dr Luke Evans** (Bosworth) (Con): On a point of order, Sir George. I think it is fair to say that the Minister has given way numerous times. It is a little churlish to suggest that she has not, and I would like *Hansard* to observe that.

**The Chair:** As the hon. Gentleman well knows, it is not up to me to decide whether a Minister, or anyone else, should give way during a speech. So, strictly speaking, it is not a point of order, but the hon. Gentleman has made his point.

**Justin Madders:** The convention is of course that Ministers give way when asked to in Bill Committee, because that is the point of a Bill Committee—that we have the opportunity to scrutinise legislation and question the Minister on its intent. I think the record will show that that has not been possible on every occasion.

That is why this amendment is so important, because the Government are obsessed with keeping power for themselves. The idea that the decision to leave the EU was about taking back control was not about the people of this country; it was about Ministers in Parliament making decisions that they do not have to address the elected representatives of this country on and that they do not have to justify. They are hiding away from proper accountability. That is not what taking back control is about.

*[Justin Madders]*

My hon. Friend the Member for Walthamstow said it is clear that Government Members have no scintilla of doubt about the intentions of the Government and are confident that nothing untoward will happen. Well, if the last scintilla of doubt has ridden out of town for them, it is certainly very much in the high street for us, because we are concerned about the Government's intentions. We have plenty of reasons to be concerned that they will not maintain laws that we want maintained and that our constituents expect to see maintained. So we want to push this amendment to a vote.

**Stella Creasy:** Does my hon. Friend agree that it is quite worrying that the Minister is conflating scrutiny of the Bill, and Opposition Members raising concerns about the process set out in it, with scrutiny of the subsequent statutory instruments that will be laid by Ministers under the Bill to address the 4,000 pieces of legislation that will be deleted by it? The Committee is scrutinising the Bill itself, not its impact. That the two are being conflated—the idea being that no further scrutiny should be required—is troubling. We do not know what impact the Bill will have, only the powers that it asks for. Does my hon. Friend agree that separating out those two things is important in taking back control?

**Justin Madders:** I agree, and I hope that by the time the Bill reaches its conclusion we have clearer answers on how Parliament will be able to properly scrutinise many of the powers that the Government are awarding themselves in the Bill. I will press the amendment to a vote.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 8.

**Division No. 8]**

**AYES**

Blomfield, Paul
Creasy, Stella
Glindon, Mary
Grant, Peter
Madders, Justin
O'Hara, Brendan
Sobel, Alex

**NOES**

Bacon, Gareth
Bhatti, Saqib
Evans, Dr Luke
Fysh, Mr Marcus
Ghani, Ms Nusrat
Jones, rh Mr David
Morrissey, Joy
Nici, Lia

*Question accordingly negatived.*

*Question proposed,* That the clause stand part of the Bill.

**Peter Grant:** I oppose the inclusion of clause 11, as I indicated earlier. I will give the Minister credit and assume that she just got confused. She has attempted to justify removing the requirement for full parliamentary consideration of a Bill to revoke European legislation and turning it all into secondary legislation. Not content with insisting on a sunset clause that means that if that secondary legislation does not get approved, nothing gets approved, she then attempted to justify removing the requirement to use the affirmative process for the vast majority of that legislation and instead use the negative process, which we all know is an even weaker form of parliamentary scrutiny. She completely missed the point. In fact, I think she confused the status of a Public Bill Committee such as this with that of a Delegated Legislation Committee, which she thinks is an adequate way for some of these important regulations to be considered.

The reason this Public Bill Committee exists is that the legislation was approved—not unanimously, by any means—by the House of Commons. The only requirement that anybody had to speak and vote on Second Reading was that the people of their constituency chose them to represent them in Parliament. Every member of the Committee is here because our party Whips chose to put us here. We were not elected to it by our people. We had to be elected to be in the Chamber of the House of Commons, but it is the Whips who decided who got to serve on this Committee. As my hon. Friend the Member for Argyll and Bute has said, Northern Ireland Members never get the opportunity to have their voice heard on a Delegated Legislation Committee, though they do have a voice on Second and Third Reading. There is also no automatic right for Wales to be represented. Wales is represented in this place by four political parties, but there is only one voice from Wales on this Committee. That did not have to happen; the Whips could easily have put someone else on it instead.

2.45 pm

Only one of the many parties in this House from Scotland is represented on the Committee. As the other parties keep reminding us, the SNP speaks for a significant number of people in Scotland but not for the whole country. There are Lib Dem and Conservative MPs and one Labour MP from Scotland who for speak for their people, as well.

The process that the Minister and her party claim is adequate is a very weak process. At one point she suggested—unintentionally, I think—that legislation does get properly scrutinised and that is what this Public Bill Committee is about. But that is the core point, is it not? If these changes were being made through secondary legislation, there would be no Public Bill Committee and no opportunity to amend the provisions. That is another crucial difference, especially when looking at tonnes of complex legislation.

In a Delegated Legislation Committee, the choice is to take it or leave it. There is no process by which any Member of Parliament can amend delegated legislation once it is brought to Committee. Even if 649 out of 650 Members of Parliament decided on the day that they wanted to amend it, they would not be allowed to that. All we can do is vote down such legislation and pray to God that the Government have the time and inclination to bring a better version back.

And then we have December 2023 hanging over us like the sword of Damocles. It would be a very high-risk strategy indeed for any DL Committee to vote down any of the legislation that the Government intend to bring forward under this Bill, because there would then be a very high risk that inadequate, insufficient protective legislation would be replaced by nothing whatsoever. That is what is at stake here. It is not just a matter of semantics as to which kind of Committee decides these things in a Committee Room of the House of Commons.

If we are talking about bringing back control to Parliament, Parliament does not have full control over consideration of statutory instruments. That is, first of all, the reserve of the Government. Such scrutiny as takes place is inevitably restricted to a very small number of Members of Parliament, representing a relatively small number of the political parties represented in this place. As I say, an entire nation of the United Kingdom will never get to be represented on a DL Committee, even if the legislation almost exclusively relates to that nation of the UK. It is not an acceptable way for major legislation to be introduced and considered, and it is certainly not an acceptable way for major legislation to be approved.

**Dr Evans:** If Scotland were to be independent and part of the EU, the European Council uses majority voting so members have to like or lump whatever they are given at the end of the vote. At the end of the day, someone has to make a decision and Government have to decide. How would that fit if Scotland were independent?

**Peter Grant:** I cannot speak about what decisions the Scottish Parliament will take after we are independent, but I look forward to seeing that day before any of us are very much older. I am confident that it is a modern, democratic Parliament with much improved scrutiny procedures. For example, in the Scottish Parliament it would have been impossible for us to have two changes of Prime Minister without the explicit approval of the Parliament. Nobody can become a Minister of the Scottish Government without being approved by the Scottish Parliament. There is much greater parliamentary accountability for the Executive than there is ever going to be here.

My confident expectation is that when an independent Scotland goes back into the European Union, the Scottish Parliament will have a much greater role in scrutinising the actions of our Ministers, acting on our behalf, at the European Council than this Parliament has ever had. As I have said to the Committee before, the problem with lack of accountability and scrutiny of European legislation is not because the European Union's processes are flawed, but because parliamentary accountability in this place is fundamentally flawed.

If I intended to be part of this establishment for much longer, I would be attempting to improve its processes in order to bring it into line with proper democratic Parliaments, such as the one in Scotland. Given that neither I nor any of my colleagues from Scotland are likely to be here for very much longer, I will have to leave it to those who remain to sort out the mess of a Parliament that they have created.

**Ms Ghani:** Our objective is not to remove power from Parliament. Our objective is to ensure that amendments or revocations made to subordinate legislation made under other existing powers receive the most appropriate level of parliamentary scrutiny. Fundamentally, people need to accept the Brexit vote and appreciate that we have to have sovereignty here. I do not think we are going to win that argument—we are too far apart.

When the European Union (Withdrawal Agreement) Act 2020 was agreed, additional parliamentary scrutiny requirements were agreed in relation to the amendment or revocation of secondary legislation made under section 2(2) of the European Communities Act 1972. It is clearly inappropriate that legislation created solely to implement our obligations as a member of the EU enjoys that privileged status. We therefore seek to remove those requirements. This reflects the main purpose of the Bill—removing the precedence given in UK law to EU-derived law—which is no longer fit for purpose now that the UK has left the EU. I recommend that the clause stand part of the Bill.

*Question put,* That the clause stand part of the Bill.

*The Committee divided:* Ayes 8, Noes 7.

**Division No. 9]**

**AYES**

Bacon, Gareth
Bhatti, Saqib
Evans, Dr Luke
Fysh, Mr Marcus
Ghani, Ms Nusrat
Jones, rh Mr David
Morrissey, Joy
Nici, Lia

**NOES**

Blomfield, Paul
Creasy, Stella
Glindon, Mary
Grant, Peter
Madders, Justin
O'Hara, Brendan
Sobel, Alex

*Question accordingly agreed to.*

*Clause 11 ordered to stand part of the Bill.*

**Clause 12**

POWER TO RESTATE RETAINED EU LAW

**Brendan O'Hara:** I beg to move amendment 53, in clause 12, page 15, line 1, leave out subsection (3).

**The Chair:** With this it will be convenient to discuss the following:

Government amendments 8 and 9.

Amendment 54, in clause 12, page 15, line 13, leave out subsection (7).

Clause stand part.

Government amendments 10 to 13.

Clause 13 stand part.

**Brendan O'Hara:** I will speak to amendments 53 and 54 on behalf of myself and my hon. Friend the Member for Glenrothes. Members will be aware that clause 12 is about the mechanism that will allow UK Government Ministers, or Ministers in the devolved Administrations, to restate or protect current retained EU law so that it does not fall away automatically at the end of 2023.

Thanks to the insidious Internal Market Act 2020, there is, as with so much of this Bill, huge confusion about which areas are devolved and which areas remained reserved. That problem was recognised by Charles Whitmore from the school of law and politics at Cardiff University when he gave evidence. He highlighted the issues surrounding restatement powers, particularly for the devolved Governments, taking into account the role of the Internal Market Act. He told the Committee:

*[Brendan O'Hara]*

"If you start thinking about the different uses that might be made of the restatement powers, and which parts of the UK might take different approaches to supremacy and the general principles, the level of uncertainty really does start to get quite extreme."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 85, Q141.]

Of course, Mr Whitmore was absolutely right to make that assessment, but it is just one of multiple problems with the clause, because it allows Ministers the freedom to decide exactly how much EU law they want to restate or protect. It lets the Government view the existing statute book as something of a smörgåsbord, whereby they can pick and choose which parts of the law they wish to keep and which parts, simply by their inaction, they will allow to disappear in December next year. For example, they could brazenly announce that they have decided to protect workers' rights by restating them, when in reality they will have saved only the bare minimum of regulations—the ones that suit them, rather than the whole suite of laws that combine together to provide what we currently understand to be workers' rights.

Another huge problem with the clause—indeed, it is a problem that runs throughout the Bill like the writing through a stick of rock—is that it has yet another one of those self-imposed, utterly unachievable and ideologically driven sunset clauses. It is no surprise that the clause has been criticised by the Law Society of Scotland's Michael Clancy, who warned in his evidence to the Committee that there was a real danger that the restatement provisions contained in the clause could create further uncertainty. He said:

"There is also a lack of clarity about what comes afterwards. It will be difficult for citizens and businesses to deal with even the provisions about replacement, restatement and the creation of the new category of assimilated law in a short—apparently very compressed—period of time, and without the adequate consultation that one would expect when this sort of law is changed."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 84, Q141.]

Clause 12(3) declares that should a piece of legislation be restated and an extension be granted beyond December 2023, the legislation cannot be regarded as retained EU law. That appears particularly petty, if not vindicative, and it reflects the almost irrational hatred and loathing of anything connected to the European Union, however loosely. Our amendment 53 would remove subsection (3), meaning that the retained EU laws that the UK, Scottish, Welsh or Northern Irish Governments wish to restate will still be what they are: retained EU law.

Amendment 54 would remove the arbitrary deadline of 31 December 2023 proposed in subsection (7). As we have heard numerous times, that impossibly tight deadline is only there for narrow ideological reasons and is a disaster waiting to happen. Amendment 54 would remove the dangerous cliff edge by deleting subsection (7) entirely.

As we have said throughout, we will help to improve the Bill, which is a truly awful piece of legislation, wherever we can, and that is what amendments 53 and 54 are designed to do. We want to make the Bill a little less damaging to the statute book and, more importantly, to those whose lives and livelihoods depend on there being robust law and regulation in place.

**Ms Ghani:** The overarching aim of the Bill is to define retained EU law as a legal category, and the power to restate such law must be viewed with that in mind. The hon. Member for Argyll and Bute said that he wants to help the process, even though he is fundamentally trying to block it. The power to restate has been designed to allow the Government to restate domestic law where it is considered appropriate for the UK in a post-Brexit setting. However, the resulting legislation will no longer be retained EU law, as subsection (3) makes clear. The restated legislation will be ordinary domestic UK legislation that is subject to traditional domestic rules of interpretation. In particular, the supremacy of EU law will no longer apply, and section 4 rights and the general principles of EU law will cease to be read into the legislation.

**Peter Grant:** Will the Minister give way?

**Ms Ghani:** If I can make a bit of progress, I will give way later.

The power will enable the Government to clarify, consolidate, codify and restate REUL to preserve the effect of the current law, while removing it from the category of REUL. It will be used selectively and is not a way to simply continue the broad concepts of EU law. Retained EU law was never intended to sit on the statute book indefinitely, although I believe that hon. Members wish it did. It is both constitutionally anomalous and politically challenging. Subsection (3) is therefore a crucial part of clause 12, and is necessary to ensure that the Government can deliver on the overarching aims of the Bill.

3 pm

Let me turn to amendment 54. The power in this clause will expire at the end of 2023, with good reason. The Bill will sunset the majority of retained EU law, so that it expires on 31 December 2023. Following that date, all retained EU law will have either sunsetted or been preserved and assimilated into the domestic statute book. It is therefore entirely appropriate that the power to restate REUL should expire at the same time as the sunset of retained EU law. Following that date, there will no longer be any secondary REUL for this power to operate on. The power in this clause will give way to the power outlined in clause 13, which will allow for the similar restatement of assimilated law up until 23 June 2026.

**Peter Grant:** Can the Minister explain the difference between restating and amending? At what point does a restatement of a piece of legislation become either an amendment or a completely new piece of legislation? Who will be the arbiter of that? Will the courts decide?

**Ms Ghani:** I did not hear the end of that question, but each Department will be in charge of the Bills in its portfolio. We have the Brexit opportunities department helping as well. I have already mentioned the processes in place to ensure that scrutiny happens, and how Ministers will work to ensure that we assimilate, amend or update.

**Peter Grant:** I am sorry if the Minister did not understand my question. I am talking not about the political, democratic scrutiny, but about the legal interpretation of restated legislation, which will fall to

the courts. My question is: who decides whether what has been done under clause 12 is simply a restatement of EU retained law or an amendment to law, which requires a different process?

**Ms Ghani:** I hope I am not failing to understand the question. As I mentioned, each of the REUL Bills is assigned to a Department, and it will be for the Ministers responsible for the REUL Bill to make a decision on whether they need to assimilate, repeal or update.

I ask the hon. Member for Argyll and Bute to withdraw his amendment. I ask the Committee to accept the Government amendments. They are simple clarificatory amendments that ensure that the restatement powers in clauses 12 to 14 cannot be used to bring back EU law concepts, such as the principle of supremacy, or general principles that the Bill aims to sunset.

**Brendan O'Hara:** The Minister is right. As we have said from day one, we oppose the Bill, but if it has to pass—history and the numbers in the room tell us that it will pass—it will do so without our support. As we have said, we have a duty not to ignore the most egregious parts of this legislation. Where we think that it will hurt people, affect businesses or leave holes in the statute book, or is ideologically driven folly, we will oppose it, and point out the problems to the Government, so that, as my hon. Friend the Member for Glenrothes said, there cannot come a time when the Government say, "We didn't know. Nobody told us this was happening." Our role here is to oppose every step of the way, but also point out in as much detail and with as much clarity as we can where this dreadful piece of legislation is almost inevitably headed. We will pick the matter up, I am sure, on Report, but I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Amendments made*: 8, in clause 12, page 15, line 2, leave out "legislation" and insert "the thing".

*This amendment provides that effects produced by virtue of the retained EU law referred to in subsection (5) do not apply in relation to anything that is codified.*

Amendment 9, in clause 12, page 15, line 10, leave out "of legislation".—*(Ms Ghani.)*

*This amendment enables regulations to produce, in relation to anything that is codified, an effect equivalent to an effect mentioned in subsection (4).*

*Clause 12, as amended, ordered to stand part of the Bill.*

## Clause 13

POWER TO RESTATE ASSIMILATED LAW OR REPRODUCE SUNSETTED RETAINED EU RIGHTS, POWERS, LIABILITIES ETC

*Amendments made:* 10, in clause 13, page 15, line 29, leave out "legislation" and insert "thing".

*This amendment provides that effects produced by virtue of the retained EU law referred to in subsection (4) do not apply in relation to anything that is codified.*

Amendment 11, in clause 13, page 15, line 33, leave out "of legislation".

*This amendment enables regulations to produce, in relation to anything that is codified, an effect equivalent to an effect mentioned in subsection (4).*

Amendment 12, in clause 13, page 15, line 36, leave out "of legislation".

*This amendment enables regulations to produce, in relation to anything that is codified, an effect equivalent to an effect mentioned in subsection (7).*

Amendment 13, in clause 13, page 15, line 40, leave out "legislation" and insert "thing".—*(Ms Ghani.)*

*This amendment enables regulations to produce, in relation to anything that is codified, an effect equivalent to an effect mentioned in subsection (7).*

*Clause 13, as amended, ordered to stand part of the Bill*

## Clause 14

POWERS TO RESTATE OR REPRODUCE: GENERAL

**Alex Sobel:** I beg to move amendment 82, in clause 14, page 16, line 18, at end insert—

"(1A) No regulations may be made under section 12 or 13 unless all the following conditions have been satisfied.

(1B) The first condition is that the relevant national authority has consulted on a draft of the regulations with organisations and persons representative of interests substantially affected by, or with expertise in the likely legal effect of, those regulations.

(1C) The second condition is that, after that consultation has concluded, the relevant national authority has laid a report before each House of Parliament (or, as the case may be, the Scottish Parliament, Senedd Cymru, or the Northern Ireland Assembly) setting out—

(a) the authority's view as to whether the proposed regulations make any change in the rights of and protections for consumers, workers, and businesses, and protections of the environment and animal welfare, and the reasons for that view;

(b) whether in making the regulations the national authority has considered using its discretion under section 12(6), section 13(6), or subsection (2), (3) or (4) of this section, and if so, the reason why it does or does not intend to exercise that discretion.

(1D) The third condition is that a period of sixty days has passed since that report was laid, with no account to be taken of any time during which Parliament (or, as the case may be, the Scottish Parliament, Senedd Cymru, or the Northern Ireland Assembly) is dissolved or prorogued or during which it was adjourned for more than four days, and where they were laid before Parliament, paragraph 8(11)(a) of Schedule 3 shall apply in determining the commencement of that period."

*This amendment requires the national authority to consult on a draft text of "restatement" regulations, and to set out its reasoning on the choices made when drafting those regulations to Parliament or the relevant devolved legislature.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 83, in clause 14, page 16, line 26, at end insert—

"(3A) A restatement may not be made unless such consultation with relevant stakeholders as the relevant national authority considers appropriate has taken place on whether the conditions set out in subsection (3) are met."

*This amendment ensures that relevant stakeholders are consulted to ensure that the conditions for the exercise of the power to restate set under clause 14(3) are met.*

Government amendment 14.

Amendment 56, in clause 14, page 16, line 32, leave out subsection (5).

Government amendment 15.

Amendment 55, in clause 14, page 17, line 2, at end insert—

"(9) Regulations under section 12 or 13 may not be made unless the relevant national authority has consulted all parties that authority considers relevant."

Clause stand part.

**Alex Sobel:** Our amendments 82 and 83 require the national authority to consult on a draft text of restatement regulations, and to set out to Parliament or the relevant devolved legislature its reasoning on the choices made when drafting the regulations. I am sure the Minister will want to earnestly reassure us that national authorities are bound to consider those decisions carefully. It follows that she should readily accept that their reasoning should be published.

On consultation, the Bar Council's written evidence refers to clauses 12 to 15 and schedule 3 granting Ministers enormous power to legislate at will to replace or update retained EU law, without any requirement to consult anyone, on matters of enormous importance to business, consumers, employees and the environment. There is no requirement for any parliamentary vote; there will be only the minimal scrutiny afforded by the affirmative procedure.

Furthermore, Parliament may well be confronted with Hobson's choice: either agree in full to unsatisfactory replacements for retained EU law, or vote out the whole lot. As a result, as we heard earlier, fundamental rights such as paid bank holidays or environmental protections to stop air or water pollution could simply disappear completely, perhaps through mistake or oversight, with little or no opportunity for public debate.

We agree with the Bar Council that important changes to our law should be made by Parliament after proper consultation, public debate, and scrutiny, not by ministerial fiat. The rushed and uncertain process for replacement or removal of REUL and the deliberate creation of legal uncertainty will seriously damage the UK's hard-won reputation for regulatory stability, predictability, and competence, on which growth-promoting investment in critical sectors of our economy depend.

The Bar Council points out that the complete absence of any requirement to consult those affected by the exercise or non-exercise of Ministers' powers under the Bill is incomprehensible, given that we are talking about often complex legislation, and that errors or omissions can have serious adverse consequences for business as well as consumers, workers and others. Businesses can have no confidence that they will have any ability to comment on or influence, or even any prior notice of, legislation that can profoundly affect them—a gap that, in the Bar Council's view, which we share, would be a serious deterrent to investment.

**The Chair:** I call—*[Interruption.]* Oh, the hon. Member for Yeovil is leaving.

**Stella Creasy:** I have a horrible feeling that it is because of something I am about to say. I rise to support amendment 82. To go back to the theme of this afternoon, if we are taking back control, then surely control should rest with this place. That means that this place needs the relevant information and powers to do its job. Amendment 82 would require consultation on any restatement of retained EU law, including on whether it affects rights and protections.

The right hon. Member for Clwyd West will find that amendment 82 finally satisfies his concern that we are all scaremongering. If we are scaremongering, it should not be a big deal for Government to restate and confirm that the laws they are replacing will not change any protections; that will reassure those of us who might otherwise trouble vulnerable people.

Amendment 82 does two things. First, it helps with the reality, which is that no Government—shock, horror!—is perfect. No Government get everything right all the time, so sometimes, with the best will in the world, and the best grace in the world, corrections need to be made. We have all sat on Delegated Legislation Committees to do that.

Consultation on draft regulations will help identify minor issues, unintended consequences and drafting errors before a law comes into force; that ensures that it is better legislation before parliamentary time is committed to it. We agreed on Tuesday that this would take 4,000 hours of parliamentary time—267 days, if we sat 24 hours a day. The Minister looks surprised at that; I hope she has done some maths on how we will pass all these SIs before the deadline in the Bill. It will require some parliamentary time, at least.

Consultation can be incredibly helpful. It can identify quirks, and experts come up with points. We might have strong views on workers' rights, but SIs will come up regarding standards, and there are experts out there who spend their lives being obsessed with electrical standards. Surely asking them to double-check what we have written down would be good.

Restatements are subject to less scrutiny, because they should not make substantive changes to regulations. That takes me to my second point, and the more substantive—dare I say it, "conspiracy, rather than cock-up"—moment in all this. It would be simple and straightforward for the Government to affirm that there will be no change in protections or rights if they did not intend to use the powers in the Bill to water down workers' rights; to reduce environmental protections that we all believe are important; or to reduce fundamental consumer protections that resolve knotty problems, such as whether, at this time, when everyone is trying to book a train, we will get compensation from Avanti. We live in hope. Why would the Government not commit to doing that, and reassure us all? All amendment 82 does is hold the Government to the pledges that they are making, and ensure that every single time a piece of legislation is brought before the House, it does what it says on the tin. I have forgotten the name of the company I am thinking of. It is not Dulux; it is the other one—the one that has to do with paving.

**Justin Madders:** Ronseal.

**Stella Creasy:** Ronseal, that's it; I am showing my age. This should be a Ronseal moment—it does what it says on the tin. I have a horrible feeling that the Minister will reject the amendment. I hope that she recognises

that the concern comes in when the Government reject relatively benign proposals, such as the suggestion that they should simply say, "Yep, this legislation is like-for-like; it does not water down protections."

As we saw on Tuesday, the Government have already started to decide, in private, which pieces of EU retained law they will not continue with, so we know that some things will change. Some legislation will fall, and we understand that; the whole point of leaving the European Union was to have the power to reject things. Knowing what will or will not be taken out is surely the epitome of taking back control. Each of us should be able, in our constituency surgeries, when we are inevitably asked about a piece of legislation and its impact, to say, "Ah, yes. Well, that is where this decision came from, and this is what we were told at the time." Parliamentary scrutiny, done well—even done at all—is taking back control, so let us see some of it in this Bill, for a change.

**Peter Grant:** I rise to speak to amendments 55 and 56 in my name and that of my hon. Friend the Member for Argyll and Bute. This is an attempt to, once again, restrict the Executive's power grab and to limit, to some small extent, the extent to which the Government are taking powers away from this Parliament and for themselves. It is an attempt to limit the use of Henry VIII powers.

First, the amendments seek to remove subsection (5) to clause 14. I make no apology for raising this point every time I see such a provision in any legislation. It is a bad idea to allow a Minister of the Crown to change any Act of Parliament that they fancy without having to present a Bill in the House of Commons that amends it. The whole House should need to approve the change, after giving it appropriate consideration, and after every single Member has had a chance to comment on it. Subsection (5) essentially seeks to do that. Interestingly, its text is now fairly standard in Bills featuring the Henry VIII powers that the Government are putting through. At some point, the Government spotted something that worries them. They have discovered a part of an Act of Parliament that they are terrified a Minister could ever change, so they have tabled Government amendment 14 to stop that happening.

3.15 pm

The Government are quite happy for Ministers to be allowed to change any Act of Parliament that protects the rights of workers, environmental rights, or high standards of public safety and animal welfare. That can be entrusted to the Minister. However, they cannot allow a Minister to do anything that might produce a piece of legislation tainted with the smell of the European Union. Government amendment 14—if hon. Members can work their way through the gobbledegook, especially in subsection (4B)—says that the one thing that Ministers cannot do under the Henry VIII powers is anything that might look like it originated in the European Union. It is what we might call the 55 Tufton Street amendment.

The amendment is there because the Government are terrified of the cabal of secret organisations that manage to squeeze into a relatively small amount of space in central London under the guise of think-tanks, when we all know that they are actually very hard right-wing political lobbying organisations. The Government are so much in hock to them that somebody has spotted the danger, or worried about a headline in the *Daily Mail* stating, that secret legislation could take us back into the European Union. That is what amendment 14 is all about. Given all the things that subsection (5) gives Ministers the power to do, why is that the one thing that it is necessary to prevent Ministers from doing? After the last few weeks, we can assure her that even if the official Opposition get elected to Government, they will not do anything like that, because they have become Brexiteers, and are at least as hard-line as the Conservative party, so I am not quite sure why amendment 14 is required anymore.

Amendment 55 recognises that there can be times when the correct or proportionate way to change the law is by secondary legislation, rather than an Act of Parliament. If that is done, there should be a requirement for proper consultation to be carried out. If the Government do not accept the amendment—I know they will not, because that is always the case—they are saying that there are times when consultation should not happen, and times when the Minister knows it all and does not need to consult interested parties, or people with more expertise than them or their advisers. Refusing to accept amendment 55 will be a sign of the Government's arrogance and its willingness to legislate at haste, knowing perfectly well that we will have to repent at leisure.

**Ms Ghani:** The Government recognise the importance of ensuring legislation undergoes appropriate scrutiny and consultation, and I will set that out shortly. However, I ask that hon. Members reject amendments 82, 83, 55 and 56.

It is right that we ensure that any amendments to retained EU law or assimilated law receive appropriate scrutiny and are subject to the proper processes for consultation. That is why we have sought to ensure that the Bill contains robust scrutiny mechanisms, including for the powers to restate under clauses 12 and 13. First, the draft affirmative procedure will be applied where the powers to restate are being used to amend primary legislation. Secondly, the sifting procedure will apply to clauses 12 and 13 for the regulations that are proposed to be made under the negative procedure. The sifting procedure largely corresponds with the sifting procedure under the European Union (Withdrawal) Act 2018, and will provide for additional scrutiny of the legislation being made. Parliament can then scrutinise instruments, subject to sifting, and make active decisions regarding the legislation. It is our expectation that Departments will follow the standard procedures regarding consultation during policy development.

On amendment 56, let me be clear that the powers are not capable of restating any REUL or assimilated law that is primary legislation. Work is already ongoing across Whitehall on a REUL statutory instrument programme, which will continue after the Bill's Royal Assent. The inclusion in the Bill of a consultation requirement for the powers, which is what the amendments seek to achieve, would build further time into the SI programme. That would disempower Departments, hindering their ability to pursue the REUL reform that they judged to be necessary. For the powers to restate in particular, that would delay the opportunity for Departments to use the powers to maintain the existing policy effect of their REUL in cases where that was judged to be necessary, by reproducing certain EU principles of interpretation that will cease to apply after the sunset.

*[Ms Ghani]*

Given that the powers to restate have been designed to enable Departments only to provide for substantially the same policy effect, when that is considered desirable and appropriate for the UK in a post-Brexit setting, the inclusion of a requirement to consult—both on the regulations proposed to be made and the purposes for their use—seems particularly unnecessary. As such, I ask the hon. Member for Leeds North West to withdraw the amendment.

The Government's simple clarificatory amendments will ensure that the restatement powers in clauses 12 to 14 cannot be used to bring back the EU law concepts—such as the principle of supremacy or general principles—that the Bill aims to sunset, in general terms.

**Alex Sobel:** The Minister talked about both an appropriate level of scrutiny and robust scrutiny, but then went on to talk about sifting. We know that there are upwards of 4,000 regulations. That is exactly the concern we have about how much scrutiny there will be across those regulations. The Minister's main objection seemed to be that the provision would create too lengthy a procedure for the SI programme. Our point is that it would otherwise be rushed through within a matter of months, until the 2023 sunset date, without the proper scrutiny. That is why amendments 82 and 83, and the SNP amendments 55 and 56, are necessary. I will press amendment 82 to a Division.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 7.

**Division No. 10]**

**AYES**

| | |
|---|---|
| Creasy, Stella | Madders, Justin |
| Glindon, Mary | O'Hara, Brendan |
| Grant, Peter | Sobel, Alex |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Jones, rh Mr David |
| Bhatti, Saqib | Morrissey, Joy |
| Evans, Dr Luke | |
| Ghani, Ms Nusrat | Nici, Lia |

*Question accordingly negatived.*

*Amendments made:* 14, in clause 14, page 16, line 31, at end insert—

"(4A) Regulations under section 12 or 13 may not codify or reproduce the principle of the supremacy of EU law or a retained general principle of EU law.

(4B) Nothing in subsection (4A)—

(a) prevents regulations under section 12 or 13 from codifying or reproducing, in relation to a particular enactment, an effect equivalent to an effect which is produced, or would but for sections 3 to 5 be produced, in relation to the enactment by virtue of the principle of supremacy of EU law or retained general principles of EU law, or

(b) prevents regulations under section 12 or 13 which codify or reproduce anything which is or was retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 from producing an effect equivalent to an effect which is produced, or would but for sections 3 to 5 be produced, in relation to that thing by virtue of the principle of supremacy of EU law or retained general principles of EU law."

*This amendment and Amendment 15 clarify that the powers under Clauses 12 and 13 may not be used so as to codify or reproduce the principle of supremacy of EU law or a retained general principle of EU law.*

Amendment 15, in clause 14, page 16, line 40, at end insert—

"(7A) In subsections (4A) and (4B) 'retained general principles of EU law' has the same meaning as in section 12 or 13 (as the case may be)."—*(Ms Ghani.)*

*This amendment and Amendment 14 clarify that the powers under Clauses 12 and 13 may not be used so as to codify or reproduce the principle of supremacy of EU law or a retained general principle of EU law.*

**Peter Grant:** Sorry, but have amendments 55 and 56 been disposed of?

**The Chair:** Does the hon. Gentleman want to press those amendments to a vote?

**Peter Grant:** I had intended to press both to a Division, Sir George, but to save time, and given that the Government Whip already has her great big no vote ready to hang up to make sure that Conservative Back Benchers know what they are supposed to do, there is clearly no point. We know the result already, so to save the Committee time, I will not press either amendment.

**The Chair:** I am very grateful to the hon. Gentleman. We would have been in a bit of muddle otherwise.

*Clause 14, as amended, ordered to stand part of the Bill.*

### Clause 15

POWERS TO REVOKE OR REPLACE

**Alex Sobel:** I beg to move amendment 84, in clause 15, page 17, line 30, at end insert—

"(4A) No regulations may be made under this section unless the conditions set out in section [Conditions on the exercise of powers under section 15 and 16] have been complied with."

*This amendment ensures that the powers to revoke or replace would be subject to restrictions as laid out in NC9.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 85, in clause 15, page 17, line 31, leave out subsections (5) and (6).

*This amendment will remove the restriction on the replacement of EU law that states it must not add to the regulatory burden.*

Amendment 94, in clause 15, page 17, line 37, at end insert—

"(6A) No provision may be made under this section unless the relevant national authority considers that the effect of the provision will lead to an increase in levels of environmental protection.

(6B) The relevant national authority must consult its environmental governance body before making any provision under this section.

(6C) The relevant national authority must publish any advice it receives from its environmental governance body, as well as the authority's response and reasons for any departure from this advice, and lay these documents before the relevant parliament or assembly.

(6D) No provision may be made by the relevant national authority under this section until the final version of its policy statement or statutory guidance on

environmental principles, as set out in Section 14 of the Environment Act 2021 for England, Schedule 2 paragraph (6) for Northern Ireland, and Section 14 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 for Scotland, has been laid before the respective Parliament and the relevant legal duty commenced.

(6E) The relevant national authority must consult persons or bodies representing the interests of those likely to be affected by the provisions before making regulations under this section.

(6F) No provision may be made under this section by a Minister of the Crown until the legally binding targets required under the Environment Act 2021 have been published, and the Secretary of State has laid before Parliament a statement setting out how the provision is compatible with the delivery of these targets."

*This amendment sets a number of conditions which must be met before provision under this clause revoking or replacing retained EU law may be made.*

Amendment 86, in clause 15, page 18, leave out lines 1 to 7.

*This amendment is consequential on Amendment 85.*

Clause stand part.

Amendment 87, in clause 16, page 18, line 27, at end insert—

"(3) No regulations may be made under this section unless the conditions set out in section [Conditions on the exercise of powers under section 15 and 16] have been complied with."

*This amendment would ensure that the power to update would be subject to the restrictions laid out in NC9.*

New clause 9—*Conditions on the exercise of powers under section 15 and 16*—

"(1) The first condition is that the relevant national authority has consulted such organisations as appear to it to be representative of interests substantially affected by its proposals, and any such other persons as it considers appropriate, on a draft of those regulations.

(2) The second condition is that the national authority has, after that consultation has concluded and after considering any representations made to it, laid a draft of the regulations before each House of Parliament (or, as the case may be, the Scottish Parliament, Senedd or Northern Ireland Assembly), together with a report setting out, with reasons, the authority's view as to the likely advantages and disadvantages of making those regulations, setting out in particular—

(a) a summary of the objectives and effect of those regulations as compared to the instrument that they will revoke, replace or modify;

(b) any difference as between that instrument and the proposed regulations in terms of protections for consumers, workers, businesses, the environment, or animal welfare;

(c) any benefits which are expected to flow from the revocation or replacement of that instrument;

(d) the consultation undertaken as required by subsection (2);

(e) any representations received as a result of that consultation;

(f) the reason why the national authority considers that it is appropriate to make those regulations, having considered those representations;

(g) the reasons why the national authority considers that section 15(5) (overall reduction in burdens) does not preclude the making of the regulations, explaining what burdens are reduced or increased as a result of the making of the regulations;

(h) the compatibility of the revocation, modification, or replacement of that instrument with obligations in the Trade and Cooperation Agreement between the United Kingdom and the EU, and the likely effect on UK exports of goods or services to the European Economic Area; and

(i) the likely effect of the revocation, modification, or replacement of that instrument on the operation of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

(3) The third condition is that a period of sixty days has passed since those draft regulations or that report were laid as required by subsection (2) with no account to be taken of any time during which Parliament (or, as the case may be, the Scottish Parliament, Senedd Cymru or Northern Ireland Assembly) is dissolved or prorogued or during which either House or that body is adjourned for more than four days, and where they were laid before Parliament, paragraph 8(11)(a) of Schedule 3 shall apply in determining the commencement of that period.

(4) The fourth condition is that the national authority has considered any representations made during the period provided for by subsection (3) and, in particular, any resolution or report of, or of any committee of, either House of Parliament (or, as the case may be of the Scottish Parliament, Senedd Cymru or Northern Ireland Assembly) with regard to the proposals, and has published its reasons for accepting or rejecting any such representations, resolution, or report."

*This new clause requires the relevant national authorities to consult with key stakeholders on proposed regulations revoking or replacing REUL, and to show Parliament their assessment of the impact of the changes.*

**Alex Sobel:** I am afraid we are back to the Homeric length of speech that I regaled everyone with on Tuesday.

This wide range of amendments is designed to do three things. First, amendments 84, 87, new clause 9 and amendment 94 require proper consultation before the revocation, replacement and updating powers in clauses 15 and 16 can be exercised. Secondly, amendments 85 and 86 remove a prohibition in clause 15(5) against the relevant national authority using powers in a way that would "increase the regulatory burden". Thirdly, amendment 94 adds a new subsection to clause 15 to ensure that the use of powers to revoke or replace retained EU law is made subject to compliance, in addition to consultation, with the environmental governance framework established by the Environment Act 2021. I will consider each of those three considerations in turn.

First, on consultation, as we have already discussed when considering other amendments, many worried stakeholders have voiced deep concerns about the unchecked powers that clauses 15 and 16 in particular place into the hands of Ministers. The Hansard Society has commented that clause 15 includes, with just a few caveats, "Do anything we want" powers for Ministers. I will not denigrate them by calling them Henry VIII powers. The Hansard Society's written evidence says the blank-cheque powers allow Ministers to act without having to observe the same oversight provisions—for example, a requirement to consult—that were required by the very legislation they are replacing.

Clause 15 also permits sub-delegation, the creation of a criminal offence or the imposition of a monetary penalty providing that any new regulations "correspond" or are "similar to" the original retained EU law. What such terms as "appropriate", "correspond" and "similar" mean in practice is left entirely up to Ministers—"Do anything you want." The duty to consult those bearing

*[Alex Sobel]*

the brunt of the changes should be one of the most basic to a Government who have now been in power for more than 12 years. Carrying out such a process should not be viewed as burdensome; it is, or should be, a basic requirement of good and proper governance.

Our new clause 9 would remedy that defect by setting out a proper, good governance process of consultation. After consultation, Ministers would need to report to Parliament on the comments and representations made, and explain their objectives, their reasons for accepting or rejecting comments and any differences between the proposed and original regulations, in terms of protections for consumers, workers, businesses, the environment and animal welfare. They would be required to explain what burdens are reduced or increased as a result of the new regulations and to list the anticipated benefits they expect from the revocation or replacement, state whether the revocation or replacement is compatible with the trade and co-operation agreement, explain the likely effect on UK trade with the European Economic Area and, finally, set out the likely effect on the Northern Ireland protocol.

I hope the Minister agrees that those are all perfectly reasonable things to consider. If so, I hope she will either accept our amendments or, if she prefers, could make a commitment now that that will be part of the Government's process.

3.30 pm

Secondly, there is the whole vexed issue of the so-called regulatory burden. Although the rest of clause 15 amounts to "Do anything you want," it places one limit on ministerial discretion. Subsection (5) prohibits Ministers from using the clause 15 revocation or replacement powers to increase regulatory burdens or impose obstacles to trade or innovation, increase financial costs and administrative inconveniences, impose obstacles to efficiency, productivity or profitability, or impose sanctions that affect the carrying on of lawful activity. The clause thus imposes what amounts to a regulatory ceiling, which is very apt. We can see that it may well have originated with the right hon. Member for North East Somerset (Mr Rees-Mogg).

The Minister and her colleagues have repeatedly sought to reassure the Committee that there is much retained EU law that is not fit for purpose, as they put it, and that they are eager to make lots of improvements. They seem to claim that they will improve standards, rights and protections far faster and to a much higher level than those we have enjoyed as an EU member state. We have been able to cite numerous examples of critical standards, rights and protections that are at risk of being lost, so it is strange that so far the Minister has not yet given us examples of the many improvements that Departments are queuing up to make as soon as the Bill is passed.

Perhaps I can help the Minister with some examples. Our ethical understanding of the impact of human activities on animals is constantly evolving and developing. As a result, we have vastly improved the conditions in which farmed animals are kept, such as by moving on from battery cages and sow stalls. We need to ensure that our UK standards for animal welfare continue to move in line with advances in our understanding of animal welfare. Potentially, we could do that ahead of EU standards. Will the Minister explain how that can be achieved in a way that would not fall foul of the clause 15 ban on increasing the regulatory burden? Those two things seem to be in conflict.

The Minister might attempt to explain that clause 16 is there to allow such regulatory improvements, but it refers only to changes in technology or developments in scientific understanding, neither of which seem to cover ethical advances. Furthermore, as the Hansard Society pointed out, it is left to ministerial discretion to decide whether a change in technology or a development in scientific understanding has occurred. Additionally, changes to the law would have to take account only of technological and scientific developments.

Also, clause 16 can be exercised indefinitely. Unlike other powers in the Bill, it is not sunsetted. Added to that, the negative scrutiny procedure means that changes will not require active parliamentary approval. Yet again, it is a case for Ministers of "Do anything you want."

On amendment 94, the Minister sought to reassure the Committee in the debates on our earlier amendments that there was no need to carve out critically important environmental protections from the Bill. She claimed that the Bill will have no impact on UK REACH—registration, evaluation, authorisation and restriction of chemicals—policy and sought to pass on assurances from the Department for Environment, Food and Rural Affairs that it is working on a model that will somehow magically reduce costs to business while maintaining human health and environmental protection. She did not mention that the work on REACH is itself running substantially behind schedule.

The Minister said:

> "Retained EU law reforms will not come at the expense of our high environmental standards"

because:

> "Our Environment Act has strengthened regulation".—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 22 November 2022; c. 159-160.]

But she also accepted that there is "no doubt" the Bill requires

> "a considerable amount of work" —[Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee, 22 November 2022; c. 158.]

right across all Departments. When it comes to DEFRA, that is precisely the problem, because of the vast quantity and range of environmental, food, air, water and animal welfare protections and standards that are covered by retained EU law. The considerable amount of work created by the Bill comes on top of the Department's extensive work programme, which was already lagging years behind schedule even before the right hon. Member for North East Somerset dreamed up the Bill that we now have to drag though. The problem is that 12 years of Conservative chaos have left DEFRA mired in delay and missed deadlines. It is not surprising that we lack confidence that it will be able to save key environmental protections from the 2023 cliff edge, 13 months from now.

The chair of the newly created Office for Environmental Protection wrote to the Secretary of State when it became clear that the Department would fail to meet the legal deadline of 31 October to set long-term targets

for air quality, water, biodiversity, species abundance, resource efficiency and waste reduction. The letter says:

"as I wrote to your predecessor, failures to meet environmental law deadlines undermine the recently enacted framework and delay measures to drive environmental improvement…a failure to meet this deadline presents a significant risk of a knock-on effect of delaying the first review of government's Environmental Improvement Plan due by 31 January 2023…We therefore see it as imperative that the targets are in place by the end of this calendar year at the very latest. Further delay risks unduly the implementation of important environmental policies so much needed to fulfil government's commitments to environmental protection."

The OEP chair's letter has a long list of other missed deadlines and delays across the Department, including in respect of waste water, river basin management, environmental impact assessment and air pollution—I could go through them all. They are a legacy of years of intense consultations followed by missed deadlines and a lack of action.

This week, the Chair of the Environmental Audit Committee, the right hon. Member for Ludlow (Philip Dunne), wrote about the missed targets deadline, and included even more examples of what his letter called a

"culture of delay in the Department".

I remind Conservative Members that he, too, is a Conservative. He wrote:

"The dire state of rivers in England requires urgent action, and the delay in establishing a new statutory target does not augur well for the current administration's resolve to tackle this issue. We hope that the full suite of statutory targets can be published before the opening of the second stage of COP15, the United Nations biodiversity summit, which is to take place in Montreal next month."

I think the first day is 5 December. Those are the words of the Select Committee Chair.

The Select Committee Chair went on to give a further long list of policies

"where progress appears to have stalled",

including producer responsibility for packaging waste, which is now delayed until 2024; the statutory environmental principles policy statement; the chemicals strategy and UK REACH; the national action plan for pesticides; and the deposit return scheme for drinks containers. I remember the deposit return scheme first being consulted on in 2019, and we have had perhaps six consultations on it.

The Select Committee Chair's letter concluded:

"In view of what appears to be endemic delay in making progress on important environmental policies, the Committee has asked me to request, by return, a clear timetable giving the dates by when each of the documents listed in this letter are now expected to be issued."

Given such a depressing record of endemic delay and of blithely ignoring legally required deadlines, we feel it is necessary for the Bill to be clear that no action can be taken to revoke or replace existing environmental protections until DEFRA has at least completed the work it already has on its overloaded plate. Amendment 94 would therefore require any revocation or replacement to lead to an increase in environmental protection; for the OEP and equivalent devolved bodies to be consulted, and any advice published; for no revocation or replacement to be made before the statutory policy statement on environmental principles has been laid before Parliament or the relevant devolved legislature; and for no revocation or replacement to be made until the legally binding targets required under the Environment Act 2021 have been published. Those targets are now, by my count, 25 days late and counting.

**Stella Creasy:** We come to the rub of the matter. When Brexit happened, we were told that we wanted to make our own laws. Any of us who were concerned that that might lead to a reduction in standards or protections were told we need not worry: being out of the EU, which was holding us back from making our own laws, was also holding us back from having higher standards.

Fast forward to 2022 and clause 15, and we know the truth. The clause writes the obsession with deregulation into law. If the Bill passes in its current form, all that our constituents can look forward to is the slow trickle of their rights being watered down and washed away—all in the name, allegedly, of reducing burdens on business. Let us be very clear: business does not want a no-regulation environment. That is a recipe not for competition, creativity and entrepreneurship, but for bad actors running riot over well-established industries and ruining entrepreneurship and creativity. Business wants better regulation. It wants good regulation.

When a law talks of a "regulatory burden", we know that it does not speak to our economy; it speaks to an ideology that is holding this country back. At a time of economic boom, that would not be a sensible measure. At a time of economic crisis, it is genuinely destructive. Clause 15 means that all the things we were told during the Brexit referendum about higher standards were not true. It means that the promises that environmental protections would be better if we left the European Union will not be kept.

For the avoidance of doubt, that is not an argument about returning to the European Union or undermining the referendum, and nor is it saying that we should not have left the European Union—that debate has been had. It is an argument for holding to account all who claimed during the referendum campaign that somehow things would be better. The Bill demands that they must not be, because it insists that a regulatory burden cannot be created, and what it defines as a regulatory burden is a better standard.

The amendments in this group are therefore designed not just to hold to account all those Brexiteers who made such rash claims, but to protect the right of the British public to have the standards that they want, especially when it comes to the environment, workers' rights or consumer protections. On Tuesday, Ministers spent much of the time telling us about their record of improving our legal standards and the rights of our constituents. Indeed, the Minister said:

"The UK regime sets some of the highest standards of consumer protection in the world, and this will continue to be the case."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 22 November 2022; c. 168.]

This clause means that that is not necessarily the case.

The clause says that we cannot improve our consumer protections. Indeed, we have already seen that from how the Government have reacted since we left the European Union. The European Union tried to bring in various regulations about sustainability of goods—frankly, about ensuring that if someone is sold something, it is not tat. Our Government have refused to implement those regulations. Indeed, if the Bill is passed as drafted, we

*[Stella Creasy]*

could not introduce them. In this brave new world, we could be sold as much tat as we like and not know that it is tat, all because the Government are determined that deregulation is what the country wants. Again, that is not something I ever saw on the leaflets that came out during the referendum campaign.

Amendment 85 deletes the ratchet provision, and amendment 86 is consequential to it. Between them, the amendments would allow Ministers to replace existing retained EU law with more stringent measures to allow us to have the higher standards that we all say we want on environmental issues, so that we can protect and conserve our precious species—dare I say it, even the killer shrimp. That would help to make the promise a reality.

The Minister might suggest that new burdens should not be pushed through without consultation, and that the minimal parliamentary scrutiny given the potential impact is not a problem, but deregulation is not value-neutral. The loss of a protection can and will create as much of a burden for businesses as not having a burden would do. When we open the door to lower standards, we open the door to bad actors. Good legal protections for workers' rights, consumer rights and environmental rights help to ensure that the market is fairer. They give businesses certainty and encourage creativity, because they allow people to plan without worrying that they will be undercut.

Given that, the Minister needs to be clear about the definition of a burden in what the Government are doing. For example, is it a burden for a business to pay new parents during their parental leave, regardless of how long they have been employed? In that case, is it deemed undesirable? Is it a burden to have to record whether any materials known to be harmful to human health are involved in a cosmetic product, and therefore is it something undesirable? Are rules governing how many hours employees are allowed to take off possibly a burden? Is reporting on the ethnicity pay gap in an organisation a burden, and therefore something deemed undesirable by the Bill?

If we are reviewing all retained law—it is debatable whether we even have the time to do so in the timetable set out by the Government—we should use the opportunity to usher in the higher protections that Ministers have assured us are the Government's ambitions. They are things that my and all our constituents deserve. Here are some of the places where, without subsections (5) and (6), Government regulations could improve rights and standards in the UK.

We could have stronger protections for agency workers, many of whom work in the creative industries and have been hit hard by covid and the cutting of our ties with the European Union. That is something that many musicians, actors and performers would benefit from.

We could have higher standards on equal pay. I was born shortly after the equal pay legislation was introduced in this country, and it is a source of shame for many of us that we still do not have equal pay. However, we could finally use the freedom that comes from taking back control to do that. The Government have fallen behind on their own commitments, and that is nothing to do with retained EU law—they failed to publish a report on the gender pay gap, which we were promised. We could use this gap and the fact that we are abolishing all the existing laws to bring in higher standards. On Tuesday, the Minister spoke passionately on how she has been supporting those campaigns.

We could bring in the legislation sponsored by the right hon. Member for Basingstoke (Dame Maria Miller), and ensure that pregnancy and maternity discrimination does not happen in this country.

3.45 pm

We could improve monitoring of the use of hazardous materials in cosmetics, and we could raise those standards. Indeed, we could raise standards on animal testing, and that would mean something to many people. We could have higher standards on energy efficiency. We will all be trying to tell our constituents how to save £1 here or £10 there in their use of electrical goods, so let us set higher standards for electrical goods and help them to save that money.

There are many ways that we could use the so-called freedom that comes from being out of the European Union to raise standards, but not if clause 15 remains. These amendments would enable us to do so. The Minister spoke of the world-leading Environment Act. Requiring any regulations under this Bill to comply with the legally binding targets mandated by the Act will not happen if the clause goes through unamended. The Government could choose to use this mechanism not to remove protections, but to ensure that we follow best practice. This programme could happen, but we cannot do it if we are determined that any change to improve standards is a burden. The Minister could accept amendment 92 as an opportunity to equal or even better the EU in our environmental regulations, but they have not yet said whether they will do so.

New clause 9 goes back to the theme that we talked about earlier: our ability to debate, discuss and learn from industries about how we can make better regulation and drive up standards. The new clause would require any consultation on the revocation, replacement or updating of retained law to be made with both Houses and devolved Administrations.

Clause 15 drives a coach and horses through the sunny uplands that the Brexit debate always promised to our constituents, but our constituents deserve sunny uplands—they deserve higher standards. The Minister would find support across the House for revising clause 15 to remove the push for deregulation and instead bring in better regulation. The Opposition amendments would help to lead her toward that. If she accepts and recognises that and works with us all, at least one of the challenges of this legislation—that it forces one-way traffic towards deregulation—could be removed.

I know that Conservative Members want to be able to tell their constituents that they will bring in better standards now that we are free from the yoke of the European Union. If they vote for clause 15, as unamended, that would not be the right thing to say, because it would not be the truth about the Bill. I hope that even if amendments are not made to clause 15 now, they will be in the other place, to take away that push and that threat.

**Peter Grant:** A long time ago now, it seems, I was a member of my local planning authority for a number of years. We used to get dozens and dozens of planning applications for consideration, and there was often a lot

of discussion about whether councillors who were uncomfortable with an application should attempt to draft conditions that had to be honoured before the application could be approved. A lot of those conditions were perfectly reasonable; we would put in conditions to ensure that housing development was road-safe, for example. An important piece of national guidance that certainly applied in Scotland—I do not know if there was an equivalent in England—was that if someone had to burden a planning application with a huge, complex set of conditions in order to make it acceptable, the application should be refused and the applicant invited to come back later with a better one. That is where we are with clause 15. The official Opposition clearly feel that the only way to make clause 15 even vaguely acceptable is to restrict it in so many ways, and with so many amendments, that it would effectively tear the heart out of the clause.

Although I certainly will not oppose any of the amendments that the hon. Member for Leeds North West wants to press to a vote, we will oppose clause 15 when the question on it is put, whether it is amended or not. It is an utterly dreadful piece of legislation. Can Members imagine any circumstance in which it could be considered good governance to give an individual or a national authority the right to repeal 4,000 pieces of legislation, knowing perfectly well that they have no intention of bringing anything forward to replace them? That is what clause 15 effectively aims to do.

As the hon. Member for Walthamstow pointed out earlier, subsection 5 of clause 15 gives the lie to the entire argument about why the Tories wanted to be allowed to regulate for themselves. It was never about being allowed to have better standards of employment law than the rest of Europe, and it was never about being allowed to apply better standards of environmental protection, consumer protection, animal welfare or anything else. It was always about pandering to what my hon. Friend the Member for Argyll and Bute has described as the wide-eyed enthusiasts of the European Research Group, and those who are so far to the right of the ERG they cannot even get elected to this place. In clause 15, and particularly in subsection (5), theirs is the agenda we are being asked to follow.

I am really interested to hear the Minister explain why she feels it is necessary to have an Act of Parliament that potentially allows a national authority to tear down 40 years of protective legislation, with the intention of replacing it with nothing, and with the extreme risk that we will run out of time to replace it with anything. We should remember that we have barely a year from now, never mind from when they start to tear apart the legislation.

When we look at the restriction in subsection (5) and then look over the page at what some of the terms in the subsection mean, we find that they are hair-raising. Legislation that imposes a burden that could include a financial cost is not allowed. There is no threshold and no limit on how many people would need to be affected by that financial cost. For example, the personal protective equipment non-provider PPE Medpro—it was slated in *The Guardian* this morning and in the Chamber earlier—made a profit of £76 million by supplying to the Government PPE that was not fit for use. If the Minister had been minded to bring in replacement legislation, it would have reduced PPE Medpro's overnight profit from £76 million and tuppence to a mere £76 million. The Bill would say that was a financial burden. It would therefore be an increased regulatory burden, and it would not be allowed.

Subsection 10(b) refers to "an administrative inconvenience". Well, good luck to the lawyers who want to decide what is an inconvenience and what is not. Again, there is no threshold and nothing about proportionality. There is nothing to say whether it imposes a disproportionate administrative inconvenience on a substantial section of the economy. That would be a reasonable protection to want to build in, but anybody who claims that that is inconvenient administratively could then challenge it in court. In fact, there is nothing written into the clause that says that the burden has to affect the private sector in order to make it unlawful.

If the burden applies to the civil servants that are trying to administer the new legislation, that is an administrative inconvenience to the civil service, especially if there will be 90,000 fewer of them than we had last year. I am talking about improving legislation that allows one person out of 60 million in these islands to say, "That's a bit inconvenient for me", and an entire piece of secondary legislation can be struck down. Despite some of the things I have seen from the Conservative party in my time, I genuinely do not believe that that is what it wants, but I know that that is what some people want.

My fear is that people who cannot get elected to this place are pulling the strings of those who did. Those people are looking to use the clause, and particularly subsection (5), to achieve their dream of a tiny bit of the world where all regulations can be struck down at the stroke of a pen, and once they are struck down it is impossible to replace them with anything. There are people who, at times, have been very close to the seat of power in this place—their donations have helped to change the course of political history in the last 10 years—who do not want there to be any workers' rights whatever.

A former member of the Government, on whose watch this Bill was drafted, is on the record as saying that he does not think workers have an automatic right to paid holidays. That is the kind of ideology we are dealing with here.

Clause 15 is not about achieving a reasonable objective; it is about completely tearing down 40 years of legislation, some of which we might not welcome but much of which has helped to make the four nations of the United Kingdom more modern and democratic. For that reason, I can understand why some people would happily see all that legislation torn up and replaced with nothing. I genuinely do not believe that is what the Minister wants, I genuinely do not believe it is what the majority of Conservative party members want and I can say with absolute certainty that it is not what the people of Scotland want, and it is not something that the people of Scotland will accept.

I will support any amendments that the Opposition are minded to press to a vote but, amended or unamended, I will seek to divide the Committee on removing clause 15 from the Bill.

**Ms Ghani:** I beg that the Committee rejects amendment 84 and does not press new clause 9 or amendment 87.

*[Ms Ghani]*

It may surprise the Committee that English is not my first language—I was not born in this country—but it has never occurred to me that the words "regulation" and "standards" are the same. Members can look them up in a dictionary, but they are definitely not the same.

Clause 15 is about ensuring we have the right regulations in place, by removing those regulations that are unduly burdensome, outdated or not fit for purpose in the UK. How about swapping them for proportionate, high-quality and agile regulations that help the UK economy, and all of us who work in it, to be nimble and competitive?

I remind the Committee that Departments will be able to maintain the current level of regulation where it is considered appropriate. Only where existing regulations are considered to be unnecessarily burdensome and not fit for purpose may a lower level of regulation be introduced. I will validate that in a moment.

The concerns of hon. Members regarding the scope of the Bill's powers are unfounded, as the powers to revoke or replace are important cost-cutting enablers of retained EU law reform. The dashboard has identified more than 2,500 pieces of retained EU law, and it is therefore right to have a power of this scope that is capable of acting on a wide range of REUL covering a variety of policy areas. The powers have several safeguards that mitigate their use, namely any legislation made under clause 15(2) that recreates a delegated power or a criminal offence present in REUL is subject to the affirmative procedure. Legislation made under clause 15(3) is specifically subject to the affirmative procedure, which will ensure that changes to policy objectives can be actively approved by Parliament. In addition, a sifting procedure will apply to legislation where Ministers choose to use the negative procedure.

The clause 16 power is intended to facilitate technical updates to retained EU law, to take account of changes in technology or developments in scientific understanding. This ongoing power is not intended to bring about significant policy change. It is instead designed to ensure the UK keeps pace with advances in science and technology over time.

The amendments would add a significant amount of time to the process and, ultimately, could risk Departments being unable to maximise the use of their powers to revoke or replace retained EU law across all policy areas, until such powers sunset. The Bill has been drafted to ensure that legislation made under these powers is subject to robust scrutiny procedures that are proportionate to the scope of the powers, as highlighted above.

I ask the Committee not to press amendments 85, 86 or 94. As I mentioned, the Bill is an enabling Act. Amendment 94 would place a number of environmental requirements on UK Ministers or devolved authorities when they intend to use the powers to revoke or replace, irrespective of the policy area. This amendment would therefore preclude Departments making reforms in policy areas unrelated to the environment, which would significantly impact the opportunity to use these powers.

On amendments 85 and 86, we have sought to ensure that the powers to revoke or replace cannot be used to add to the overall regulatory burden on this subject area. In her evidence to the Committee, Professor Alison Young noted that combining

"a number of earlier burdens, turn them into one burden with a higher standard, that is also not increasing the burden."—[*Official Report, Retained EU Law (Revocation and Reform) Bill Public Bill Committee,* 8 November 2022; c. 19, Q33.]

The requirement not to add to the overall regulatory burden has been drafted to allow the relevant national authority to determine how best to achieve the desired policy outcome. For example, removing regulations or administrative requirements that are deemed unnecessary or unsuitable will make it possible to add new regulations with a higher standard—shock, horror—where it is deemed necessary or desirable, provided that the overall regulatory burden is not increased. The reforms that these powers will enable are vital to allow the UK to drive genuine reform and seize the opportunities of Brexit.

We had a repeat of the debate about animal welfare. As I mentioned the other day, the Government remain focused on how best to deliver the "Action Plan for Animal Welfare" published in 2021, which builds on our existing high animal welfare standards. I therefore ask the hon. Member for Leeds North West to withdraw the amendment.

4 pm

**Alex Sobel:** The Minister and Conservative MPs expect us to trust them, when they have repeatedly voted against our attempts to preserve the most basic legal rights and protections for consumers, workers and the environment in Committee so far. In fact, no Government should be trusted with the sweeping powers that this Bill will grant, with minimal parliamentary oversight or scrutiny. Instead of wasting time debating their trustworthiness, our amendments were designed to move beyond the trust that the Government have failed to earn and allow for greater transparency. I will push amendment 85 to a vote, but I beg to ask leave to withdraw amendment 84.

*Amendment, by leave, withdrawn.*

*Amendment proposed*: 85, in clause 15, page 17, line 31, leave out subsections (5) and (6).—*(Alex Sobel.)*

*This amendment will remove the restriction on the replacement of EU law that states it must not add to the regulatory burden.*

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 7.

**Division No. 11]**

**AYES**

Creasy, Stella
Glindon, Mary
Grant, Peter
Madders, Justin
O'Hara, Brendan
Sobel, Alex

**NOES**

Bacon, Gareth
Bhatti, Saqib
Evans, Dr Luke
Ghani, Ms Nusrat
Jones, rh Mr David
Morrissey, Joy
Nici, Lia

*Question accordingly negatived.*

*Question put,* That the clause stand part of the Bill.

*The Committee divided:* Ayes 7, Noes 6.

**Division No. 12]**

**AYES**

Bacon, Gareth
Bhatti, Saqib
Evans, Dr Luke
Ghani, Ms Nusrat
Jones, rh Mr David
Morrissey, Joy
Nici, Lia

**NOES**

Creasy, Stella
Glindon, Mary
Grant, Peter
Madders, Justin
O'Hara, Brendan
Sobel, Alex

*Question accordingly agreed to.*

*Clause 15 ordered to stand part of the Bill.*

*Ordered,* That further consideration be now adjourned.—*(Joy Morrissey.)*

4.5 pm

*Adjourned till Tuesday 29 November at twenty-five minutes past Nine o'clock.*

**Written evidence to be reported to the House**

REULB81 TUC

REULB82 Welsh Assembly

REULB83 British Chamber of Commerce

REULB84 UK Industry Working Group on Probiotics

REULB85 Human Rights Consortium

REULB86 The Law Society of England and Wales

REULB87 Professor Jo Hunt, Cardiff School of Law and Politics, Wales Governance Centre

REULB88 Bates Wells (supplementary submission)

REULB89 Regulatory Policy Committee

REULB90 Sharon Leclercq-Spooner, chair the EU-UK task force of the American Chamber of Commerce to the EU

REULB91 Nuclear Decommissioning Authority

REULB92 Meta