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Public Bill Committee

RETAINED EU LAW (REVOCATION AND REFORM) BILL

Third Sitting

Tuesday 22 November 2022

(Morning)

CONTENTS

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Saturday 26 November 2022

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 *(Wealden)* (Con)
† 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

Tuesday 22 November 2022

(Morning)

[Sir George Howarth *in the Chair*]

Retained EU Law (Revocation and Reform) Bill

9.25 am

The Chair: We are now sitting in public and the proceedings are being broadcast. I have a few preliminary announcements. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

We now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. Please note that decisions on amendments do not take place in the order they are debated but in the order they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any amendments within the group. A Member may speak more than once in a single debate. At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or seek a decision. If any Member wishes to press any other amendment in a group to a vote, they need to let me know.

Clause 1

Sunset of EU-derived subordinate legislation and retained direct EU legislation

Brendan O'Hara (Argyll and Bute) (SNP): I beg to move amendment 26, in clause 1, page 1, line 4, leave out "2023" and insert "2026".

This amendment, together with Amendment 28, changes the date that the revocation of EU-derived subordinate legislation and retained direct EU legislation would take effect to the end of 2026.

The Chair: With this it will be convenient to discuss amendment 28, in clause 2, page 2, line 8, leave out "2023" and insert "2026".

This amendment, together with Amendment 26, changes the date that the revocation of EU-derived subordinate legislation and retained direct EU legislation would take effect to the end of 2026.

Brendan O'Hara: It is a pleasure to see you in the Chair, Sir George. Amendments 26 and 28, tabled in my name and that of my hon. Friend the Member for Glenrothes, would change the date on which revocation would take effect from the end of 2023 to the end of 2026, essentially moving the date of the sunset clause by three years, from the totally unrealistic and unachievable to something that is still extremely challenging but is at least on the margins of the possible.

Before I address the amendments directly, it is worth pointing out that they have been tabled, like all the others, to try to make a thoroughly rotten Bill a little bit better, and should not be viewed in any way as we on the Opposition Benches giving any succour or support to the Bill. As we have said throughout its passage, the Bill is a dreadful piece of legislation that we will oppose at every step of the way, but if we can help to make it less awful, we will.

I have to begin by asking the Government why they are pushing ahead with the Bill. The architects are gone; it really belongs to another age, when the true believers were in charge, pushing the myth of the sunlit uplands of Brexit. We said it was rubbish then, and as we survey the wreckage of the UK economy post Brexit, it is demonstrable rubbish now. Why are the Government pushing ahead? We are in the middle of an economic crisis. People cannot heat their homes. Children are growing up in poverty. Food banks are being used by millions. Yet the Government are introducing arbitrary targets, which even if they could be achieved would consume just about every Government Department for the next 12 months, not just here but in Edinburgh, Cardiff and Belfast too. As the former senior civil servant in the Department for Environment, Food and Rural Affairs Jill Rutter told BBC Radio 4:

> "If you look at my old department, they have about 500 pieces of law they need to look at…even if they worked every day to the end of 2023, they'd be reviewing whether they keep or allow to lapse a piece of law a day".

At the moment, an eye-watering 3,800 pieces of EU legislation face the sunset clause on 31 December next year. On Second Reading a few weeks ago, that figure was considerably lower. In the intervening few weeks, no fewer than 1,400 other pieces of legislation have been discovered, and goodness knows how many more are yet to be identified. If the Bill passes unamended, all those will be added to the almost 4,000 existing pieces of legislation that will be sunsetted in 13 months' time. Why on earth did the Government set such an arbitrary deadline for themselves? Why would they introduce a totally unnecessary cliff edge on such a vital piece of legislation about workers' rights, environmental protections, food standards and so much more? It makes no sense whatsoever.

9.30 am

Peter Grant (Glenrothes) (SNP): Like my hon. Friend, I have been puzzling over why the Government are so determined to die in a ditch over this 2023 date. Does he think it is because instead of admitting to the public that they made promises in 2019 they could not possibly keep— having realised that the promise in 2019 to get Brexit done was completely unrealistic—they are prepared to crash the economy in order to go into a 2024 election saying they have got Brexit done?

Brendan O'Hara: I look forward to hearing what the Government have to say by way of explanation. I agree with my hon. Friend. It makes absolutely no sense, unless the arbitrary deadline is purely ideologically driven and there to appease the true believers, who have now resumed languishing on the Back Benches.

In response to the sunset clause of the Bill, the Scottish warned that it

"carries an unacceptable risk that vital law, on which the smooth functioning of sectors of the economy and society depends, simply drops off the UK statute book."

If the Government will not listen to us, perhaps they will take heed of the warning from the right hon. Member for Camborne and Redruth (George Eustice), who said that the Australia and New Zealand trade deals were so poor because of the Government's self-imposed arbitrary targets. Of course, Members on the Government Benches will say that there are extensions available if they are applied for, but that ignores the fact that the relevant Departments still have to go through and identify at least 3,800 pieces of pertinent legislation, and then someone has to decide what happens next.

Even then, it is far from clear. Does the Secretary of State get to decide that an extension is allowed? Will a decision be made by the Cabinet or at a Cabinet Sub-Committee? Will a separate body be set up to specifically to examine which legislation can and cannot be granted an extension? Let us not forget that if this is not all done and dusted in 13 months, every piece of EU retained legislation will by default fall off the statute book, leaving huge holes in our domestic legislation.

Mr David Jones (Clwyd West) (Con): Could the hon. Gentleman indicate whether he and his party are entirely happy with every aspect of EU retained law? If not, which aspects does he feel should be swept away?

Brendan O'Hara: The right hon. Gentleman misses the point. It is about a much wider area: the principle of sunsetting by the end of next year. It is a legal minefield. If we are determined to travel through it, let nobody come back in a year's time and say, "We didn't know", because it is perfectly obvious. The case has been made perfectly clear; sunsetting by December 2023 is well-nigh impossible and will lead to huge dangers. It is a disaster waiting to happen. Today the Government have the chance to finally accept that the price of appeasing their true believers is a price too high. I urge them to accept our amendment.

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair, Sir George. I will start by echoing the comments of the SNP spokesperson, the hon. Member for Argyll and Bute. We do not think the Bill is fit for purpose. We will try to help the Government to improve the Bill with the amendments we will be moving, but fundamentally we think its approach is flawed, not least the subject of this amendment—the unnecessary and entirely artificial cliff edge, which is driven by political considerations, not practical ones.

I have yet to hear any justification for the deadline of 31 December 2023, other than the belief—seemingly rooted in fantasy—that unless we free ourselves of the shackles of these regulations by that date, we can never prosper as a country. That is a fantasy, because whenever a Department is asked to identify which regulations it no longer wants, all we hear is silence. We are told that we must hurry along and free ourselves of the 2,400 or 3,800 regulations—or however many they turn out to be—that are holding us back. The best I have heard any Government Minister say so far is something about vacuum cleaner power, but given the chaos of the past few months I am not sure anyone can seriously say that the reason for our current economic mess is that we do not have sufficient control over our hoovers.

I do understand the need to have a finite date. I understand the importance of having a target to work towards, but the date has been plucked out of thin air, seemingly at random, and we should not accept it unless a compelling and rational case is put forward. The Regulatory Policy Committee has said that setting a deadline is not enough, and that a stronger argument is needed for choosing that particular date, and I agree. The truth is that there is no better reason for that date having been chosen than the Prime Minister of the day, or the week, being able to say, "We will have put an end to all unnecessary EU burdens by the end of next year"—never mind that the Government cannot tell us what those burdens are, or why the end of 2023 is better than the end of 2024, 2025 or 2026. What we can say for certain, though, is that there will not be sufficient capacity in the civil service for a genuinely effective appraisal of the regulations that the Bill seeks to remove. The case for the cliff edge is incredibly weak; the arguments for removing it and putting the date back are much stronger.

Let us look at the numbers for a moment—although, of course, the numbers are something of a moveable feast. If we accept the newspaper reports that 3,800 statutory instruments will come within the ambit of the Bill, and presume—because we have not heard anything to the contrary—that the Government want to keep the majority of them, more statutory instruments would need something doing to them as a result of the Bill than were passed in the whole of last year. Of course, we had many extra regulations in that year due to covid, and plenty of people think the scrutiny of those particular instruments was not at the required level, so even under the most generous interpretation, we are looking at possibly doubling from last year the number of statutory instruments, if everything is to be passed before the end of next year.

It will be in half the time, as well. Let us assume for now that the Government press on with the Bill—although there is still some doubt about that, I believe—and it gets to the Lords early next year. There will probably be a bit of to and fro, given the significant constitutional elements this legislation contains, so it will not get Royal Assent until well into the spring. At best, that gives the Government six, seven or eight months to restate all the laws that will be covered by the Bill, so will the Minister tell us how many extra staff each Department has been assigned to deal with the additional workload? Have they been given any deadlines to work to? As we know, the *Financial Times* reported on 27 October that the Minister's Department, with 300 pieces of EU law, would need an extra 400 staff to review the body of retained EU law. What does that mean if we extrapolate it across the whole of Government? How many extra staff will be needed overall in anticipation of the Bill?

The *Financial Times* also reported that "Whitehall insiders"—I never quite know who those people are, but they obviously have sufficient insight to talk to the press—are saying that

"reviewing the majority of retained EU law by 2023 would present a massive bureaucratic burden. One senior Whitehall official estimated that between 1,000 and 1,500 statutory instruments would be required in order to convert retained EU law that was deemed necessary on to the UK statute book."

[Justin Madders]

No wonder the impact assessments are silent on the issue of the sunset date. The Regulatory Policy Committee has made clear that it believes the analysis of that sunset date is inadequate. I refer to a newspaper report in the *Financial Times*, which said that Government officials are considering whether to press ahead with the 2023 sunset clause. I do not know if that is news to the Minister, but it is hot off the press. According to the article, Government officials have said that the Prime Minister and the Business Secretary have "yet to decide whether to stick to the 2023 deadline or push it back."

No. 10 said,

"It's too early to say."

I am afraid it is not too early to say because we are debating it right now. If the Government have plans to push back the sunset, it will be useful to hear. If the Minister is able to comment on that report when she responds, I would be obliged.

I remind the Committee what Mark Fenhalls of the Bar Council said in the evidence session:

"I am no expert in how much civil service time exists, but I would be astonished if it were remotely possible to cover but a fraction of this. I do not know why it is set up as anything other than a political problem."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 28, Q56.]

That is the nub of the issue. This is a politically generated deadline that is going to cause problems, but if the Committee needs further persuasion, I also refer to the written evidence of the Bar Council, which raised the alarm when it said:

"The setting of an arbitrary, and in all the circumstances, impractical sunset date, with the consequent and entirely unnecessary risk of the disappearance of rules of critical importance to business, consumers, employees and the environment (some of which, due to their sheer numbers, may only be missed once lost) without adequate consideration or any consultation, and conferring an entirely unfettered and unscrutinised discretion to Ministers to disapply or delay the sunset provision or not; as well as the attendant risk of rushed replacement legislation".

Eleonor Duhs also told us in the evidence session:

"In order to get the statute book ready for Brexit, which was in some ways a much more simple task than this, it took over two years and over 600 pieces of legislation. The reason I say it was a simpler task is that we were essentially making the statute book work without the co-operation framework of the EU. We were taking out references to the European Commission and replacing them with 'Secretary of State'—that sort of thing. That was a much simpler task than what we have here, and that took over two and a half years.

A lot of areas also have several pieces of amending legislation… There may be huge policy changes under this legislation, and the end of 2023 is simply not a realistic timeframe for the process."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 29, Q56.]

There is plenty of evidence of concern out there, indicating that we should look again at the sunset. If Members are reassured that there is departmental and civil service capacity to handle all that in the time required, perhaps they should also consider the scrutiny aspects of the sunset, and whether Parliament will be able to fulfil its role properly in the time available. As George Peretz said in the evidence session:

"the sunset clause does interrelate with the question of Minister's powers. One of the problems with the effectiveness of parliamentary scrutiny is that although one hears that Parliament has powers—in some cases via the negative or affirmative resolution procedures—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.

To take an example, if Ministers decided to keep the working time rules but rewrite them to make them less favourable to employees, and came up with the new regulations in November 2023, those rewritten regulations would probably be introduced under the affirmative procedure. However, when the House of Commons voted on them, Ministers would say, 'You may not like these revised regulations very much, but if you do not vote for them, the alternative is that we will not have any regulations at all.' That weakens Parliament's ability to control the exercise of ministerial power."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 32, Q61.]

I do not want to be back here in a year's time faced with a choice between accepting a reduction in the number of days of paid holiday that people are entitled to from, say, 28 to 10, and the alternative—people having no right to paid holiday at all—because we have been forced up to a precipice due to the timescale set out in the Bill. That is not Parliament taking back control.

I am not alone in my concerns. The Delegated Powers and Regulatory Reform Committee raised concerns about primary legislation and said that

"where little of the policy is included on the face of the bill"

but where Parliament is asked

"to pass primary legislation which is so insubstantial that it leaves the real operation of legislation to be decided by ministers",

this reduces any parliamentary scrutiny to a bare minimum, and we are left only with

"delegated legislation which Parliament cannot amend but only accept or reject, with rejection being a rare occurrence and fraught with difficulty."

That Committee further warned that

"the abuse of delegated powers is in effect an abuse of Parliament and an abuse of democracy".

It is a shame that the former Secretary of State, the right hon. Member for North East Somerset (Mr Rees-Mogg), did not take his own advice on that issue before he drafted the Bill. When he was Leader of the House, in response to the Committee's report into the frequent use of skeleton Bills during the period of the pandemic, he said that it did not

"necessarily provide a model example of how Parliament would like to see legislation brought forward",

and that he would be

"encouraging them to minimise the use of delegated powers where possible".

However, here we are today.

Finally, I will respond to the argument that there is already provision in the Bill to address the sunset. The problem is that that can apply to laws only if we know about them in the first place. There is also the prospect that we end up with a potpourri of sunset dates, because it could be any time between now and 2026. That just creates more uncertainty and confusion, and uncertainty for businesses that are trying to invest.

In conclusion, we support the amendments because 2023 is a deadline in search of a headline. It is not a serious proposition and it should be rejected. Parliament legislated, as we were preparing to leave the EU, to avoid a cliff edge. It seems illogical and reckless in the extreme to be now deliberately creating one when we are so close to the precipice.

9.45 am

Stella Creasy (Walthamstow) (Lab/Co-op): It is a pleasure to serve under your chairmanship this morning, Sir George, as indeed I believe it will be throughout the Bill Committee. I am sure that we will have a wonderful and detailed discussion. Government Members are laughing about that idea. Maybe that is the irony about all of this, because, when we were told that Brexit should happen, it was about "taking back control" for this place. Well, let us give some control to this place in the proper scrutiny of this legislation. I support the comments of my Front Bench colleague, my hon. Friend the Member for Ellesmere Port and Neston, and of the hon. Members from further north than me—the hon. Members for Glenrothes and for Argyll and Bute—on these amendments.

Amendments 26 and 28 are critical. Let us start this debate by being absolutely clear; this Bill has nothing to do with Brexit. Brexit has happened. It may be continuing to cause many problems, but it has actually happened. However, the Bill is not what Brexit was about, because the Bill is a process and it has everything to do with a knee-jerk obsession with the idea that something with the word "Europe" in must be bad. That obsession will cause catastrophic devastation for our constituents, because the process that the Bill brings forward is incredibly destructive.

As my hon. Friend the Member for Ellesmere Port and Neston said, it is a deadline in search of a headline. That seems a rather poetic attempt to say something simpler, which is that nobody quite understands why the Government are doing it in this way. After all, when we look at the amendments that have been tabled, and at the evidence that has been given, not a single piece of evidence has been provided in support of this approach. That is a startling thing to recognise. Nobody knows why these particular laws are up for abolition, all in one go, apart from the fact that they contain "Europe" at some point in their titles.

That knee-jerk reaction is incredibly dangerous because it means that we will delete things that we did not even know were on the statute book, as things stand. Yesterday, I had the pleasure of serving in a Delegated Legislation Committee—I suspect that we will have thousands more if this legislation goes through—where the Ministers were not aware of the foundations of the laws that they were trying to amend. They were technical amendments, they said, to do with pollutants, rooted in European legislation.

Now, that is not a case for staying in the European Union; as I said, we have left. I would take up the challenge of the right hon. Member for Clwyd West, who talked about other laws we would want to change. Of course, there are laws we want to change in this place; nobody ever says that the statute book is the preserve of being correct, apart from Governments who are frightened of scrutiny.

The amendments have a simple, pragmatic basis: what this Government are trying to do is too big to do in one year. It is a very simple proposition, and we want to hold the Government accountable for the consequences of trying to delete everything all at once. One might look at the amendment paper and think that there are 50 ways to leave the European Union using this legislation, given all the different amendments that have been tabled. I prefer to think of Warren G, and his debate around "Regulate", because this Bill is ultimately about the regulations that we have in this country—everyday rules that make such a massive difference to the people of this country.

I know we will come on to those, Sir George, so I will not test your patience by listing them, but that is why this sunset clause matters. When the Government are putting up for grabs people's rights not just to a paid holiday or maternity rights, but to compensation, to not have cancer-causing chemicals in their cosmetics, to be able to watch the Olympics free of charge, or around compensation if they are artists—thousands and thousands of regulations that have been part of the social fabric of this country for generations—it is right to ask whether deleting all of them in one year, with no guarantee about what will come next, is the right way to approach the matter.

The debate we had yesterday in a Delegated Legislation Committee on the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 was a classic example of what the folly is. Not only was it not clear to the Minister which amendments would be deleted by the legislation we are debating, which then underpinned the Statutory Instrument that the Minster was presenting, but she could not clarify what would come next. She made a strong case about the importance of protecting us and protecting against the ways in which pollutants might be used within the chemical industry, but if we do not amend the legislation, that case will fall in a year's time—by the sheer fact that the very legislation which underpinned the proposals, the technical amendments the Minister was trying to make, will also fall, because the Government are deleting absolutely everything.

During the passage of the Bill, let no one say that the concerns being raised are about whether Brexit should have happened. Brexit is done. This is about the folly of hitting "delete", "control" and "alt" at the same time—then hoping we can remember what was taken out and that in a single year everything can be replaced. Six hundred statutory instruments were introduced during the Brexit process and anyone who was here at the time—I know that not everyone was—will remember the hours we spent in Committee Rooms. Here we have five times the number in a single year.

Some may suggest that Members of Parliament are lazy, that they do not do very much. Some even suggest that Ministers—current or former—might have time to go into a jungle. I know, however, that no one thinks it really feasible that we will have 167 days of non-stop Delegated Legislation Committees, yet that is exactly what this legislation will require if we stick to this particular sunset clause for everything. At the moment, given the way in which the Bill is drafted, it does indeed cover everything—and that is without beginning the process of what we want to keep and what we want to get rid of. The point of all this is that there are things the Government want to change. Those of us who are democrats believe that the Government ought to set out what regulations they intend to remove, because that is what taking back control really meant. Again, if we have only one year in which people are to understand quite how the Government wish to change their rights to paid holiday, it seems not unreasonable to expect the Minister to give us some idea of the direction of travel before we hit delete—but, again, we have nothing.

[Stella Creasy]

The amendment is simply about setting a calmer course of action. I think we owe that to all our constituents. I do not think there is a single member of the Committee who in recent weeks and months has not dealt with constituents who are terrified about the status quo, terrified about what is happening now and worried whether they will get through Christmas. It is not unreasonable to say that our primary focus is stabilising the economy and we will not do anything that would undermine that. Whether someone is a passionate believer that Brexit still brings opportunities—and I say good luck to them, and also, "We all know of a good therapist"—or whether they were worried at the time that this was a high risk to take, recognition that the pace of change is best tackled in a measured and orderly fashion is something I am sure we can all agree on. The amendment is about the pace of change, not the change itself. It is about recognising that in an economy that is struggling, we cannot rip up every single regulation, not provide any clarity about what comes next in under a year, then expect Parliament to find the time to write all those regulations—or, indeed, to find all the regulations; we will come on to the question of whether we know about everything that is going to be deleted. Yesterday, Ministers from DEFRA certainly did not; and the Whips even suggested that it was a problem for the Department for Business, Energy and Industrial Strategy rather than for DEFRA. I am sure it was news to the Minister in that Committee that she is now responsible for persistent organic pollutants on top of everything else.

I urge Government Members not to see this as about stopping Brexit, because Brexit has happened; but, rather, to see this as the best course of action to show that Brexit could work for this country. That means taking a simple proposal about how best to look at the legislation and its rubric. If we are going to find 4,000 hours of parliamentary scrutiny for delegated legislation, what are Ministers not going to be able to do? If we are going to find the civil servants to be able to deal with all this legislation, what else are they not going to be able to do? Are we confident that the next year will not bring further crises that will require our time, effort and energy? Are we confident that what is happening in Europe right now will not lead to further challenges that we would be better off putting our time, effort and energy towards?

I know that Government Members want to believe that the amendments are about opposing Brexit, but they are about opposing chaos. Government Members will have to explain to people how we will find parliamentary time, let alone find all the regulations. I note that the Minister said she would tell us what other regulations would be affected after we had passed the legislation, which does not inspire massive confidence. If not today, I hope that Government Members will reflect, and perhaps use the opportunity of those press reports to urge a calmer course of action. I think that all our constituents would thank us for it at a later date.

Mr Marcus Fysh (Yeovil) (Con): On a point of order, Sir George. The hon. Member for Walthamstow mentioned at the beginning of her speech that Government Members were laughing. That was not true. I wonder whether we could ask the *Hansard* Reporters to strike that from the record.

The Chair: Order. I am not responsible for any comments that the hon. Lady might make. I was not aware of anybody laughing, but that does not necessarily mean to say that they were not.

Lia Nici (Great Grimsby) (Con): Further to that point of order, Sir George. I was hoping to make the exact same point. If it will not be stricken from the record, the *Hansard* Reporters should ensure that the comments of my hon. Friend the Member for Yeovil are noted.

The Chair: I am grateful to the hon. Lady, but I think I have already dealt with the point.

Stella Creasy: Further to that point of order, Sir George. I merely rise to clarify that if somebody had a twinkle in their eye, I would consider that to be laughing. It might not have been heard by everyone, but I did not mean to suggest that anybody does not think that this is a serious matter; it was merely a wry reflection on the challenge ahead of us. I hope that the rest of the Committee's proceedings will follow in good spirit and humour accordingly.

The Chair: I think the hon. Lady is trying to restore the calm that she referred to in her speech. I am sure that she has done so.

The Minister for Industry and Investment Security (Ms Nusrat Ghani): It is an honour to serve under your chairmanship, Sir George. I hope that, over the next few—or many—days, proceedings will be conducted as calmly as possible. To start on a friendly note, I wish the hon. Member for Ellesmere Port and Neston a happy birthday—the big five-0. Now he will not talk to me any more.

I reject amendments 26 and 28, which would change the sunset date from 2023, as well as the date to which the sunset may be extended under the extension power. I am grateful that, although amendment 26 is not appropriate for the Bill, some hon. Members who spoke in support of it at least acknowledged that a sunset will be a valuable tool in dealing with retained EU law. It was interesting to hear the hon. Member for Argyll and Bute, for whom I always have a huge amount of time, say that he will oppose every step of the Bill. Fundamentally, he is just opposing Brexit, and we really cannot rehash the same conversation over and over. The hon. Member for Walthamstow referred to Brexit as a process. This is part of the process, so we need to crack on. We need a sunset date, otherwise it will be 20-on-the-never-never.

Paul Blomfield (Sheffield Central) (Lab): I, and I think a lot of Opposition Members, have some sympathy for the Minister in having to defend the indefensible—a piece of legacy legislation. Has she seen the report in the *Financial Times* this morning? Her boss is apparently briefing that the sunset clause is inappropriate for next December. His aides are saying:

"Grant thinks things should be done at a more sane pace",

reflecting all the evidence that we have received. When will she put us out of our misery and acknowledge that the December 2023 sunset date is madness?

Ms Ghani: If I have to respond to every item in a newspaper, regardless of where it comes from, we will be here much longer than we are already committed to be. If the hon. Member gives me a few moments, I will

explain why the sunset date matters. As he says, many people are concerned about the timelines in the Bill, but I assure the Committee that there is definitely not a cliff edge. I want to respond to allegations of a bureaucratic burden—although that would assume that we would never have any change. This process is not simple, but we are not in government to do simple things; that is the honest truth.

10 am

The Government disagree with the amendments and strongly believe that the sunset is deliverable. First, the sunset date was chosen because it is the quickest and most efficient way to enact retained EU law reform without taking up additional resources and parliamentary time to revoke laws individually. Sunset allows us to do away with retained EU laws that are stifling growth and are not in the best interests of UK businesses and consumers as soon as possible. Secondly, work is already taking place in each Department to draw up plans for each piece of retained EU law in scope of the sunset, including an SI programme, and the Brexit Opportunities Unit is working with these Departments to ensure that the programme of work is delivered by the sunset date.

Paul Blomfield: The Minister says that work is taking place in every Department. The Government clearly have a lot concerning them at the moment and many priorities. What assessment has been made of the amount of civil service time that will be involved? We have seen many estimates of hundreds of civil servants having to be devoted solely to this work, so I assume that the Government have done an evaluation of the impact. Can the Minister share that with us?

Ms Ghani: Every time the Government put forward a piece of legislation, Government resources are focused on that piece of legislation to ensure that it is delivered. We have a Brexit Opportunities Unit in place as well. The assumption that resources are not moved around to get a piece of legislation through is slightly absurd. We understand that it is a piece of work that needs to be done, that it is a process and we have a deadline, but the work will be done.

Justin Madders *rose—*

Ms Ghani: If the hon. Member gives me a moment to expand a little more I can explain; I will then take interventions from the birthday boy. Officials have catalogued retained EU law across Government, which has been collated, as part of the cross-varietal substance review of retained EU law, into the dashboard that was published on 22 June. Crucially, powers in the Bill have been drafted to ensure that the current date is workable. The preservation power enables UK Ministers and devolved authorities to keep specific pieces of legislation that would otherwise be subject to sunset where the legislation meets a desired policy effect, without having fully to restate or otherwise amend the legislation.

The power to revoke or replace the compatibility power and the power to restate assimilated law will be available until 23 June 2026, while the power to update will be a continuous power. These powers have the ability to amend assimilated law once the sunset date has passed and retained EU law is no longer a legal category; that means that Departments can preserve their retained EU law so that it becomes assimilated law after the sunset date, and amend it further beyond that date if required. In addition, the Department for Business, Energy and Industrial Strategy will be working closely with other Government Departments, as well as devolved Governments, to ensure that appropriate actions are taken before the sunset date. Finally, the extension mechanism in clause 2 ensures that, should more time be required fully to review the changes needed to retained EU law, the sunset can be extended for specific provisions or descriptions of retained EU law until 23 June 2026.

Peter Grant: The Minister has tried heroically but unsuccessfully, I am afraid, to argue that this arbitrary deadline will not place enormous strain on a civil service that is already under enormous strain. Can she look at it from the opposite direction? Can she explain why it would be bad to set an absolute deadline of 2026? If Departments and Ministers are able to sort things out by the end of 2023, they can do so in a safe environment where they are not under pressure to get it done quickly, with the possible consequence that it would then be done wrong.

Ms Ghani: I simply do not recognise that the added burden means that the programme of work cannot be deliverable. I mentioned the fact that we have an ability to provide an extension, depending on what that piece of legislation is. What we do not want to do is undermine focus on delivering the bulk of the work by the sunset date that is in place at the moment.

Justin Madders: I am grateful for the Minister's references to my special day, which will now be recorded forever more. She mentioned the Brexit opportunities team. Who is the Minister responsible for that team?

Ms Ghani: The Brexit opportunities team sits in BEIS and it works across Whitehall. This programme of work is being delivered with the team and across all Whitehall Departments as well; the focus of the work that is taking place is across Whitehall. Any anxiety that people are not working closely or collectively is for the birds. The fact that we have a deadline means that it focused everyone's mind and attention.

Justin Madders: This is a very important piece of work, as the Minister has outlined. There must be a Minister who is responsible for it. Who is that? Who can we ask and speak to about this issue, because this is clearly a matter of important scrutiny?

Ms Ghani: I am not sure exactly what the hon. Member wants to speak about with regard to the Bill. I am here to perform my role and deliver this piece of legislation. We have a Secretary of State and we know that the Prime Minister is delivering on this piece of legislation as well. I am not sure what further contact the hon. Member needs.

Alongside amendment 26, amendment 28 would have very little impact, as clause 2 would still specify that 2026 was the maximum date that an extension could be set for. If we combined these amendments with amendment 29 or amendment 32, which we will debate later, that would result in the extension mechanism being able to extend specific provisions or descriptions of retained EU law beyond 31 December 2026. The

[Ms Ghani]

extension power's very nature is to mitigate any risks posed by the current sunset date. I recognise that, without an extension, there is a risk that Departments would not have sufficient time to perform the legislative and administrative procedures required for retained EU legislation in certain complex areas.

Stella Creasy: If we cannot play a game of "Guess Who?" as to who will then be responsible for the implementation of this legislation if it is passed, let me ask this. The Minister wrote to us to say that the Government were still scoping out which laws would be covered by it, so how can she be confident that everything is in place to cover the full gamut of what would be covered by this legislation if she cannot at this point tell us how many laws will be covered? It is a reasonable question to ask, is it not? How much work is there to be done? If the Minister cannot tell us now or at least confirm how many laws are covered, it is not unreasonable to worry that equally she cannot confirm that the Government have put in place the people and the processes to do it all within a year.

Ms Ghani: The dashboard is there to identify the pieces of legislation that need to be uncovered, but of course we will constantly look, constantly dig and constantly ask Departments to see what else is in place. I do not think it is unreasonable to ask Departments to explore what pieces of legislation are in place, which ones are valid, which ones have already come to the end of their lifespan and what more we need to do. I think it is really healthy to ask Departments, to ask across Whitehall, what further work needs to be done. That work will then continue, and on the anxiety over the sunset clause, we have the extension in place as well.

Combined, the amendments would thwart the Bill and retain REUL as a distinct category of law on the UK statute book. I therefore ask that the amendments be withdrawn or not pressed.

Brendan O'Hara: I thank the hon. Member for Walthamstow and the hon. Member for Ellesmere Port and Neston—and happy birthday! I am sure that he dreamed of spending his big day with us. Both Opposition colleagues made extremely convincing arguments that this work simply cannot be done in the timescale that has been laid out in the Bill. I think that nobody believes that it can be done in the timescale, because basic logic tells us that it cannot. Like the hon. Member for Sheffield Central, I have enormous sympathy for the Minister, who I think has been sent in, as he said, to defend the indefensible. I suspect that eventually, when the harsh reality dawns over Downing Street, which it appears to be doing, this will change, and I hope that it will change sooner rather than later. On that basis, I will not push our amendments to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Brendan O'Hara: I beg to move amendment 68, in clause 1, page 1, line 6, at end insert—

"(1A) Subsection (1) does not apply to an instrument, or a provision of an instrument, that—

(a) would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament, or

(b) could be made in subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone."

This amendment restricts the automatic revocation or "sunsetting" of EU-derived subordinate legislation and retained direct EU legislation under Clause 1 of the Bill so that it does not apply to legislation that is within the legislative competence of the Scottish Parliament.

The Chair: With this it will be convenient to discuss amendment 21, in clause 23, page 22, line 23, leave out "Scotland".

Brendan O'Hara: I rise to speak to the amendments tabled in my name and that of my hon. Friend the Member for Glenrothes, which would remove the sunsetting of EU legislation where it falls within the competence of the Scottish Parliament.

The amendments would mean that if, defying all logic, the Government are still determined to push ahead with the dangerous sunsetting of all EU legislation by 31 December next year, the Scottish Parliament could, in respect of areas that are wholly devolved, decide to keep relevant domestic legislation aligned to that of the European Union. That would mean that, in areas such as environmental health, food standards and animal welfare, the people of Scotland could continue to enjoy the high standards and protections that we have had as members of the European Union for almost five decades.

In his oral evidence to the Committee, Angus Robertson MSP suggested that it would be perfectly possible to draft the Bill

"in such a way that it did not apply to Scotland or Wales"

by limiting

"the scope of the Bill to non-devolved areas."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee*, 8 November 2022; c. 80, Q136.]

Why should it not be drafted in such a way? Let us never lose sight of the fact that this is not our Brexit. This is something that is being done to us by a Government we did not elect pursuing the hardest form of a policy that we overwhelmingly rejected. In the circumstances, it is perfectly reasonable to suggest that legislation that is the preserve of the Scottish Parliament be excluded from this one-size-fits-all approach.

Angus Robertson also told the Committee that the UK Government were still, even at this late stage, unable to tell Scottish Government Ministers exactly which areas of competence they consider devolved and which they intend to view as being reserved to this place. In his evidence, Charles Whitmore from the school of law and politics at Cardiff University warned our Committee that the Bill could lead to

"legal uncertainty, and that is compounded at the devolved level because our capacity constraints are probably more acute, so the time sensitivity is even greater".—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 85, Q141.]

As I said earlier, it might be the skewed priority of this Government to instruct Departments across Whitehall to prioritise this ill-conceived bonfire of retained EU law ahead of trying to mend the broken economy or lift people out of poverty, but that is certainly not the priority of the Scottish Government nor, I suspect, of the Welsh Government. Yet, as it stands, they will be

forced to set aside valuable Government and parliamentary time to take part in this exercise, which will undermine the high standards and protections that people in Scotland have enjoyed and have quite rightly come to expect from European Union membership. Given that, I intend to press amendments 68 and 21 to a vote to ensure that the sunsetting of retained EU law does not apply in areas that are devolved.

Justin Madders: We have some sympathy with amendment 68. From what we can determine, it tries to equalise the approach to the current anomaly whereby under clause 1(2) the power to remove the sunset is granted both to Westminster and to devolved authorities, but the power to extend the sunset under clause 2(1) is just for Ministers in Westminster. I do not know the reasons for the difference in that approach.

I suggest that the evidence sessions did not reveal a particular state of readiness in the Scottish Parliament for the administrative burden that the Bill will leave it with. That is not, by the way, a criticism of the Scottish Parliament; it is a reflection of the timescales that we face. The current powers in the Bill leave the Scottish Parliament in a position in which it would have to remove the sunset entirely, whereas perhaps an option could be for it to extend the sunset for reasons of capacity. That would be a much more measured approach.

Peter Grant: My recollection, which may help the hon. Member on his first point, is that Angus Robertson said they had not had a chance to begin to quantify the amount of legislation. He was saying not that it was because there was not very much but because there was so much of it. Can the hon. Member be clear as to what Labour's current position is? If a piece of retained EU law related exclusively to one of the devolved competences—either the Scottish Parliament, Senedd Cymru or the Northern Irish Assembly—is it Labour's position that that retained law should be removed from the devolved legislatures only with their explicit consent, or does Labour support the Government, who think this Parliament can legislate away in fields of devolved competence without the consent of the devolved Administrations?

10.15 am

Justin Madders: I thank the hon. Member for his intervention. I think we start from the point that this should be a matter of logic. If an issue is within devolved competence, it should be for the devolved Administration to determine, but I wait to hear the Minister's explanation for leaving that proposition to one side for the purposes of the Bill. We suspect the Government have done this because of the political imperative that Ministers will be able to say they have got rid of everything they do not want by the arbitrary deadline of 31 December 2023. If this amendment is accepted and it is something the Government accept is a valid argument, we would expect similar measures to come forward for Wales.

Another consideration is that we do not actually know at this stage which laws are within the competence of Scotland. We do not know which laws are covered, because there is no list anywhere. We just have the dashboard, but that does not give us any clues as to which pieces of regulation are considered to be within the devolved nations' competence. Can the Minister justify the power to extend the sunset having to reside only in Westminster when it deals with matters of devolved competence? Can she also explain what the process will be in Government with the Brexit Opportunities Minister, when appointed, for identifying the laws that are within devolved competence, and the procedure to be followed for resolving any disputes about ownership of those pieces of legislation and which authority has competence?

Stella Creasy: This is a good example of the challenge we faced yesterday in the Delegated Legislation Committee on persistent organic pollutants, where it was not clear what legislation was covered by this Bill and what would be deleted and, therefore, whether it was worth rewriting any legislation. The Minister got into a tangle. We would be talking about such a tangle on a more widespread scale across our devolved Administrations.

I echo the point made about my Front-Bench colleague, my hon. Friend the Member for Ellesmere Port and Neston, about the importance of recognising our colleagues in the Senedd as well. That is the challenge with this legislation. Because we do not know the full extent of what it will do, we do not know how it will affect devolution. We do not know where the lines between devolved powers and powers held at Westminster will be drawn and what will be retained. These amendments reflect that. It is not unreasonable to ask Government Ministers to clarify how they see this all working.

One of the concerns over the last couple of years has been the fractures in devolution and the pressure we have put on our devolved Administrations in making the decision to leave the European Union. I would ask the Minister to set out not just why she thinks Westminster should supersede any of the devolved Administrations, but also what her plans would be, should in that subsequent, updated, rolling list of laws a piece of retained law come up that had perhaps not been previously identified but that is quite clearly about devolved powers. How would she look to manage that?

The Minister's colleagues yesterday were rather intemperate, shall we say, when it was pointed out that they were passing a statutory instrument that rested on legislation that would no longer exist at the end of the next year, 50% of which had not yet been identified as being on the dashboard but was clearly part of the regulations the Government had put forward. How does the Minister feel that will affect our relationships across the United Kingdom and our ability to speak up for the Union if the Westminster Government puts Government Ministers across the devolved Assemblies and the Scottish Parliament in the same position for 4,000 pieces of legislation?

I hope the Minister will recognise that these amendments and concerns about devolution come, yet again, not from a desire to stop Brexit, because Brexit has happened, but from a desire to protect the Union and ensure that people in any part of the United Kingdom have confidence that Government Ministers know exactly what they are doing.

Ms Ghani: The Committee should reject the amendments, which would exempt devolved legislation within Scotland's legislative competence from the sunset, and amend the territorial extent of the Bill so that it does not extend to Scotland. A sunset is the quickest and most effective way to accelerate the review of the majority of rules on

[Ms Ghani]

the UK statute book by a specific date in the near future. That will incentivise genuine rule reform in a way that will work best for all parts of the UK.

The territorial scope of the Bill is UK-wide. It is therefore constitutionally appropriate that the sunset applies across all four sovereign nations in the UK. That approach is consistent with other EU exit legislation, and will enable the devolved Governments to make provisions for addressing retained EU law in areas of devolved competence. Every nation of the UK should have the opportunity to review the retained EU law and have the powers to reform the legislation in a way that is appropriate and best suited to its citizens and businesses. Nothing in the sunset provision affects the devolution settlement. It is not intended to restrict the competence of either the devolved legislatures or the devolved Governments.

Peter Grant: I put it to the Minister that rejecting the amendment very much affects the devolution settlement. It means that the priorities on which the Scottish, Welsh and Northern Ireland civil service work will no longer be those set by their democratically elected Parliaments and Governments, but the policies set by the UK Government. Angus Robertson made it clear that the Scottish Government believe that there will be a substantial burden of administration on the Scottish civil service. What gives Ministers in this Parliament the right to tell the Scottish civil service to do what they tell them to, not their elected Ministers?

Ms Ghani: We are delivering. A crucial part of Brexit was ensuring that our law is the most sovereign law in the land. That is what we are delivering. It is not a diversion from any other policy.

Peter Grant *rose—*

Ms Ghani: I will continue.

A question was raised earlier, as the hon. Member raised just now, about a power grab. When using the powers under the Bill, the Government will use the appropriate mechanisms, such as the common frameworks, to engage with the devolved Governments. That will ensure that we are able to take account of the wider context and allow for joined-up decision making across the UK. If any disputes arise, we are committed to using the appropriate processes set out in the review of intergovernmental relations.

Nothing in the sunset provision affects the devolution settlement. It is not intended to restrict the competence of either the devolved legislatures or the devolved Governments; rather, it will enable the Scottish Government to make active decisions about the retained EU law within their devolved competence for the benefit of citizens and businesses throughout Scotland. I therefore ask the hon. Member for Argyll and Bute to withdraw the amendment.

Brendan O'Hara: It will come as no surprise to the Minister that I will not withdraw the amendment. I repeat that Scotland is having this done to us by a Government that we did not elect, pursuing a policy that we overwhelmingly rejected. My hon. Friend the Member for Glenrothes is right that the priorities of the Scottish Government will be dictated by the Government in Westminster. That flies in the face of the devolution settlement. I agree with the hon. Member for Ellesmere Port and Neston that, if a matter is within the devolved competence, it should be for the devolved Parliaments to decide whether they retain EU law and whether they sunset it. On that basis, I will press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 1]

AYES

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

NOES

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

Question accordingly negatived.

Justin Madders: I beg to move amendment 90, in clause 1, page 1, line 6, at end insert—

"(1A) Schedule [the Definitive List] sets out a complete list of instruments to be revoked by subsection (1) (referred to as the 'Definitive List').

(1B) The Secretary of State must by regulation add all relevant instruments referred to in subsection (1), so far as they are known to the Secretary of State at that date, to the Definitive List within 14 days of the date of Royal Assent to this Act."

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

Amendment 91, in clause 1, page 1, line 7, leave out subsection (2) and insert—

"(2) Before 30 June 2023 a relevant national authority must consult such organisations as appear to it to be representative of interests substantially affected by the inclusion of an instrument in the Definitive List, and any other persons potentially affected as the relevant national authority considers appropriate.

(2A) Following the consultation referred to in subsection (2), where a relevant national authority considers it appropriate, it may by regulations made no later than 31 May 2023—

(a) add any EU-derived subordinate legislation or retained direct EU legislation to the Definitive List, or

(b) remove any EU-derived subordinate legislation or retained direct EU legislation from the Definitive List.

(2B) No later than 30 June 2023 the Secretary of State must publish and lay a report before Parliament setting out—

(a) a summary of the objectives and effect in law of each instrument listed in the Definitive List and of the legal consequences of its revocation;

(b) whether that instrument affords any protections for consumers, workers, businesses, the environment, or animal welfare, and, if so, whether and how that protection is to be continued when the instrument is revoked;

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

(d) the consultation undertaken as required by subsection (2), together with any representations received in the course of the consultation;

(e) the reason why the relevant national authority considers that it is appropriate to revoke the instrument having considered those representations;

(f) the likely effect of the revocation of that instrument on the operation of the Trade and Cooperation Agreement between the United Kingdom and the EU, and on UK exports of goods or services to the European Economic Area; and

(g) the likely effect of the revocation of that instrument on the operation of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

(2C) The Secretary of State must by regulations remove an instrument from the Definitive List following an order of either House of Parliament (or, as the case may be, the Scottish Parliament, Senedd Cymru, or the Northern Ireland Assembly) calling on the Secretary of State to remove that instrument from the Definitive List.

(2D) If the Secretary of State is required by subsection (2C) to make regulations removing any instrument from the Definitive List but the Secretary of State has either—

(a) not made such regulations, or

(b) has made such regulations but they will not come into force on or before 31 December 2023,

then such regulations will be deemed to have been made and to have come into force on 31 December 2023."

New schedule 1—*The Definitive List*—

"This schedule sets out the Definitive List in accordance with section 1 of this Act."

Justin Madders: I apologise in advance that this discussion will last longer than that on other amendments. We accept that these amendments would fundamentally change the nature of the Bill, but they would do so in such a way as to create greater transparency and accountability and ensure that Parliament was able to properly fulfil its role in relation to the regulations. I refer to the evidence of the Bar Council, which said:

"It is a matter of great public interest that, where it applies, REUL should be as certain as possible. It is also important as a matter of democratic principle—as well as ensuring that replacement legislation in areas of great importance to business and the wider public is effective in achieving its goals—that replacement legislation be carefully considered and properly scrutinised before it is enacted."

We certainly agree with that as a starting proposition. It is clear that the Bill as currently drafted does none of those things. The first thing to do is to identify and agree on what is covered by the Bill, but I am afraid that has not been forthcoming so far. I am grateful to the Minister for writing to us on 11 November to set out her understanding of the position following reports in the *Financial Times* that another 1,000 or 1,400 laws that have been identified do not appear on the dashboard. The critical point, as she wrote in her letter in respect of further legislation that may be identified by the National Archives, is:

"This number has not yet been verified by the Government."

We still do not know what the Bill covers.

The former Minister, the hon. Member for Watford (Dean Russell), told us in response to a written question on 24 October:

"The dashboard presents an authoritative, not comprehensive, catalogue of REUL. Therefore, there may be some legislation that is covered by clause 1 of the Bill that is not yet captured in the dashboard. The Government will continue to identify additional REUL and update the dashboard on a quarterly basis to reflect this."

I am sure that I am not the only person struggling to understand how something can be authoritative but not comprehensive. The former Minister also told us in response to a written question on 21 October that

"we anticipate over 100 additional pieces of legislation will be added to the REUL dashboard."

We now know that it may well be considerably more than that. Even if just 100 pieces of legislation are missing, that will make that dashboard neither authoritative nor comprehensive. In that same answer, the former Minister also told us:

"Government officials are currently working to quality assure this data and any amendments to the data will be reflected in an update of the dashboard this Autumn."

The position is that the dashboard may be updated at some point in the not-too-distant future, but it is certainly not comprehensive or authoritative at the moment. With this Bill, we do not even know what we are allowing the Government to change.

As my hon. Friend the Member for Walthamstow told us in an evidence session, the Department for Environment, Food and Rural Affairs issued a ministerial correction to a written answer about the application of the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No.2) Order 2006. Originally, it said that the order

"was not made under section 2(2) of the European Communities Act 1972, and therefore it does not fall within the scope of Clause 1 of the Retained EU Law (Revocation and Reform) Bill",

but the ministerial correction confirmed that it did. Those actions hardly inspire confidence that that Department—or, indeed, any Department—has adequately identified the regulations that will be classified as retained EU law.

For good measure, the Marine Conservation Society has said that the Conservation of Offshore Marine Habitats and Species Regulations 2017, the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, the REACH Enforcement Regulations 2008 and the Civil Aviation (Working Time) Regulations 2004 are all absent from the dashboard but are retained EU law.

Those are just a few of the known unknowns, so we find ourselves in the unacceptable position of setting up a framework for the removal of laws, but we do not know which laws it will apply to. It is now six and a half years since the country voted to leave the EU. Surely the Government should know by now which laws are EU-derived and which ones they want to junk. I will come to that later point in due course, because before we get to the substance of what the Government intend to do with the Bill, let us first have an agreed baseline for what is covered by it.

10.30 am

As I say, the Government ought to know by now which laws are covered by the Bill, but if they are serious about taking back control of Parliament,

parliamentarians ought to know as well. Instead, we have a dashboard on a website—not even a list that we can all see. There is certainly not a list attached to the Bill. If the Government wish to maintain that they can accurately produce a list, they should ask themselves whether this is the right approach in the circumstances. If they can produce a list, they should accept new schedule 1 and allow everyone to work off the same list. It seems that the current approach is designed to create as little transparency as possible. Imagine being a business trying to plan ahead and having to navigate the dashboard, which might or might not be complete and which might be updated at some point in the future, just to understand what might be changed and which rules might come under the ambit of the Bill, never mind whether there will be changes to it and what those changes will be.

As the Bill currently stands, there is a risk that laws will fall automatically if the relevant Department has not identified them in the first place, and we have identified a number of laws that may fall into that category. Let us remove that risk all together by making it a requirement that the Government set out a definitive list within 14 days of the Bill being passed. I hope the Minister will acknowledge that this approach has some merit. I have not really heard any justification for why the Government would not want to set out everything as clearly as possible, so that we are all clear about what is in place.

Amendment 91 would insert subsection 2A into clause 1 to create a failsafe by allowing any Department to amend the list until 31 May 2023, because, from what we have heard so far, further regulations will keep dripping out over the coming months. Let us have a definitive list, not a dashboard or a guessing game whereby people have to type in the right search terms to see what is covered. Professor Catherine Barnard eloquently explained in the evidence session that

"listing the provisions that will be turned off avoids those bits of legislation that we do not know about—that is, they have not been found, despite an exhaustive search, including by the National Archives—being accidentally turned off, and our not knowing that they have been turned off until they become an issue down the line in some sort of litigation."

Professor Barnard said of the definitive list:

"Once you have done all that, you can say, 'Right, we should consult on those bits of legislation.'"—[*Official Report, Retained EU Law (Revocation and Reform) Bill Public Bill Committee,* 8 November 2022; c. 11.]

That is what amendment 91 seeks to do, as it sets out that:

"Before 30 June 2023 a relevant national authority must consult such organisations as appear to it to be representative of interests substantially affected by the inclusion of an instrument in the Definitive List"

that the amendment would create,

"and any other persons potentially affected as the relevant national authority considers appropriate."

It is good practice for any Government Department to seek to consult when it wants to change the law, and I will quote from the 2008 "Code of Practice on Consultation", which says:

"When developing a new policy or considering a change to existing policies, processes or practices, it will often be desirable to carry out a formal, time-bound, public, written consultation exercise."

I appreciate that the code of practice is nearly 15 years old and is from the last Labour Government, but that statement surely ought to be one that any Government of any persuasion could sign up to. That is what the amendment seeks.

It may well be that Ministers will argue that some of the regulations are so minor and technical that they are not worth consulting on, but without a definitive list, we are unable to say whether we accept that that is the case. In any event, the clause only requires the consultation to be with those that the relevant authority considers to be relevant. For instance, if there is a regulation that deals with widgets in Walsall, that should be a fairly modest exercise. However, even the Department recognises the shortcomings, because it says there is a potential risk of unintended and harmful consequences if pieces of retained EU law are amended on sunset without proper review. As far as I can tell, no Department has published or even begun to identify which regulations it wishes to retain, amend or revoke. I am sure it would be helpful for those Departments to hear the views of those that might actually be affected by those regulations before they seek to make final decisions on them. As Professor Barnard said in the evidence session,

"The question is, what is the internal process? Even if the Secretary of State in DEFRA decides that he or she wants to retain all the legislation because it is so important in different forms, what happens? Does it go to the Cabinet? Is there some sort of star chamber that looks at what is being proposed by the Departments? We know none of that, and we know none of the detail about whether there will be any consultation with external stakeholders, which is particularly important in the field of agriculture, where a large number of stakeholders are affected."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 8 November 2022; c. 15, Q27.]

The amendment seeks to answer those questions and insert some basic accountability and scrutiny into the process. It would be helpful if, when she responds, the Minister could put a little flesh on the bone as to how these processes will actually work, although I suggest to her that setting it all out in the Bill, as per our amendment, would ensure that there is a consistent approach by each Department across the whole Government. That way, when a Brexit Opportunities Minister is appointed, they could have an assurance that the approach is consistent across the board.

Amendment 91 would require by 30 June 2023 that the Secretary of State

"publish and lay a report before Parliament setting out"

a number of things. First, there must be a summary of the objectives and effect in law of each instrument in the definitive list and of the legal consequences of its revocation, which would ensure that we at least create some legal certainty in what is acknowledged by most to be a very uncertain legal situation.

Under the amendment, the Secretary of State must also state whether that instrument affords any protections for consumers, workers, businesses, the environment or animal welfare, and, if so, whether and how that protection is to be continued when the instrument is revoked. That is very important. As we know, there are significant numbers of protections contained in the regulations. Is it not right that we should have clarity on whether those rights will remain or whether, as is entirely permissible, those rights could be protected via another route? In later amendments, we will get on to some of the very important rights and protections contained in these

regulations. It cannot be anything other than beneficial for there to be an exercise in each Department to undertake an assessment of that.

In the statement within the amendment, the Secretary of State must also set out any benefits that are expected to flow from the revocation of that instrument. Of course, it is entirely possible that some might benefit from the removal of regulations. I suspect that the majority of my constituents will not fall into that category, but let us not be churlish: let us give the Secretary of State the opportunity next year—their moment in the sun—to actually say what the benefit of revoking certain regulations will be.

We would also require the statement to set out the consultation undertaken with any representations received in the course of the consultation. That is very important. We want to know the full picture of any proposals from the Government, both good and bad. It would also be necessary to state a reason why the relevant national authority considers it appropriate to revoke the instrument, having considered those representations. I do not think it is unreasonable for us, as parliamentarians, to want some explanation as to why a Minister is taking a particular decision. We would not want anyone to enter into a consultation with their mind already made up, ignore the results of that consultation and then not have to justify their decision.

The statement would also have to include a few words on the likely effect of the revocation of that instrument on the operation of the trade and co-operation agreement between the United Kingdom and the European Union, and on UK exports of goods or services to the European economic area. That, in effect, is something the Government have already committed to. When he had his moment in the sun on Second Reading of the Bill, the hon. Member for Watford (Dean Russell) said:

"I am very happy to make a commitment today that the Government will, as a priority, take the necessary action to safeguard the substance of any retained EU law and legal effects required to operate international obligations within domestic law. We will set out where retained EU law is required to maintain international obligations through the dashboard".—[*Official Report*, 25 October 2022; Vol. 721, c. 189.]

The only difference, really, is that we would have something in this statement, rather than on the much-referred to dashboard. I do not know where this obsession with the dashboard has come from, but we are a Parliament, not a car, and a dashboard is not the way we should be legislating.

Finally, the statement must also set out the likely effect of the revocation of that instrument on the operation of the protocol on Northern Ireland in the EU withdrawal agreement. I think that is fairly self-explanatory.

Peter Grant: I have a great deal of sympathy with amendment 90, but amendment 91 seems to be telling the devolved Administrations how to do their job. Does the hon. Gentleman not think that if we want to allow the devolved Administrations to decide whether to vote for a particular piece of retained EU law, we should also leave it to them to decide the process by which they do it?

Justin Madders: If the hon. Member does not think that doing proper consultations is the way the Scottish Parliament wants to go, that is a matter for him, but we would like consistency of approach across all Departments and nations of this United Kingdom. Subsections (2C) and (2D) in amendment 91 would effectively create a failsafe so that any attempts to frustrate the will of the devolved nations cannot be made by the inaction of a recalcitrant Secretary of State. I hope the hon. Member can at least take some reassurance from that—any exercises of the devolved nations would, under the amendment, be honoured by Westminster.

We have already heard arguments that some of these laws were not brought into force in a truly democratic manner. Therefore, they do not need the same level of scrutiny that would ordinarily be afforded to other laws passed by this Parliament. Frankly, I find that argument nonsense. It is like saying, "I object to my neighbour planting leylandii in their garden, so I am going to do exactly the same." If the complaint is that the level of accountability and scrutiny was insufficient when the laws were brought in, surely those making that argument would want accountability and scrutiny when those laws are reviewed. Is taking back control not about us—this Parliament—having a fuller role in the legislative process?

As it happens, I do not accept that characterisation of how these laws were introduced in the first place. In its written evidence, the Bar Council said that

"the EU legislative process, whilst certainly capable of much improvement, contains a number of democratic checks and balances: for the vast bulk of EU subordinate legislation, the co-legislators, both of whom must adopt the final text by (normally weighted) majority, are the Council, comprised of elected Ministers from the Member States, and the European Parliament",

which is democratically elected, of course, and whose membership included until 2020 Members who were democratically elected from the UK. It continues:

"Important Commission legislative proposals are preceded by impact assessments and so-called roadmaps, and often accompanied by Staff Working Documents, all publicly available and setting out the policy intent. In addition, public consultations and stakeholder meetings are frequent features of the process, whether concerning binding or non-binding measures."

I do not know whether the criticisms of this process are about the quality of representation that we had over there. A number of former MEPs are now Members of these Houses of Parliament, and they all seem pretty capable people to me. Let us not forget that once the EU issued its directives, we in this place had the European Scrutiny Committee and other Select Committees to examine any proposals. It is simply wrong to say that our politicians, stakeholders and policymakers did not have ample opportunity to exert influence on the development of EU policy and secondary legislation.

There are many examples where EU legislation was supported, and even promoted, by the UK Government of the day. One example—I am sure you will remember this, Sir George—was the social chapter. That was clearly telegraphed by the Labour party as something it would introduce if it got into power back in the 1990s; it was in the manifesto. Of course, Labour won that election and those laws were introduced, including rights on parental leave and working hours. Nobody can say those rules were forced on us without our consent. It should therefore be a matter of agreement for everyone who wants to see democracy prosper that the replacement legislation under this Bill should be made by Parliament after proper consultation, public debate and scrutiny, not simply a ministerial decision—or, as the case may be, ministerial non-decision.

[Justin Madders]

The best idea we have at the moment regarding how the Government intend to approach this mammoth task is a statement from Lord Frost, who said the policy intention was

"to amend, replace or repeal all retained EU law that is not right for the UK."—[*Official Report, House of Lords,* 16 September 2021; Vol. 814, c. 1533.]

"Not right"—is that the best we can do? This centuries-old Parliament, taking a historic decision to wrestle back control from those unelected Brussels bureaucrats, finds itself in the ludicrous position of having another unelected person tell us that laws will be changed if they are "not right". Surely the Minister can see that could mean absolutely anything. That is the equivalent of a dictator waking up one morning and saying, "I don't think it's right that people in my country are allowed to wear hats, so from today we will outlaw that." Clearly that is an extreme example, but that is the consequence of having a Government who have the power to dispense with laws with no consultation or scrutiny because they do not think those laws are right. Surely as a Parliament we can do better than that. Surely we should hold ourselves to a high standard when we want to change legislation. We should not legislate on a whim, and Parliament should not hand powers to Ministers that enable them to do just that.

10.45 am

Finally, I refer the Committee to the comments of the Regulatory Policy Committee, which in its report described the impact assessment as either "weak" or "very weak" in every aspect. It said:

"As first submitted, the IA was not fit for purpose as it failed to consider adequately the full impacts of the Bill, in line with RPC primary legislation guidance. In addition, the Department had not included a suitable assessment of the impact on SMBs across the UK economy, or the impact of regulation (and deregulation) upon them or any potential mechanisms to mitigate the impact on SMBs. Specifically, the RPC highlighted, in its initial review, that the IA had not…provided a clear baseline position, with respect to the overall number of REUL that was in scope of the Bill and would, potentially, be retained, amended or sunset".

The report also said that the impact assessment had not

"clarified whether other legislation that is in progress, will have impacts on some of the REUL contained in the overall figure of over 2,400 pieces of REUL as presented in the IA. The Department was not clear on how the different legislation would interact with the Bill",

nor had it

"discussed, or set out, any examples of the REUL that is likely to be sunset, despite the Department having previously published extensive assessments of candidate REUL that could be changed or removed".

The impact assessment also had not

"used the approximately 20 per cent of REUL that has already been removed, amended or replaced, to make a better estimate of how much REUL remains to be considered and, by extension, estimate, or better illustrate, the possible impacts. The Department had not drawn upon any evidence or analysis, which was used to support those prior legislative changes, to provide an indication of the potential impacts associated with amending/replacing more",

nor had it

"provided a more considered assessment of the full range of impacts of the Bill including, where possible, quantification of the REUL already dealt with or being dealt with elsewhere".

In short, the approach is completely wrong and needs to change. There is more, but I think the Committee gets the picture.

The reason why the Regulatory Policy Committee was so damning about the initial impact assessment—I do not think, by the way, that it thought that the revised one was much better—was not that those writing the impact assessments are no good at their job. The impact assessment was so lacking because the Bill itself is so lacking. No amount of polishing can put a shine on something that is fundamentally flawed in the first place. That is why the amendments will add a little shine, if not sanity, to a Bill that is in desperate need of improvement.

Stella Creasy: Government Members may find this incomprehensible, but at some point it is not inconceivable that they may be in opposition. When they are, and they are presented with a Government Bill and literally nobody knows the full extent of what it does, that will seem similarly incomprehensible. I know that many Government Members have never contemplated the wilderness of opposition. For other Members, such as myself, it is all that we have ever known—but we have never known a situation where to ask Ministers to set out what a piece of legislation covers is considered an inconvenience at best or offensive at worst. The amendment is about rectifying that—not to put Ministers on the spot, but because it is completely reasonable and rational in a democracy to expect to know what Parliament is being asked to do.

The fact that we have to state that—my colleague on the Front Bench, my hon. Friend the Member for Ellesmere Port and Neston, gave an admirably gentle and mild version of what I am about to say—is a reflection of the difficulties of a Government who are struggling on after 12 years and cannot explain themselves. Our constituents could look at the consequences of not knowing what the legislation does as either—in what I believe is the common parlance—cock-up or conspiracy. That is precisely what will happen if we do not know what laws will be covered. Yet the Minister has admitted that she does not know. She wants to tell us some time next year, after the legislation will apparently have passed through Parliament.

I do not know about you, Sir George, but I am pretty sure that the Netflix special is already being written, because there must be some conspiracy behind this. Why do the Government not want to tell us what laws they want to get rid of? After all, we have just been told that actually the Bill is all about Brexit. Those of us who think that this is a bad process and that Brexit could be done in 101 other ways are clearly mistaken. There must be a conspiracy at stake here. The true width of what is happening must be something that could rival "Designated Survivor". The alternative—that the Government have put forward a Bill with a timetable and pace that mean they literally do not know what will happen next—is frankly disrespectful to our constituents. This amendment is about the confidence that the Government have in their own work. I turn again to the wondrous words of Warren G, when he said about being a regulator,

"you can't be any geek off the street".

Surely there must be some competency involved in this role. That competency is knowing what the legislation does. That is why with every other piece of legislation

we have an impact assessment. It is not unreasonable for us as parliamentarians to ask for that. After all, we will have to justify it to our constituents—well, we Opposition Members will not, but those currently sitting in the glorious offices of Government will. They will have to explain to their constituents why they passed a piece of legislation while not realising what it would do. At this point in time, nobody in this House can explain what it will do. Nobody, as the Minister yesterday discovered, could explain what would replace it. Nobody in this room can tell us exactly what is on that list. It is indescribable.

I do not think that in 12 years—that makes me a grandee in Labour terms at this rate—I have ever seen a piece of legislation where we as the Opposition have to ask for the extent of its impact. I want to warn Government Members: some day this may well happen to them. I know that must seem a gross insult, but they too will want Governments who are able to explain what they are intending to do, even if they do not agree with it, because they would then be able to go and tell their constituents why they do not agree with it. It is a reasonable proposition.

Amendment 90 asks the Government to set out a comprehensive list of retained EU law. After all, it is on the face of the Bill that that is what this legislation does. I apologise, Sir George, because I am now laughing. I am laughing at the absurdity of our being at a point where we have to ask the Government to set out what they are going to do. There is the concept of an "authoritative but not comprehensive" list—those words are worthy not just of "Yes Minister" but of "Blackadder" in their pomposity and stupidity. It is stupidity because it is incredibly dangerous to give the Government powers that they do not know what they are going to do with. Let me be clear that I am talking about the stupidity of the legislation, not the people.

I am talking about stupidity in terms of accidental intent—the cock-up element of this, rather than conspiracy. That is what I fear most of all. A conspiracy means somebody at least has a plan. As I am sure we will come on to later, the conspiracy is that the Government intend to rip up thousands of rights that people have relied on, such as by ending people's right to bank holidays, leaving them as an option, and ripping up maternity rights. After all, some of us in the House remember the Beecroft report well, so we know this is something Government have talked about before. That would be the conspiracy.

The cock-up is in creating a piece of legislation that deletes things and the Government then not realising they have deleted them until somebody comes forward to point it out. The statutory instrument I spoke to yesterday, which I really hope Ministers go and look at, was also about correcting deficiencies in how legislation was written. That is to say, things had been missed off. It happens, but asking the Government to set out clearly what legislation the Bill will amend—whether that be deleting, replacing or amending it—is not an unreasonable request. Our constituents should expect us to know what it is we are going to be legislating on.

On Second Reading, the previous Minister—not the Minister in front of us, to be clear—tried to claim that I should not be worried that this legislation would have an impact on airline safety, as that was a matter contained in primary legislation, so not subject to the sunset. In reality, we have now replaced that provision of civil aviation legislation with a range of secondary legislation, meaning precisely that airline safety is up for grabs and we will need to find time to rewrite that legislation.

If the Ministers responsible for this legislation do not themselves know its extent, how can we expect all those civil servants—who the Minister cannot clarify are working on this legislation—to know the full extent, let alone the colleagues she cannot name who are working on it? What will happen when a Minister is suddenly presented with a piece of legislation that has been abolished, which was not on the dashboard, not identified and not set out in the legislation? A Minister presented with that scenario will have no recourse—it will have happened, unless we pass amendments that give everybody clarity and confidence. It is not unreasonable to want to set out a workload for Government so that they know what they are doing.

Amendment 91 allows us to work out how the amendments happen. Again, I am laughing at the absurdity of our being in a position where we have to set out an understanding of how things might be changed and who we might want to talk to—perhaps industry experts. I am sure Government Members who stood on platforms where they supported things such as Beecroft have no problem with watering down the working time directive. I am sure they will tell us later when we come to debate that.

What about standards regulations—those incredibly technical but incredibly dull pieces of legislation that, if we are all honest, we have not spent a lot of time looking at, but we look to industry experts to be able to tell us about? How is it unreasonable to set out a process by which those people will be consulted? What have we got against experts in this country? Frankly, at this point in time, some expertise on legislation, given that the Government have to admit they do not know the full extent of the Bill, would be welcome.

In my 12 years as an MP, we have always expected to have impact assessments and to know roughly what is in scope in legislation. Clerks cannot tell us that because Clerks do not know the full extent of the legislation, because we do not have a full list. We keep coming back to the themes of the amendment, but we also have to recognise that removing the entire body of EU-based legislation at a stroke, without clarity about what replaces it, will also have a wider impact. It could impact on the TCA itself, because it could be considered to breach regulations that we put into the TCA to show that we were not going to reduce or water down rights in order to make sure we did not start a trade war. Again, setting out what laws are up for grabs would help mitigate that impact.

Government Members can be as blind as they like or as deaf to the idea that there could be any problem with passing a piece of legislation where we literally have no idea of what it covers. But mark my words, Sir George: if and when they find themselves in opposition, they will rue the day they set the precedent that it is possible for Government Ministers not only to have such sweeping powers, but not to be told what it is they can use those powers for.

The amendments are not unreasonable; I will wager that when the Bill comes to the House of Lords, if the Ministers today are adamant about turning down the amendments, we might see something similar. I hope

[Stella Creasy]

that Members across the House will support them if only for the sanity of being able to remove the idea that there is some sort of conspiracy, and we can go back to expecting a common or garden cock-up in how legislation in this place is written.

In the meantime, I urge Government Members to support the amendments. If they cannot explain to their constituents what they are doing in Committee today, they certainly would not be able to explain it when we come to the election to decide which side of the House any of us sits on, and that will be a very testing moment indeed.

Ms Ghani: I ask hon. Members to reject amendments 90 and 91 as well as the introduction of new schedule 1. The amendments undermine the central sunset policy of clause 1 and the Bill as a whole. The sunset provision was drafted to incentivise Departments to review their retained EU legislation and actively make a decision on whether to preserve something. Amendment 90 creates the preservation of a default position and therefore removes the key impetus for reform. Allowing outdated retained EU laws to languish on our statute book where they do not work in the best interests of the UK is irresponsible.

The sunset is the backbone of the Bill as it accelerates reform and planning for future regulatory changes. Without it, the benefits and the potential to bolster economic growth might not be realised at all, as sunset ensures that a single cohesive domestic statute book will exist following the sunset deadline. We have already committed to abolishing retained EU laws that stifle growth and are not in the best interests of UK businesses and consumers. The sunset is our fulfilment of that commitment.

I want to quickly respond to some of the questions raised. I do not have a list of TV or Netflix programmes or movies to contrast my responses. To crush the conspiracy about the laws that have been recognised, I refer hon. Members to the dashboard, which has the retained EU laws available, collected as part of a cross-Government collaborative exercise. The process was led by the Brexit Opportunities Unit, and it is where retained EU law sits across over 300 policy areas and 21 sectors of the economy. Hopefully, that conspiracy theory can die very quickly.

11 am

On the conversations about the dashboard being accurate, I should say that it has undergone extensive quality assurance by policy, legal and digital colleagues to ensure that all legislation is represented accurately within each Department. Officials have ensured that the data presented uses a consistent set of categories to define the different elements of retained EU law.

Paul Blomfield: Will the Minister give way?

Ms Ghani: If I make progress, maybe I will answer some of the hon. Gentleman's questions.

A question was raised about whether this was the only account of retained EU law. Throughout the process of the retained EU law review, we have been working closely with the National Archives. There was a figure in the *Financial Times*, but we have yet to verify all those items. The number covers all existing legislation, but some of it may have already outdated itself as legislation has been updated.

On the question about management and cost, the retained EU law dashboard was built by officials from the Brexit Opportunities Unit and the Cabinet Office using the software Tableau. It was created with no additional cost to the Government. Hopefully, that covers some of the conspiracy theory about where the information is kept.

Alex Sobel (Leeds North West) (Lab/Co-op): Will the Minister give way?

Ms Ghani: If I can continue, I will hopefully finish on some of the questions that were raised, such as the one about working with Parliament. We are committed to working collaboratively with Parliament to deliver the programme, as we did with our programme of statutory instruments for EU exit. I do not see why we cannot build on that approach as well.

The question was raised about international obligations. The UK Government are committed to ensuring that the necessary legislation is in place to uphold the UK's international obligations, including the withdrawal agreement, the Northern Ireland protocol and the trade and co-operation agreement after the sunset date. The UK Government will make sure that the necessary legislation is in place to ensure the terms of the withdrawal agreement are upheld after the sunset date, including regarding citizens' rights and the Northern Ireland protocol. The aim of the Bill is not to alter the rights of EU nationals, which are protected or eligible to be protected by the relevant citizens' rights provisions contained within the withdrawal agreement.

I do not buy the Opposition argument that somehow we will take decisions that mean we have a different set of values to Brussels—lower standards, making our constituents less safe and taking away their rights. That is not who we are as elected officials. We are all working together in the same room and many Opposition Members know that we share the same values as they do. Scaring people that we are going to do something that takes away those rights is slightly absurd.

Clause 2 also allows for extensions to the sunset date for specified instruments or a specified description of retained EU legislation where we have plans to amend and reform but need slightly longer to do so. Everybody will recognise and welcome that. Introducing a schedule that requires a listing of all retained EU law to be revoked is unnecessarily burdensome and not a good use of civil service and parliamentary time when preservation would still be necessary.

Several hon. Members *rose—*

Ms Ghani: Overall, the amendments change the very principle that the Bill is trying to introduce: fundamentally delivering Brexit. I therefore ask the hon. Member for Ellesmere Port and Neston to withdraw his amendment.

The Chair: I call Justin Madders.

Justin Madders: Thank you, Sir George. I am happy to take interventions if any hon. Members wish to intervene.

Stella Creasy: I thank my hon. Friend for giving way. Given that we are debating whether Ministers are capable of scrutiny, not to take any questions rather proves the point. Does my hon. Friend agree with me that he has already set out a number of instances of regulations that are not on the dashboard? I wish to add the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. Is there a number for the regulations that are not currently on the dashboard that people can feel comfortable with? Is there a margin of error that the shadow Minister can set out, given that the Government will not answer that question? Or given that businesses want better rather than no regulation, is it not completely unreasonable not to know what is up for grabs?

Justin Madders: Businesses want certainty and, with this Bill, we are as far away from that as is possible. I do not know if there is going to be a margin of error. Indeed, I do not think there should be any margin for error when talking about legislation in this place. We should all know exactly what we are voting for and signing up for. At the moment, the Bill does none of those things. The Minister said that the amendments would undermine the Bill. Absolutely they would. They are intended to create some parliamentary scrutiny, which the Bill sorely lacks. The Minister also said that the Bill's drafting aims to incentivise Departments to hurry along and decide which laws they want to retain, but I am afraid that if we are using legislation as a management tool for civil servants we are in a pretty poor place

Paul Blomfield: Does my hon. Friend agree that the purpose of a Public Bill Committee is to put legislation under scrutiny and that that process is enabled by Ministers answering questions? Does he further agree that the objective of the process we are involved in will not be served if the Minister refuses to take interventions?

Justin Madders: I thank my hon. Friend for his intervention. When a Bill is clear, and when the intention and the factual basis for proceeding are clear, it is not always necessary to have interventions, but when a Bill is as opaque and uncertain as this, it is important that the Government set out clearly their rationale for proceeding in such a way. No doubt those concerns will be picked up in the other place, where I hope they get more comprehensive answers.

Paul Blomfield: I understand the difficulties the Minister has in dealing with some of the questions, but on her specific point about it being too burdensome for civil servants to produce a list of laws, does my hon. Friend share my incredulity at her acceptance that undertaking a review and putting forward revised proposals, or indeed making a recommendation, to revoke all the laws is not too burdensome, although it is too difficult for the Government to list those laws?

Justin Madders: I agree. I, too, have sympathy for the Minister, who has been dealt a pretty poor hand, but the idea that we cannot get someone to cut and paste from the dashboard to the Bill is ludicrous.

Peter Grant: I note that the hon. Gentleman's incredulity is almost as great as mine with respect to a Minister who a minute ago said that we can deal properly with 4,000 bits of legislation in just over a year, but then said that the Government cannot take stuff from their own dashboard and transpose it somewhere else.

Am I correct to think that, essentially, the purpose of the amendment is to give the Government some insurance cover to prevent them from revoking useful legislation by mistake? What does it say about the arrogance of a Government that they refuse to accept such an offer of help and prefer to see legislation that could have unintended damaging consequences, rather than simply having the humility to accept such a proposal, which they seem to reject purely because of where it comes from, rather than any benefit it might contain?

Justin Madders: I hope the Minister will learn that I always try to be helpful with my amendments. We are genuinely trying to get the Bill into some kind of shape whereby it might restore faith in parliamentary democracy. We will not be the ones to bear the consequences of accidental omissions; it will be our constituents. They will rightly ask, "What were you doing? Where were you when the Bill was passed?" It will be clear that we raised our concerns and pointed out the terrible potential consequences of not doing this correctly.

Stella Creasy: Can my hon. Friend have any confidence in the dashboard itself if Ministers are not prepared to put it on a statutory footing by at least listing the laws that are creating it? The Minister tells us to have confidence in the dashboard process, saying that it is a wonderful tool for people to be able to learn what is going on, but not so wonderful that it can be transplanted in legislation. Does my hon. Friend agree that that rather undermines any confidence that people might have in the dashboard, even as an authoritative if not comprehensive list of the legislation affected?

Justin Madders: I will use a hip-hop lyric in response, seeing as that is the road we are going down. LL Cool J once said

"you can't gain or maintain…Unless you say my name",

and that is the point of this amendment. We cannot actually say, scrutinise or understand the effect of the Bill if we do not have a comprehensive list. The Minister has said that the dashboard is the panacea for our criticism, concerns and, indeed, conspiracies about what is going on here, but when the Government themselves admit that the dashboard is not a full list of the laws, it cannot be acceptable or tenable that that is the basis on which they intend to proceed. We do not legislate in this place by website; we legislate by legislation, and the intention of the legislation should be clear.

I will pick up one other point that the Minister made. She said that we continue to support the values of the EU, even though we are leaving it. I am afraid that clause 5 does not do that; it specifically says that we will no longer be following the principles of EU law as we leave. I accept it is a legitimate position, but that is the fact of the matter. I appreciate that we have dealt with this matter to the nth degree, so I will finish by saying that I intend to push this amendment to a vote. We cannot have a situation where we do not know what legislation covers, where we do not what know what the

[Justin Madders]

Government intend to do with the legislation, or where the Government will not talk to anyone about what they intend to do with it.

We cannot have the Government changing the law on a whim; there must be proper accountability and scrutiny. We cannot have unaccountable Ministers changing the rules without reference to anyone else. That is not what taking back control was supposed to mean. I am afraid that says that the Government are not confident about their intentions and, frankly, that is a completely unacceptable situation, which this amendment would go some way to putting right.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 2]

AYES

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

NOES

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

Question accordingly negatived.

Brendan O'Hara: I beg to move amendment 22, in clause 1, page 1, line 9, at end insert—

"(2A) Subsection (1) does not apply unless a motion approving the revocation of any piece of legislation to be revoked has been passed by the House of Commons, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly."

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

Amendment 23, in clause 15, page 17, line 4, at beginning insert "Subject to subsection (1A),".

Amendment 24, in clause 15, page 17, line 5, at end insert—

"(1A) A Minister of the Crown may not make regulations under subsection (1) unless a motion approving the revocation of the secondary retained EU law has been passed by the House of Commons, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.

(1B) A motion under subsection (1A) must state the date on which the secondary retained EU law is to be repealed, and any regulations under subsection (1) which follow such a motion must provide for the revocation to take place on that date."

Brendan O'Hara: The amendments are in my name and the name of my hon. Friend the Member for Glenrothes. I will be extremely brief. The purpose of these amendments is to recognise the fact that there are four Parliaments on these islands, and those Parliaments should be respected, so it should be the case that nothing can sunset, whether reserved or devolved, unless that is agreed to by the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly. We need to remind Committee members that Scotland and Northern Ireland completely rejected Brexit; only England and Wales supported it.

Had David Cameron been wise enough to accept a similar proposal to the one set out in the amendments—that is, had he said that the UK would not leave the European Union unless every constituent part of the UK agreed to that—we would not be in the boorach that we find ourselves in. I ask the Government to learn from their mistakes, and to accept that listening to and respecting the opinions of the Parliaments in the constituent parts of the United Kingdom might be a useful way to avoid yet another almighty mess. What is decided in this place will have a profound effect on the peoples across these islands. Heeding the views of their Parliaments, which represent the people of Scotland, Wales and Northern Ireland, would do nothing other than improve our democracy. For that reason, I urge the Government to accept amendments 22, 23 and 24.

11.15 am

Justin Madders: The amendments acknowledge that it should not be Ministers who get to decide which laws to keep and which to chop. The Bill gives the Government widespread executive powers to rewrite affected laws through statutory instruments that require little parliamentary scrutiny, and with no mandate from the voters. There has been no guidance on, or indication of, which laws Ministers consider to be outdated, and what improvements are intended to make them

"better suited to the UK."

Any replacement for these rights would require little parliamentary scrutiny. Core workers' rights, key environmental protections and important consumer rights are left in the gift of Ministers. I think we have made it clear that we do not think that is acceptable.

The refrain of those who advocated for Brexit was that we should take back control—"we" meaning the people we represent, not Ministers sitting in rooms on their own, answerable to nobody, and under no requirement to explain their actions or inaction. That is not the way to go. The Government cannot argue that the Bill brings sovereignty and democratic control back to the legislative process when it demolishes the role normally undertaken by Parliament.

Any meaningful attempt to increase democratic oversight would seek to address those fundamental flaws. Parliamentary safeguards exist precisely because Ministers might always be tempted to resist scrutiny from Parliament. Those safeguards are important, if only because scrutiny and debate prevent errors, omissions—we certainly feel that there may well be omissions—and mistakes. These are important matters that will impact our constituents' lives, and the prosperity or otherwise of the nation for years to come. Should not any Government have the courage of their convictions and open up their decisions for parliamentary approval? Should not we have a say on whatever Government decide that they are letting themselves and their citizens in for?

The Civil Society Alliance has said that this Bill will further destabilise devolution arrangements at a time when tensions between devolved and central authorities are more challenging than ever, and that will undermine the UK's democracy and constitution, as well as the

role of devolved and central Parliaments. The alliance says that the Bill gives staggeringly broad delegated powers to repeal and replace parliamentary laws with policy that is subject to little or no democratic scrutiny and is introduced at an alarming pace. We have already made clear our position: we do not agree with this. No one, whether they voted remain or leave, would want that. For that reason, we think that the amendments have some merit.

Ms Ghani: I ask hon. Members to reject amendments 22 to 24. Amendment 22 would fundamentally undermine the principles of the Bill by requiring individual pieces of retained EU law to be approved by a motion in the House of Commons and all the devolved legislatures before the sunset could revoke them. Notwithstanding the issue with parliamentary time, this amendment would require the UK Government to seek consent from all the devolved legislatures before revoking any secondary retained EU law, irrespective of its devolution status or territorial extent. It seems that it would in effect give the devolved legislatures a veto over retained EU law in other parts of the UK, and is therefore highly inappropriate.

Amendments 23 and 24 would hinder the efficient removal of regulations that have been identified as beign outdated, unduly burdensome and not suitable for UK citizens and businesses. The intention in this Bill is not for the Government to take on the function of the devolved authorities; nor is the Bill a power grab. I therefore ask that the amendments be withdrawn or not pressed.

Brendan O'Hara: I am not remotely surprised by the Minister's reply, but I gently ask her: who knows better than the parliamentarians representing people across these islands in Edinburgh, Cardiff and Belfast about what is best for them and the people who elected them? They can also provide expertise on the damage that unintended consequences can cause. How often in this Parliament have we made the case that on occasion—or often—the views of other parts of the United Kingdom have been overlooked or ignored by the Government, and that Government officials have been unaware of them?

This is about democracy. This is about giving the other Parliaments the right to say, "No, this will not work, and these are the reasons why." Very recent history tells us that had we adopted such an approach only six or seven years ago, we would not be in the mess we are in. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Justin Madders: I beg to move amendment 73, in clause 1, page 1, line 9, at end insert—

"(2A) Subsection (1) does not apply to the following instruments—

(a) Management of Health and Safety at Work Regulations 1999,

(b) Children and Young Person Working Time Regulations 1933,

(c) Posted Workers (Enforcement of Employment Rights) Regulations 2020,

(d) Part Time Employees (Prevention of Less Favourable Treatment) Regulations 2000,

(e) Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002,

(f) Transfer of Undertakings (Protection of Employment) Regulations 2006,

(g) Information and Consultation of Employees Regulations 2004,

(h) Road Transport (Working Time) Regulations 2005,

(i) Working Time Regulations 1998,

(j) Agency Workers Regulations 2010,

(k) Maternity and Parental Leave etc Regulations 1999,

(l) Trade Secrets (Enforcement etc) Regulations 2018,

(m) The Health and Safety (Consultation with Employees) Regulations 1996, and

(n) Information and Consultation of Employees Regulations 2004."

This amendment would exclude certain regulations which provide for workers' protections from the sunset in subsection (1).

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

Amendment 76, in clause 15, page 17, line 5, at end insert—

"(1A) Subsection (1) does not apply to the following instruments—

(a) Management of Health and Safety at Work Regulations 1999,

(b) Children and Young Person Working Time Regulations 1933,

(c) Posted Workers (Enforcement of Employment Rights) Regulations 2020,

(d) Part Time Employees (Prevention of Less Favourable Treatment) Regulations 2000,

(e) Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002,

(f) Transfer of Undertakings (Protection of Employment) Regulations 2006,

(g) Information and Consultation of Employees Regulations 2004,

(h) Road Transport (Working Time) Regulations 2005,

(i) Working Time Regulations 1998,

(j) Agency Workers Regulations 2010,

(k) Maternity and Parental Leave etc Regulations 1999,

(l) Trade Secrets (Enforcement etc) Regulations 2018,

(m) The Health and Safety (Consultation with Employees) Regulations 1996, and

(n) Information and Consultation of Employees Regulations 2004."

This amendment would exclude certain legislation which provides for workers' protections from the power to revoke without replacement in subsection (1).

Amendment 67, Clause 22, page 21, line 42, at end insert—

"(da) section [Workers' rights];"

Amendment 60, in clause 22, page 22, line 19, at end insert—

"(d) any regulations made under section 2 of the European Communities Act 1972 which have the effect of conferring rights or protections on workers."

New clause 4—*Workers' rights*—

"The Secretary of State must by 1 January 2023 publish a list of any provision to which this Act applies which confers rights or protections on workers which has not been—

(a) subject to regulations under section 1(2),

(b) restated under section 12 or 13,

(c) replaced under section 15(2), or

(d) revoked under section 15(3) and replaced with alternative provision

as at 1 January 2023."

Justin Madders: Amendment 73 provides that clauses 1 to 3 and the powers under clause 15 do not apply to the list of regulations set out in the amendment. Committee members with a keen eye will notice that they all relate to employment and workers' rights. The amendment would remove them from the sunset clause and prevent further watering down by the Government. If the Committee is minded to support the amendments, we can all leave here today safe in the knowledge that we have done our bit to protect workers' rights from deliberate action or careless inaction.

I will not go through the effect of every one of the regulations. Some will be more familiar to Members than others. They represent, as far as we can identify, all the major employment rights in the ambit of this Bill—rights that people enjoy every day.

Paid annual leave is one of the greatest achievements of the last Labour Government. Also included are the regulations that introduced daily and weekly working limits. For Members who are not aware, that arose from a concern about workers' health and safety. The risk of working excessively long hours has been shown time and again. The regulations listed also include a worker's right to a 20-minute break in a shift, a break from work each day, and a day off every week or two days off every 14 days. We should not jettison those minimum standards.

Other regulations in the list oblige employers to assess health and safety risks to their workers, and to keep that risk assessment up to date. Do we not think that everyone has a right to work in a safe environment, and that employers should take steps to ensure that?

There are other laws in the list that are well worth fighting for, such as the right of part-time and fixed-time workers to be treated, pro rata, similarly to permanent workers unless the employer can justify the different treatment. Agency workers have the right after 12 weeks to receive the same basic working and employment conditions as directly employed workers. There are rights to do with taking parental, paternity and maternity leave, and of course the right not to be subject to detriment or to be dismissed for having exercised such a right. Importantly, there is the right to return to the same job that the employee had before they went on maternity leave.

Employees have the important right to be consulted on health and safety, and to paid time off to carry out health and safety training and other duties. They also have the right to protection from discrimination or victimisation for carrying out health and safety duties.

Also included are rights under the TUPE regulations, which ensure that when one business buys another, there is reasonable certainty about which workers transfer to the new business, so that the purchaser knows which employers it is getting and, critically, workers know that they cannot be dismissed or have their terms and conditions chopped just because they are working for a new employer. How many times does the TUPE regulation get applied every year? I do not have a figure, but I expect that hundreds of thousands of people have their employment changed each year under TUPE. No one has ever come to me and said that they do not think that workers deserve the protections and consideration that those regulations provide.

Having a new boss creates uncertainty, as Government Members will no doubt appreciate after the past few months, so let us not add to it. Let us make it crystal clear that TUPE will stay. Imagine if someone was thinking of buying a business in 2023. How on earth would they know whether to proceed with the purchase if they did not know whether they were obliged to take on its employees? We have a stable, settled, well-understood framework of law that helps businesses to operate more efficiently, and this amendment seeks to retain that.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.