

Keep Our NHS Public

Briefing on the EU Law (Revocation and Reform) Bill 2022

Introduction

During its 40 year membership of the European Union (EU), the UK incorporated thousands of pieces of EU legislation shaping diverse areas of life, such as data privacy, genetically modified farming, medical devices and, not least, employment, worker and environmental protections. When the UK left the EU, in order to provide legal continuity and certainty, this legislation was ‘cut and pasted’ onto the UK Statute Book as ‘retained EU law’ (REUL). This body of law, created by the EU Withdrawal Act 2018, is now set to be reviewed in what Liz Truss said will become “a bonfire of red tape” that will encourage business investment and boost growth.¹

The EU Law (Retained and Revocation) Bill (otherwise known as the Brexit Freedoms Bill) was introduced by Jacob Rees-Mogg and has already reached the Report Stage in the Commons. If passed, most ‘retained’ EU legislation will be revoked by 31st December 2023,² unless Parliament takes positive action to incorporate it within UK law.³

What the Bill will do

The Bill

“completely overhauls the constitutional architecture of REUL, making it (on the whole) much easier to revoke, modify or replace through secondary legislation”.⁴

If passed it will, for example:

- give Ministers a range of delegated powers to revoke, restate, replace or update retained EU law by statutory instrument and therefore without the usual Parliamentary scrutiny;⁵
- remove or downgrade existing forms of Parliamentary scrutiny of statutory instruments when these aim to modify or revoke law of EU origin;
- place a ‘sunset’ on retained EU law which means that, unless it’s specifically preserved, it will disappear after 31st December 2023, creating gaps in domestic law – something that the EU Withdrawal Act of 2018 was designed to avoid;

¹ <https://www.independent.co.uk/business/liz-truss-promises-red-tape-bonfire-with-review-of-all-eu-law-by-end-of-2023-b2129521.html>

² or, if a consensus to delay is reached, by June 2026.

³ Acts of UK Parliament are out of scope.

⁴ <https://researchbriefings.files.parliament.uk/documents/CBP-9638/CBP-9638.pdf>

⁵ Only 17 Statutory Instruments have been turned down in the past 65 years.

- provide a new legal framework for reconciling inconsistent sources of law when they include those of EU origin, which Ministers can influence through the use of statutory instruments.

The scale of the project

The government has published a Retained EU Law Dashboard⁶ aiming to show the number of relevant laws and whether they are still in force. The Dashboard initially itemised 2,400 pieces of Retained Law, across 300 policy areas and 21 sectors of the UK economy. However, more recently, the Financial Times has found an additional 1,400 (unverified) items of legislation that may be affected by the Bill,⁷ suggesting the task of working through all retained law is even more difficult than initially thought.

Given the dearth of officials in key government departments who can work on replacing these laws, there are doubts about whether the work can be done within the time frame: for example only three officials (rather than the 150 estimated necessary) are working on the Department of Health and Social Care's 137 Retained Laws.

The process

The Bill provides no information about the process to be adopted to assess the thousands of pieces of retained law, or the resources to be provided for this. Nor is there any indication of the involvement of the devolved administrations in decisions about the future of retained laws, suggesting a potential for dispute and a risk to the Union.

Further, there are concerns that the sunset clause could be used to put a gun to the head of Parliament if Government submits a raft of replacement legislation at the eleventh hour, so preventing objections and proper scrutiny.⁸

Sweeping Ministerial powers

The Bill side-lines Parliament, transferring substantial legislative powers to the Executive. It gives extraordinary scope to Ministers, allowing them to decide which laws to save before the sunset deadline, with minimal Parliamentary oversight, no public consultation and no opportunity to improve legislation.

Clause 15 of the Bill is particularly contentious: it has been described as giving Ministers a “do anything we want power”,⁹ providing, that is, they do nothing to *increase* regulatory burdens, or impose obstacles to trade, innovation, efficiency

⁶ <https://www.gov.uk/government/publications/retained-eu-law-dashboard>

⁷ https://www.ft.com/content/0c0593a3-19f1-45fe-aad1-2ed25e30b5f8?accessToken=zwAAAYRb9WMCKc8MBZOjGfFF_tOq0S7SXjC1-A.MEQCIAXztcabOpzyupNxoodVrmhoqTtZBnjevmoQX9janrFEAiAWMJTXaYnmk6cfzi16CvhN9wa2TcMhAvn1EENq70_djw&sharetype=gift&token=a688c708-4727-4551-83e0-fadc3aee24b2

⁸ <https://www.monckton.com/event/webinar-on-the-retained-eu-law-revocation-and-reform-bill/> 28.9.22

⁹ Dr Ruth Fox, Hansard Society Webinar: <https://www.hansardsociety.org.uk/events/webinars/retained-eu-law-bill-parliament-what-does-it-mean> 12.10.22

productivity or profitability. The Bill only allows for standards and protections to be weakened: whatever law remains is to provide “a regulatory ceiling, rather than a floor”.¹⁰

KONP’s specific concerns

i) Potential impact on the NHS

KONP is anxious about the potential consequences of the Bill for the NHS if many existing rights and protections are lost. For example, the Dashboard indicates that we could see the disappearance of regulations governing quality, health and safety, such as those dealing with human medicines; the quality of food for babies and infants; hygiene standards for the production of products of animal origin; the quality and safety of organs intended for transplantation; and requirements for the manufacture, packaging and sale of tobacco and related products.

The disappearance of these and many other regulations risk undermining the health of the public, and in turn creating new pressures on the NHS.

ii) Employment rights

The Bill poses threats to long-established employment rights, such as the Working Times Regulations 1998, the Transfer of Undertakings (Protection of Employment) Regulations 2006, Fixed Term Employees Regulations 2002, the Part Time Workers (Prevention of Less Favourable Treatment) Regulation 2000, the Agency Workers Regulations 2010 and the Information and Consultation of Employees’ Regulations 2004.

The morale of NHS staff is already low in the face of low pay, exhaustion following Covid and pressure due to staff shortages. If employment rights are undermined as a result of this Bill, the situation for NHS staff and patients can only get worse.

Unwarranted uncertainty

In addition to political uncertainty about the future of the Bill - for example, both Scottish and Welsh Governments have recommended their Parliaments withhold consent - the Bill creates huge uncertainty about which legislation will remain in effect after December 2023 and which will simply ‘fall off the cliff’ – whether by intention; because it was overlooked and omitted from the Dashboard; or due to insufficient time and staff to review the legislation. The Bill’s Explanatory notes give no indication of the policy or legal areas that the Government thinks should be retained, so if the Bill is passed “.... neither Parliament nor businesses nor anyone else can know what the substantive law will be by the end of 2023”.¹¹

Moreover, the Bill gives Ministers the power to set different sunset dates for specified pieces of retained law, up until June 2026, but without indicating which

¹⁰ https://www.hansardsociety.org.uk/publications/briefings/five-problems-with-the-retained-eu-law-revocation-and-reform-bill?mc_cid=5b3fb62627&mc_eid=b2437c739f

¹¹ Sir Jonathan Jones KC, Hansard Society webinar, <https://www.hansardsociety.org.uk/events/webinars/retained-eu-law-bill-parliament-what-does-it-mean>

laws will be considered or dropped, thereby prolonging uncertainty and creating even more legal complexity.

This uncertainty runs counter to the Governments' own aims of promoting investment and growth by creating significant problems for UK businesses: lack of clarity about future employment laws and technical standards, for example, is likely to discourage investment. Plus a swathe of new UK legislation imposing different standards to those of the EU may introduce additional costs for companies wishing to trade with the EU, on top of rising operating costs. At the same time, under the Trade and Cooperation Agreement, changes to labour and environmental protections run the risk of distorting UK-EU trade or investment and triggering the imposition of tariffs by the EU.

Conclusion

The EU Law (Revocation and Reform) Bill gives Ministers excessive powers and marginalises Parliament. Driven by ideology, it is primarily concerned with deregulation, rather than ensuring public safety and wellbeing: it poses considerable threat, for example, to the NHS and its staff. Although it ostensibly aims to promote growth, the Bill creates uncertainty for the business world. The 'cliff edge' provided by the sunset clause is dangerous and unnecessary when Parliament can review retained EU law as and when it seems necessary on a policy-by-policy basis.

The Bill poses a huge threat to our democracy and to our NHS and its staff. It must be resisted at every level possible.

Keep Our NHS Public is a non-party-political organisation campaigning against the privatisation and underfunding of the NHS.
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