



What does the Retained EU Law (Revocation and Reform) Bill mean for UK employment law?

Background

The Retained EU Law (Revocation and Reform) Bill was introduced into parliament in Autumn 2022. Colloquially named as the “Brexit Freedoms Bill”, the UK government has described it as the “culmination of a journey that began on 23 June 2016 when more than 17 million citizens of the UK and Gibraltar voted for the UK to leave the European Union (EU)”.

The Bill had its third reading in parliament on 18 January 2023 and will now go to the House of Lords for consideration. In the lead up to this, the Bill has had significant press coverage with commentators concerned about the potential “bonfire” of employment rights.

We set out below what the Bill proposes in its original (and current form) and what impacts it might have.

But wait a minute – hasn’t the UK already left the EU?

You would be forgiven for wondering what the hype around the Bill is given that Brexit has already happened. So before we explain the Bill, it is important to understand the current position.

Following the UK’s departure from the EU, to help ease the transition and given the sheer amount of work that would be required to disentangle UK law from EU law, a new category of UK law called “Retained EU Law” was created. Essentially, at the moment the UK left the EU, the European Union (Withdrawal) Act 2018 (EUWA), took a snapshot of the applicable EU law in force in the UK on 31 December 2020 and provided provisions on its interpretation to ensure continuity, legal certainty, and to avoid an interpretative void.

The UK is now free to remove Retained EU Law, but the process is not always quick or straightforward. There are reportedly over 50,000 laws introduced in the UK as a result of EU membership since 1990. The current position is that to change Retained EU Law there must be new primary or secondary legislation or a court decision.

What does the Bill propose?

The Bill is designed to end the special status of Retained EU Law in the UK and to enable it to be amended, repealed or replaced more quickly and easily. It proposes that:

- Certain categories of Retained EU Law will be subject to “sunset provisions” so that they will expire on 31 December 2023 (or 23 June 2026 if the extension power is utilised) unless restated or replaced. Not all Retained EU Law will be captured by the sunset provisions, but would include such EU-derived laws set out in regulations unless they are specifically preserved.
- The supremacy of EU law over domestic UK legislation will end:
 - Currently retained direct EU legislation takes priority over domestic UK legislation passed prior to 31 December 2020. The Bill proposes to reverse this
 - The general principles of EU law will be abolished
 - Retained EU Law will become “assimilated law”, removing its special status
 - The UK courts will have greater discretion to depart from Retained EU case law (including new tests and processes that must be followed by the higher appellate courts and the lower courts and tribunals)

What will this mean for employment law?

The immediate potential impact is with the potential deletion of all Retained EU Law caught by the sunset provisions (namely EU-derived regulations), unless these are preserved or replaced. Currently, there are around 4,000 laws in total in scope (although the accuracy has been debated). Given the December 2023 deadline, this would leave little time for the full consideration by the raft of civil servants, regulators and ministers required.

In the employment sphere, in scope would be (to name just a few):

- Working Time Regulations
- TUPE
- Maternity and Parental Leave Regulations
- Agency Worker Regulations

In addition, the removal of the supremacy of EU law will also mean that some directly effective EU rights (such as the right to equal pay) will also no longer apply in the UK.

Commentators are concerned that this will lead to:

- The removal of important underlying employment rights
- Employment laws being removed, amended or replaced too quickly, without proper understanding of the implications or parliamentary scrutiny, creating “bad law”
- The creation of a legal vacuum, which EUWA aimed to prevent, causing legal uncertainty
- Greater litigation to either resolve the raft of uncertainties or to re-open previously settled areas of law

There is, however, an alternative view to all this - that this could be an opportunity to shake up areas of UK employment law that are ripe for reform and that give you (and us lawyers) a headache. For example, the rules on holiday pay set out in the Working Time Regulations, which are complex. In fact the government has just commenced a [consultation](#) on calculating holiday entitlement for part-year and irregular hours workers (following the Supreme Court’s decision in *Harpur Trust v Brazel* last year), which could mean that the Working Time Regulations will be ripe for the first bonfire.

Wait a minute – wasn’t there some agreement with the EU about employment rights being protected?

As part of the UK’s Trade and Cooperation Agreement with the EU, the UK committed that it would not weaken or reduce the employment rights that were in existence at the end of the transition period. The promise, however, is limited to reductions in protection that affect trade or investment between the parties. If the EU believes there is a breach, a process is triggered under the agreement to resolve the dispute, and if it is not resolved the UK could face tariffs or other trade barriers. The extent to which the UK will choose to meddle with UK employment rights in practice, therefore, remains to be seen. However, even if these rights are to be maintained somehow, changes would be required if the framework of Retained EU Law that sits around employment law is pulled



away.

Changes to employment law following Brexit would also be somewhat at odds with the commitment given by the Theresa May government when the UK left the EU in 2019 not to reduce the standards of workers' rights from EU laws retained in UK law and of the manifesto of the current government to "raise standards in areas like workers' rights". We will see.

Final thoughts

Regardless of your views on the matter, if the Bill is passed the effects will likely be significant. The extent to which employment rights are kept, changed or removed remains unknown, which leaves employers with a lot of uncertainty. For now, we will have to remain patient until more concrete policy proposals regarding UK employment laws are confirmed, but employers may need to brace themselves for extensive changes at the end of the year with little forewarning.