

The Retained EU Law Bill – sunsetting the sunset

12 May 2023  Claire Rosney

The Department for Business and Trade has released a [written statement](#) confirming that it is revoking the sunset provisions contained in the Retained EU Law (Revocation and Reform) Bill. The Bill was initially introduced into the House of Commons in September 2022 and was passed by the government in January before proceeding to the House of Lords.

The Bill as originally introduced would have automatically repealed any retained EU law so that it expired on 31 December 2023 unless specific legislation was introduced to retain or amend it. The Bill attracted widespread criticism from opposition parties, trade unions, business leaders and campaign groups who warned that there was insufficient time for the government to conduct a full and thorough review of the circa 4,000 pieces of legislation identified to determine whether these laws should be retained and therefore could result in some being inadvertently lost leading to legal uncertainty. The Bill also attracted fierce criticism from the House of Lords who expressed concern about the ability for ministers to amend or replace EU laws using secondary legislation, a fast-track process that attracts less scrutiny in Parliament.

In what is being reported by the press as a U-turn, the government have now confirmed that it is revoking the sunset provisions and instead all EU law will be retained except for circa 600 pieces of specified legislation which will be repealed at the end of 2023. From an employment law perspective, this only includes a small number of pretty obscure legislation concerning Posted Workers and Community Drivers' Hours. Therefore, it appears that the current proposed repeals will have little practical effect in respect of employment legislation.

Although the sunset provision has gone, it may not be as drastic a U-turn as the press is suggesting. The Bill still contains provisions for the government to amend, replace or repeal further laws going forward. Indeed, Kemi Badenoch confirmed that the Bill will retain its powers "that allow [the government] to continue to amend EU laws, so more complex regulation can still be revoked or reformed after proper assessment and consultation". Accordingly, employment laws which were previously seen as vulnerable under the sunset provision, such as the Working Time Regulations and TUPE (although the government has made separate announcements in respect of these – [see here](#)) and the Part-Time, Fixed Term and Agency Worker Regulations could still be subject to amendment or repeal going forwards. Therefore, the announcement may be better described as a "reprieve" rather than a "U-turn". It is generally assumed that there will not be a radical reduction in employment rights given any legislation introduced to replace EU-derived legislation may not "increase the regulatory burden". Equally, any changes to existing levels of employment protection that affect trade or investment would be subject to the "level playing field" provisions of the trade and co-operation agreement and could expose the UK to enforcement action by the EU.

The Bill could also still have a significant impact in respect of employment law. This is because the provisions of the Bill will still end the supremacy of EU law and general principles of EU law and will also end direct effect by 31 December 2023. This means that the Bill will effectively erase previous case law that has built up over the past 50 years which is based on EU law principles, and currently creates legal certainty about the application, scope and meaning of retained EU law. From January 2024 employers and employees will face legal uncertainty as lawyers will no longer be able to predict with any certainty how rules relating to numerous pieces of legislation are interpreted. Further as this affects not only the meaning of EU Regulations but also primary Acts of Parliament, the Equality Act or the rules on collective consultation may change going forwards. This creates the potential for further delays and costs to parties whilst appeals are brought or the courts utilise a new reference procedure, which enables lower courts or tribunals (where they are bound by retained case law) to refer points of law on retained case law to a relevant higher court if they consider that the points of law are of general public importance.

Therefore, whilst news that the sunset provisions are no more will be welcomed by many, whether it is quite the U-turn that it is being hailed as remains to be seen.

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