
Retained EU Law (Revocation and Reform) Bill

Submission to the Bill Committee

Introduction

The Retained EU Law (Revocation and Reform) Bill poses a significant threat to workers' rights and should be opposed by MPs.

The Bill proposes to automatically sweep away thousands of pieces of legislation and upend decades-worth of case law.

It is striking that ministers have yet to explain which laws they intend to retain, to amend or allow to expire. Indeed, there even remains uncertainty about whether government knows which laws are affected.¹

But the Bill makes it clear that the ultimate goal is deregulation. This is in stark contrast to reassurances from then-Business Secretary Kwasi Kwarteng who, in a letter to the TUC in February of this year, wrote: "There is no Government plan to reduce workers' rights."

Ministers haven't even set out how Parliament will cope with the vast amount of legislation that will need to be rushed through before the end of next year. This will span not just employment rights but also environmental and consumer issues and many more areas.

For working people this means that important rights could be lost including such as minimum rest periods, annual paid leave entitlements, protection when your employment is transferred and protection against discrimination.

The best they can hope from this legislation is a long period of considerable uncertainty as issues relating to the definition and implementation of workplace rights are contested in courts and tribunals. This would put even more pressure on an overstretched legal system and lead to increasing delays.

The most immediate victims of this situation are likely to be the UK's 3.7 million insecure workers, for whom the law provides particularly valuable protections.² Weak and ambiguous law is only good news for bad bosses.

¹ Parker, G (8 November 2022). "UK plan to scrap all EU laws suffers new setback," *Financial Times* www.ft.com/content/0c0593a3-19f1-45fe-aad1-2ed25e30b5f8

The Bill also risks placing the UK in breach of its legal obligations under the Trade and Co-operation Agreement. Resulting tariffs on UK exports to the EU would add further hardship to families and businesses already struggling with a cost-of-living crisis.

Ministers have no mandate from voters to carry out this exercise: watering down employment protections was not in the Conservative Party manifesto.

What's at risk

A range of employment and health and safety rights are derived from, or reinforced by, EU law.

These rights were maintained as retained EU law when the UK left the European Union. Parliament can already amend or scrap these measures.

This Bill takes an alternative approach by revoking automatically from the end of 2023:

- all EU-derived subordinate legislation (such as the Working Time Directive)
- retained direct EU legislation (such as the treaty provisions that enabled female supermarket workers to claim equal pay)

The supremacy of EU law is also ended.

Ministers and devolved authorities can by regulation restate or replace the secondary legislation that is due to expire. UK ministers can also further delay the sunseting until 23 June 2026.

Some EU-derived legislation that was incorporated into UK law via Acts of Parliament will not automatically expire. However, crucially, it could be affected by huge changes in the way that law is interpreted which could lead to significant changes in the way that legislation protects workers.

Legal confusion

The Bill will result in legal confusion.

Where EU-derived legislation is restated by Parliament, previous judgments relating to these instruments will no longer be binding. Issues will have to go through the judicial system again.

The Bill hands huge powers to and puts enormous pressure on the Court of Appeal and Supreme Court which have been instructed to depart from case law informed by EU law if they consider it "right to do so".

There is also a mechanism to allow lower courts or tribunals to make 'references' to higher courts or tribunals to enable departure from retained EU case law.

The result will be workers and employers spending more time in court to establish what the law now means.

² TUC (2022). *Insecure work*. TUC www.tuc.org.uk/research-analysis/reports/insecure-work-why-employment-rights-need-overhaul

Lack of democracy

The Bill would transfer considerable legislative powers from Parliament to ministers.

Ministers would be able to change retained EU law via statutory instruments (SIs).

These typically receive little scrutiny and cannot be amended. The House of Commons has not rejected an SI since 1979. Parliament could look forward to potentially thousands of SIs being tabled before the end of next year. There is a huge risk of poor legislation being passed. Or slipped through.

The Department for Business, Energy and Industrial Strategy said that the Bill is 'an opportunity to move away from outdated EU laws to establish our own rules that are better suited to the UK.'³ Ministers have not said which laws will be retained, changed or allowed to expire. Furthermore, Clause 15 of the Bill states that any replacement legislation should not "increase the regulatory burden". This makes it virtually impossible for stronger workers' rights to replace existing legislation.

Rights that could be lost⁴

Trade unions have been at the forefront of fighting for increased rights for workers in the UK and through European institutions. As a result, many key rights have been embedded in legislation and case law originating in the EU. Some examples of these rights that could be lost include:

- Holiday pay
- Agency worker rights
- Data protection rights
- Protections of terms and conditions for workers whose employment is transferred to another employer
- Collective consultation with worker representatives when redundancies are proposed
- Protection of pregnant workers, and rights to maternity and parental leave
- Protection of part-time and fixed-term workers
- Rights relating to working time, including rights to daily and weekly rest, maximum weekly working time, paid annual leave and measures to protect night workers
- Protection of workers' rights on the insolvency of their employer

³ Department for Business, Energy and Industrial Strategy (22 September 2022). *UK government to set its own laws for its own people as Brexit Freedoms Bill introduced*, BEIS www.gov.uk/government/news/uk-government-to-set-its-own-laws-for-its-own-people-as-brexit-freedoms-bill-introduced

⁴ A more detailed list can be found in Ford, M. (2016). *Workers' rights from Europe: the impact of Brexit*, TUC www.tuc.org.uk/research-analysis/reports/workers-rights-europe-impact-brexit

- Rights to a written statement of terms and conditions.

The TUC is particularly concerned about the impact on those in insecure forms of employment and on female workers.

In addition to this, significant health and safety rights, notably the so-called “six pack” set of regulations including the main set of regulations in this area, the Management of Health and Safety at Work Regulations 1999 and others covering the likes of manual handling and the use of protective equipment, would be at risk.

Insecure workers

Key measures that emanate from EU law protect vulnerable workers.

These include the likes of the Part Time Employees (Prevention of Less Favourable Treatment) Regulations 2000. This gave part-time workers the right not to be treated less favourably than a comparable full-time worker with regard to the terms of their contract. Part-time employees should benefit from the same terms and conditions as full-time employees unless the employer can justify different treatment.

Likewise, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 establish protection for fixed term workers give the worker the right to be treated no less favourably than a comparable permanent employee unless the employer can justify the different treatment. The employee can insist that the fixed-term contract is converted into a permanent one in certain circumstances and is entitled to be informed of available permanent vacancies.

The Agency Workers Regulations 2010, while adopting a narrow definition of “pay” and requiring a 12-week qualifying period, gives an agency worker has a right to the same “basic working and employment conditions” as apply to comparable direct employees,

Any or all of these could be lost under this Bill.

Women workers

Retained EU legislation gives female workers a number of important protections. But these are threatened by this legislation.

Michael Ford KC states in advice in the TUC: “It is difficult to overstate the significance of EU law in protecting against sex discrimination.”⁵

Take for example changes to the operation of the Equality Act, which gives effect to a number of EU directives on issues like principles of equal treatment between women and men.

The Act remains on the statute book under the terms of this Bill. However, courts will no longer have to interpret those provisions in a way that fits EU jurisprudence.⁶ So, for example, the way

⁵ Ford, M. (2016). *Workers’ rights from Europe: the impact of Brexit*, TUC p. 16
www.tuc.org.uk/research-analysis/reports/workers-rights-europe-impact-brexite

⁶ Employment Lawyers Association (November 2022). *A response to the House of Commons*

equal pay cases are determined may change. Currently Article 157 of the Treaty on the Functioning of the European Union enables a claimant to compare herself against employees in the same establishment or service and where the terms and conditions are attributable to a single source. This allows mostly female supermarket shopworkers to compare themselves with mostly male colleagues working in distribution. Removing this concept of “single source” could reduce the scope for workers to successfully pursue claims in future.

Likewise, while certain parental rights are contained in the Employment Rights Act 1996, the Maternity and Parental Leave etc. Regulations 1999 (MAPLE) also play a crucial role. The loss of this set of regulations could create legal uncertainty in respect of the interpretation and application of rights relating to ordinary and additional maternity leave, the right to be given first refusal of any suitable alternative job which is available during a redundancy process whilst on maternity, adoption or shared parental leave; and the right to return to the same job after maternity or parental leave, where this is reasonably practicable.

It would be a massive step backwards for the role of women in the workplace if rights such as these, which are only a small snapshot of the vast number that could be lost, are allowed to disappear from the statute book or become more difficult to assert due to legal uncertainty.

Non-EU derived law could be affected

It should also be noted that laws emanating from outside the European Union could also be affected.

Many of the statutory instruments implementing the Maritime Labour Convention came into force by deployment of section 2(2) of the European Communities Act 1972. One example is the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014.

Therefore, the UK could find itself failing to meet its international commitments as well as undermining workers’ conditions.

Breach of Trade and Co-operation Agreement

Should key employment rights derived from EU law be repealed through this Bill the government would be in breach of its commitments under the UK-EU Trade and Co-operation Agreement (TCA).

The TCA contains ‘Level Playing Field’ clauses which require the UK government to maintain workers’ rights to the level they were in December 2020.⁷

public committee’s call for written evidence: The Retained EU Law (Revocation and Reform) bill, its effect on employment law rights and obligations, ELA

⁷ TUC (22 January 2022). *Protecting workers’ rights using the EU-UK Trade and Cooperation Agreement*, TUC www.tuc.org.uk/research-analysis/reports/protecting-workers-rights-using-eu-uk-trade-and-cooperation-agreement.

If the government is found to be in breach of the agreement by the EU, it could seek to impose tariffs on UK goods. This would hurt businesses, and those who work for them, that sell into the EU.

Lowering workers' rights would also breach the Northern Ireland Protocol which commits the government to "non diminution" of rights for citizens of Northern Ireland in comparison to those in the Republic of Ireland. Breach of this agreement could also result in the EU being able to impose tariffs on UK goods.

Conclusion

This Bill would be disastrous for working people. It would create considerable uncertainty for employers and workers and place at risk many important rights. The Bill should be opposed.