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“Taking Back Control”? Explaining post-Brexit legislative developments in the UK

*Rebecca Zahn, Reader in Law, University of Strathclyde ,
Visiting Professor at Sciences Po Grenoble (2023)*

“Taking back control” was the key slogan of the Brexit campaign. Seven years on from the referendum, some are concerned that the slogan has remained just that – a slogan. This has led to the introduction of controversial legislation in the form of the Retained EU Law (Revocation and Reform) Bill (“REUL Bill”) currently being debated in the UK Houses of Parliament. This blog post provides an overview of these developments.

The UK officially left the EU on 31 January 2020 and the transition period, during which EU law continued to apply as during the country's membership, ended on 31

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effect in the UK which had been implemented as a result of the country's EU membership. In order to prevent legal uncertainty, minimize disruption and avoid gaps in the law upon Brexit, the UK Parliament passed the European Union (Withdrawal) Act 2018 (EUWA 2018) ; one of the most important pieces of constitutional legislation ever enacted.

The purpose of EUWA 2018 is to ensure that the many pieces of EU law that applied in the UK during the country's membership continued to apply after Brexit. It did this, in effect, by taking a snapshot of all EU Directives, EU Regulations, some EU Treaty provisions, EU case law and some EU law principles as they stood on 31 December 2020 and copying and pasting these into UK law by creating a new category of domestic law called 'retained EU law'. This approach ensured that there wouldn't be any unintended gaps in the legal system and it gives the UK Parliament time to see what laws might work and which might need to be changed after Brexit.

The UK officially left the EU on 31 January 2020 and the transition period, during which EU law continued to apply as during the country's membership, ended on 31 December 2020. Leaving the EU had consequences for the many laws (estimated to be in the thousands) in effect in the UK which had been implemented as a result of the country's EU membership. In order to prevent legal uncertainty, minimise disruption and

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However, there was a perception, amongst some, that EU law wasn't being removed 'fast enough'. A new bill which aims to remove all retained EU law still on the statute book and to "firmly reestablish [...] Parliament as the principal source of law in the UK" was therefore announced as part of the Queen's Speech of May 2022. In September 2022, then Business Secretary, Jacob Rees-Mogg, introduced the REUL Bill; a complex and controversial piece of legislation. The REUL Bill lays the foundations for a major programme of deregulation. If passed by Parliament in its current form, it will amend EUWA 2018 and either assimilate retained EU laws into existing primary and secondary UK law or abolish

covering swathes of employment, environmental, and consumer protections.

The most important provisions in the REUL Bill concern the automatic sunseting (i.e. turning off) of most secondary retained EU law by 31 December 2023 (legislation related to financial services, tax and customs is exempt and subject to a separate review). This means that any affected legislation will automatically disappear from the statute books at the end of this year. Legislation can only be saved if a relevant national authority (a UK or devolved government minister) proactively chooses to preserve it. And while there is an option to extend the sunset clause for specified legislation, the maximum length for the extension is 23 June 2026 – 10 years on from the date of the Brexit referendum. This is highly significant because it means, at least in principle, the overnight end of legislation in areas as diverse as employment law, consumer protections, intellectual property, food standards, gas safety certifications, and airline safety. Let us take the example of the Working Time Regulations 1998 which implement the Working Time Directive 2003/88/EC. The Regulations currently provide for important limits to working time, and rights to rest breaks and paid annual leave for workers. If the REUL Bill is passed then, unless a government minister specifically decides to preserve the Working Time Regulations, they – and the rights which they contain –

Unsurprisingly, the REUL Bill has caused a considerable amount of concern, not least because of the tight (self-imposed) timeline but also because it is not clear how many laws will be affected by the sunset clause.

The Retained EU Law Dashboard, an online database created by the government, lists 1000s of pieces of retained EU law across 300 policy areas. However, there is no certainty that all pieces of retained EU law have been identified. But regardless of whether it has been identified or not, legislation considered retained EU law would be subject to the sunset clause. This could therefore create innumerable gaps in the legal system which would not become obvious until after the laws had disappeared.

A second problem is the manner and speed with which the REUL Bill is proposing potential wholesale deregulation. Under the procedure in the Bill, there is no scope for stakeholder consultation or parliamentary scrutiny of which laws to preserve. The sunset clause just automatically turns legislation off if it hasn't been explicitly saved. In the words of the Law Society, this “is a recipe for bad law-making”. More fundamentally, the side-lining of Parliament (the Bill proposes giving substantial delegated powers to ministers) undermines parliamentary democracy. The Delegated Powers and Regulatory Reform Committee has characterised the bill as ‘a blank cheque placed in the hands of Ministers’ – pointing out also that it ‘contradicts pledges by the

The concerns raised about the Bill have not stopped it from progressing through the legislative process. It is currently in the upper chamber, the House of Lords where it may end up being substantially amended. Regardless, though, the complexities surrounding the Bill show us that disentangling two legal systems – “taking back control” – in practice is not as straightforward as a slogan may imply.

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SCIENCES PO GRENOBLE

1030 BC. central
University
Domain
38400, Saint-
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