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A new horizon for making the United Kingdom ‘the best regulated economy in the world’

The UK Government is preparing to finally unhitch itself from EU law as its Retained EU Law Bill seeks to end the temporary special status of retained EU Law in the UK on 31st December 2023. This is the culmination of the decision by national referendum taken on 23rd June 2016 to exit the EU, and is being heralded as the next step towards asserting the country’s post-Brexit identity.

It has also sparked widespread fears of an imminent “bonfire” of workers’ rights.

The objectives of the Retained EU Law Bill

If the Bill passes into law, it will abolish the special status of retained EU Law by the end of 2023 and will enable the Government, via Parliament to amend more easily, repeal and replace retained EU Law. The Bill will also include a sunset date by which all remaining retained EU Law – numbering over 2,400 pieces of retained EU law across 300 unique policy areas and 21 sectors of the economy – will either be repealed, or assimilated into UK domestic law. The sunset may be extended for specified pieces of retained

EU Law, known as assimilated law, but only until 23 June 2026, which is the ten-year anniversary of the referendum.

The removal of the principle of EU supremacy broadly means that domestic legislation would no longer need to be interpreted in line with EU law. As such, the practice of reading words into domestic legislation to conform with the underlying EU law would come to an end.

The Bill also aims to provide domestic courts with greater discretion to depart from retained EU case law and would introduce new tests for higher courts to apply when considering departing from retained EU case law.

The Bill will create powers to make secondary legislation so that retained EU law can be amended, repealed and replaced more easily. The Bill also takes powers to specify, after the sunset, the body of law that will continue to apply in place of retained EU law, and how it should be interpreted.

According to the UK Government, these powers will be used to “ensure that only regulation that is fit for purpose, and suited for the UK will remain on the statute book”. This is remarkably vague and points to a significant transfer of power from Parliament to the Government.

Employment law implications

In any view these are seismic changes and will have an immediate potential impact on certain key employment protections that are currently baked into UK employment law and may spell major changes in the workplace.

- Several key statutory frameworks are likely to be affected and will potentially fall away, including these:
- Working Time Regulations 1998 (governing daily and weekly rest breaks for workers, as well as statutory paid annual leave);
- Maternity and Parental Leave etc Regulations 1999 (which provide the right to paid maternity, paternity and parental leave);

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- Agency Workers Regulations 2010 (entitling agency workers to the same basic working and employment conditions as if they had been employed directly);
- Part-Time Workers Regulations 2000 (ensuring part-time workers are not treated differently to full-time workers);
- Transfer of Undertakings (Protection of Employment Regulations) 2006 TUPE (which preserves automatic transfer of employment and the protection of employees on the transfer of a business).
- Sections of the Equality Act 2010 (Includes a general framework for equal treatment in employment and occupation and prohibits unlawful discrimination etc on the grounds of religion and belief, disability, age and sexual orientation)
- Health and Safety (Display Screen Equipment) Regulations 1992 (governing safety of workstations and display screen equipment, including the provision of eyesight tests and corrective eyewear to users);
- Sections of the Employment Rights Act 1996 (including the right to receive written employment particulars;
- Management of Health and Safety at Work Regulations 1999 (health and safety at work of workers who are pregnant, have recently given birth or are breastfeeding); and
- Trade Union and Labour Relations (Consolidation) Act 1992 (requirements for collective consultation and notification to a relevant public body in the event of collective redundancy).

All of the above are sourced within retained EU Law and will come to an end unless the government specifically legislates to either preserve or extend them. However even where specific revocations are postponed, their lease of life will come to an end within only 3 more years.

The future

The so-called “Bonfire Bill” is steadily progressing towards the statute books and seems likely to come into force during 2023. Yet there is no clarity regarding the UK Government’s plans for employment law and it seems very unlikely that a formal review of all of the affected legislation will be possible before the sunset happens on 31 December 2023. This suggests that most of the affected employment legislation will be preserved for an interim period at the very least.

It is also noteworthy that any changes to existing levels of employment protection that affect trade or investment would be subject to the “level playing field” provisions of the UK-EU trade and co-operation agreement (TCA) and could potentially expose the UK to enforcement action by the EU.

The threat of a bonfire of fundamental employment rights in the UK is real, but the Government will surely be loath to permit a damaging cliff-edge scenario where the underlying employment laws are revoked on a wholesale basis at the end of 2023.

There will inevitably be twists and turns ahead as the UK seeks to put a legislative seal on Brexit and reclaim the sovereignty of Parliament. It remains to be seen how this will ultimately impact workers’ rights, and how the Government will use these new freedoms to achieve its bold aim of “transform[ing] the UK into the best regulated economy in the world”.

Shilpen has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high-value commercial dispute resolution and contentious corporate matters, often involving an international element. He has conducted a number of reported cases and cross-border disputes. Shilpen also advises and represents employers, employees and professional clients in all aspects of employment law. He has particular expertise in acting for senior executives, self-employed professionals and company directors in connection with their entire employment needs, including claims in the Employment Tribunal and the High Court.

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