

Report to the Tyne and Wear Trading Standards Joint Committee

23 June 2022

An update on the proposed Brexit Freedoms Bill.

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Purpose of the report

To provide Committee with an update on the issue related to the proposed Brexit Freedoms Bill (the Bill). The relevant announcement was made in the Queens Speech on the 5 May 2022.

Brexit Freedoms Bill

1. The Government is planning to introduce a Brexit Freedoms Bill to end the special domestic legal status of EU law and make it easier to amend or remove retained EU law. The Prime Minister announced the bill in January 2022, on the second anniversary of the UK's departure from the EU. The Government also said a cross-government drive to reform, repeal or replace "outdated" retained EU law would cut £1bn of red tape for UK businesses.
2. 'Retained EU law' is a concept created by the European Union (Withdrawal) Act 2018 (EUWA 2018). The act (amended in 2020 to take account of the Brexit transition period) took a 'snapshot' of EU law as it applied to the UK at the end of the transition period. It provided for this body of retained EU law to continue to apply in domestic law. EUWA 2018 also sets out how retained EU law can be modified (whether primary or secondary legislation is required depends on the type of retained EU law) and how the courts should interpret it.
3. Retained EU law has already been amended in multiple ways. The Government has used primary legislation to implement major post-Brexit policy changes. For example, the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 ended EU free movement rights in the UK and repealed the main provisions of retained EU law relating to free movement. Section 8 of EUWA 2018 gives ministers the power to make regulations to correct 'deficiencies' in retained EU law.
4. The Government has made hundreds of regulations using this power, for example to remove references to "other member states" from domestic law. This power expires at the end of 2022. Depending on the status they are given under EUWA 2018, some types of retained EU law can also be modified through other delegated powers, not just the section 8 power.
5. Although the ability to amend retained EU law exists, the Government's view is that further, more systematic, changes are needed. It set out details in a policy paper entitled "The Benefits of Brexit", published on the same day the Prime

Minister announced plans for the bill. The Government said its intention was to “amend, replace or repeal all the retained EU law that is not right for the UK”. It identified two key strands: reviewing the substance of retained EU law to meet the UK’s new regulatory priorities and reviewing the status of retained EU law to allow changes to be made more easily.

6. The policy paper said the new legislation would “clarify the status and operation of retained EU law”, “simplify the complex status provisions” in EUWA 2018 and ensure retained EU law could be amended “in a proportionate and sensible way”. It said the Cabinet Office was currently reviewing questions including:
 - Revising the status of certain types of retained EU law for the purposes of amendment, to “normalise” their status in domestic law and make them easier to repeal or replace.
 - Creating a “targeted” power to enable the amendment of retained EU law for certain purposes without requiring primary legislation. The Government argued it was “not a good use of finite parliamentary time” to require primary legislation to amend retained EU laws that currently have a status equivalent to primary legislation when it comes to making amendments to them.
 - Removing the continued effect of the supremacy of EU law over domestic law that was made before the end of the transition period.

Potential Effects on Consumer Protection Legislation

7. The proposed Bill will lead to a great deal of scrutiny on all EU derived legislation many of which related Regulations and Orders have been developed over the past fifty years and are enforced by officers in areas of consumer protection such as metrology, product safety, fair trading, animal health and welfare and food safety.

Recommendation

8. The Committee is asked to note the information. Further information can be sought at: <https://lordslibrary.parliament.uk/queens-speech-2022-brex-it-retained-eu-law-and-the-protocol-on-ireland-northern-ireland/>

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