

The Great Repeal Bill – implications for employment law

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Theresa May's letter triggering Article 50 has been delivered to Brussels this week, and the Government has published its White Paper on the 'Great Repeal Bill'.

In summary, the intention expressed in the White Paper is that very little will change – at least in the short term – after we leave the EU. The proposals in the White Paper that are relevant to employment law are as follows:

- As far as practical and appropriate, EU law will be converted into UK law from the day we leave. After we have left, the UK will then be able to decide what to keep, amend or repeal.
- All laws that we have made in the UK to implement our EU obligations – so that includes all EU-derived employment laws – will be retained when we leave the EU. That's not to say they will never change, just that it will be the UK's decision to change them after Brexit, not the EU's.
- The EU courts will have no role in interpreting our laws after we have left the EU. However, any question as to the meaning of EU-derived law will be determined in the UK courts by reference to EU case law as it exists on the day we leave the EU. Such historic EU case law will be given the same status in our courts as decisions of the Supreme Court (formerly the House of Lords). This approach is intended to maximise legal certainty at the point of departure, but not fossilise the past decisions of the EU forever. It is very rare for the Supreme Court to depart from one of its own decisions; it will do so only in exceptional circumstances 'when it appears right to do so' and the Government expects the Supreme Court to take a similar, sparing approach to departing from relevant historic EU case law. The Government reiterates though that Parliament will be free to change the law, and therefore overturn case law, where it decides it is right to do so. At the moment, Parliament cannot do this in respect of EU-derived law.
- Where a conflict arises between EU-derived law and new laws passed by Parliament after Brexit, the newer laws will take precedence.

COMMENT – ISSUES

There are three issues with these proposals that spring to mind:

- First, there is always the possibility that they will change during the Bill's passage through Parliament.
- Secondly, they may also change as a result of the UK's negotiations with the other EU Member States and any concessions that the UK may make during the negotiation process.
- Thirdly, if the rights of EU citizens living in the UK are fully preserved, which currently appears to be an objective of both sides, it is difficult to see how the role of the EU courts could be excluded as regards those citizens; they may still have EU rights and the UK courts may have to implement them in accordance with the EU courts' decisions.

Our expectation is that despite various statements made by politicians on both sides, the reform of existing employment legislation will be a hot topic during the next two years of negotiating the UK's exit from the EU, and beyond. The bill itself will be included in the next Queen's Speech and will then have to pass through both Houses of Parliament. The current plan is for it to be passed ahead of the UK's exit from the EU but to become law only when the UK actually leaves. We will be closely watching the progress of the bill once it is presented to Parliament, and will provide further commentary when it passes significant milestones or is amended in any meaningful ways.

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