

Brachers Bitesize

Revocation of EU laws

What does this mean for employment law in the UK?

18 January 2022

Presented by:

Colin Smith - Partner

Employment Law and HR



Welcome

Today's Seminar

1. A brief history
2. What is the Bill?
3. When may this happen?
4. What could it mean for employment law?
5. What do we think will happen?
6. What can/should I do now?



Poll 1

Do you think we will see major reform to employment law in 2023?



Poll 2

Which of the following areas do you think will see major changes in 2023?



A brief history of EU derived law

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A brief history of Brexit

- *23 June 2016 – Referendum on Exiting the European Union*
- *29 March 2017 – Article 50 triggered by the UK government*
- *19 June 2017 Brexit negotiations begin*
- *23 January 2020 European Union (Withdrawal Agreement) Act 2020 (“the Withdrawal Agreement”) becomes law.*

A brief history of Brexit

- *31 January 2020 – UK left the European Union*
- *1 February to 31 December 2020 – Transitional Period*
- *30 December 2020 the European Union (Future Relationship) Act 2020 becomes law*
- *31 December 2020 the Transition Period ended*

A brief history of Brexit

- *The European Union (Future Relationship) Act 2020*
- *Implements into UK law the “EU-UK Trade and Co-operation Agreement”*
- *This is further underpinned by the European Union (Withdrawal Agreement) Act 2020 which repealed the European Communities Act 1972*
- *European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020*

A brief history of Brexit

- *Created the concept of “Retained EU Law”*
- *So we currently have:*
 - *Retained EU Laws*
 - *UK Only Laws*
 - *Laws impacted by the Withdrawal agreement*
- *With different rules applying to how they are interpreted and applied*

Retained EU Law

- *Laws that originate from EU laws/treaties.*
- *So much of our UK employment laws.*
- *Will be subject to UK courts interpretation*
- *But the UK courts must act in accordance with the obligations under the Withdrawal Agreement – so the Withdrawal Agreement is supreme*

The Trade and Cooperation Agreement

- *The “level playing field”*

TITLE X: GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

Article GRP.1: General principles

1. Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice, procedures and fundamental principles underlying its regulatory system.

The Trade and Cooperation Agreement

3. Nothing in this Title shall affect the right of a Party to define or regulate its own levels of protection in pursuit or furtherance of its public policy objectives in areas such as:

...

(d) Labour conditions

...

The Trade and Cooperation Agreement

- *But there is a big caveat – the Non Regression clause*

Chapter six: Labour and social standards

Article 6.1: Definition

1. *For the purposes of this Chapter, “labour and social levels of protection” means the levels of protection provided overall in a Party’s law and standards, in each of the following areas:*
 - (a) fundamental rights at work;*
 - (b) occupational health and safety standards;*
 - (c) fair working conditions and employment standards;*
 - (d) information and consultation rights at company level; or*
 - (e) restructuring of undertakings.*

The Trade and Cooperation Agreement

Article 6.2: Non-regression from levels of protection

1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the labour and social levels of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party's international commitments, including those under this Chapter.
2. A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.

The Trade and Cooperation Agreement

3. The Parties recognise that each Party retains the right to exercise reasonable discretion and to make bona fide decisions regarding the allocation of labour enforcement resources with respect to other labour law determined to have higher priority, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

4. The Parties shall continue to strive to increase their respective labour and social levels of protection referred to in this Chapter.

The Trade and Cooperation Agreement

- *But there is a big caveat – the Non Regression clause*

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The Trade and Cooperation Agreement

- *“Re-balancing” and “Divergence”*
- *If “material impacts on trade or investment” arise “as a result of significant divergences” between the UK and the EU in labour and social standards, either party may take “appropriate rebalancing measures”*
- *In other words, impose tariffs on trade to address the situation.*
- *Any alleged impact on trade or investment “shall be based on reliable evidence and not merely on conjecture or remote possibility”*

The Bill

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Retained EU Law (Revocation and Reform) Bill 2022

- *Only a Bill at present. Published 22 September 2022*
- Aims to dramatically accelerate removal / replacement of EU law
- In a press release, the UK government stated that the Bill will enable them to create regulations 'tailor-made' to the UK's own needs by scrapping any what the government considers to be un-needed EU laws.

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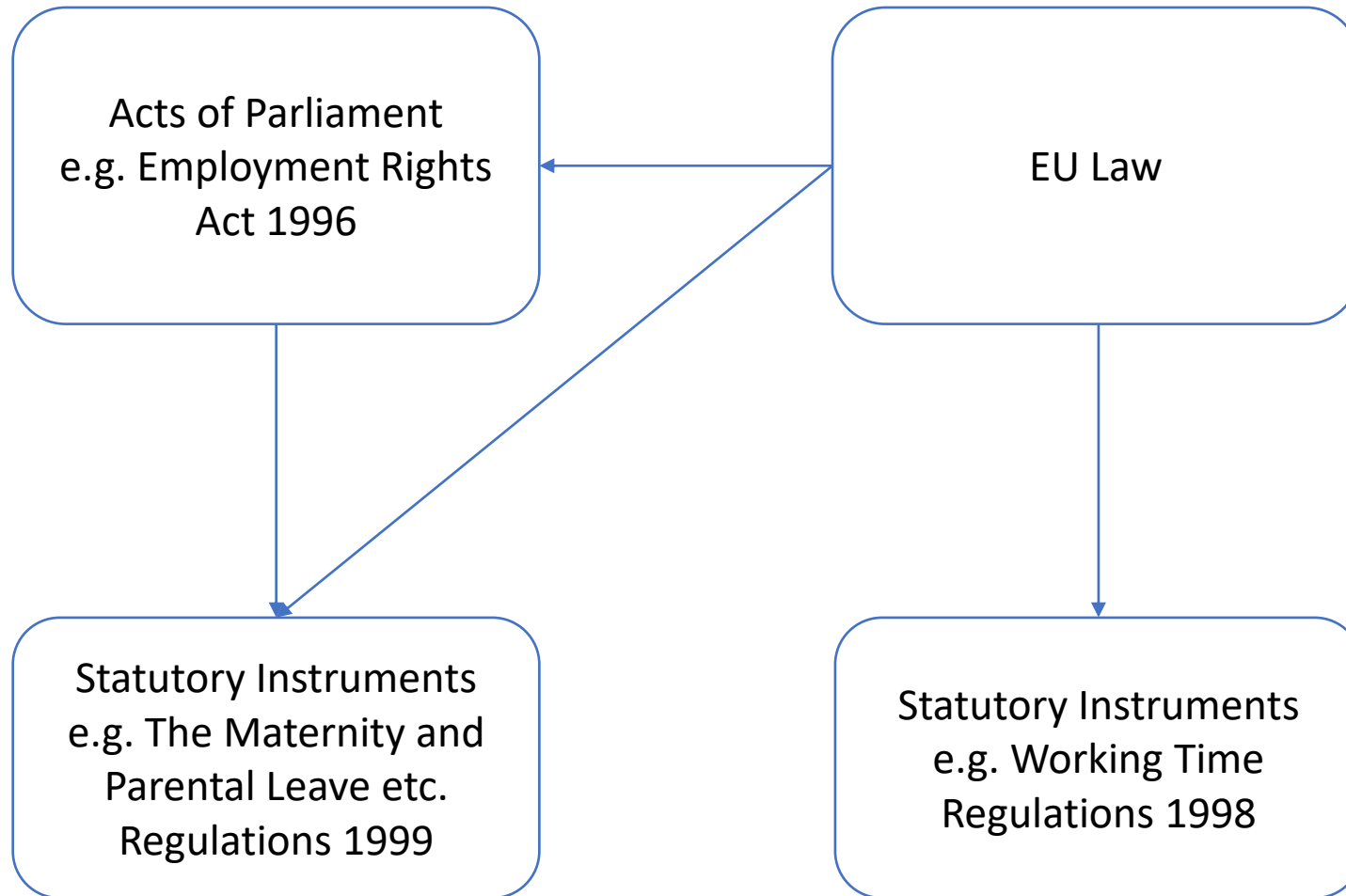
When?

- Expires on 31 December 2023
- Potential extension to 23 June 2026
- Gives the government the power to make changes in the period in between when they see fit.
- Default is they go at the end of 2023 unless kept in some form.

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What?



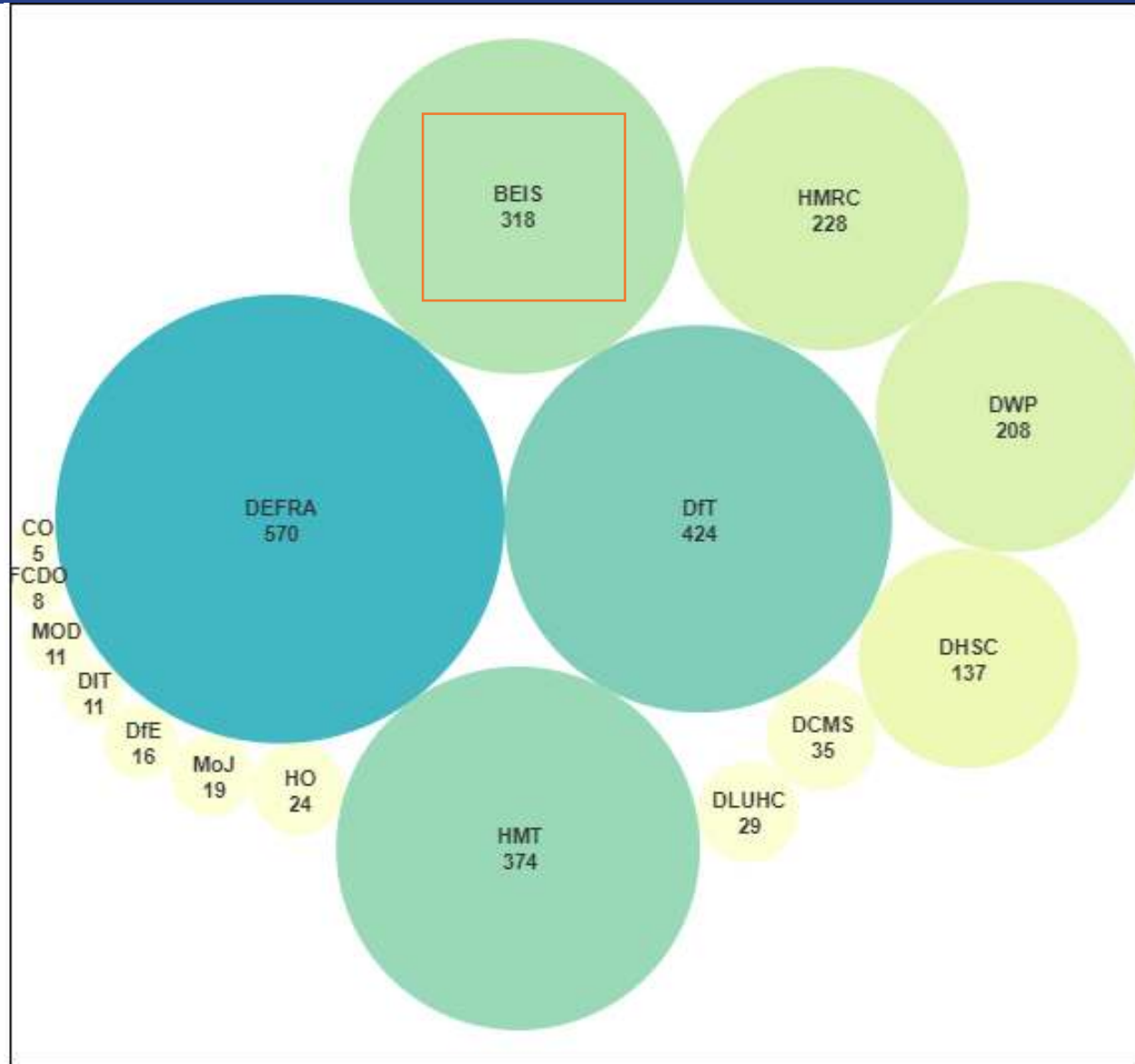
How much?

- UK currently has 2,400+ pieces of retained EU law
- Over 2,000 pieces have remained unchanged since Brexit
- Many key employment laws would be impacted
- [UK Government - Retained EU Law Dashboard | Tableau Public](#)

A lot

Department	☰	Number of REUL
Department for Environment, Food and Rural Affairs		570
Department for Transport		424
HM Treasury		374
Department for Business, Energy and Industrial Strategy		318
HM Revenue and Customs		228
Department for Work and Pensions		208
Department of Health and Social Care		137
Department for Digital, Culture, Media & Sport		35
Department for Levelling Up, Housing and Communities		29
Home Office		24
Ministry of Justice		19
Department for Education		16
Department for International Trade		11
Ministry of Defence		11
Foreign, Commonwealth and Development Office		8
Cabinet Office		5

How much?

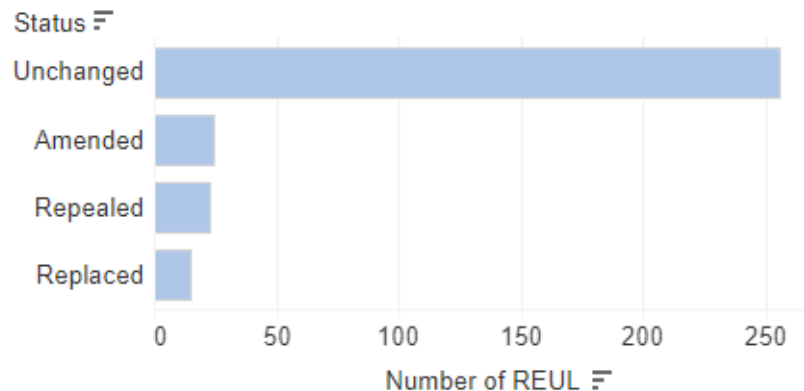


Employment laws impact

- 318 pieces of legislation relate to worker's rights
- Large proportion of legislation remains unchanged post Brexit

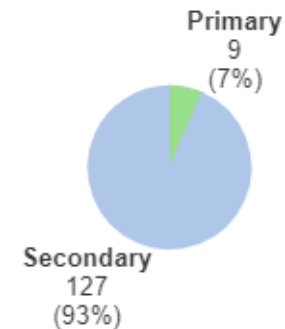
Total REUL	Unchanged	Amended	Repealed	Replaced
318	256	24	23	15

Status of REUL



Type of Legislation*

Under section 2 of EUWA



How could it change? The “R’s”

Restate or Reproduce:

- Does not have to be copy and paste – may use different words
- Can still make changes to resolve ambiguities, doubts, anomalies and improve clarity or accessibility or remove anything “legally unnecessary”

How? The R's

Revoke or Replace:

- Can revoke and not replace at all.
- Can replace with something the government “considers appropriate to achieve the same or similar objectives” or “considers appropriate” – two current draft options
- New laws must not increase the regulatory burden

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Key Impacts

- Working Time Regulations 1998
- Agency Workers Regulations 2020
- Part-Time Workers Regulations 2000
- Fixed-Term Employees Regulations 2002
- TUPE 2006
- Collective Redundancy laws
- Equal Pay Law/Discrimination law changes
- *Parental Leave rights/Paternity and Adoption Rights*

Key Impacts

- Possible amendments could include:
 - Removal or changes to the 48-hour limit on working week
 - Removal or changes to the rules on rest breaks
 - Paid annual leave?
 - Clarification of holiday pay calculations
 - Cap on discrimination claim compensation?
 - Changes to more complex areas of equal treatment laws?

Key Impacts

- TUPE changes – consultation rules, ELI, changes to terms and conditions?
- Repeal of agency worker regulations entirely?
- Government has not yet published detail on what will be repealed, revoked or retained or when
- Likely to be highly political bearing in mind there will be an impending general election due in 2024 if not before.

Other Key Impacts

- The Bill also removes other more technical aspects of retained EU law around case law usage and rules on interpretation of laws.
- EU-retained law must be interpreted as far as possible in line with EU law, including following general principles of EU law;
- The Supreme Court and Court of Appeal can depart from EU-law “when it appears right to do so”.
- Under the Bill, the requirement for UK courts to interpret UK legislation in the light of EU case law will end on 31 December 2023.

Key Impacts

- The requirement for courts to apply EU principles will also be abolished by 31 December 2023 – for example, the principles of proportionality and equal treatment.
- However, the practical impact of this is likely to be limited, as the approach of UK courts follows similar principles in any event.

Areas not directly impacted

- National Minimum Wage
- The Equality Act 2010 in the main
- Unfair dismissal law

Barriers to radical change?

- It is currently only a Bill
- It has not yet even passed through parliamentary scrutiny
- It gives wide powers to the government to pass these new laws with no real scrutiny which may prove controversial.
- Query how long this could take and how much time that would then leave to act on it by the end of 2023
- The Trade and Cooperation Agreement – tariff retaliation
- UK opinion/politics – what government wants to abolish paid annual leave or key employment law rights?

Barriers to removal

- What government will we have by the end of next year?
- General election no later than January 2025 – normally called in the Spring/Summer
- Time – vast volume of regulations to process across multiple fields – likely many will be maintained beyond the end of 2023.
- Contract law – many of these rights have become contractualised in any event e.g. paid holiday

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What to do now?

- Nothing other than be aware
- Watch and wait how this develops
- Consider possible impacts in terms of HR Budgets for 2023?
- If working on new or amended contracts or policies or procedures consider links to legislation that may not be changed or removed but no easy answers.



Questions