

Paving the way for a profound change to the English legal system

This blog post highlights the key issues to watch out for as the change to the Bill makes its way to Parliament.

Submitted	14 November 2017
Applicable Law	UK , European Union
Topic	Brexit
Author	David Bridge
Contact	David Bridge

The European Union (Withdrawal) Bill proposes, without risk of hyperbole, the most profound change to UK law considered in our lifetime. The Bill, once somewhat inaccurately known as the “Great Repeal Bill”, sets out the process by which EU law applicable in the UK prior to the UK leaving the European Union will continue to have effect after “exit day”.

EU legislation with direct effect will be incorporated into UK law, after which ministers will be able to make amendments by regulations wherever they consider it appropriate to remedy any defects or deficiencies arising from Brexit. And there will be many defects and deficiencies. Much EU law makes no sense when applied to a nation that is not part of the EU. References to EU institutions and interpretation based upon lengthy recitals setting out the legislative aims of the EU do not sit easily in the legislature of a country outside the bloc. For more on interpreting the law post-Brexit, see our previous [blog post](#).

384 amendments have been tabled to the Bill so far. Many of these are political, reflecting the kind of Brexit that those tabling them seek. Issues such as whether Parliament will get a vote on the final deal, the length and nature of any transition period and whether the UK should remain in the Common Market will dominate the headlines. But for lawyers contemplating the task of advising on what the law is in April 2019, these are some of the key issues to watch as the Bill makes its tortuous route through Parliament:

- What will be the test for when ministers can legislate to amend EU-derived legislation? The Government’s White Paper in March 2017 said this would be where “necessary”. The Bill says where ministers consider it “appropriate”. The use of, and constraints upon, these “Henry VIII powers” will be the subject of much debate.
- Does the Government plan to draft amending regulations for as much EU legislation as it can in the time available? Thousands of regulations, covering everything from market abuse to chemical certification, will become UK law in March 2019, but there has been no word on whether work has already begun on analysing these and establishing what amendments are necessary.
- Will the Government establish bodies to take over the roles of EU bodies in advance of Brexit? The Bill gives them

power to create new domestic regulatory bodies and imbue them with their own legislative powers, but there is no indication of how this might be used in practice. What will happen where the law prescribes the involvement of an EU body and no UK equivalent has yet been created? It is possible that the Bill will be amended to provide that one body, or possibly the Secretary of State, will be the default replacement for EU bodies.

- Will judges be left with a discretion to consider post-Brexit Court of Justice of the European Union (CJEU) decisions if they consider it appropriate, as the Bill currently states? The judiciary do not want such a discretion, fearing that they will then be accused of importing EU law into the UK and assuming the role of policy makers. The outgoing Lord Chief Justice Lord Thomas of Cwmgiedd made clear that the judiciary wants Parliament to make the decision on whether future decisions of the CJEU can be relevant to the interpretation of our EU-derived law.
- Will a strategy be produced for the UK's relationship with European agencies and programmes, including various sector-specific bodies such as the European Medicines Agency, the European Securities and Markets Authority, the Internal Energy Market and Europol?

Two days of debate on the Bill are scheduled for the week commencing 13 November 2017, with another six days to be scheduled later.

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ellexica Limited, CityPoint, One Ropemaker Street, London EC2Y 9SS T: +44 20 7628 2020