



THE REPEAL BILL AND BEYOND

Following the House of Commons vote on 29 June, we now know the government's focus in terms of legislation to be prioritised in light of Brexit.

The European Union (Withdrawal) Bill¹, more commonly known as the Repeal Bill, published on 13 July 2017 has been the most talked about of the Brexit Bills and is the most ambitious - seeking to identify the EU legislation that the UK will retain in its national law post-Brexit. David Davis, the Secretary of State for Brexit, called the Bill "one of the most significant pieces of legislation that has ever passed through Parliament".

However, this is only one of eight such bills the government hopes to pass during the life-time of this Parliament.

1. <https://www.publications.parliament.uk/pa/bills/cbill/2017-2019/0005/18005.pdf>

The Repeal Bill

This is the most well known and main Brexit Bill. This Bill, if voted through, will result in the UK actually leaving the EU. It will first repeal the European Communities Act 1972, thereby ending the authority of the EU and the judicial powers of the European Court of Justice (ECJ).

The Bill's secondary purpose identified by the government is to give businesses confidence that there will not be any regulatory black holes the day following Brexit. The Bill aims to facilitate the incorporation of those parts of EU legislation identified as relating to the UK and therefore required to become part of UK national law, of which there are estimated to be approximately 20,000². This has now become a highly controversial part of the Bill.

It is estimated that the process of identifying which of the Regulations and principles derived from ECJ decisions, should be retained, amended or repealed will take many years and far longer than the period we have until we leave the EU in March 2019. In order to facilitate this, the government has opted to introduce a new section to the Bill that enables it to avoid or limit Parliamentary scrutiny, the so called "Henry VIII Powers". Within hours of the Bill being published, cross party MPs have been highly critical and rebels from Conservative and Labour benches have called for greater Parliamentary accountability.

The Bill will now need to pass through both Houses of Parliament, before being enacted. Given the criticism it faces, we wonder whether we might yet see it evolve, especially in relation to workers' rights and environmental issues.

The remaining Bills likely to be laid before Parliament towards the end of the year, include:

- The Customs Bill providing for a standalone customs and indirect tax regime.
- The Trade Bill providing for an independent trade policy. The government has already made progress on this having commenced talks and set up working groups with other Member States in order to maintain the same or similar relationships to those which the UK's membership of the EU affords with third party countries.
- The International Sanctions Bill which we anticipate risks the UK and EU maintaining two distinct target lists.
- The Immigration, Fisheries, Agriculture, and Nuclear Safeguards Bills enabling the UK to establish its own regimes in these areas.

Perhaps tellingly, none of the Bills refer to the so called EU divorce payment, said by Michel Barnier the EU's chief negotiator to be a pre-condition to the start of talks on the EU/UK negotiations. However, David Davis' written statement to Parliament³ on 13 July appears to acknowledge that the UK has financial responsibilities to the EU, it states: "that the UK has obligations to the EU... that will survive the UK's withdrawal – and that these need to be resolved".

The Brexit talks resume next week. The written statement identifies the government's focus for the talks as follows:

- The position of UK parties involved in ECJ cases following Brexit, where the issues concerned the period in which the UK was a member of the EU. Will these parties still be subject to ECJ jurisdiction? As an initial view we believe that they may well be, but

we await to see the outcome of these negotiations.

- The ongoing maintenance of nuclear safeguards following the UK's withdrawal from EURATOM when it leaves the EU.
- Citizens' rights and the aim to identify areas of common agreement between the UK/EU in order to work towards a mutually agreeable resolution.
- In relation to Northern Ireland and Ireland, working towards an agreement that preserves the Common Travel Area, recognising the commitment to the Belfast Agreement and avoiding a hard border.

As to the consequences of these Bills we will monitor the situation and report as they pass through Parliament on their journey to becoming legislation.

For more information on Brexit please see our sector specific series of Brexit Considerations available on our Brexit web page, or please contact the authors, or our Brexit Committee chaired by Anthony Woolich and Brian Perrott on brexit@hfw.com.

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2. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7863>

3. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-07-13/HCWS43/>

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