

## **The Retained EU Law (Revocation and Reform) Bill – Needless Uncertainty and Undemocratic Powers** by *Eleonor Duhs, Barrister and Partner at Bates Wells* (15<sup>th</sup> May 2023)

At the end of the Brexit transition period, EU law which applied to the UK, was [turned into domestic law](#). The European Union (Withdrawal) Act 2018 (“EUWA”) took the approach of preserving or [converting EU laws into UK law by category](#):

- Domestic law which was made to implement EU obligations was **preserved** through section 2 of EUWA (for example, the Data Protection Act 2018);
- Direct EU legislation was **converted** into domestic law through section 3 of EUWA (for example, the General Data Protection Regulation or GDPR);
- Any other rights, powers, liabilities, obligations, restrictions, remedies, and procedures were saved through the “**sweeper provision**” in section 4 of EUWA (for example, the right to equal pay between men and women as set out in Article 157 of the Treaty on the Functioning of the European Union).

Together these three categories make up retained EU law. **The “sweeper” provision in section 4 of EUWA was needed to deliver the aim of “maximum certainty” as the UK left the EU, and it** ensured that no rights were inadvertently lost upon exit from the EU. Given the number of rights, powers, etc., that flowed through the [“conduit pipe” of section 2\(1\) of the European Communities Act 1972](#), the government couldn't discover and list them all. Examples of rights that may exist but for which there is no definitive list are rights in direct EU legislation where there was no English language version of the measure in question (only English language versions were saved through section 3 – see section 3(4)), or directly effective rights in international treaties which applied in the UK by our EU membership and which have been preserved on the statute book.

Clause 4 of the Bill simply revokes any rights, powers, etc., saved under section 4 of EUWA. This is reckless. The government has, in effect, conceded through its amendments to Clause 1 of the Bill that there are significant risks to simply removing legal rights from the statute book without any proper understanding of what is being lost. The same logic should apply to Clause 4.

**At the Report Stage on 15th May 2023, Peers are therefore urged to support the amendments to Clause 4 of the Bill**, which would ensure that rights, etc., contained in the “sweeper provision” are not lost overnight but would instead require Ministers to identify which rights they wish to revoke. The decision as to whether the relevant rights should be removed should be for Parliament and the devolved legislatures and not the Executive.

Clause 16 of the Bill is effectively a “blank cheque” for Ministers to revoke retained EU Law or replace it with whatever frameworks they deem appropriate. Further, the replacement legislation cannot increase standards – it can only keep them the same or make them lower (see clause 16(5)). These powers are profoundly undemocratic and a retrograde step in terms of regulatory standards. **Peers are urged to support tabled amendments to the Bill that would delete Clause 16 or alternatively ensure that additional safeguards apply** to the exercise of the powers conferred in Clause 16.

For further information contact the author at [e.duhs@bateswells.co.uk](mailto:e.duhs@bateswells.co.uk). Contact Professor Alison Scott-Baumann for access to other experts at [as150@soas.ac.uk](mailto:as150@soas.ac.uk), and visit [our website](#) for more information. *The views expressed in SOAS ICOP Briefings are those of the authors and do not necessarily represent those of SOAS.*