

THE GREAT CHALLENGE OF THE GREAT REPEAL BILL

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THE OBJECTIVE



- “Its working title notwithstanding, the “Great Repeal Bill” may not in fact repeal much EU law. The Government’s intention....is that the Bill will preserve EU law where it stands at the moment before we leave the EU. In effect a snapshot will be taken..and transformed into domestic law.”
- “The purpose of doing so is to provide legal certainty: the Government’s intention is that, wherever practical and appropriate, the same laws will apply in the UK the day after Brexit as before it.”

House of Lords Select Cttee on the Constitution HL Paper 123

NOT THE ONLY BILL



There will be areas where there is a need for major substantive provision to be in place before Brexit.

In order to allow votes “on substantive policy choices....we expect to bring forward separate legislation in areas such as customs and immigration.” HC Deb 2.2.17 col 1217

Press reports this week indicated pressure for bills covering immigration, trade and customs regimes, fisheries, data protection, sanctions, EU migrant benefits, nuclear safeguards, emissions trading, and the transfer of spending from EU funds to UK departments.

CHALLENGE OF THE TIMETABLE



- Same press report (Times) recorded desire to reduce this “wish list”. But the issues have to be dealt with somehow – within the fixed two year timetable.
- This is related to another aspect of the challenge – the “moving target” as negotiations and policy imperatives progress.

PRINCIPAL ISSUES FOR THE GREAT REPEAL BILL



- EU Law part of domestic law in a variety of ways
- Regulations are “directly applicable” by reason of s2 ECA
- Some Directives “directly effective”
- Others transposed under ECA powers alone
- Other provisions of EU law reflected either in primary legislation or in subordinate legislation made under non ECA powers
- Obviously, repeal of ECA has a differential effect on these categories.



TWO DISTINCT PHASES

- The initial preservation of EU law by converting it into UK law
- A longer terms process which will determine the extent to which (what was) EU law remains part of UK law.

CONSTITUTIONAL IMPLICATIONS – HENRY VIII CLAUSES



- Inevitable that first phase will involve extensive use of Henry VIII clauses.

“The ‘Great Repeal Bill’ is thus likely to involve a massive transfer of legislative competence from Parliament to Government. This raises constitutional concerns of a fundamental nature concerning as it does the appropriate balance of power between the legislature and the executive.”

“Parliament must consider how best to limit and to exercise oversight of the Government’s use of these extensive delegated powers. In addition, it is important that both parties recognise that the ‘Great Repeal Bill’ will be an exceptional piece of legislation, necessitated by the extraordinary circumstances of Brexit: while the Government may make a case for a wide array of discretionary powers, this should in no way be taken as a precedent....”

HoL Select Cttee HL Paper 123

SUGGESTED SAFEGUARDS



Committee suggest a general provision on the face of the Bill to the effect that the delegated powers granted by the Bill be used only:-

- So far as necessary to adapt the body of EU law to fit the UK's domestic legal framework; and
- So far as necessary to implement the result of the UK's negotiations with the EU.

OTHER ISSUES



- Suggested use of “sunset clauses”
- Transitional arrangements
- Non-legislative elements of EU law – eg the status of CJEU judgments, whether given before or after Brexit; interpretation or implementation issues from European agencies.