



EU (Withdrawal) Bill

Department
for Exiting the
European Union

Factsheet 2: Converting and
preserving law

repeal-bill@dexeu.gov.uk

Conversion and preservation of EU law

The purpose of the Withdrawal Bill is to provide a functioning statute book on the day we leave the EU, and ensure that it is for our sovereign Parliament and, where appropriate, devolved institutions to make any future changes.

The Bill aims to maximise certainty for individuals and businesses as we leave the EU in order to provide the basis for a smooth and orderly exit. It is in no one's interests for there to be a cliff edge when we leave the EU, and so the laws and rules that we have now will, so far as possible, continue to apply.

The European Communities Act 1972 (ECA) which currently gives effect in our legal system to our membership of the EU, will be repealed by the Bill. Therefore, to avoid large gaps appearing in the statute book, the Bill will convert existing EU law as it applies immediately before exit day into our domestic law. It will also preserve laws we have made in the UK to implement our EU obligations.

What are we retaining?

- The Bill will preserve the laws we have made in the UK to implement our EU obligations (e.g. the laws which implement EU directives).
- The Bill will convert existing EU law which applies directly in the UK's legal systems (such as EU regulations and EU decisions) into UK law.
- The Bill will also retain remaining rights and obligations which apply directly in the UK as a result of section 2(1) of the ECA, including directly effective rights and obligations within EU treaties. An example is Article 157 of the Treaty on the Functioning of the European Union (TFEU) on equal pay.
- Directly effective rights arising under other treaties brought into domestic law by the ECA, such as international agreements made by the EU with countries outside the EU, will also be retained by the Bill.
- The body of law that is converted and preserved under the Bill is known as 'retained EU law'.

What are we not retaining?

- Certain EU legislation which has never applied to the UK (for example, because the UK did not adopt the Euro, or because the UK did not participate in certain aspects of the EU acquis, in the area of freedom, security and justice).
- Changes to EU law which are stated to apply after exit day. Arrangements for the proposed implementation period will be brought forward in separate primary legislation, the Withdrawal Agreement and Implementation Bill.
- EU directives. Directives are adopted by the EU, and require member states to achieve a particular result, but are not intended to form part of domestic law. As they are not a part of domestic law at present, they will not be so after exit. Instead the Bill will preserve the domestic law which has implemented them.
- The EU treaties themselves, or the text of any articles within those treaties. As above, however, the Bill will continue to make available in domestic law any directly effective rights which arise under the treaties.
- The principle of supremacy of EU law, except where there is a conflict between pre-exit domestic law and retained EU law, in which case the principle of supremacy will continue to apply so far as relevant. The duty of consistent interpretation also means that domestic law must be interpreted, as far as possible, in accordance with EU law. That interpretative principle will be maintained in respect of pre-exit domestic legislation.
- The Charter of Fundamental Rights - see separate factsheet. (This is subject to the House of Commons considering an amendment made to the Bill by the House of Lords.)
- *Francovich* damages (damages that are available where there are breaches of EU law by a Member State) will no longer be generally available.

Court of Justice of the European Union (CJEU) case law

- In leaving the EU, we will bring about an end to the direct jurisdiction of the CJEU in the UK. The UK will engage constructively to negotiate an approach to enforcement and dispute resolution which meets the key objectives of the UK and the EU, underpinning the deep and special partnership we seek. The dispute resolution mechanism for the Withdrawal Agreement is a matter for negotiation and will depend on the document's content.
- The UK and EU have reached an agreement on the terms of a time-limited implementation period. This agreement is an important step towards finalising the full Withdrawal Agreement. If there is a specific and time-limited role for the CJEU as part of that agreement then it would be legislated for under the separate Withdrawal Agreement and Implementation Bill.
- This Bill will ensure a functioning statute book whatever the outcome of the negotiations. It sets out how retained EU law is to be read and interpreted on and after exit day. Subject to any possible content of a Withdrawal Agreement,

decisions of the CJEU made after exit day will not be binding on UK courts and tribunals, though judges may take these judgments into account if it is relevant to the matter before them, and UK courts and tribunals will also no longer be able to refer cases to the CJEU on or after exit day.

- Retained EU law will be interpreted by domestic courts in accordance with relevant pre-exit CJEU case law and any retained general principles of EU law. This case law will have the same binding or precedent status as that of the UK Supreme Court or the High Court of Justiciary.

Frequently Asked Questions

Why are you copying EU law into our law when we're leaving the EU?

- It is important to ensure there is maximum clarity as to the law that applies in the UK after we leave. Simply repealing the ECA would leave large gaps in the statute book.
- To avoid this, the Bill will convert directly-applicable EU laws into domestic law, preserve laws made to implement the UK's EU obligations and retain any remaining rights or obligations recognised under section 2(1) ECA 1972.
- This maximises certainty for individuals and businesses, avoids a cliff edge, and provides a stable basis for Parliament and, where appropriate, devolved institutions to change the law where they decide it is right to do so.

Will the UK be bound by judgments of the CJEU made after we leave the EU?

- This Bill ensures that the statute book will function effectively without prejudice to the outcome of negotiations. It provides that UK courts and tribunals will not be bound by CJEU decisions made after the point at which EU rules and regulations cease to apply in the UK. It also provides that UK courts will be able to take post-exit CJEU judgments into account when making their decisions, as they can currently do with judgments of other courts around the world, but they will not be required to do so.
- The agreed implementation period will act as a framework, delivering a bridge to the future which will provide certainty for business and citizens. The implementation period, including any role for the CJEU, will be legislated for under the separate Withdrawal Agreement and Implementation Bill.

What about case law that preceded withdrawal?

- For as long as retained EU law remains in force in the UK, it is essential that there is a common understanding of what that law means.
- To maximise certainty, therefore, the Bill will ensure that any question as to the meaning of retained EU law will be determined by reference to the CJEU's case law as it exists immediately before we leave the EU.
- To ensure this case law is not fossilised within our domestic law, the UK Supreme Court (UKSC) or the High Court of Justiciary will also be able to depart from it.

When considering whether to depart from retained EU case law, these courts must apply the same test as when considering whether to depart from their own case law. It is rare for the UKSC to depart from one of its own decisions or that of its predecessor, the House of Lords.