Government changes approach to discarding EU laws and announces plans to reform the Working Time Regulations 1998 and TUPE

The Government has backtracked on its pledge to discard all retained EU laws at the end of year. Instead, around 600 pieces of legislation will be revoked, including some relatively niche employment laws. The rest will remain on the statute books but may be reformed over time. In connection with this, the Government has already announced plans to reform the Working Time Regulations 1998 and the Transfer of Undertakings (Protection of Employment) Regulations 2006.

What is the Retained EU Law Bill?

A large proportion of the UK's legal framework – including its employment law framework – was underpinned by the law of the European Union as follows:

- EU "directives" had to be implemented into UK law, either as an Act of Parliament or a statutory instrument.
- Certain other forms of EU law were directly applicable in the UK without the need for any implementing laws.
- Decisions of the Court of Justice of the European Union were also binding on the UK.

Brexit required changes to be made to this legal framework. Acts of Parliament which implemented EU directives (e.g. the Equality Act 2010) remained in place. However, all the relevant statutory instruments would have automatically fallen away upon Brexit. To avoid legal chaos when Brexit happened, the Government decided to keep these statutory instruments and transfer them into UK law. It also chose to keep directly applicable EU law and decisions of the Court of Justice of the European Union made on or before 31 December 2020. Together, all these laws and decisions became known as "retained EU law".

In September 2022, the Government decided that the time was right to look again at whether retained EU law should be kept or repealed. The Government published the Retained EU Law (Revocation and Reform) Bill (the Bill), which is aimed at removing the presence and influence of retained EU law within UK law. Initially, the Bill provided that all retained EU law contained in statutory instruments would automatically expire on 31 December 2023 unless a positive decision was made to keep it after this date. This was referred to as the "sunset" provision.

How has the Government changed its approach?

On 10 May 2023 the Government performed a surprise U-turn on the sunset provision. The Government announced that it would table an amendment to the Bill which would scrap the sunset provision and replace it with a list of around 600 pieces of retained EU law to be revoked on 31 December 2023. Any piece of retained EU law which was notincluded in that list would stay on the statute books (for now at least – it may be revoked or reformed at a later date).

Why did the Government change its approach? It had become clear that civil servants would simply not have enough time to assess which retained EU laws should be kept, reformed or discarded before the sunset date. If the sunset provision had stayed, the concern was that we would be left with a legal vacuum on 1 January 2024 – including in the field of employment law.

Will any retained EU employment laws be revoked on 31 December 2023?

Yes. The Government's list of retained EU law to be revoked contains the following employment laws:

- The Posted Workers (Enforcement of Employment Rights) Regulations 2016.
- The Posted Workers (Agency Workers) Regulations 2020.
- The European Cooperative Society (Involvement of Employees) Regulations 2006.

The concepts of a "posted worker" and a "European Cooperative Society" do not apply to the UK as they did when we were members of the EU. The consultation says the revocation of these rules should be regarded as a *"tidying up of the statute book".*

Will any retained EU employment laws be kept or reformed after 31 December 2023?

Yes. On 12 May 2023, the Government published a consultation

paper, setting out its plans regarding the future of retained EU employment law. The consultation confirms the Government's intention to keep retained EU employment laws in the following areas without any change:

- Family leave rights (maternity, paternity, adoption and parental leave).
- "Atypical" workers' rights (part-time workers, fixed-term workers and agency workers).
- Information and consultation rights.

However, some reforms are proposed to the Working Time Regulations 1998 (**WTR**) and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) namely:

- Changes to working time record-keeping requirements.
- Changes to annual leave entitlements.
- Introduction of "rolled up" holiday pay.
- Changes to the consultation requirements under TUPE.

You can read our detailed briefing on the proposed changes here.

What are the next steps?

The Bill has completed its passage through the House of Commons and is currently at the report stage in the House of Lords (meaning it has almost completed its passage there). There will then be a consideration of amendments before the Bill passes into law. Assuming that the Bill

passes in its revised format, the employment laws concerning posted workers and European Co-operative Societies will be revoked on 31 December 2023.

The consultation seeking views on the proposed reforms to the WTR and TUPE closes on 7 July 2023. The Government will need to consider the responses and decide what changes, if any, it wishes to make to the law. Its position will be set out in a response paper, which we would expect to be published by the end of 2023. Legislation will then need to be passed, meaning that the reforms to the WTR and TUPE are unlikely to take effect before the latter part of 2024 at the earliest. However, we will continue to monitor this development and keep you updated.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.