

UK Government Outlines Plan for Initial Continuation of EU Law in Post-Brexit UK Law

March 30, 2017

Firm General and Europe

Today, the UK Government published a [White Paper](#) envisaging an initial continuation of EU law in the UK “wherever practical and appropriate” on withdrawal from the EU (“Brexit”). Today’s White Paper comes one day after the [UK notified the EU of its intention to leave](#) which triggers the two-year Brexit negotiation period.

The UK Government intends on achieving this continuation through legislation in the form of the “Great Repeal Bill.” At the same time as removing the legal supremacy of EU law and the formal influence of EU laws in the UK, the Great Repeal Bill will convert the body of existing EU law into UK domestic law. The effect will be that on day one of Brexit, “wherever practical and appropriate,” the same rules and laws of the EU will apply in the UK. Thereafter, the UK Government will review those laws derived from EU law and seek to either amend, repeal, or maintain those laws. Today’s White Paper sets out the UK Government’s plans. The scope of the Great Repeal Bill will likely change once it is proposed as a draft Act of Parliament later this year and after it is debated and reviewed by the UK Parliament.

UK Law During Article 50 Negotiations

While the UK remains a member of the EU, including during the two-year Article 50 negotiations, EU law continues to take supremacy over UK law. This effectively means that all the rights and obligations of EU membership remain in force until exit. The UK Government remains bound to implement and apply EU law during this period. Moreover, the decisions of the Court of Justice of the European Union (“CJEU”) remain binding on UK courts.

The Great Repeal Bill

When the UK joined the EU in 1973 (then called the European Economic Community), a condition of joining was that EU law will be given effect in UK domestic law. UK legislation in the form of the European Communities Act 1972 (“ECA”) gives EU law in the UK and the legislation which makes EU law supremacy over UK law.

The Great Repeal Bill will repeal the ECA on the day of Brexit. Simply repealing the ECA would lead to an incomplete UK regulatory framework. There are roughly 20,000 legislative acts derived from the EU that apply in the UK, either directly from the EU or via UK legislation implementing EU laws. If EU law does not apply in the UK post-Brexit or if the UK does not convert existing EU law into UK domestic law at the same time as repealing the ECA, there will be significant gaps in the UK regulatory framework.

The UK Government plans on the Great Repeal Bill converting the body of EU law existing *at the moment* of Brexit into UK domestic law. These means that:

- all directly-applicable EU laws (e.g., EU regulations) will be converted into UK domestic law;
- all UK law implementing EU obligations (e.g., UK laws transposing EU directives) will be preserved;
- the rights in EU Treaties (e.g., workers' right to rely on equal pay) will be preserved and individuals can rely on those rights in UK courts—the UK Government does intend to remove the influence of rights contained in the EU Charter of Fundamental Rights;
- all CJEU case law will be given the same binding and precedential status in UK courts as if they were decisions of the UK Supreme Court (which will be the ultimate judicial arbiter post-Brexit).

“Practical and Appropriate” Adjustments to UK Law After Brexit

The UK Government recognizes that a significant amount of EU-derived law, even when converted into domestic law, will be impractical and inappropriate post-Brexit. For example, legislation may refer to EU institutions (e.g., regulators such as the European Medicines Agency or the European Commission) or be predicated on UK membership of, or access to, an EU regime or system (e.g., UK court referrals to the CJEU or the ability of UK citizens to elect MEPs to the European Parliament). After Brexit, this legislation will not work and will not achieve the intended effect. Because of the sheer volume of law, the Great Repeal Bill will not cover these adjustments in all cases—instead the Great Repeal Bill will create powers for Parliament and the UK Government to “rectify problems occurring as a consequence” of Brexit.

Implications for Business

Much remains uncertain, and while the initial position of the UK Government provides some clarity, the probable UK regulatory framework post-Brexit is likely to change over the coming years. Converting the body of EU law into UK domestic law post-Brexit *should* allow businesses some regulatory certainty that the rules applicable in the UK will not change drastically overnight. It also means that individuals will be able to rely on similar rights and obligations post-Brexit.

Our [Brexit Task Force](#) is staffed by senior lawyers and advisors across London, Brussels, and Washington. We monitor events and keep clients apprised of legal, regulatory, and policy developments. We can advise clients across a wide range of businesses and industries on the impact and implications of Brexit and the Great Repeal Bill, including on strategic policy and regulatory issues relating to a number of sector-specific issues, including life sciences, IT and technology, and financial services.

If you have any questions concerning the material discussed in this client alert, please contact the following lawyers:

[Kevin Coates](#)
[Louise Nash](#)
[Sebastian Vos](#)
[Joseph Jones](#)
[Atli Stannard](#)

+32 2 549 52 32
+44 20 7067 2028
+32 2 549 52 67
+44 20 7067 2193
+32 2 545 75 18

kcoates@cov.com
lnash@cov.com
svos@cov.com
jjones@cov.com
astannard@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Firm General and Europe

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.