

The European Union (Withdrawal) Bill: (1) Why we need it

The European Union (Withdrawal) Bill, which is being debated in Parliament this week, prepares the way for us to abrogate the 1972 Accession Treaty by which we joined what has become the EU and repeal the European Communities Act 1972 which gave the Treaty its force in British law. If there are no delays, we will cease to be a member state of the EU on 29th March 2019.

The campaign to regain our sovereignty has lasted for many years and it is encouraging that Parliament will finally be preparing the way whereby this is to happen. After over 45 years as a member of the European project, however, we are currently in a position whereby many items of legislation on our statute books originated in Brussels and what is more, derive their authority from the EU treaties to which we have been a signatory.

In this regard, the wording of Paragraph 3 of Article 50 of the Lisbon Treaty, which the UK Government invoked last March is particularly important:-

The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

Note the phrase **“The Treaties shall cease to apply.”** This means that the current basis for any EU-derived legislation being included in UK law disappears on Brexit Day in March 2019. In other words, if the Government doesn't take action, a

considerable number of laws completely lose their authority.

For the benefit of anyone who has never studied any EU legislative document, you may like to click on this link, which does admittedly take you to one of the most pointless of all regulations, but at least it is short, so you won't have to plough through pages of technical detail.

It begins by saying:-

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

**Having regard to the Treaty establishing the European
Community,**

Right from the start, the document makes clear that it derives its authority from the EU treaties, which will cease to apply to the UK once we leave the EU. Therefore this regulation's authority also ceases for us.

Just to confirm this point, Article 3 of this regulation says:-

**This Regulation shall enter into force on the 20th day
following its publication in the Official Journal of the
European Union**

and then the Regulation concludes with these words:-

**This Regulation shall be binding in its entirety and directly
applicable in all Member States**

So to underline the point, we will no longer be a Member State, so it will no longer apply.

The disappearance of this particular Regulation, complete with its picture of a cuddly toy sheep, from our statute books wouldn't create any anxiety for HM Government or the team of Civil Servants in the Department for Exiting the European Union. There are, however, many far more important pieces of

EU legislation which, if they lost their authority overnight without anything else being put in their place, would cause chaos.

For instance, the EU's Bathing Water Directive 2006/7/EC which deals with the quality of bathing water. Readers may like to study this page of the DEFRA website which tells Councils what they must do to inform bathers at beaches and lakes about the quality of the water in which they will be swimming. If there is no regulation in force to replace the one which the EU has foisted on us, there is an enormous potential for serious problems to ensue. To take an extreme example, someone could pour hundreds of gallons of a highly toxic substance into a lake used for bathing and if the local council failed to put up a notice about it, there would be no mechanism to prosecute it. The legal basis for a court case would have vanished on 29th March 2019.

What the EU (Withdrawal) Bill will do is to "repatriate" EU legislation. In other words, it will remain on our statute books but in an amended form so that its authority will derive not from the EU treaties, which no longer apply, but from our Westminster Parliament.

It may upset some Brexit supporters that we still will be stuck with this legacy of our EU membership, but it was the approach adopted by several newly-independent states in the past as the only way of ensuring life carried on normally after independence. For instance, in 1922, the Irish Free State adopted all laws bequeathed to it by the Westminster Parliament to be effective in the newly-independent country and enforced by its institutions. The alternative would have been an impossible legal vacuum. India did likewise when the British Raj came to an end in 1947.

While it may go against the grain still to be reliant on laws bequeathed by the authority you have just shaken off, as an independent country you will be in a position to revise or

repeal them at a later date if you don't like them. Even though there is more time to prepare for Brexit than the very hasty British withdrawal from India, however, negotiating independence will be a massive undertaking. As far as the mechanisms for day-to-day administration of the UK are concerned, it is therefore best to let sleeping dogs lie during the period immediately after independence. The EU (Withdrawal) Bill seeks to do just that. Some EU legislation is actually very sensible. An independent UK would probably have passed a very similar act to the Bathing Water Directive. It is therefore likely that this piece of EU-inspired legislation will continue as UK law more or less unaltered for the foreseeable future.

On the other hand, some EU laws do not suit the UK and would better be replaced by new domestic legislation. Take the Landfill Directive which was brought in because Denmark and Holland, two small flat countries, had run out of holes in which to bury their domestic waste. The UK, with its quarrying industry, does not suffer from this problem, but the requirement to comply with this directive has resulted in the erection of smelly incinerators. In due course, we can rid ourselves of unhelpful legislation like this.

Likewise, the Interoperability Directives, which set the rules for the registration of newly-built railway rolling stock, are unnecessarily complicated for well over 95% of the trains running in the UK because they were designed to make it easy for trains to cross international borders. Given the UK's island location, the Eurostar services, car, coach and lorry shuttles through the Channel tunnel, international freight trains and the handful of through Belfast-Dublin passenger trains (Currently eight in each direction on weekdays and five on Sundays) are the only rail services ever likely to cross international boundaries. We could replace it with something much simpler for the benefit of most UK domestic rail operators.

At the end of the day, however, if it takes a couple of years before Parliament has the time to look at replacing these less-than-ideal pieces of legislation with something better, the sky is not going to fall in if we still abide by them post-Brexit. What really matters is that on 29th March 2019, we don't wake up to a huge legal vacuum where areas of our life as a nation are completely unregulated because the EU treaties no longer have any force.

This, then, is the rationale behind the EU (Withdrawal) Bill. In the next article, I will address an obvious concern that sharp-eyed readers may have spotted. Taking again our "Cuddly Toy Sheep" Regulation 1462/2006 as an example, it clearly cannot be transferred onto the UK statute books verbatim. It is no longer a Regulation deriving its power from the EU treaties so any reference to the Commission or to Council Regulations and other EU legislation will need to be reworded. Then there is the phrase "Member States". This again will need to be changed in the "repatriated" version or it won't make any sense. You would think that it ought to be a simple job using certain formulae to make the necessary corrections in regulation after regulation without altering the provisions of the original EU law beyond limiting its scope to the UK, but in reality life isn't quite that simple.....