

Retained EU Law (Revocation and Reform) Bill - Government Bill

Written evidence submitted to the
Retained EU Law (Revocation and
Reform) Public Bill Committee¹.



¹ Note: This written submission was presented after the Public Bill Committee proposed deadline.

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The Institution of Occupational Safety and Health (IOSH), the Chartered body for occupational safety and health professionals, with approximately 49,000 members in more than 130 countries, has a vision of 'A safe and healthy world of work'. We are pleased to provide feedback to the House of Commons Public Bill Committee which is going to consider this Bill. While we are conscious that the formal deadline of this inquiry has come to an end, we believe there is merit in sharing our viewpoint considering that many of the nearly 100 pieces of written evidence have not specifically addressed the occupational safety and health (OSH) impacts of this Bill.

As an international non-profit organisation, IOSH ethically influences important decisions that affect the safety, health and wellbeing of people at work worldwide. We responsibly collaborate with governments, advise policymakers, commission research, set standards, engage with global, regional and local organisations and run high-profile campaigns to promote awareness of occupational safety and health (OSH) issues. The IOSH Policy and Regulatory Engagement function provides a strong foundation for key policy responses and public policy initiatives that focus on the crucial role of OSH.

Written evidence submitted by the Institution of Occupational Safety and Health.

Introduction

It is widely recognised by policymakers that the UK has one of the most advanced systems of health and safety regulation in Europe² and globally³⁴. In the current post-Brexit and Covid-19 recovery scenario 'good work' must be placed at the heart of the nation's economic recovery and rebuild. As the country heads to an unprecedented recession this could also mean that workers' rights may be undermined under the guise of economic stagnation and UK's labour market competitiveness and performance, leaving the protection of health and safety legislation and workers' working and living conditions at stake.

During Brexit negotiations the UK and the EU firmly agreed to non-regressive levels of protection and specifically not to weaken or reduce existing levels of labour and social protections, yet the Bill in the current 'what to keep, what to amend, and what to let go' form, we believe threatens to weaken well-established occupational safety and health rights. While the post-Brexit regulatory landscape is yet to be clarified, the risk of future regulatory deregulation is highly probable, at a time when the regulatory system that is massively under-resourced⁵.

IOSH's focus on this time of great national change and instability remains two-fold: ensuring no erosion of health and safety standards and building a safer, healthier, and more sustainable future for all. Not only must we maintain standards, but we must also energetically drive continual improvement in them and ensure human-centred approaches.

Scope of the Bill

² See, for example HSE Chair's introduction to Health and Safety Executive (2013) *A guide to health and safety regulation in Great Britain*, London: HS

³ Almond, P. and Esbester, M. (2016) The changing legitimacy of health and safety, 1960-2015. https://www.regulation.org.uk/library/2016-IOSH_Paul_Almond_Mike%20EsbesterThe_Changing_Legitimacy_of_Health_and_Safety_at_work.pdf

⁴ Leka, S. Jain, A. Zwetsloot, G. Andreou, N. Hollis, D. The changing landscape of OSH regulation in the UK. University of Nottingham, 2016. http://irep.ntu.ac.uk/id/eprint/33731/1/11149_Hollis.pdf

⁵ Ewing, K., Ford, M., Glenister, S., James, P. (Ed.), Jones, C., Hendy, J., Newsham, J., O'Neil, R., Taylor, P., Tombs, S., Walters, D., Watterson, A., & Whyte, D. (2021). HSE and Covid at work: a case of regulatory failure.

The Retained EU Law (REUL) platform lists 2,417 pieces of retained EU law (with new figures indicating an estimated 3,800 articles of REU), including an estimated 58 pieces of specific legislation on occupational safety and health aspects. Lack of regulatory oversight and enforcement of workplace health and safety conditions can leave workers in a vulnerable position, as previous crises have demonstrated⁶. It is also happening at a time when the need for effective safety standards has never been more acute. Key figures for 2021/22 in Great Britain from the Health and Safety Executive (HSE), states: 1.8 million workers that have suffered from work-related ill health (new or longstanding) in 2021/22; 36.8 million working days lost due to work-related illness and workplace injury and £18.8 billion estimated cost of injuries and ill health from current working conditions (2019/20), and there are 123 workers killed in work-related accidents⁷. These figures alone highlight that the challenge is far from over and more needs to be done, and that the impact of work-related incidents are far-reaching, from the injured person, to their family and friends, to the employer, their sector, society, the economy and so on.

Within the proposed structure, there is real potential for abolishing EU-derived laws on Employment and Health and Safety regulations. For example, what does this mean in relation to the following:

- The Management of Health and Safety at Work Regulations (MHSWR) 1999 – there would be no duty to have suitable and sufficient risk assessments or arrangements for effective planning, organisation, control, monitoring and review of the preventative and protective measures. This also stems to a duty on an employer to carry out an assessment of the risks to new and expectant mothers in the workplace. Capabilities and training and health and safety assistance to the employer will also be impacted plus more.
- The Health and Safety (Consultation with Employees) Regulations 1996 - covers consultation and involving employees and their representatives on health and safety matters at work. There are rights for employees to be consulted on health and safety and for paid time off for the representatives to carry out training and health and safety duties. Are there impacts to consultations and functions of representatives?
- Chemical related legislation such as, Control of Substances Hazardous to Health (COSHH) 2002, CLP Regulations (Classification, Labelling and Packaging of Substances and Mixtures and REACH (Registration, Evaluation, Authorisation & restriction of Chemicals) – COSHH covers substances hazardous to health and puts in place requirements to protect workers, including but not limited to, employer duties, risk assessment, control measures, training, and so on. For CLP and REACH we have already seen the necessary amendments be made to make them operational within the UK, e.g. 'UK REACH' and 'GB CLP'. Whereby CLP adopts the United Nations Globally Harmonised System for the classification of labelling chemicals across all EU countries and this is important to help protect people/users, the environment and to facilitate trade. These regulations are therefore essential for the protection of human health, placing duties on manufacturers and importers of chemical regarding the identification and management of risks, the communication of information on the safe use of chemicals through supply chains and so on. What will the impact be in relation to these regulations and the protections they afford?
- Building Regulations 2010 and Construction (Design and Management) Regulations (CDM) 2015 – in the Building Regulations we see standards set for design and building work, and within CDM the duties for clients, designers, principal designers, principal contractors and contractors are detailed for construction work, and include general requirements for construction sites. It is imperative that health and safety protections afforded within these regulations remain and continue to be robust.
- Working Time regulations 1998 – which provides safe limits on working hours. Will these protections remain?
- The Agency Workers Regulations 2010 – which provides agency workers the entitlement to the same or no less favourable treatment for basic employment and working conditions if they complete a qualifying period of 12 weeks in a particular job. Will these protections remain?
- The Personal Protective Equipment at Work Regulations 1992 amended 2022 - regarding the provision of PPE. Will there be impacts to these requirements?
- And the list goes on.

⁶ James, P. Walters, D. Work and Health: 50 years of regulatory failure. Institute of Employment Studies. London, July, 2022.

⁷ Health and Safety Executive. Health and safety at work Summary statistics for Great Britain 2022. London, November 2022.

These are all necessary regulations that contribute to the protection of workers from harm and have been well-established and integrated into workplaces and employers' policies and practices. If anything, there is more we need to do to further implement and embed good occupational health and safety management and to develop positive cultures e.g. within micro-small and medium enterprises (SME), the informal economy, etc.

Identified issues

- **Resourcing.** The ongoing process puts an excessive burden on the ability of devolved to comply to the arbitrary December 2023 sunset deadline. Ministers, civil servants, key administrations such as the Health and Safety Executive (HSE) or the Department for Business, Energy and Industrial Strategy (BEIS), we perceive currently lack adequate resource to carry out this thorough exercise which requires each piece of legislation that falls within the scope of the Bill to be reviewed (e.g. BEIS is devoting 77 full-time staff to undertake this review) even if the Bill passes without a significant amount of amendments. IOSH argues that the scale and complex feasibility of conducting this exercise within the proposed timeframe appears to us as unachievable and will require an increase in investment and capacity-building not just at the public level but also for the support and education at the business and worker level.
- **Lack of consensus and participation.** The Bill requires consultation with stakeholders, such as civil society, workers and businesses, to assess current retained EU law and possible changes. Equally, the unprecedented powers in Clause 15 allow Ministers to change key employment rights without any prior indication as to how they intend to use those powers, and without consultation with stakeholders or meaningful scrutiny and debate in Parliament. It is well-evidenced that changes to health and safety law have historically been achieved through robust consensus, achieved through a common purpose of improving health and safety in the workplace. These issues in participation can also be extended to the short periods of consultation offered by Ministers with the devolved administrations before this Bill was formally published.
- **Required regulatory due diligence.** This consultative exercise does not have an informative and up-to-date inventory of retained EU law. The way the REUL Bill is currently structured provides no indication of which laws are likely to be kept and which will be replaced or amended. This doesn't seem an appropriate process at an extremely complex economic and political time. Good practice requires active engagement at a public policy level, upholding Parliament's scrutiny and oversight powers. It also requires strict governance and safeguarding processes to be followed, such as the production of an impact assessment, defining plausible scenarios, legal evidence-base and more importantly shifting the approach to a more democratic and participatory framework that removes the current executive powers and increases the Parliament and public scrutiny prerogatives.

Conclusion

IOSH believes that this Bill will contribute to moving robust risk-based framework and well-acquired worker occupational safety and health protections into the direction of de-regulation and reduced worker protection at a time when workers, employers and Governments have witnessed and realised the value and importance of good occupational health and safety practice at work during the pandemic and furthermore, at a time when a safe and healthy working environment has been recognised as a fundamental principle and right at work through the International Labour Organization.

We therefore recommend that the previously referred Employment and Health and Safety Regulations are withdrawn and/or removed from the scope of the Revocation Bill. Failing this, we recommend extending the given deadline till 2030 to allow for a thorough review. This will provide a more achievable timeline rather than the alternative sunset extended period of 23 June 2026.

As emphasised on previous calls⁸. The Government's focus should not be on compromising health and safety standards but on reinforcing, strengthening them and supporting their implementation to enable workplaces to be safe, healthy, providing decent work and to be positive drivers of innovation, improved productivity and sustainability.

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⁸ Institution of Occupational Safety and Health. IOSH writes to new UK Prime Minister with key calls for action. <https://iosh.com/news/iosh-writes-to-new-uk-prime-minister-with-key-calls-for-action/> IOSH calls on UK Prime Minister to reverse reporting exemptions <https://iosh.com/news/iosh-calls-on-uk-prime-minister-to-reverse-reporting-exemptions/>