

“The Great Repeal Bill”: What will it mean?

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On Thursday 30 March, the day after the Prime Minister triggered Article 50, the UK Government published the White Paper, [Legislating for the United Kingdom’s withdrawal from the European Union](#). That is the so-called ‘Great Repeal Bill’ White Paper.

What will the Great Repeal Bill do?

The White Paper proposes that a Great Repeal Bill will do three things:

- Repeal of the European Communities Act 1972 with effect from the day the UK leaves the EU.
- Convert EU law (the *acquis communautaire*) as it stands on the day the UK leaves the EU, into UK law. The UK Government has stated that this will provide certainty to businesses, organisations and individuals that rights and obligations won’t suddenly change overnight.
- Finally, the Bill will give UK Ministers, and “where appropriate” devolved Ministers, powers to make secondary legislation to technically amend this body of “domesticated EU law” to make sure that the law is workable once we leave the EU. For example amending references in legislation to EU agencies that the UK will no longer be a part of when it leaves the EU.

The Bill will require UK Courts to follow pre-Brexit Day case-law of the Court of Justice of the European Union (CJEU) when interpreting domesticated EU law but will bring to an end the jurisdiction of the CJEU over UK laws following the UK’s exit.

What won’t the Great Repeal Bill do?

The Great Repeal Bill won’t provide UK Ministers or Welsh Ministers with the powers to make substantive policy changes as a result of the UK leaving the EU. Significant policy



changes will be made in separate primary legislation. The White Paper states that a 'number of further bills' will be introduced in the course of the next two years to make sure the UK is prepared for withdrawal. Separate bills in relation to customs and immigration are mentioned specifically in the White Paper but up to 15 bills, on areas such as agriculture and fisheries, are expected.

What's the timeline for the Great Repeal Bill?

The White Paper doesn't set out a timeline for the Great Repeal Bill nor was one set out by the Secretary of State for Exiting the EU, David Davis MP, in his statement to the House of Commons. The UK Government has previously stated that a Bill will be introduced early in the next session of Parliament which is expected to commence in late May or early June following the Queen's speech.

The work of amending the UK statute book will need to be completed before the UK withdraws from the EU. The White Paper estimates that at a UK level 800–1000 pieces of subordinate legislation will be needed to make the body of EU law transferred workable. No estimate has yet been provided of how many pieces of subordinate legislation will be needed in Wales in areas of devolved responsibility.

What are the key issues arising from the Bill?

The Bill will provide UK and, where relevant, devolved Ministers with powers to amend the body of EU law transferred via subordinate legislation. These powers will be necessary because of the volume of changes that will be needed to make the body of EU law transferred workable, and the short time available to do that in – two years from 29 March 2017, the date on which Article 50 of the Treaty on European Union was triggered. Subordinate legislation can typically be made much more quickly than primary legislation (Acts of Parliament or Acts of the devolved legislatures).

Whilst acknowledging that Ministers will need these powers, some MPs and Peers have expressed concern about giving broad subordinate legislation powers to Ministers to amend the body of EU law. This is because, traditionally, most subordinate legislation has been subject to far less scrutiny than primary legislation. In addition subordinate legislation cannot be amended, only accepted or rejected. So Members cannot change it and it is also much more difficult for them to influence its contents; some proposed amendments to primary legislation aren't passed, but the Government in question agrees to make changes to the Bill themselves.



In his statement to the House of Commons, the Secretary of State outlined that the subordinate legislation powers proposed in the Bill would be time-limited. The White Paper also outlines that the power will only allow Government to make the changes necessary to enable the law transferred to function effectively after Brexit Day, and also to reflect the terms of the final UK withdrawal agreement. The White Paper also indicates that the power may be limited in other ways. Nonetheless, several MPs, in their response to the statement, expressed their concern at the fact that the White Paper fails to set out further details on how powers will be constrained.

The Assembly's External Affairs Committee will be considering the Bill as part of its work on the implications for Wales of the UK's exit from the EU. The Committee will consider issues such as whether the Assembly should be given the powers to decide in the Bill what limits and scrutiny procedures should be placed on any subordinate legislation powers given to Welsh Ministers.

What are the potential implications for the devolved settlements?

All three devolved settlements at present set out that the devolved administrations and legislatures have the ability to make law in devolved policy areas as long as that law is compatible with EU law. This requirement will need to change once the UK exits the EU. Chapter 4 of the White Paper sets out the UK Government's views on the relationship between EU law and the devolution settlements. It states that when the UK leaves the EU, the powers the EU currently exercises in relation to common frameworks on areas such as agriculture, fisheries and the environment will return to the UK. In these areas, the UK Government states it will be important to ensure that common frameworks for these policies continue inside the UK once it exits.

The White Paper states that the UK's exit:

...will be an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration.

The First Minister for Wales has outlined that the Welsh Government appears to hold a different view to the UK Government on the impact of the UK's exit on the devolved settlement. The First Minister has stated several times on the record that he believes



powers such as agriculture should come to directly to Wales, and indeed will do so automatically under the existing devolution settlement (and the new settlement introduced by the *Wales Act 2017*). [He told the Constitutional and Legislative Affairs Committee:](#)

The assumption that's been made in Whitehall is that, when powers return from Brussels, they will rest in London. We don't accept that view. We take the view that where powers are already devolved, they will bypass London and come to Wales. Why do we say that? Well, if we look, for example, at our devolution settlement, agriculture and fisheries are devolved. There's no caveat—they're devolved.

From the White Paper, it does not appear that the Great Repeal Bill will attempt to allocate powers which are now exercised at EU level between the UK central authorities and the devolved governments and legislatures. This may, however, occur in the other Brexit-related Bills trailed by the Government and mentioned above.

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