

Retained EU Law (Revocation and Reform) Bill – Response to Public Bill Committee Call for Evidence

November 2022

Who we are:

The Labour Exploitation Advisory Group (LEAG) is a group of experts from nine organisations¹ supporting people in, or at risk of, severe forms of labour exploitation, such as human trafficking, forced labour and slavery. Members work together to assess the impact of formal and informal responses to tackling labour exploitation by both government and non-governmental actors; and to identify barriers and develop joint strategies for improving the relevance and effectiveness of local and national responses to tackle labour abuse and exploitation.

The Anti Trafficking and Labour Exploitation Unit (ATLEU) provides dedicated and holistic legal advice to survivors of trafficking and labour exploitation. ATLEU's specialist multidisciplinary legal team assists survivors to escape situations of trafficking, start their recovery and rebuild their lives.

Hope for Justice is an international charity working to change lives and end slavery.

1. Introduction

Members of the Labour Exploitation Advisory Group (LEAG), together with the Anti Trafficking and Labour Exploitation Unit (ATLEU) and Hope for Justice, are unanimous in their serious concerns about the impact of this Bill on the UK's efforts to tackle labour exploitation and the welfare of low-paid and precarious workers. Our concerns begin from our understanding that employment rights and strong labour standards play an essential part in the prevention of labour abuse and exploitation (section 2.1). On that basis, we set out our concerns on the Bill's provisions, particularly clauses 1 and 15 (section 2.2). A weakening of protections would most affect those workers already at a greater risk of exploitation (section 2.3). By unsettling decades

¹ Member Organisations: Latin American Women's Rights Service (LEAG Chair); Focus on Labour Exploitation (Founder & Secretariat); British Red Cross; East European Resource Centre; Kalayaan, Glass Door Homeless Charity; Work Rights Centre; Unite the Union; Kanlungan.

of case law, the Bill will create unnecessary uncertainty and add to the inaccessibility of the justice system for low-paid workers (section 3).

Besides the risk of weakening employment rights, the Bill also threatens to undermine the UK's ability to counter modern slavery, including human trafficking. Many aspects of the UK's framework for identifying and supporting victims of modern slavery, and for prosecuting perpetrators, originate in EU law. This Bill puts those provisions at risk and, therefore, increases risks of exploitation.

2. The Bill threatens to weaken employment rights and increase risks of labour exploitation

Signatory organisations are concerned that this Bill would lead to a significant weakening of basic employment rights. If this happens, precarious workers will be put at an increased risk of serious labour exploitation and abuse.

2.1. Continuum of exploitation

Employment rights act as a vital safeguard against serious exploitation and abuse, because they set down minimum standards of fair and respectful treatment at work and can provide a route to redress where standards are breached. Workers' experiences can be understood as existing on a "continuum": at one end there is decent and well-paid work, with poorer treatment such as breaches of employment rights (such as unpaid wages, discrimination etc.) situated along the continuum, culminating at the opposite end of the continuum in serious exploitation, such as human trafficking and forced labour.

On this understanding, real and enforceable employment rights are crucial safeguards and preventative measures against serious labour exploitation taking root. In a labour market where all workers enjoy decent wages, paid time off and a safe working environment, workers are less vulnerable to labour exploitation because they can access decent work opportunities. Where workers are denied the protection of basic rights and labour standards are poor, workers become more vulnerable to labour exploitation.²

If employment rights are weakened or removed as a result of this Bill, a large number of low-paid workers will be put at an increased risk of serious exploitation. In the context of the current crisis in cost of living, such a fall in labour standards would further put workers at risk of

² See for example: FLEX, 2021. ["The gig is up": Participatory Research with Couriers in the UK App-Based Delivery Sector](#), p.10; FLEX, 2017. [Risky Business: Tackling Exploitation in the UK Labour Market](#).

financial hardship and poverty. We are concerned that several provisions of the Bill pose a real risk that rights will be weakened.

2.2. Concerns with the Bill

First, the Bill proposes to automatically repeal secondary retained EU law at the end of 2023 (clause 1). The Bill also proposes to hand the government a ‘blank cheque’ to make laws as it sees fit, via virtually unfettered powers to revoke, rewrite or replace retained EU law provisions which it considers “appropriate” (clause 15).

Taken together, these provisions pose a very real risk that employment rights are scrapped or disastrously weakened without full and proper consideration of the impact on precarious workers at risk of exploitation.

2.2.1. Lack of consultation

First, nowhere does the Bill require consultation with stakeholders, such as civil society, workers and businesses, to assess current retained EU law and possible changes. With regard to the “sunset clause” in clause 1, there is no requirement on a minister to indicate publicly at any stage whether they intend to save, amend or allow to sunset secondary retained EU law, or to follow any process of assessment and consultation with stakeholders. The risk, therefore, is that rights which are integral to the prevention of labour exploitation are lost, possibly as a result of inaction, without the impact having been fully considered.

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 even meaningful scrutiny and debate in Parliament.

2.2.2. Short timeframe of sunset clause

The “sunset clause” demands a gargantuan effort of public administration for government departments within an unrealistic and unnecessary deadline. The government’s “dashboard” of secondary retained EU law contains over 2500 pieces of legislation and there are likely many more. Indeed, we cannot even be sure of the true scale of the task or the impact of the sunset clause because the actual number remains unknown: 1400 further pieces of secondary retained EU law have recently been reported to have been “found” by the government, further expanding the task.³

³ Financial Times, [‘UK plan to scrap all EU laws suffers new setback’](#) (8 November 2022)

By the end of 2023, government departments would have to review, evaluate and consider changes to a huge number of important laws. There are good reasons to doubt that the civil service has the capacity to complete this enormous task in the time given. For example, the Department for Environment, Food and Rural Affairs recently missed statutory deadlines for publishing plans to tackle several issues such as air and water quality.⁴ There is a significant risk that important protections disappear from the statute books without consideration and attention simply due to a lack of capacity.

It is irrational and risky to set a hard expiry date on all secondary retained EU law, when the scale and impact of this measure is yet unknown. If the government does not intend to allow key rights to be sunsetted, the justification for this ‘cliff-edge’ approach is unclear. Instead, any review of legislation should take a merits-based approach, considering its purpose and effectiveness within a sensible timeframe and allowing for full and proper consultation of stakeholders and consideration of relevant evidence. We hold that the Retained EU Law Bill does not achieve this, and as such, should not be taken forward.

2.2.3. Clear deregulatory agenda

The Bill puts on a statutory footing the government’s political agenda of deregulation, which was already clear from its previous statements on retained EU law.⁵

Clause 15(5) provides that none of the powers set out above may be exercised in a way which increases the overall “regulatory burden”. This means that the powers to make replacement legislation could not be used so as to strengthen employment rights in the UK. Ministers may only maintain EU-derived protections at their current level or, as seems a real possibility, to weaken and reduce protections for workers. There is, therefore, no uncertainty that the only direction of travel for which the government might use these ‘blank cheque’ powers is to weaken rights and increase risks of exploitation.

2.3. Disproportionate impact on low-paid, women, migrant and BAME workers

Many of the rights which are under threat in this Bill are relied upon by workers who are at particular risk of exploitation, including low-paid, women, migrant and BAME workers.

⁴ The Guardian [‘UK government delays clean water and nature targets, breaching Environment Act’](#) (28 October 2022)

⁵ The Independent, [‘Jacob Rees-Mogg says his vision for Brexit is scrapping ‘gold-plated’ EU regulations’](#) (22 March 2022)

For example, FLEX's research into the risks of labour exploitation in the cleaning sector showed that the majority of cleaners work part-time: 73% of those surveyed said they work part-time.⁶ Secondary retained EU law includes rights for part-time workers to equal treatment to full-time colleagues. Owing to these rights, part-time workers cannot be paid less (pro rata) or given fewer benefits and opportunities than full-time workers doing the same or similar job. Under this Bill, these rights are liable to be scrapped or weakened, putting part-time workers in low-paid sectors such as cleaning at risk of worsening conditions and exploitation.

Such a weakening of rights might be compounded by losses in other rights. Cleaning is also a highly feminised sector of work: in FLEX's research on the risks of labour abuse and exploitation in the cleaning sector 81% of survey respondents were women.⁷ Women workers have relied upon EU equal pay rights to bring claims against pay inequality.⁸ Under this Bill, women workers could be left with fewer rights with which to fight low pay, placing them at greater risk of abuse and exploitation.

FLEX's research in the cleaning sector also found that the practice of outsourcing cleaning services to an agency has become dominant in recent years and has put downward pressure on wages and working conditions.⁹ Under regulations partly derived from EU law, where an employer sells their business or outsources employees, those employees have rights to be consulted about the process and to have the terms of their employment (such as pay, time off and pensions) protected in the transfer to the new employer.¹⁰ If these rights are scrapped or weakened as a result of this Bill, bidders for businesses and outsourcing contracts may undercut each other on employment terms and conditions. This means fewer safeguards for precarious workers against abuse and exploitation.

This Bill threatens to weaken workers' rights to rest breaks, including rest periods during a shift, each day and each week, plus paid holiday days. It is workers in low-paid and precarious work, in which women and migrants are overrepresented, who are most at risk of being denied adequate rest or paid time off and feeling unable to take action. The Home Office's Statutory Guidance on the Modern Slavery Act 2015 recognises excessive overtime as an indicator of forced labour. The weakening of these rights would only increase risks of exploitation for these workers.

In the rush to meet the deadline set by clause 1 of this Bill, it is these impacts on marginalised workers which are at serious risk of being overlooked and unexamined. Further, such a weakening of rights would hit workers at a time when their wages and conditions are already

⁶ FLEX, 2021. ["If I Could Change Anything About My Work..." Participatory Research With Cleaners In The UK](#), p.13.

⁷ *ibid.*

⁸ Article 157, Treaty on the Functioning of the European Union

⁹ FLEX, 2021. *ibid.* note 6. p.28.

¹⁰ Transfer of Undertakings (Protection of Employment) Regulations 2006

being squeezed by the crisis of living standards. Facing higher energy and food prices, workers may feel less able than ever to protest mistreatment at work and risk losing their income. The deregulation promised by this Bill is the last thing that workers in the UK need at this time.

Besides these employment rights, the Bill puts at risk important protections for victims of trafficking which are derived from the Trafficking Directive (2011/36/EU), including provisions for the non-prosecution of victims. As in many other areas, there is a lack of clarity as to the precise impact of the sunset clause on these protections because aspects of the Directive are interwoven with domestic law.

3. The Bill will further impede access to justice for low-paid workers

Besides the sunset of secondary retained EU law, the Bill would also abolish the principles of supremacy, direct effect and general principles of EU which are used to interpret EU-derived rights (clauses 3 to 5). The Bill also provides that courts may depart from case law decided on the basis of retained EU law to reach a different interpretation of rights (clause 7). The cumulative effect is to drastically unsettle decades of case law upon which workers and employers have relied for certainty around rights at work.

For low-paid workers and victims of exploitation, the impact will be to increase the already significant obstacles to enforcing rights in the justice system. Without reliable advice as to their rights and confidence as to the strength of their claim, workers will only be further deterred from bringing a claim in the Employment Tribunal. Where rights are made uncertain, the time and cost required for parties to resolve uncertainty through the courts will be insurmountable, particularly for precarious workers, who most need the protection of these rights. Further, the legal uncertainty will only add to the volume of cases waiting to be heard by the Employment Tribunal and worsen already severe delays. Equally, for workers who have suffered severe exploitation amounting to modern slavery, the uncertainty created by these provisions will add further obstacles to obtaining legal remedies, both through the Employment Tribunal and civil courts.

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