

Briefing

21 April 2017

Government white paper on the great repeal bill – Q&A for the NHS

What is the great repeal bill?

The purpose of the government's **great repeal bill** is to ensure legal continuity on the day the UK leaves the European Union (EU), by incorporating pre-Brexit EU law into UK domestic law.

According to the government white paper, the bill will:

- repeal the European Communities Act 1972 which gives effect in UK law to the EU treaties and incorporates EU law into the UK's domestic legal order
- convert directly-applicable EU law (EU regulations) into UK law
- preserve all the laws the UK has made to implement its EU obligations
- enshrine in UK law the rights in the EU treaties that an individual can directly rely on in court
- ensure that historic case law of the European Court be given the same status in UK courts (binding, or precedent) as decisions of the UK's own Supreme Court, for as long as EU-derived law remains on the UK statute book.

To note:

Where conflict arises between EU-derived law and new primary legislation passed by parliament after the UK's exit from the EU, the newer legislation will take precedence over the EU-derived law that the UK has preserved.

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Why is the great repeal bill necessary?

EU law covers areas such as environmental regulation, workers' rights, public procurement, and the regulation of financial services. Without the great repeal bill, when the UK leaves the EU, all these rules and regulations would no longer have legal standing in the UK. The aim of the great repeal bill is to help facilitate a smooth exit from the EU by providing constitutional continuity and ensuring there are no gaps in the UK statute book on the day the UK leaves the EU.

How will the necessary corrections to EU law be made for it to become UK law?

The bill will create powers to make secondary legislation which will allow corrections to be made to the EU laws when necessary for them to become UK domestic law. For example, many EU laws mention EU institutions in which the UK will no longer participate after Brexit, or mention EU law itself, which will not be part of the UK legal system after Brexit. The government argues that there will not be time for parliament to scrutinise every change, so the bill will give ministers powers to make these changes by secondary legislation.

What is the difference between primary and secondary legislation?

Primary legislation or statute is law debated, made and approved by parliament, which, after gaining Royal Assent, becomes an act.

When additional law-making powers are delegated to another body or person other than parliament, (these additional powers are included in the original act) this is referred to as secondary or delegated legislation. The legislation is principally made in the form of statutory instruments and regulations, their main purpose being to supplement, administer, support and enforce primary legislation. The powers to make secondary legislation are usually conferred or delegated to ministers or public bodies.

How will the great repeal bill affect the devolved administrations?

Legislation that is within the competence of the devolved administrations giving effect to EU law – e.g. agriculture, environment and transport issues – will also need to be amended as the UK leaves the EU. Therefore, the bill will also give the devolved ministers similar power to amend devolved legislation in line with the power proposed for UK ministers.

When will the great repeal bill come into force?

The plan is for the bill to complete its passage through parliament well before the point at which the UK leaves the EU. The bill will then come into force from the day we leave the European Union. In theory, this will be on 29 March 2019, although if Article 50 negotiations are extended, it may be later.

Why is the great repeal bill relevant to the NHS?

EU laws impact on many areas of NHS activity, including:

- how NHS organisations buy goods and services
- how the health and safety of the NHS workforce is guaranteed
- how clinical trials are conducted
- how the rights of patients to receive healthcare in other EU member states is affected.

The great repeal bill will convert these EU laws into UK law. This will be an important exercise which may have a big impact on the NHS. During the conversion exercise, changes will have to be introduced and this could mean possible risks or opportunities from an NHS perspective. For example, while EU procurement powers can be transposed into English law, there will need to be a replacement for EU processes such as the Official Journal

of the European Union (OJEU) where contracts have to be advertised. These corrections may have important implications for organisations that will have to comply with the new requirements and may either generate additional burden or, conversely, provide for more welcome local flexibilities.

An area where these changes are expected to be substantial is the regulatory framework for health technologies, due to the UK leaving the European Medicines Agency's centralised regulatory system for the approval and surveillance of medicines. These changes may have implications for patient care and therefore it will be important for the NHS to be vigilant and seize opportunities to give its views during the process of converting EU law into domestic regulation.

What will happen with EU-derived law after we have left the EU?

After we leave the EU, it will be possible to amend or repeal legislation of EU origin, as we will no longer be bound by EU law. However, it is important to stress that a new comprehensive partnership with the EU post-Brexit is likely to require equivalence between EU and UK law in a number of areas, which significantly limits the UK's flexibility to diverge from EU law in the future. This will depend on the type of new relationship that the UK and the EU will negotiate and how much access to the EU internal market the UK will seek to maintain in the future through a UK/EU free trade agreement.

Does the NHS want to see changes to EU-derived law post-Brexit?

There are aspects of EU law that we would like to see improved in the future, if possible. For example, ideally we would like more flexibility on the implementation of EU rules on falsified medicines, which introduce a unique identifier system for medicinal products, allowing drugs to be tracked from the manufacturer to the patient. This will be done through scanning each pack of medicine to verify the unique identifier, making sure that the drug is not falsified. While the rules provide some flexibility for hospitals, NHS trusts can procure millions of packs of drugs per year. Scanning each pack would be a difficult and an unnecessary burden, as NHS procurement processes mean there is minimal chance of falsified medicines entering the NHS supply chain.

We would also welcome some changes to employment law derived from the EU, where the current rules are overly detailed and prescriptive. For example, we would welcome greater flexibility in the timing of rest periods set out in the Working Time Directive, to support the provision of round-the-clock patient services while still ensuring that healthcare staff are protected from fatigue.

Will the great repeal bill be accompanied by other bills to prepare for our exit from the EU?

The great repeal bill will not aim to make major changes to policy or establish new legal frameworks in the UK beyond those that are necessary to ensure the law continues to function properly from day one. Therefore, the government will also introduce a number of further bills during the course of the next two years to ensure we are prepared for EU withdrawal – and that parliament has the fullest possible opportunity to scrutinise this legislation.

This will include, in particular, an immigration bill and a customs bill. Primary legislation in these areas will have to be introduced in advance of the UK's departure from the EU to ensure that the UK is fully prepared on day one of its exit.

Are these additional bills important to the NHS?

Yes, they are very important to the NHS, in particular the immigration bill, as a high proportion of health and social care staff working in the UK (especially in London, the South-East and certain specialist areas) are EU citizens. Whatever immigration system is introduced post-Brexit, it will be vital for the NHS to continue to be able to recruit from the EU - and further afield – with minimum bureaucratic hurdles, to maintain vital services.

The customs bill will also be important to the NHS as the supply chain in the health sector is very complex and new tariffs and customs procedures for importing/exporting goods and services from and to the EU are likely to translate into additional costs for the NHS.

How can it be ensured that NHS views will be taken into account in the Brexit process?

NHS Employers has established a group of 34 health and social care organisations, called the **Cavendish Coalition**, working together to secure the workforce required to deliver safe, high-quality health and social care across the UK after Brexit. With this aim in mind, the Coalition seeks to influence decision-makers across and beyond government by presenting evidence-based arguments and solutions, concentrating on three priorities:

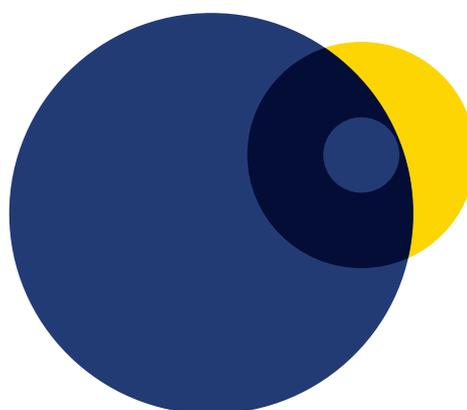
- Advocating for certainty about right to remain for EU staff already working in the sector.
- Promoting future migration and employment policies which will enable continued recruitment into the UK from the EU and beyond.
- Stimulating increased domestic recruitment and retention.

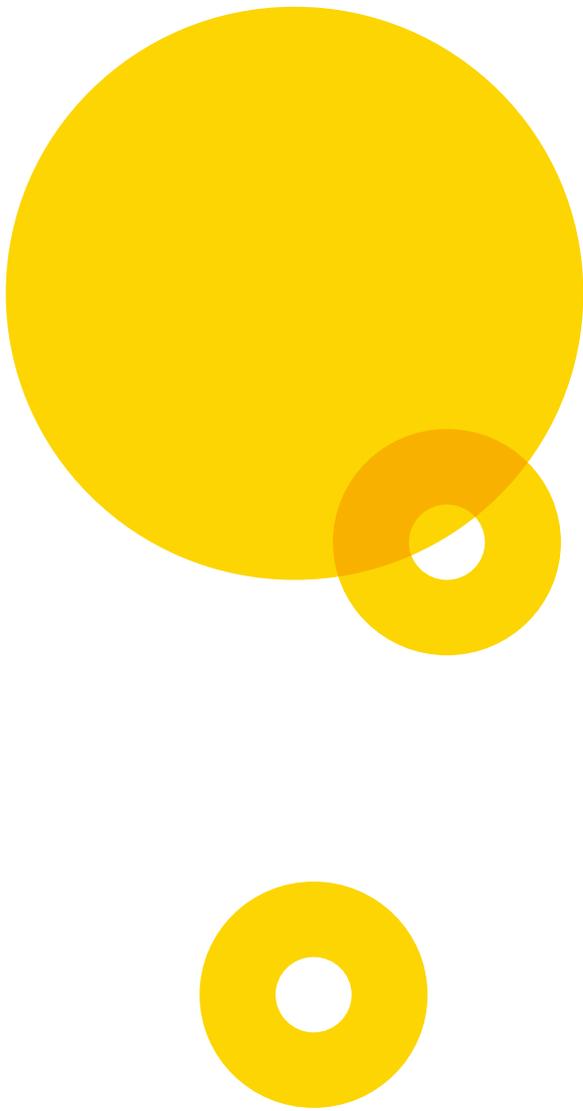
In light of the success and impact of the Cavendish Coalition, and recognising the enormous implications of Brexit for so many areas of NHS activity, we are now looking at the role the NHS Confederation could play across the healthcare sector in other important areas impacted by Brexit, such as clinical research, regulation of health technologies and access to patient care abroad.

What does the June 2017 general election mean for the great repeal bill?

On 19 May, the House of Commons voted to agree with the Prime Minister's motion to call a general election on the 8 June 2017. This means that the current parliament will be dissolved on 3 May and all government business which is not concluded by then will not become law.

This includes the great repeal bill white paper, which is very unlikely to progress any further through the legislation-making process in the few weeks before dissolution. There are however, several possible outcomes for the white paper, depending on the results of the general election. If Theresa May and a Conservative government is returned, we can expect that they would re-introduce the white paper in their legislative programme, with or without some alterations to proposals. However, they are under no obligation to do so and they may wish to change course with this altogether. Equally, if any other government is formed after the election, we may not see the current white paper re-introduced at all.





The NHS European Office

The impact of the EU agenda on the NHS is constantly increasing, bringing with it both challenges and opportunities. The NHS European Office is the conduit for the NHS to engage with the EU agenda. Hosted by the NHS Confederation, we are the representative body for the range of NHS organisations in England on EU affairs. Our work includes:

- monitoring and influencing EU policy and legislation in the interest of the NHS
- facilitating access to EU funds for NHS bodies and their partner organisations
- supporting pan-European collaborations and sharing successful EU practices.

For more information on EU affairs of importance to the NHS and to get in touch with the NHS European Office, visit www.nhsconfed.org/europe or email european.office@nhsconfed.org

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