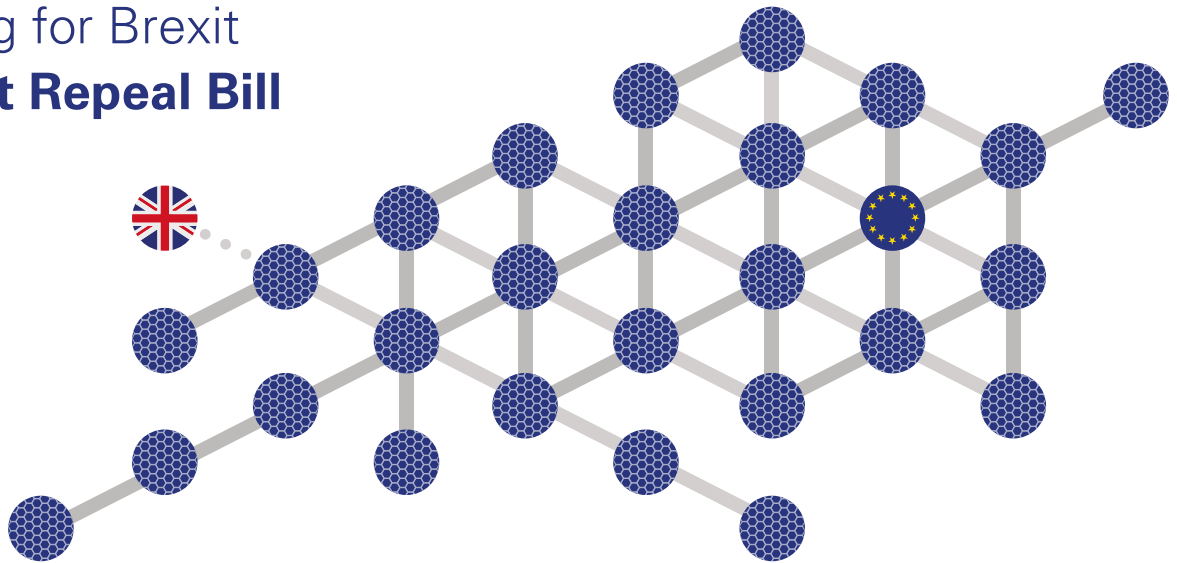


Legislating for Brexit The Great Repeal Bill



On 2 October 2016, the Prime Minister outlined the Government's plans for the Brexit process, announcing that Article 50 will be triggered by March 2017 and that a Great Repeal Bill is to be included in the next Queen's Speech in May 2017. At a stroke, this legislation is intended to repeal the European Communities Act 1972, putting an end to the supremacy of EU law, while converting all existing EU law into UK law.

Legislating for Brexit: the Great Repeal Bill (the Briefing) published by the House of Commons Library on 21 November 2016 provides an indication of the complex issues surrounding the preparation of the Great Repeal Bill. The Briefing was prepared on the basis of comments made by senior members of the Government.

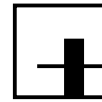
As the Briefing indicates, transposing existing EU law so that it applies after Brexit will be far from straightforward. The Briefing identifies a number of challenges.

- A number of EU laws simply cannot be transposed, or can only be transposed effectively if other Member States agree to cooperate – for example the laws on recognition and enforcement of judgments will only work if Member States agree to recognise and enforce UK judgments after Brexit.
- EU and UK legislation frequently makes reference to EU institutions. One example among many is the Companies Act 2006, which defines international accounting standards by reference to the standards adopted by the European Commission. Similarly, certain EU and UK laws depend on EU institutions and agencies in order to be effective (for example EU laws on food hygiene often refer to the European Food Safety Authority). How such laws will operate post-

Brexit will need to be considered, especially where there is no equivalent UK body capable of stepping into the role previously filled by an EU institution or agency.

- There is substantial guidance from the European Commission on various aspects of EU law. It will be important to assess whether this guidance, or elements of it, will also need to be transposed into UK law.
- Certain laws will be amended and updated by the EU after they have been transposed into UK law. Should the UK 'shadow' the EU in this respect? Certain EU legislation empowers the European Commission to provide secondary legislation – if such secondary legislation is made after Brexit, then it may also need to be transposed.

The Briefing makes it clear that a wholesale transposition of EU law into UK law will be impossible. Transposition will require a detailed assessment of the *Acquis Communautaire*, made up not just of EU treaties and legislation, but also European Court of Justice case law, to ensure that there is, in the words of David Davis, "no black hole in our statute book".



One of the other issues considered in the Briefing is the role of the devolved legislatures. It highlights that constitutional convention provides that the UK Parliament will only legislate on devolved matters after obtaining consent from the relevant devolved legislature. Certain EU laws deal with matters that have been devolved, such as the environment or agriculture. In Scotland, the First Minister has claimed that MSPs could therefore 'veto' Brexit by refusing to grant consent. The Briefing states that there is no strict legal requirement for the UK Parliament to obtain consent in order to legislate on

devolved matters, although there is considerable debate over this issue. Not obtaining the consent of the devolved legislatures may prove unpopular politically, especially if the Great Repeal Bill empowers UK ministers to make secondary legislation that touches on devolved matters. The Briefing also notes that the devolved legislatures may need to enact their own legislation to ensure the effective transposition of EU law.

The House of Commons Library's Briefing can be found [here](#).

SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS

JOINING THE DOTS OF THE EU REFERENDUM

What next?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes.

For further information in the first instance, please contact:



Louisa Knox
Partner & Co-Chair Of Brexit Advisers
T +44 (0)131 473 5216
M +44(0)781 800 2191
E louisa.knox@shepwedd.com



Gordon Downie
Partner & Co-Chair Of Brexit Advisers
T +44 (0)131 473 5162
M +44(0)771 863 7298
E gordon.downie@shepwedd.com



Bookmark our Brexit Advisers page for a comprehensive collection of Brexit updates and guidance

[shepwedd.com/brexit](https://www.shepwedd.com/brexit)