

EU and UK laws – what a different approach to framing them

Over our years in the EU growing volumes of legislation have been passed by the EU. Some of it is directly acting through EU Regulations requiring no UK Parliamentary endorsement. Much of it is embodied in Directives, which require the UK Parliament to pass a UK law to achieve the stated aims and reproduce the detailed proposals in the Directive. Some of these measures have replaced good UK laws, and reflect a general wish to have high standards of employment law or environmental regulation. Some have been meddlesome and damaging, as with the fishing regulations. I do not wish today to go into the balance of good and bad law that came from the EU. I fully accept that some EU law is good law we want anyway and all of it after we have left becomes UK law to ensure immediate continuity. I want instead to examine the very different approach legislators have adopted to these two types of law.

Parliament has not been able to consider or amend any Regulation. Opposition parties in the UK have very rarely objected to Directives that have come from Brussels. They have accepted a form of approval which prevents amendment to the draft law. However long and complex the EU Directive is, it is embedded in UK law as a Statutory Instrument using what are known as Henry VIII powers for government to press Parliament to pass something with little debate and no amendment. These powers are normally reserved for the detail needed to implement primary legislation which has been through a long, argumentative process with plenty of scope for amendment in the UK Parliament. In the case of EU law this does not happen, as the enabling Statute is the European Communities Act 1972 which created the most massive Henry VIII power of them all allowing any legislation from the EU to go through as an SI. Opposition parties have also always accepted government advice that they have to pass the relevant SI because it is a requirement of Brussels, backed up by the threat of court action in the ECJ and fines if we do not comply. Parliament has never turned down an EU Directive. Domestic legislation requiring SIs to implement them does sometimes encounter refusal to enact with the government having to take it away and rewrite the SI or abandon the attempt to push it through. The more law we have that comes from the EU, the less Parliament can amend and improve in future. Parliament's role in updating and improving our law codes has become more and more impeded by the rapid growth of EU competence and law.

Recently the Commons was asked to enact the EU's General Data Protection legislation, even though this was already a directly acting Regulation, so keen was the civil service to see it fully into effect. I have no problem with the principle that governments and companies holding and handling data should be careful with it and protect people from harm from its theft or inappropriate use. There were already laws in place before the GDPR to do this. Maybe they needed improvement and updating. What I thought was interesting was there was little opposition attempt to amend or criticise the EU approach to this task. Small charities complained that it was very heavy

handed, forcing them to spend a lot of money on advice and new systems to carry on holding lists of their supporters and communicating with them when they were not in any way unhappy or threatened. Small businesses were concerned about their marketing lists and often had to spend a lot of money on advice and systems when they had caused no problems before. If these proposals had been a UK government initiative requiring normal primary legislation I am sure the opposition would have put up much more of a fight to try to improve the legislation.

In the endless and repetitious iterations of Project Fear 2 all we hear about is trade and trade deals. We need to remember one of the central tasks the public want us to do. They want us to restore a fully functioning Parliament which properly probes and amends government legislation on all matters before the Parliament including all those that are currently fixed in Brussels and not subject to any decent scrutiny.