

Eurosceptic MPs must resist the temptation to meddle with the Great Repeal Bill

No sooner was Article 50 triggered than David Davis's "Department X" sprang into action. The Secretary of State has today [launched the white paper for the Great Repeal Bill](#).

The Bill gets its name from its immediate, crucial effect: the repeal of the European Communities Act 1972. This is the prerequisite to restoring full Parliamentary sovereignty over our laws, but it isn't the only thing that needs to happen to ensure a "smooth and orderly exit".

It's for that reason that, despite its name, the Bill's second effect will be to vastly extend the UK statute book, effectively copying and pasting all current EU law into UK law. This means inserting thousands of regulations and directives into British statute, a reminder of the degree to which Brussels exerted its powers during our membership.

Doing so has two benefits – first, it ensures that on the day after Brexit there is no immediate disruption by a sudden reversion either to pre-1972 laws or to a vacuum in areas where Westminster hadn't the power to legislate while we were in the EU. And second, it ensures that any deviation from or scrapping of EU laws that takes place as part of Brexit will require Parliament's approval – a right and proper restoration of democratic control.

This approach brings with it two complications, one objection and one temptation.

The first complication relates to the role of the European Court of Justice. ECJ case law – the thousands of judgments on how EU law should be interpreted – is an important extra element of the way in which EU law operates in this country. To copy across the legislation and regulations but not to incorporate the case law would blunt the effect of the Bill, meaning that Brexit would still see sudden adjustments in the law overnight.

Davis's solution is for the Bill to "provide that any question as to the meaning of EU law that has been converted into UK law will be determined in the UK courts by reference to the CJEU's case law as it exists on the day we leave the EU." This means that May will remain true to her promise to end the authority of the ECJ over our law post-Brexit – no new rulings in Luxembourg will have any power. Parliament will be able to overrule and alter those past judgments, as will the Supreme Court. In effect, a current snapshot of EU law, including its case law, will be transposed, to be edited at will by sovereign British institutions whenever they might wish to do so.

The second complication is that a perfect, word-for-word, copy of EU law won't quite do the job once we leave the EU. For obvious reasons, it

routinely refers to the powers of EU institutions, to the EU treaties and to all manner of other organisations and legal structures that we will have left once we leave the EU.

To take a random example, the legislation which defines [the framework for agricultural regulation](#) is needed for all the other, product-specific, agricultural regulations to function and make sense; Parliament would want to retain that, at least in the short term, to ensure a smooth Brexit. But in its current form it empowers the EU Commission to change the definitions of products and alter how tariffs apply to them; Parliament obviously wouldn't want to give the Commission that power after we have left the EU.

This means that there are many small amendments that need to be made during the copying across process in order to make these laws work in a solely British context – mostly changing references from EU institutions to UK institutions, and altering references to the treaties to become references to other parts of the Great Repeal Bill.

This could all just be done in the drafting of the Great Repeal Bill. But that would take time up-front, and would risk bogging the important principles of the Bill down in niggling. Davis's answer is for the Bill to provide for a power to make these alterations through secondary legislation after the Bill has become an Act.

It is this power that gives rise to the objection. Such powers, known rather arcanelly as "Henry VIII" powers, inevitably reduce Parliamentary scrutiny over the changes that are being made. The Government argues that the timing is too tight to have full debates and votes on every one of what could be thousands of what are really technical edits. Furthermore, the White Paper points out that some of the detail won't be agreed until when (or if) a Brexit deal is struck – and waiting on the whole process until then is impractical given the need to ensure an orderly Brexit. Critics fear that ministers will use their new power to change the nature, rather than just the technical wording, of the law – ditching particular regulations outright, for example. The words "Tory power grab" are sure to issue forth from one Labour, Lib Dem or SNP MP before long.

The White Paper includes a promise that this won't happen: "The Great Repeal Bill will not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are necessary to ensure the law continues to function properly from day one." Opposition MPs might not find that sufficiently reassuring, but there is another aspect which allays their concerns rather more strongly. Because EU law is also in effect in the devolved nations, the Great Repeal Bill will also give the same power to ministers in the devolved administrations. Even if May and Davis harboured a secret desire to implement sweeping policy changes without Parliamentary approval, they would be very unlikely to grant Labour in Cardiff and the SNP in Holyrood the opportunity to do the same. Devolution acts as a disincentive for the UK government to over-reach itself.

This leaves us with the temptation presented by the Great Repeal Bill. The power of the moment – the return, at last, of full democratic control over

our laws – and the name of the Bill itself whets Eurosceptic appetites to start instantly tearing up the EU laws that they have railed against for so long. Why not start tabling amendments to the Bill now, to delete bad regulations and torch red tape instantly, without having to wait to undo it after March 2019?

There is plenty of demand for a bonfire of EU red tape. [This site called in November](#) for the Chancellor to establish a task force to advise on a new and better post-Brexit regulatory regime. The *Daily Telegraph* followed our call [this week](#) and has launched a campaign on the topic.

But it would be a serious error to go jumping in with attempts to deregulate instantly by meddling with the Great Repeal Bill. There is a good reason why we and the *Telegraph* have both suggested that the Government should prepare for action after Brexit, rather than start cutting out particular EU laws in the Brexit process. Those who wish to hobble Brexit, or even prevent it entirely, are studying the Bill with a wolfish eye. They can see that it is complex, and that it must run on a tight timescale. They know that complexity equals opportunities to raise concerns, mount attacks and perhaps inspire rebellions. They view it as a major opportunity for their promised “fightback”.

If Eurosceptic MPs were to start trying to mess with the Bill, they would be giving Farron, Heseltine et al exactly what they want. They might even find themselves in the same lobby as those who loathe everything they believe in.

Last year’s referendum victory was the product of a sustained exercise in self-denial. When Eurosceptics indulged our temptations, talking high theory and dragging out historical analogy, we lost. When we exercised self-denial, studying to learn what would win and working to focus on the issues that interested less obsessive voters, we won. This trial is just the same: do what makes you feel good, and risk losing the great prize; knuckle down and do what must be done, and finally secure what you have always wanted.