



The HR Edit

Series 1, Episode 8: The Retained EU Law (Revocation and Reform Bill) – what could this mean for you

10 ten key points:

- The podcast episode delves into the Retained EU Law Revocation and Reform Bill, its impact on UK employment, and changes to the holiday entitlement calculation.
- The expert panel includes HR experts Michelle and Sarah, and newcomer Chelsea, an HR professional with a background in funeral services.
- The episode provides a deep dive into EU law and how its revocation may shape UK employment practices, discussing topics like the European Court of Justice, the Equality Act, and the Working Time Directive.
- The podcast also covers the UK government's decision to replace the sunset clause with a specific revocation list.
- Chelsea shares her journey from HR to becoming a qualified funeral director and celebrant, providing insight into the funeral services industry.
- The episode includes discussions on the proposed changes to the holiday entitlement calculation, impact on employers' record-keeping, and the easing of consultation requirements.
- The podcast episode is divided into various chapters, each focusing on a different topic, including the Retained EU Law Revocation, EU Law's Impact on UK Employment, and Holiday Pay and Employment Rights Consultation.
- The chapter summaries provide a detailed breakdown of the topics covered during specific time segments of the episode.
- The podcast provides transcript samples from key chapters, offering a glimpse into the detailed conversation and insights provided by the experts.
- The episode is a valuable resource for HR professionals and employers navigating the complex changes brought about by the revocation of EU law and its impact on UK employment.

[Music]

0:00:05- **Helen:**

Hello and welcome to the HR edit, a podcast brought to you from South East Employers taking a look at those common and often tricky HR questions. Today we're going to be talking about the retained EU law Revocation and Reform Bill, the background, specific proposals for the new legislation and things to look out for. But first let me introduce the team for today. Of course, we have our guru on all things HR, Michelle. Hi Michelle,

Michelle:

Hello.

Helen:

And our tech wizard, Sarah. Hi Sarah.

Sarah:

Hi.



Helen:

And introducing the newest member of the SEE team, Chelsea, our HR business partner. Hi Chelsea.

Chelsea:

Hello.

Helen:

It's great to have you as part of the team. Would you like to tell us a little bit about yourself?

0:00:47- **Chelsea:**

Yes, so my background in HR started with Hampshire County Council back in the days of Local Government Review, and I worked for Hampshire for a number of years, starting as an HR Assistant and working my way up to Senior HR advisor, and both in a general estate HR team and then a specialist within the Reward and Benefits project that they were running at the time. I also have recent public sector experience in higher education and I've worked as well in the private sector in technology, telecoms in New Zealand and pharmaceuticals also in the UK. So quite a long HR career.

0:01:40- **Sarah:**

Brilliant. That's what we like to hear, isn't it, Michelle?!

Michelle:

Absolutely.

Sarah:

So, we know a little bit more about you, which would be fantastic to share with our listeners, which is that you have qualifications in funerals, something to do with funerals...

0:01:57- **Chelsea:**

Yes, that's right. So, in 2010, I decided to move away from HR mainstream for a little while and work as a Funeral Director for a small, independent family firm. So I did my funeral directing qualification, which you can only do if you're actually working in the industry, it's quite practical, and I chose to do that because I wanted to be doing something that was giving something back to my community in a more direct way than simply supporting those in local authorities or public services who are working on the front line. I wanted to be on that front line myself for a little while, so I worked as a Funeral Director for nine years. What I found I liked about funeral directing was dealing with bereaved families and the people contact, because that's the rewarding bit. That's when you know you've made a difference. And so then I realised that if I trained as a Funeral Celebrant, I would have much more time and more contact with those families. So I then completed training to be a Funeral Celebrant, and if people don't know what that means, basically I write and deliver bespoke funeral ceremonies for each individual family that I work with.



So if families want a service that is not affiliated to a formal faith organisation or church, then that's where I come in and I create a ceremony for them. That's just about that particular individual. And because I'm independent, people have often heard of humanist celebrants. But because I'm independent, I can create a service that can either be completely non-religious, which is what humanist celebrants do, or I can create a service which includes elements of religious or spiritual belief, if that's right for either the person who's died or their family, because often there's a difference. So I absolutely adore the job. People say is it depressing? But no, it's not, because if you can put together a really special service, that's a really good way to remember somebody, a real celebration of someone's life and a really good way for everybody to feel that they've said a fitting goodbye to that person. Then you can really make a difference. And I'm lucky that I'm able to continue doing that on a part-time basis alongside my SEE work, so I'm really happy about that.

0:04:44- **Sarah:**

That's absolutely fascinating. My family recently suffered a bereavement and it was the first one we kind of had to deal with after knowing that you were a Funeral Celebrant and actually appreciating what that is, and actually the celebrant there was fantastic and that was the only time I got a real appreciation, I think, of what a Funeral Celebrant does and how, what a difference they make to a bereaved family. I mean, it is, I think it's an incredible job and a job that I think only a special kind of person could do. There's absolutely no way I could do it. So that's fantastic, Chelsea.

0:05:17- **Michelle:**

I'd agree. It's in my experiences of the good funerals, the ones where you really feel like you've had that opportunity to say your goodbyes and to celebrate who they were to you. It is now that new-found appreciation of how much effort goes into providing that for the family and loved ones of the person who's gone. So, yeah, it's eye-opening and I hadn't appreciated that there was a formal qualification in doing that.

0:05:49- **Chelsea:**

You don't have to be qualified and a lot of celebrants aren't. And people were surprised that I went for the qualification because as a funeral director I'd sat through probably over a thousand funerals so I kind of knew what made a good funeral and what didn't. But I felt for me it was important to be professional in this and to get the proper qualification and I was really pleased about that because it meant that I had exposure to things like a singing lesson, because obviously if somebody wants to sing a hymn, you're leading it, and acting, so voice projection and how to use different register in different tone. So there was all of that, as well as the resources for the celebrancy and the participation in a network of celebrants. So if we're stuck with something, we can kind of reach out to all these other celebrants over the country and say got this situation, what would you do? Has anyone got a you know a resource that would help with this?

0:06:53- **Sarah:**

Absolutely fascinating. But changing the subject a little bit, we know that you've mentioned that you have, you absolutely love travel. Can you tell us a bit about that?



0:07:02- **Chelsea:**

Yes, so I took a gap year when I was 28 and backpacked around the world. I went to 17 countries in a year, so I went all through South America. I started in Brazil, in Rio, for Carnival, which was an interesting introduction to the continent, to the continent, and then I was on a backpacker overland truck. It was a converted Bedford truck, it was not a bus and it still had truck suspension, so it was very uncomfortable and we drove for three months all around South America, right down to Ushuaia, right at the very bottom of Argentina, and then up coast. So all through Chile, Bolivia and then into Peru. Did the Inca Trail, over to Australia, spent some time in New Zealand as well, worked in an outback pub in Australia in the middle of nowhere. It was literally on a road through the effective desert, and it was about it was 150 kilometres to the next village in one direction and 200 kilometres in the other, so it was really like the middle of nowhere.

Michelle:

They have a lot of space out there!

Chelsea:

And then into Asia and ended up in Africa on a volunteering program in a game reserve. So we lived in an unfenced property in the middle of the game reserve. So basically at night we were not allowed to go off the veranda, even because the day I arrived there was an elephant in the back garden. And one morning, one morning, we woke up and there were all the lions were literally sitting right outside the front of the house by the vehicles that we would normally get up and go out into to do our little research trip in the morning. So that was a fantastic I mean weird living in this, you know no, so we had water but we had no electric. So the fridges and everything ran off, gas canisters and you know, cooking by like head torch and things like that it was. It was basic but amazing. So yeah, so I did that, came back, got itchy feet again quite quickly. So that's when I went off to live and work in New Zealand mainly.

0:09:30- **Chelsea:**

I mean I love New Zealand, but mainly chosen because it was the only country that would give me still a working holiday visa due to my age. So I spent a year living and working in New Zealand and bought a proper like bomber but backpack a car and drove it 10,000 kilometres all around New Zealand. So basically that means I've driven on nearly every major road in New Zealand, absolutely adored that it's such a beautiful country and so varied and just so friendly as well.

0:10:01- **Michelle:**

I've only done in North Island, but yes, I agree with everything. I wish I had longer.

0:10:06- **Chelsea:**

Oh yeah, it was amazing. Yeah, and then, other than that, I just like travel, so I hit 40 countries before I was 40 and I'm now working on getting another 10, so I get to 50 before 50.



0:10:22- **Michelle:**

And we were discussing that yesterday, weren't we? And you've got some plans to do some fairly unusual trips in the next couple of years.

0:10:31- **Chelsea:**

Yes, yeah, I've got a nice list of all the places I want to go, so Antarctica is top of that list. Wow, need to plan that one in. and then, yeah, Israel, Namibia, Ethiopia, Greece never been to Greece and Croatia, so yeah, there's a few on there.

0:10:51- **Sarah:**

Gosh you've done so much. That's amazing, and I know you've written a book as well.

0:10:55- **Chelsea:**

I have. Yeah, and that was about my backpacking.

So I realised halfway through that backpacking year I realised that I'd kind of learned a lot of things about just how to be a backpacker and how to make things work, and I thought that would be useful for people who weren't, who were new to backpacking, who were maybe just going to take their first long trip. So the kind of premise was that you know your guidebooks can tell you lots of useful things like maps, and you know where to find a laundrette and where to find a supermarket and where to stay and where to eat, but they don't tell you the things like how to cook in a hostel kitchen when there's 25 people and three saucepans, how to make sure that your food is not the food that gets nicked out of the communal fridge, all those sorts of how not to annoy all your dorm mates. You know when you've got to get up early to get a flight and the trick is do not have any carrier bags anywhere in your luggage. That is the one noise nobody can sleep through the rustling of carrier bags.

Yeah, so I wrote a book called, 'High Heels and a Head Torch the Essential Guide for Girls Who Backpack'. So it's a little bit dated now because it was written pre-smartphone, but it talks about internet cafes and public space, internet access and using maps and compasses to navigate around the city. So actually I think it's quite useful because if you've got no battery and no data, yeah, then you know you need maps. You need to know how to use maps and compasses.

0:12:45- **Sarah:**

Brilliant, so that was probably the really exciting bit. And then we go... Well, actually, no, it depends who's listening!

Michelle:

Depends how much of a geek you are like me!

Sarah:

But Chelsea and Michelle will definitely be in that element. Now, as we talk a little bit about the retained EU law revocation and reform bill,

Helen:

So, Chelsea, do you want to start with a little bit of the background, what it is and what it refers to?

0:13:12- Chelsea:

Yeah. So this is a bill to create law that was originally presented to Parliament in September 2022. And at that point it had three key proposals, the first of which was to sunset all of the existing retained EU law, unless the government enacted specific legislation to either keep it or bring it back, and it would have sunsetted by the 31st of December this year. So it basically sunset means it just all goes away. The second was to remove the supremacy of EU law over UK law, and I'll talk a little bit more about that in a second. And the third was to give UK courts, including employment tribunals, the discretion to depart from EU derived case law, which can include cases decided by the European courts of justice, and that would mean moving away from, potentially, decisions that have become commonplace within English employment law or English and Welsh employment law. So the law in the UK works in two different ways. We have written law, legislation, and that's by statute, so a statutory instrument that Parliament creates and they write what the law is. That law is then interpreted in courts and tribunals, and so sometimes a court or a tribunal will have to decide where it says this in this statutory instrument. What does that actually mean in practice and in the past for law that derives from the EU, we have had to go the, as it goes up the appeal stages. We've had to go to the European court to get a ruling on what was the intention of the original EU law. So the statutory instrument, and that's the EU law in British law, written law, and then the court interprets what that means. So some of the things that HR professionals would recognise as common in our employment law actually derive from European court cases. So a good example is the case that was decided where the EU court decided that a woman who had been pregnant and on maternity leave from her job was not the same in law as a man who had been absent through sickness for the same period of time. The European Court of Justice said that the British statutory instrument, the Sex Discrimination Act, was inadequate because it did not protect the unique position of a woman on maternity leave. There is no existing male equivalent for that, if you like and so what the government did was they then wrote that they amended the statutory instrument, the written law, to write that into our law. So the Sex Discrimination Act was then incorporated into the Equality Act and so those principles came through into the Equality Act.

However, in the case of working time, which derives from European law our working time directive there are case law that exists in European law which has until now been binding on UK courts and tribunals, but which has not been written into the statutory instrument.

So the working time regulations themselves have not been changed by the British government. So an example of that is the right for people who are on maternity leave or long-term sickness, for example, to carry over a certain proportion of their annual leave into the following year where they've been unable to take it because they're absent. That's not provided for in the written working time regulations, but courts will uphold that principle because of the EU derived case law. So but once the supremacy of EU law is removed from



those courts, then they will no longer be obligated to follow that decision. They may still choose to or they may come up with their own reasoning, but they're no longer obligated to. So changing that could result in some things that we accept as commonplace now becoming questioned again. So that's why that particular supremacy of EU law over British law and the interaction between the two. That's why that's important and it could create a bit of uncertainty in terms of employment law and what we currently see as standard employment rights.

0:18:09- **Michelle:**

It's a good time to become an employment lawyer, then quite possibly!

0:18:13- **Chelsea:**

Yes, yeah, because there might be cases might be tested or the government, if it chooses to, and may write legislation that incorporates those principles which are currently in case law so that they then become part of written law anyway. But basically, key elements of current employment law rights derived from EU laws so were potentially threatened by this bill, and that includes protections for part-time, fixed-term and agency workers, rights for all forms of parental leave, rights around working time, such as the 48 hour maximum working week, and the rights paid holiday, equal pay, and also the protection that employees enjoy under QP if their employment transfers to another employer. So in the HR profession, we were thinking that potentially there could be some really serious impacts from this bill, and it would have potentially impacted both employers and employees alike, and it was possible that if the government decided it wanted to retain a lot of these rights when the law would otherwise sunset, that there might have been this whole tranche of employment law issued in November and December this year to get it through before the deadline. However, the bill's been controversial and has been subject to a lot of challenge in its parliamentary process, and so in May of this year, the government issued a statement to say that they were amending the bill significantly to remove the sunset clause and to replace it instead with a list of specific laws that were being revoked. So it flipped its position almost on its head from going from a default of removing everything to saying, actually we're only going to remove these things.

None of the list of laws being revoked are significant in terms of employment, particularly in public sector and local authorities, but they have retained the principle of UK supremacy over EU decisions, so courts will still have some discretion. And, as a result, they have now launched consultation on some key changes to UK law which derives from EU law, in order to, in some ways, keep some of those case law decisions and bring them into the written law, but also to clarify the position for employers and to make things a bit clearer. So the consultation covers holiday pay in terms of what is paid, and I know I think, Michelle, there was an existing podcast that you've done on holiday pay and things like that.

0:21:11- **Michelle:**

Yes, I recorded it and about six hours later this statement was issued and I very quickly kind of went oh, 'I need to rerecord parts of that!'

0:21:20- **Chelsea:**

So there's a consultation on holiday pay, as in what is paid and the minimum amount of leave, and also the calculation of holiday entitlement in the first year of employment. There's a consultation on removing the current requirement for employers to keep very detailed records about working time and a consultation on slightly loosening the consultation requirements under TUPE, so allowing smaller employers or employers where there's only a very small number of people actually transferring, to consult directly with the affected employees rather than have to elect or appoint employee representatives to do that. So there's some. They're relatively potentially relatively minor. But that consultation closes on the 7th of July and the local government association has encouraged individual local authorities to reply to the consultation, taking account of the situation in their authority. Because, for example, for some employers it could mean paying more paid holiday or it could make holiday pay more expensive in terms of if guaranteed overtime has to be included in the whole minimum amount and things like that.

But the government has also, as part of that statement, confirmed that there will be no changes to key employment rights such as parental leave entitlements and protection for part-time, fixed term and agency workers. So that does give us a bit of certainty in those areas. So it's broadly, I think, good news for employers and for HR.

0:23:05- **Michelle:**

I think it's very interesting that they've specifically said they're not changing the agency worker legislation, because that was very controversial when it was first implemented in many EU countries and I know that the UK government didn't want it. So the fact that they have stated they're retaining it is quite an interesting fact at this point.

0:23:27- **Sarah:**

So, this is one for both of you, Michelle and Chelsea. Chelsea's mentioned some specific proposals for new legislation. Can you just give us a brief overview about what those might be?

0:23:38- **Michelle:**

I'll take the first one, the proposal around the composition of holiday entitlement. At the moment, as anyone who has listened to previous podcasts, we have EU-derived leave entitlement of four weeks and we have a UK-derived entitlement of 1.6 weeks, totalling the 5.6 weeks that we are all familiar with as the statutory minimum amount of leave. The proposal, effectively, is that the law will be rewritten to just refer to 5.6 weeks of leave entitlement for everybody, so it becomes one lump sum, effectively, of leave rather than two different sources. Then there's the question of what carries over in absence situations and how that pay is calculated. The amount of leave won't reduce, but the way it's calculated, the pay for that leave is calculated, may result in a reduction in cost just because it's pulling out those elements that the UK law hadn't intended initially.

So the EU case law has told us we have to include regular overtime that has become sort of so relied upon or so regular that it is relied upon as part of the normal income. We've been told we have to include commission into holiday pay calculations and those are the elements



that the UK government would initially you know, through the court system had challenged that sort of perception, but the EU law came back or the EU case law came back saying no. The wording of their directive was very clear that an individual should not be discouraged from taking that annual leave due to financial reasons. So, we were put in that position where we had to, you know, include anything that an individual had become reliant on as part of their income. So, we might see some tweaks there and that definition of normal pay being reigned back to, to what the UK courts initially thought was the case.

0:25:44- **Chelsea:**

So, if I talk about the next element, which is rolled up holiday pay, as we all know, at the moment, technically it is illegal to pay for paid holiday as an addition to an hourly rate, and holiday is supposed to be paid for when it is taken.

So that mainly affects people who work in regular hours so that could be casuals or perhaps zero hours workers and where they're often paid just a certain amount on top of their hourly rate and that accounts for their holiday pay.

So, the proposal is that, effectively, employers should be allowed to pay a rolled-up holiday so they won't be obligated to keep records of how many hours somebody has worked and therefore how much holiday they've accrued, and allow them to book it and take it.

The proposal is to allow them to simply pay that, although it should be shown as a separate line on the pay slip, so the person is aware that they're receiving paid holiday, but they can receive it as they're doing the work rather than when they then take the leave. So that is likely to benefit both managers and payroll because it should significantly reduce the administrative burden, but it may result in more leave being due. For example, at the moment employers are only obliged to pay the 28 days leave which derives from EU law and they can include payment for bank holidays within that 28 days, which is the additional 1.6. But if the government moves to a 5.6 minimum 5.6 week minimum then that could slightly increase the amount of holiday paid due by making up higher proportion. But basically I think that one's good news because of the significant administrative savings.

0:27:50- **Michelle:**

I will pick up the next one, and that is the proposed change to the way a crucial holiday is calculated in an employee's first year of employment with you. So, at the moment there are conflicting calculation methods for this, and so this really gives us an opportunity to resolve that conflict. The proposal is that employees will accrue leave at the end of each pay period. So for those who are paid on a monthly basis, it will become akin to that one-twelfth of the entitlement for the year. We probably have quite a range operating at the moment between accruing it on a weekly basis or even a daily basis, and that has been borne out of various bits of case law. So the proposal is we go to that one-twelfth of an annual entitlement per pay period is accrued. So you know that's going to be quite useful to have that clarified. It will have some potential payroll and administrative impacts in terms of maybe changing the payroll systems and the HR systems that automatically calculate entitlements currently. But you know, in long run at least it gives that consistency and clarity.

A bit of a word of warning on this the pay period accrual referenced in this consultation differs to the pay period accrual that is referenced in the consultation that the government has circulated in as a result of the Harper Trust case. So the LGA have responded very clearly saying actually we need consistency across those definitions so that those who are starting employment partway through the year have their leave calculated in the same way as those who are only working for part year, so term time only staff. So just you know. just a word of warning.

0:29:52- **Chelsea:**

There may be a slight shift in that definition, okay and whilst we're still talking about working time, I'll pick up the other proposal that exists on working time before we move on to TUPE, and that is there's a case law requirement, which derives from EU law, for employers to keep detailed records of time worked to ensure compliance with the maximum 48 hour week and to ensure that employees are getting adequate rest periods and rest breaks. In practice, it is likely that most employers don't keep records to that level of detail, which would technically be non-compliant at the moment, but the government is proposing to reduce the administrative burden to make it so that employers don't have to keep that level of detail. The benefit of this really depends on what records they decide will be required and where the responsibility will sit for keeping those records. So, is it with the employee themselves or is it with the employer? And we don't know how they might do that yet. But broadly again, probably good news, because it should make things easier.

0:31:12- **Michelle:**

Yeah, and I mean we know that and you know we have a number of employers where they have a swipe-in, swipe-out system and those IT systems record. You know the time that they've been in the building doesn't necessarily mean they've been working for those hours and that's the only kind of timekeeping record they have. So, yeah, it has created some challenges for some of our councils in the past.

So, the final area that we are covering as a result of the government statement is the TUPE consultation rules and, as Chelsea indicated earlier, the proposal is that the requirement to consult with employee representatives either trade union reps or elected employee representatives from the workforce applies to currently all employers. The proposal is that if you are an organisation with 10 employees or fewer, that requirement to consult with representatives will be removed and instead you can consult directly with your employees, and that just makes it a little bit easier. And if you haven't got a recognised trade union or existing employee representatives who've been elected from your workforce, that process of getting them elected can be quite time-consuming and therefore add a significant amount of time onto the front end of any TUPE consultation process at the moment. So you know, for most of our councils, our principal councils, this will be irrelevant because you've got more than 10, but for our associate members and smaller organisations, this this will have quite a significant change and a benefit to them.



0:32:56- **Chelsea:**

Yeah, I think that's particularly the case because election of employee representatives can be one of the pitfalls for employers where, even if they've done everything else correctly in the TUPE process, that can be an area where they can fall foul of the existing law. So I think this this will be really beneficial for smaller employers.

0:33:16- **Michelle:**

Yeah, absolutely, and it brings it a bit more in line with redundancy consultations as well.

0:33:23- **Helen:**

Can you summarise for us the key things that people need to look out for with this?

0:33:26- **Chelsea:**

Yes, the first thing as I mentioned earlier, is that the current consultation closes on the 7th of July and local authorities have been asked to respond, having established how their existing practices and policies would be impacted by these proposed changes.

So it will be important for authorities to do that, to try and work out what's good for them and what's not so good and make sure that their views are counted in that consultation.

Once the legislation is actually published, once the consultation closes and the government publishes any changes, then employers will need to review any policies or local arrangements that they've got which might be impacted, and that could include things like, if people have got flexible leave policies where they allow buying or selling of leave or where they determine how much leave can be carried forward, it will be important just to double check that they aren't in contravention of anything that's now going to be in law.

And employers will also need to check that their payroll systems can comply with any new requirements, such as, for example, if rolled up holiday pay is permitted, then it will still need to be shown separately on the pay slips. So you'll need to confirm with payroll providers and systems that that's possible. And, finally, where local pay and conditions apply, employers will need to determine what is supposed to be included in pay for leave purposes, again determining that based on the legislation, what the government says in terms of whether it's just basic pay or whether it has to include overtime, for example, and other things. So that will need to be determined. And then any other impacts on policies or terms and conditions and, of course, we will be looking out for this law and we will issue advice to our members once it comes out as to flagging up things that particularly may need to be looked at.

0:35:41- **Helen:**

Thank you, Chelsea and Michelle, for giving us that insight into this. If you are a member of SEE, a link to the consultation and a really useful LGA bulletin are available on our website, www.seemp.co.uk/theHRedit and if you have any questions or queries, you can always contact the team at advice@seemp.co.uk or visit the SEE website, which hosts lots of information resources and various details about the services SEE offers. Thank you very much for joining us and we look forward to seeing you next week. [Music]