A regulatory cliff edge: the potential health effects of the EU retained law bill

The government’s EU retained law bill risks changing or abandoning regulations and damaging the future of public health

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In the Hitchhiker’s Guide to the Galaxy, the protagonist Arthur Dent wakes to find bulldozers outside ready to demolish his house to make way for a new bypass. He finds himself lying in front of them in a vain effort to protect all that he owns. The foreman argues: “You were quite entitled to make any suggestions or protests at the appropriate time, you know . . . the plans were on display.” Dent responds that the council plans were “on display” in a cellar, with a broken light and no staircase, in the bottom of a locked filing cabinet, in a disused lavatory, with a sign on the door saying, “Beware of the leopard.”

By the end of this year, we might sympathise with Dent’s plight. The UK government’s EU retained law bill will automatically revoke most retained EU law at the end of 2023 unless these laws are rewritten by ministers, rather than parliament. This means there is little independent scrutiny of changes made to the laws and even less clarity on which of the thousands of laws might not be changed in time and would simply disappear over a regulatory “cliff edge.” The Social Market Foundation—an independent think tank working to promote knowledge of public policy—has described these “particularly zealous attempts to cut regulation” as likely leading to “regulations cut without properly thinking through their value.” The government’s independent regulation scrutiny watchdog, the Regulatory Policy Committee, gave the impact assessment of this bill a “red” rating, saying it was not fit for purpose, and provided “inadequate support for decision making.”

Such issues might not seem directly relevant to health, especially when we face so many more urgent challenges in relation to healthcare access. The consequences of decisions related to austerity 10 years ago were not as easily measurable or tangible at the time as emergency department waiting times or patient backlog numbers are now but were nevertheless predictable and substantial. There is a danger of becoming “prisoners of the proximate,” focusing on what is tangible and urgent, while losing sight of what led us to this point or the decisions being made now that will worsen health and our ability to protect it in the future.

There is a risk we stand at such an inflection point. The current list of retained EU laws potentially on the chopping block maps extremely well onto the social determinants of health. At the time of writing, this includes 1781 separate laws related to the environment and food systems, 452 to the Treasury, 424 to transportation, 337 to business, energy, and industrial strategy, 212 to the Department for Work and Pensions, and 137 for health and social care, among many others. Over 3000 regulations are currently unchanged and risk automatic repeal at the end of the year. The downstream effects of deregulation at such a scale and pace are likely profound, representing a substantial population level health intervention. This is true whether these laws are changed, repealed in ways that are hard to assess, or left to expire.

If this proceeds, and the health effects of these changes only later become more acute, we will be faced with the Arthur Dent problem. We can be told that the plans were on display all along, on the “retained EU law dashboard,” where the public is “invited to explore this catalogue to build an understanding of how much EU-derived legislation sits on the UK statute book and scrutinise legislation.”

In relation to such a profound regulatory shift, we must consider the commercial determinants of health. The public and health workers might be faced with a mountain of potential regulatory changes to consider, but companies and trade groups are doubtlessly aware of the handful of specific regulations that stand in the way of more revenue or less liability—the “red tape.” They are in a much stronger position than the public to push for arrangements that suit their particular interests. Faced with such a challenge, we must find ways to ensure that the social and commercial determinants of health are considered in any decision making.

Firstly, health professionals, leaders, and civil society need a far greater sense of urgency around the potential effects of such a profound change, based on unexamined assumptions and overzealous commitments to deregulation, with a range of potential long term health and environmental consequences.

Secondly, we need far greater transparency about these regulatory changes, as well as the logic and evidence underpinning them. The government’s own levelling up strategy lists improving public safety, health, and wellbeing among its core priorities. The science is clear that these priorities are largely shaped by the social, environmental, and commercial conditions in which we live, which are influenced by many of the same regulations the retained EU law bill might amend or abolish.

Thirdly, there are other ways to pursue regulatory divergence. Applying principles of health impact

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assessment, informed by a “health in all policies” approach, could identify opportunities for greater policy coherence and the potential for improving population health in strategic ways. The publication of such assessments would enable health professionals, civil society, and the public to consider the implications in their own contexts and to respond accordingly. These approaches take time, but there is no compelling reason for an arbitrary deadline to end a wide range of regulatory protections.

In a time of crisis, it can be hard to see past the urgent and proximate to the wider determinants of health. But we must find ways to, otherwise we face a future in worse health, under even greater pressures, with even less freedom to think about what might be around the corner.

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1 Retained EU Law (Revocation and Reform) Bill. https://bills.parliament.uk/bills/3340