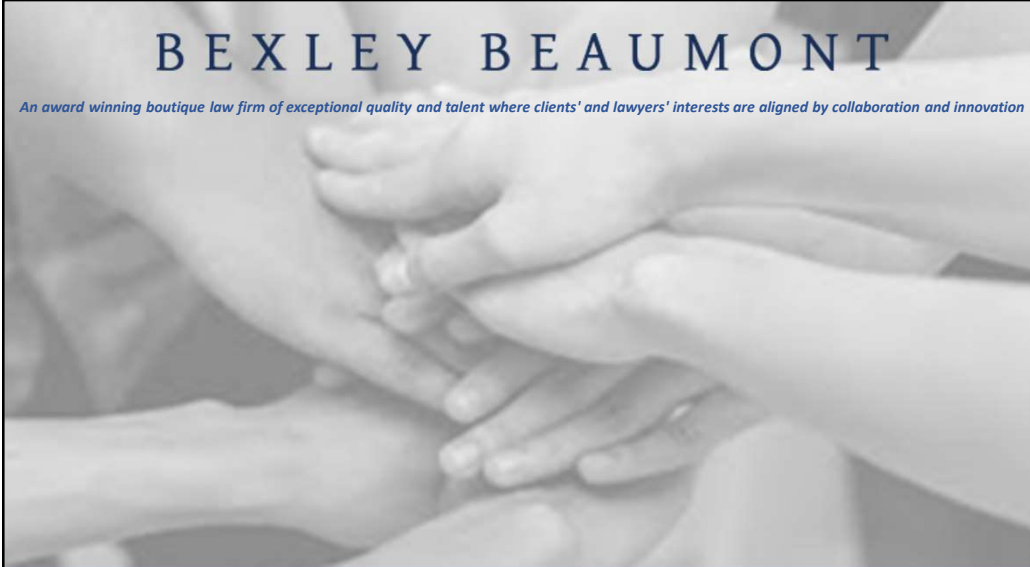



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The Retained EU Law (Revocation and Reform) Act 2023

Emma Tattersdill, Partner, Bexley Beaumont
Presentation for the National Brownfield Forum



Emma Tattersdill – Environmental Partner BEXLEY BEAUMONT

Practice area:

- Land and water contamination
- Waste management
- Environmental permits, exemptions and registrations
- Flooding, drainage and water supply
- Noise, odour, dust, smoke and other nuisances
- Trees, hedgerows, protected species and habitats
- Environmental issues in the planning regime (incl. EIA)
- Environmental issues in property and corporate transactions



- Trustee of CL:AIRE
- UKELA representative on the National Brownfield Forum
- SiLC PTP

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The Retained EU Law (Revocation and Reform) Act

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- Background: EU (Withdrawal) Act 2018
- “Brexit Freedoms Bill” (September 2022, Jacob Rees-Mogg - then Secretary of State for Business) - intended to "remove years of burdensome EU regulation in favour of a more agile, home-grown regulatory approach ..."
- REUL Act - received royal assent on 29th June 2023
- “Sunset clause” removed

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What is EU Retained Law?

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- Retained direct EU legislation
 - EU Regulations (made by EU Council, Commission and/or Parliament)
 - Commission Decisions
 - E.g. establishing List of Wastes
- EU derived subordinate legislation
 - Typically, UK regulations implementing EU Directives
 - E.g. implementation of waste framework directive
 - E.g. implementation of water framework directive

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What does the Act do?

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- Clause 1 & Schedule 1: individual pieces of legislation that are revoked with effect from 31st December 2023
- Powers to restate, revoke and replace the laws that have been retained
- Clause 15: applies to secondary retained EU law (i.e. domestic regulations)
 - revoke without replacing
 - revoke and replace “with such provision as the [authority] considers to be appropriate and to achieve the same or similar objectives”
 - revoke “and make such alternative provision as the [authority] considers appropriate”.

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What else does the Act do?

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- Terminology: “retained EU law” becomes “assimilated law”
- Removes legal status of principles of EU Law (polluter pays, precautionary principle)
 - Article 191(2) of the Treaty on the functioning of the EU
 - UK government's Environmental Principles Policy Statement
 - Section 19 Environment Act 2021
 - Section 14 UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

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What else does the Act do?

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- Ends principle of supremacy of EU law
- Removes rights and obligations that arise under “direct effect”
 - Harris & Harris v Environment Agency [2022] EWHC 2264 (Admin)
- Provisions relating to when UK courts may move away from existing domestic caselaw relating to the application and interpretation of retained EU laws.

- No “non regression” clause
 - but see s20 Environment Act 2012
- Use of s15 REUL: not to increase regulatory burden

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Conclusions

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- Impact: much will depend on regulations made under the Act;
- Concerns –v- an opportunity to reform;
- BUT it isn’t all about future changes in legislation - a lot of **principles** are changing on 31st December 2023:
 - direct effect (applicability of pre-Brexit legislation)
 - supremacy (interpretation of legislation)
 - legal status of principles (polluter pays etc)
 - caselaw.

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Conclusions

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- Levelling Up and Regeneration Act 2023
 - Part 6: Environmental Outcome Reports
 - Part 7: nutrient pollution standards

- European Scrutiny Committee - call for evidence:
<https://committees.parliament.uk/work/8015/retained-eu-law-the-progress-and-mechanics-of-reform/>

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