



## Net neutrality to sunset if Retained EU Law Bill is passed

Policy briefing Retained EU Law (Revocation and Reform) Bill by Dr Monica Horten, Open Rights Group

Jan 18 2023

Anyone who cares about the Internet – and indeed who cares about freedom of expression and access to information online – should be very concerned about a Bill that MPs will be voting on today. This is the Retained Retained EU Law (Revocation and Reform) Bill and it will wipe out net neutrality from UK law on 31 December this year.

It could also put the UK government in breach of its agreement with the EU.

**Net neutrality is the principle that broadband providers will carry traffic without blocking, filtering, discrimination, or prioritisation of content.** It means that all traffic will be treated equally, regardless of the content or the nature of the service. [https://en.wikipedia.org/wiki/Net\\_neutrality](https://en.wikipedia.org/wiki/Net_neutrality) For example, no websites or services can be discriminated against on the basis that they don't suit the commercial interests of the broadband carrier. It is an important foundation stone for freedom of expression online.

In the UK, net neutrality was enshrined into law under the EU's Open Internet Access Regulation.<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015R2120> This is one of 2400 EU laws implemented in UK law as Secondary Legislation. The Retained Retained EU Law (Revocation and Reform) Bill contains a sunset clause that will remove all of these laws from the UK statute by 31 December, unless either their fate is made subject to delay until 2026, or are "saved" by a Minister.

The Bill is expected to complete its Stages in the House of Commons today. It will then go to House of Lords for further scrutiny. If the Bill is passed by both Houses, the Open Internet Regulation will sunset at the end of the year.

It's revocation would remove legal barriers to anyone demanding that ISPs block websites, without any form of legal evidence or order. It could allow ISPs to seek to prioritise content and services for commercial reasons, including zero-rating of preferred content. It would create legal uncertainty and leave Ofcom exposed.

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<sup>1</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access

But there's one more thing. **The EU-UK Trade and Co-operation Agreement**, Article 178, entitled "Open Internet Access" enshrines a fundamental principle of the Open Internet and net neutrality into an international agreement signed by the UK government. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22021A0430\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22021A0430(01)&from=EN)

The UK government has signed up to the principle that Internet users must be able to "*access and distribute information and content, use and provide applications and services of their choice*". This must be subject to "*non-discriminatory, reasonable, transparent and proportionate network management. Users must be allowed to use the equipment of their choice*". This is a core part of the Open Internet Regulation in *Article 3: Safeguarding of open Internet access*.

Reasonable network management is defined in the Regulation as "*transparent, non-discriminatory and proportionate, and [...] not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic*".

Moreover, Article 208 in the Trade and Co-operation Agreement, entitled Online Consumer Trust, refers to trust in electronic commerce. This is relevant to another piece of retained EU law, the Electronic Commerce Regulations, a crucial foundation stone for online businesses and network services.

If these two Regulations are allowed to sunset on 31 December, the government would have to replace them. We have already seen in other contexts, how a breach of the Trade and Co-operation Agreement can have serious consequences. The government should take action now to ensure this breach does not happen.

**Open Rights Group (ORG)** is the leading UK-based digital campaigning organisation. We work to protect fundamental rights to privacy and free speech online, including data protection, the impacts of the use of data on vulnerable groups, and online surveillance. With over 20,000 active supporters, we are a grassroots organisation with local groups across the UK.

