

Liverpool Hope University, UK

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The Government's Quandary: "Great", or Ordinary, Repeal

Dr Brian Christopher Jones, *Liverpool Hope University, UK*

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The government would certainly prefer a "great" repeal, but they would be wise to make it an ordinary one. Four years ago I published an [analysis piece](#) in *Public Law* (April 2013) about the need to prevent political language in legislation, and especially in relation to statutory titles. In short, I could find little guidance in a host of official Parliamentary and drafting documents that would curtail overtly political statutory language, and especially in the presentational aspects of bills and statutes, such as short titles. When it came down to it, if a minister desired a particular title for their Bill, they could strong-arm drafters into getting their way—although, there could be pushback from House Authorities, such as the Speaker. The most recent version of [Erskine May](#) (2011) notes that short titles must "describe the bill in a straightforwardly factual manner. An argumentative title or slogan is not permitted" (p 526). In [reality](#), however, ministers "may for presentational reasons have strong views about the short title and the structure of the bill", and attempt to assert their authority (Cabinet Office Guide to Making Legislation, 9.71). Indeed, it is this unique convergence of law and policy that makes the process of drafting so interesting.

The problem that the above piece focused on is approaching a critical head. The government has [indicated](#) on numerous occasions that they intend on introducing a "Great Repeal Bill" to scrap the European Communities Act 1972, and to potentially enact a wide swath of EU legislation into British law. There are certainly reasons to believe that ministers have strong views regarding this Bill and may try and push ahead with that title, not least because of its political effectiveness. This blog has examined the proposal on [numerous occasions](#), and a couple writers have mentioned the title's inaccuracies. In fact, in a separate Brexit-related measure, Prof Philip Allott [demonstrated](#) that the Bill (now Act) to trigger Article 50 was misnamed, as it should have been entitled: European Union (Notification of Intention to Withdraw) Bill. Nonetheless, it went unamended and became law.

When Theresa May [presented](#) her idea of the Great Repeal Bill in October 2016, the name sounded lavish and unlikely; nothing more than a political slogan. Alas, the moniker appears to have stuck...for now. Although the recent Lords Constitution Committee [report](#) called it a "working title", they also decided to use it in the report's official title ("The 'Great Repeal Bill' and delegated powers"). The BBC has recently [portrayed](#) it as the official Bill title, noting that it will eventually be known as the Great Repeal Act. This piece advocates for governmental restraint and a change of language on the title, not least because there is another such "great repeal" waiting in the wings (see below). In particular, it is hoped that the five recommendations for short titles I provided in my original PL piece would be heeded. They are the following:

- Accuracy is paramount. A short title should be as descriptive as possible without being unduly emotive, misleading, tendentious or otherwise controversial. Accuracy ensures that the short title easily encapsulates the subject of the bill for those who encounter it; aids in the overall interpretation

of the bill for legislative, judicial and other scrutiny; and provides for ease of use when placing or referencing an Act in the Statute Book.

- If a short title can be easily construed as a policy statement; if the short title in essence makes suggestive or symbolic assumptions about what it will or will not accomplish with no reasonable measure available (i.e. without the measure being implemented as law and its impact sufficiently definable and susceptible to empirical study); or if the core meaning of the short title can be debated because of the ambiguous language contained within its text (i.e. “responsibility” or “accountability” to one individual does not necessarily mean “responsibility” or “accountability” to another individual); then such language should not be used.
- If the short title of a bill employs the name/s of a victim, member of Parliament, or anybody who could be used to either assist or hinder the legislation in question during the legislative process, then such language should not be used.
- If the short title of a bill uses language that spells an acronym that either: (a) spells a word or phrase that falls into above categories (1), (2) or (3); or (b) spells a word that intentionally misrepresents the legislation in any form or fashion, then such language should not be used.
- In order to ensure accuracy, and in the hopes of preventing overtly political or divisive bill names, all short titles should be provided by (and stay unamended other than at the insistence of) the lead drafter preparing the statute, honouring the principles provided in the above guidelines and giving ultimate deference to the impartiality, ease of reference and non-political nature of the Statute Book.

Outside of the first provision, I believe that the final recommendation from the above list is the most important. After all, the impartiality of the statute book is essential; it does not merely govern Conservative, Labour, or Liberal Democrat constituents, but the whole of the UK. As authors of the statute book, drafters—not ministers—should be empowered to use their best judgement on these matters.

Writing about Australian bill titles at the turn of the century, Graeme Orr [emphasised](#) that employing political sloganeering could “hasten a decline in respect for democratic governance”. I agree, and would take it ever further: bill titles that employ explicit political posturing also threaten aspects of the rule of law. Tom Bingham’s first [principle](#), that “The law must be accessible and so far as possible intelligible, clear and predictable” could certainly be under threat from tendentiously labelled statutory titles, which may misinform citizens and make it ever more difficult to discern the true meaning of statutes (as if citizens do not already have trouble doing this under normal circumstances).

Of course, “Great Repeal” could remain the informal, rather than formal, title. This is not unprecedented (see the [Great Reform Act 1832](#), statutorily known as the Representation of the People Act 1832). Informal names do not appear in the statute book, but can significantly affect the tone or substance of debate on the measure. Given the widespread coverage the proposal has already received, it may very well stick. That makes its use, formal or informal, all the more troubling, especially because it is likely to *enact* more legislation than it will repeal. As the PL [piece](#) noted above lays out, ordinary repeal bills nowadays are commonly entitled: Statute Law

(Repeals) Act. And yet, this is hardly an ordinary piece of legislation; nor is it merely a “repeal” bill.

Ultimately, the government would be wise to keep this name in its pocket for another occasion. If Scotland ever votes for independence, the Great Repeal Act would be an appropriate—perhaps even accurate—title for an instrument that leads to the break up an over three hundred year Union.

Brian Christopher Jones is a Lecturer in Public Law at Liverpool Hope University.

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