

# The Civil Society Brexit Project: *Information*

## The EU Withdrawal Bill

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### Background

After the referendum vote in June 2016 for the UK to leave the European Union (EU), the UK Government began the diplomatic and legal steps needed to do so. Article 50 – official notice that the UK intends to leave the EU – was triggered in March 2017 and thereafter the UK Government began negotiations with the EU Commission (representing the other 27 EU countries), aimed at agreeing a ‘deal’ around the conditions for the UK leaving the EU and around the UK’s future relationship with the EU.

At the same time as this external negotiating process, the UK Government also needs to prepare UK law for leaving the EU. This includes the huge task of disentangling UK law from EU law, so that it will continue to operate well on the day after Brexit. Therefore the UK Government introduced the [EU Withdrawal Bill](#) – previously called the Great Repeal Bill – to Westminster in July 2017.

### Purpose of the EU Withdrawal Bill

The EU Withdrawal Bill aims to do the following:

#### 1. Repeal the European Communities Act

Part and parcel of being an EU Member State is to give effect to EU law in national law. The UK currently does this through the [European Communities Act 1972](#) (ECA), which enables EU law to apply in the UK and gives EU law supremacy over UK law. Clause 1 of the Withdrawal Bill repeals the ECA on the day that the UK leaves the EU. From exit day onwards existing and newly made EU law will therefore

no longer apply in the UK. This ensures that all law making powers will be brought back to Westminster and EU law will no longer trump UK law.

## **2. Provides legal continuity**

If all EU law that affects the UK was simply binned on exit day, there would be huge holes in the UK statute book and many critical areas of UK law would cease to operate. Therefore the Bill copies over the entirety of EU law into UK law – to be called “retained EU law” - so that it will continue to apply post-Brexit. Retained EU law can then be amended, replaced or repealed in future.

The Bill does set out a few elements of EU law that are expressly not to be retained. For example, it is proposed that the Charter of Fundamental Rights will not be retained -this is discussed further below.

## **3. Give temporary powers to Government to sort out any legal gaps**

Some EU law that is brought back to the UK will simply no longer work after Brexit. For example, this is the case where laws name EU institutions or organisations that the UK will no longer be part of.

It is estimated that there are over 12,000 EU regulations in UK law and that many of these will need to be adapted to fit the UK operating alone. Therefore, in order to make all the legal changes needed in time, the Withdrawal Bill gives powers to Government ministers to use secondary (also known as delegated) legislation to make technical changes to retained EU law, if certain conditions are met.

Secondary legislation does not need MPs to debate and vote on it to the same extent as with primary legislation. These powers will be available for up to 2 years after Brexit. This includes the power to change primary and secondary legislation that is not retained EU law if the reason for doing so is to resolve a problem that is related to retained EU law. The power to use secondary legislation to amend primary legislation is known as a “Henry VIII” power.

## **4. Put into effect the final UK-EU negotiated agreement**

The EU Withdrawal Bill is being debated and finalised whilst we do not know the outcome of the UK-EU negotiations. Therefore, the Bill includes giving Ministers the power to use secondary legislation to implement the final withdrawal agreement between the UK and EU.

## **5. Devolution**

At present the devolved legislatures – which includes the Scottish Parliament - cannot legislate contrary to EU law, in the same way that Westminster cannot. The Bill changes this restriction so that after Brexit, they will not be able to legislate contrary to *retained* EU law. That power will from then on sit with the UK Government and Parliament.

Without this change, after Brexit, the devolved legislatures would have been able to legislate in areas currently covered by EU law that are within devolved competence, such as agriculture, fisheries or the environment. However instead of this, the Bill effectively re-reserves to the UK Parliament these areas of competence, within competences which have otherwise been devolved.

## Timetable for the Bill

The EU Withdrawal Bill is complicated, controversial and far-reaching. Over 450 amendments to the Bill have already been lodged and more are expected. Whilst some of these will be withdrawn or amended or debated together, the time pressure to get the Bill passed is considerable. What we know about the timescale so far is:

➤ First and Second Reading

The Bill was introduced to the House of Commons on 13 July 2017, and passed Second Reading on 12 September 2017.

➤ Committee Stage

The Bill will now be looked at line by line by a 'Committee' of all of the MPs. Amendments will be roughly grouped for debate into an order that makes sense. What we know of the timescale so far is:

- 14<sup>th</sup> November - debate on Clauses 1 and 6
- 15<sup>th</sup> November -debate on Clauses 2, 3 and 4

There will be at least another 6 days of debate at this Committee Stage but these have not as yet been timetabled.

➤ Report and Third Reading

At report stage, further amendments are possible before reaching the Third Reading which is for discussion but no amendments. It is expected, but by no means certain, that the Bill will pass these stages by Christmas.

➤ House of Lords

After the Bill passes these stages in the House of Commons it will then go to the House of Lords to be debated in the same stages.

Both Houses must usually agree on the text of a Bill before it can become an Act. This means that if the Bill is amended in the House of Lords, it must return to the House of Commons for those amendments to be considered. The House of Commons can reject the amendments, make changes to them or suggest alternatives. A Bill may move backwards and forwards between the two Houses before agreement is reached, so this stage is sometimes called "ping pong".

The House of Lords can delay legislation for one parliamentary session (usually one year) but ultimately the elected House of Commons can reintroduce a Bill in the

following session and pass it without the consent of the Lords. However it should be noted that in June 2017, MPs voted to extend the current Parliamentary session from the usual one year to two, to give MPs enough time to fully consider the laws required to bring about Brexit on time. This means that this option to reintroduce a Bill in the next session does not seem possible in advance of the Brexit deadline of 29<sup>th</sup> March 2019.

Read more:

[House of Commons: Brexit Timeline briefing](#)

## Some civil society concerns about the Bill

Some of the main areas of amendment that civil society organisations have raised around the Bill are:

- **Strengthening parliamentary scrutiny of changes to EU retained law or related law**

The Bill gives the Government significant powers to make secondary legislation. This was done for several reasons, including that it is a much quicker process, allows some flexibility in content, and provides for some confidentiality in the exit negotiations. Secondary legislation can also enact the withdrawal agreement quickly.

Many organisations however are concerned that whilst the vast majority of changes are likely to be technical, the way in which the Bill is drafted **allows for the powers to be used to make major policy changes to retained EU law**. For example, it would be possible to introduce new rules and standards, create new public authorities or get rid of certain legal rights.

As the Bill allows secondary legislation to be used to implement the withdrawal agreement, this is also likely to include aspects such as **the rights of EU citizens**.

In addition, because of the sheer amount of secondary legislation that will be required to repatriate EU law and the time pressure to get these changes done by March 2019, there are significant **concerns about the level of scrutiny of all of these changes**. Civil society organisations are particularly concerned that there will be a lack of consultation around some of these changes and that it will be very difficult for them to be informed about proposed legal changes that will affect those that they work with or for

➤ Read more:

Repeal Bill Alliance – <https://repealbill.org/>

[A Democratic Brexit: Avoiding Constitutional Crisis in Brexit Britain](#)  
[House of Lords Select Committee on the Constitution: The Great Repeal Bill and delegated powers](#)

- **Embedding general rights protections in the Bill**

Several organisations have been calling for specific clauses to be included in the Bill that ensure that there will be no change to legal rights without full consultation and a full parliamentary process. They argue that any change to our rights protections should not be allowed to happen via secondary legislation. These proposed amendments have been called '[The People's Clause](#)'.

➤ Read more:

[Committee Stage Briefing by Liberty, Amnesty, Public Law Project & Justice on rights implications of EU Withdrawal Bill](#)

[Equality and Human Rights Commission – Briefing on the EU Withdrawal Bill](#)

[Scottish Parliament SPICE Briefing: Brexit the impact on Equalities and Human Rights](#)

[Decimating Rights: The Consequences of the Great Repeal Bill](#)

- **Embedding specific rights protections in the Bill**

Some children's organisations are calling for the [UN Convention on the Rights of the Child](#) to be embedded within the Bill. They argue that EU legislation, policy and case-law developments have 'substantially improved the landscape for children across a diverse range of areas, including: criminal and family justice, non-discrimination, child trafficking, sexual exploitation and health and safety....As EU law has children's rights embedded throughout, the permanent requirement to act compatibly with the UNCRC is the best way to ensure that this protection continues beyond withdrawal<sup>1</sup>'.

Environmental organisations want to see key principles in EU law around the environment included in the Bill, such as the 'precautionary principle' which creates a bottom line forcing those who want to build or develop, for example, to prove in law that what they are doing will not damage the environment. Principles such as the 'polluter pays' and the principle that preventative action should be taken to avert environmental damage are also seen as important. Organisations are asking MPs to support Amendment NC28 which puts forward a new clause to ensure that public authorities must have regard to environmental principles currently enshrined in EU law.

The rights of EU citizens to live in the UK after Brexit has been a big issue throughout discussions around Brexit. Several organisations are supporting amendments to include the freedom of movement of people in the Bill, as well as specific amendments such as around child refugee family reunion.

➤ Read more:

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<sup>1</sup> [Children's Society, Children in Scotland and others briefing for Committee Stage EU Withdrawal Bill](#)

[Children's Society, Children in Scotland and others Committee Stage Briefing on EU Withdrawal Bill](#)

[The Implications of Brexit for Environmental Law in Scotland](#)

[Ensuring the Withdrawal Bill leads to a Greener UK](#)

[Call for Scotland's Third Sector to support EU Nationals](#)

[List of some amendments related to non-UK EU Citizen rights](#)

[SULNE: Free Movement, Immigration and Political Rights](#)

[Brexit: what impact on those currently exercising free movement rights?](#)

- **Retaining the Charter of Fundamental Rights**

Alongside general rights protections in the Bill, other organisations are calling specifically for retention of the EU [Charter of Fundamental Rights](#). This Charter gives broader rights that are not part of the European Convention of Human Rights. For example, the Charter includes wider data protection rights, a right to asylum, a right to education and an overarching right to non-discrimination. Whilst the Charter only applies in relation to EU law we might not see any immediate impact on rights. Nonetheless its removal may reduce legal rights in the longer term.

➤ Read more:

[Liberty, Amnesty & Public Law Project briefing on keeping the Charter of Fundamental Rights](#)

[SULNE Paper - Human Rights in EU Law: Charter of Fundamental Rights and the ECHR \(a detailed list of rights that are in the Charter which are not in the ECHR.\)](#)

- **Taking account of the Court of Justice and maintaining progress on social rights**

The Bill states that UK courts will 'be able to consider' post-Brexit decisions by the European Court of Justice after Brexit. However many organisations are concerned that this is too vague, places too much responsibility on judges to interpret what this means and that a crucial layer of oversight will be lost. For example, [this is a concern by those involved with the complex area of immigration law](#). There are also concerns that we need to take into account ECJ decisions in the UK so that we don't fall behind the rest of Europe in social protections.

➤ Read more:

[House of Commons Library briefing paper on the EU \(Withdrawal\) Bill: Supremacy and the Court of Justice](#)

[Institute for Government briefing on Brexit and the European Court of Justice](#)

- **Committing the Government to continue engagement with EU strategies and programmes**

There are some proposed amendments to the Bill which aim to commit the Government to continuing participation in key EU strategies and programmes. These would include for example, Euratom, Europol, Erasmus.

- **Bringing EU law in areas that are devolved directly back to the devolved regions – and not to the UK level**

As noted above, currently the Scottish Parliament (and other devolved legislatures) have responsibility for several areas where there is considerable EU law. For example, the EU has passed many laws and regulations around agriculture. Whilst the Scottish Parliament cannot legislate contrary to this EU law, it currently can and has passed law and regulations on other aspects of agriculture.

The Bill proposes that this situation should continue – at least temporarily. Hence all EU law is brought back to the UK level even if it would ordinarily be within devolved competence. The UK Government has said that they will then consult with devolved legislatures on those areas which should be devolved. The reasoning for doing this is because this will enable a common UK approach to many elements of retained EU law.

However the Scottish Government are concerned that this is a ‘power grab’ and want amendments to the Bill that ensure that these areas of EU law are devolved on exit day. They argue that there can then be discussion about a UK level approach.

➤ Read more:

<https://publiclawforeveryone.com/2017/10/05/public-law-update-4-brex-it-the-separation-of-powers-and-devolution/>

[Scottish Government proposed amendments to the EU Withdrawal Bill](#)

[Detailed written evidence received by Scottish Parliament on delegated powers in the EU Withdrawal Bill](#)

[Brexit, devolution and the common framework](#)

- **Securing the future of health and social care**

If Brexit leads to fewer people from other E countries living in the UK, there is significant concern about the potential impact of this on the health and social care workforce. This in turn could have implications for the care and quality of life of disabled and older people and those with long-term health conditions. Camphill Scotland, the ALLIANCE, CCPS, the Genetic Alliance UK, Inclusion Scotland, Scottish Care and SCVO therefore want to see an amendment that would introduce a duty to implement an independent evaluation of the impact of Brexit on the health and social care sector.

- Read more:

<https://www.alliance-scotland.org.uk/blog/resources/eu-withdrawal-bill-independent-review-amendment-briefing/>

## Opportunities for influence

There are a number of different ways that civil society organisations in Scotland can raise any concerns or make comments on the EU Withdrawal Bill. Some of these are:

- Ask MPs to support certain amendments, either by highlighting a particular set of amendments or by raising a particular concern. You could gather case examples of the impact on those that you work with. This does not have to be a long briefing – actually just one or two lines with a specific point for them to raise is most useful. You can read the full list of amendments [here](#). You can find your MP email address [here](#).
- Add your organisation's support to a network or alliance who are promoting particular amendments. For example, join the [Repeal Bill Alliance](#) or support the [People's Clause](#). Ask a network organisation who cover your issue area what they are doing around Brexit and how you can help.
- If your organisation is in the third sector, you can participate in the development of SCVO priorities and influencing around Brexit. [See here for more information](#).
- Send in a submission or written briefing as a contribution to a Westminster or Scottish Parliament inquiry. For example, currently these include:
  - [Joint Committee on Human Rights: EU Withdrawal Bill inquiry](#) – closing date for submissions is 20<sup>th</sup> November
  - [Exiting the European Union: scrutiny of delegated legislation inquiry](#) – open for submissions
  - [Brexit: Trade in Food Inquiry](#) –open for submissions
  - [Brexit: Citizens' Rights Inquiry](#) – closing date for submissions is 24<sup>th</sup> November

The Civil Society Brexit Project is a collaboration between the [Scottish Universities Legal Network on Europe](#) (SULNE) and the [Human Rights Consortium Scotland](#), funded by the [Legal Education Foundation](#).

The Project can help your organisation by providing detailed and independent information or advice on Brexit implications. In particular we can help to proofread internal or external documents around Brexit.

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November 2017