

BRIEFING: AMENDING THE EU WITHDRAWAL BILL

Overview

The Repeal Bill Alliance is guided by a set of broad principles:

- **Parliamentary scrutiny and democratic accountability in the transposition process**
- **The preservation of existing rights and standards**
- **Parity of institutions**
- **Respect for the devolution settlements**

Report Stage is critical for determining whether the government will make good on the promises (detailed below) made during Committee Stage. There are issues still to be resolved. In particular, the bill currently falls short of meeting the broad principles that members of the Alliance have all agreed should underpin legislation of such a broad scope.

The interdependence of parliamentary scrutiny, rights and institutions

Alliance members believe that the core issues around parliamentary scrutiny, government accountability, the governance gap, and the preservation of rights and institutions, **are related and interdependent. To robustly protect one, all must be protected.**

For example, if an amendment specifically exempting EU derived workers' rights legislation from being subject to change by delegated legislation was tabled, to be effective it would need to be accompanied by an amendment to limit the Henry VIII powers in the bill. Otherwise, given the breadth of the Henry VIII powers, the bill itself could be amended to retrospectively remove the protection for workers' rights legislation.

The Alliance has recommended [in previous briefings](#) that **MPs should vote for a suite of amendments that stop the possibility of changes by the back door.**

Protecting the devolution settlements

The bill (principally Clause 11) threatens to undermine hard-won devolution settlements by bringing EU powers back to Westminster. There were missed opportunities to amend Clause 11 at Committee Stage. However the government has tabled an amendment that devolved administrations in Scotland, Wales and Northern Ireland will have to **consult** with the UK Government, rather than seeking **consent**, before using "correcting powers" to amend EU rules as they are transferred to domestic law. **However, this does not address many of the concerns about the risk to devolution settlements raised by both the**

SNP and Welsh Labour MPs, and there is still no clarification on the legal status of the Belfast Good Friday Agreement (BGFA) in the bill.

During Report stage, MPs should ask for **clarification of the difference between consulting and consent** and how this consultation process will take place. Although the government has conceded that deficiencies to clause 11 will be resolved in the Lords, we urge MPs to use Report Stage to **highlight again deficiencies in Clause 11** and push for amendments that will **secure the devolution settlements**. We would also recommend that MPs ask for **clarification of the legal status of the BGFA agreement**.

The EU Charter of Fundamental Rights

Despite the Government claiming that the bill is merely a 'copy and paste' job, clause 5(4) of the bill states explicitly that the EU Charter of Fundamental Rights will not be part of domestic law after Brexit.

In response to concerns from MPs across the chamber about the exclusion of the Charter, the Government conceded to publish a 'rights-by-rights' analysis of where Charter rights are reflected in UK law. The legal opinion obtained from Alliance member EHRC (Equality and Human Rights Commission) is that rights and protections will be weakened as result of excluding the Charter in the bill. The legal opinion commissioned by EHRC's is also that the "rights-by-rights" analysis provided by the Government is largely inadequate.

Given that the rights-by-rights analysis by the Government fails to provide clarity on where Charter rights are reflected in UK law, **the Alliance urges MPs to vote to maintain the Charter and avoid any undermining of rights and protections post-Brexit.**

Limiting Henry VIII powers

During Committee Stage, MPs across the chamber voiced concerns about the breadth of delegated powers in the bill which can be used to remove vital rights and protections with little accountability. The Government has made some concessions. **However, these concessions do not give sufficient assurances that such powers will not be used to undermine rights and protections.**

For instance, the amendments tabled by Charles Walker (chair of Procedure Committee) set up a new sifting committee to deal with which pieces of delegated legislation need detailed scrutiny by MPs. However, the new committee does little to address the existing, inadequate system of scrutinising statutory instruments. Furthermore, the new committee is only advisory, meaning that the government doesn't have to follow through on its recommendations. Nor does the amendments seek to go beyond the temporary measure restricted purely to the Withdrawal Bill - which prompts the important question of how delegated legislation in the seven other Brexit bills will be scrutinised

The Government has also published a series of amendments ahead of Report Stage, some of which include restricting the Henry VIII powers (amendments 15-21). Some of these amendments (particularly amendment 15) **lack a clear definition of what deficiencies in EU law ministers may consider appropriate to amend.**

MPs should use Report Stage as an opportunity to ask the Government why the scrutiny committee have only been restricted to the Withdrawal bill.

About the Alliance

The Repeal Bill Alliance, coordinated by Unlock Democracy, is a loose alliance of over 70 campaign and advocacy organisations with an interest in the Withdrawal Bill. The Alliance is Brexit neutral. Collectively, we want the best possible outcome from Brexit and ensure the Withdrawal Bill maintains a high standards UK and secures open and accountable lawmaking through the Withdrawal Bill.

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