

HOUSE OF LORDS BRIEFING ON THE EU (WITHDRAWAL) BILL

The Commons Committee Stage for the EU (Withdrawal) Bill ends on the 20th December. There will be two days for Report Stage and Third Reading in January 2018 (dates not yet announced), with the Bill likely to start in the House of Lords in the second half of January.

The Repeal Bill Alliance, coordinated by Unlock Democracy, is a loose coalition of over 70 campaign and advocacy organisations with an interest in the Withdrawal Bill. The Alliance is Brexit neutral, and takes no position on the outcome of the referendum. Collectively, we want the best possible outcome from Brexit and to ensure the Withdrawal Bill is amended so that a high standards UK is maintained, and open and accountable lawmaking is secured.

COMMITTEE STAGE

While there have been no successful amendments at Committee Stage (at the time this briefing was published), ministers have made several concessions during the debates. These are likely to be reflected in Government amendments at Report Stage, with commitments to include points in new legislation, and/or some flexibility in the Government's position in the House of Lords.

Points where ministers have given assurances:

1. Commons Report Stage amendment will require ministers to give an account of how any Brexit-related legislation is consistent with the Equality Act 2010.
2. There will be new legislation (following a consultation process early in 2018) to set up an independent advisory and enforcement body on environmental policy and regulations.
3. There is likely to be some concession on the EU principle of "animal sentience" being incorporated into UK laws.
4. A detailed memorandum will set out how the points in the EU Charter of Fundamental Rights will be reflected in UK law (even though the Charter itself won't be adopted).
5. There will be Government amendments at Commons Report Stage to allow legal challenges to be brought against EU laws retained in UK law. It is not clear what form these will take.
6. As it stands, Clause 9 (to be considered on Day 7: 13 Dec) gives power for action to be taken before Brexit for the implementation of any exit deal with the EU, through such regulations "as the Minister considers appropriate". The Government has now conceded that there will be separate legislation on this, so there could potentially be a vote to delete this clause.
7. During Committee Stage day 5, Lady Hermon's (Independent, North Down) withdrew New Clause 70- which set out to incorporate the Belfast Good Friday Agreement (BGFA) on the face of the bill, the Opposition also withdrew their amendment on protection of BGFA principles. This came after Brexit minister Robin Walker promised to enshrine the principles (BGFA) in the withdrawal agreement.

These are all points where the Government has felt under pressure and where the House of Lords could press them further.

OTHER KEY ISSUES

There are also key issues where the Government has not given any concessions but where there is a great deal of concern from people and organisations outside Parliament. In particular:

1. The Bill as drafted gives ministers a huge amount of power to change the law through the use of statutory instruments, which are not always properly scrutinised. This will be a particular problem given the likely volume of them. For example, Clause 7 (to be considered on Day 6: 12 Dec) would enable the Government to set up new public bodies without needing primary legislation to do so.
2. The Bill (principally in Clause 11) brings back power from Brussels to London, but not to Edinburgh, Cardiff, or Belfast, and therefore threatens existing devolution settlements.
3. The Bill fails to provide either Parliament or the public with the opportunity for a meaningful vote on a final exit deal, or lack of a deal. The only options it envisages are parliamentary acceptance of a deal (if there is one) or leaving with no deal.
4. The Bill, and the current Trade Bill, fail to establish a system of parliamentary control over new trade agreements, which are currently conducted through Crown prerogative. The Trade White Paper merely envisages Parliament being included as a “stakeholder” in a consultation process.
5. Despite the agreement reached between the UK government and the EU, there is a long-term question when it comes to considering the UK’s future trade and customs arrangements about the implications for the Irish border.
6. Chair of the Procedure Committee, Charles Walker MP (Conservative), has tabled amendments - with the unanimous backing of the committee. The amendments would create a new sifting committee in the House of Commons, to determine which proposed pieces of delegated legislation need detailed scrutiny by MPs as EU law is transferred into UK law.

All of these points make the rallying cry to “take back control” look as though it is being applied only to government ministers. The way concessions have been dealt with so far, and the way MPs on both sides have withdrawn amendments, suggests that it is the passage through the House of Lords that will be the real battleground for the Withdrawal Bill.

OUR HOPES

As an Alliance of civil society organisations there are many ways in which we would like to see the Bill improved as it goes through Parliament. The details of course will have to depend on amendments and proposed new clauses, but we have agreed the following statement of principles:

- As we embark on this massive constitutional journey we want to make sure that the government faithfully transposes EU law into UK domestic law with as few changes as possible.
- We want to make sure that the government remains faithful to the principle of taking back control and make sure that control truly does reside with Parliament. There must be robust parliamentary scrutiny and safeguards against transfer of power to the Executive.

We want to see:

Open and accountable law making:

- Respect for democratic processes, including the devolved nature of the UK Constitution.
- There must be clear limits and safeguards on the powers given to ministers in the bill.

- There must be robust parliamentary scrutiny at all levels with appropriate levels of transparency and debate both before and during the conversion process.

A high standards UK:

- Ensuring that as EU law is transposed into domestic law, rights and standards for all sectors are maintained.
- A UK framework for common standards, that is mutually agreed between the four administrations, to enable cross-border working and maintain an internal common market. This framework must respect the devolution settlements, meaning any administration can raise standards within the scope of those settlements, if they wish to do so.
- Leaving the EU must not create a governance gap. EU institutions have a role in monitoring, oversight and ensuring compliance with the law as well as setting regulations. Where governance arrangements are changed as a result of leaving the EU, there must be clear powers and procedures for ensuring the law is properly implemented and enforced on an ongoing basis.

OUR ACTIVITIES

The Repeal Bill Alliance has been very active. We have:

- Been in close contact with MPs during the Commons Committee Stage, discussing amendments and new clauses.
- Met with our member organisations and independent lawyers to discuss their concerns about the Bill.
- Kept member organisations informed about the progress of the Bill through Parliament and maintained a presence on social media.
- Held events in Belfast and Cardiff, and been in contact with organisations in Scotland, to consider the implications of the Bill for the devolution settlements, Good Friday Agreement, and the Irish border.

We are now beginning our work with the House of Lords, optimistic that further concessions can be achieved and some major changes made to the Bill.

We know that many members of the House of Lords are deeply concerned about aspects of the Bill and we hope we can be in touch to think through how it should be amended and what points about it could usefully be made.

We will be holding briefing meetings and producing written briefings, and are of course available to discuss the Bill with peers, parliamentary staff, and journalists.

You can contact the Alliance's Coordinator, Jane Thomas, at jane@repealbill.org

Alternatively, visit our website repealbill.org or follow us on twitter [@fixrepealbill](https://twitter.com/fixrepealbill)