

# BRIEFING: AMENDING THE EU (WITHDRAWAL) BILL

Briefing produced by the Repeal Bill Alliance, with thanks to Sam Fowles (Queen Mary University) and Unlock Democracy.

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## Summary

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**

As the bill moves into Committee Stage, attention has now turned to identifying how the bill can be amended to secure these key protections. Individual MPs will no doubt have their own objectives when it comes to amending the bill.

For example, MPs that are concerned about maintaining EU derived environmental protections may be seeking to amend the bill to ensure that environmental standards cannot be weakened in the transposition process, or through the use of the delegated powers in the bill.

When considering how to amend the bill to achieve a certain aim, it is important to understand the interdependence of the core principles identified by the Alliance. In many instances, and particularly when it comes to the principles mentioned above, the only way to secure key protections is to back a set of amendments addressing multiple areas in order to avoid changes by the back door.

This briefing sets out to explain how the Alliance's core principles are interdependent, and what types of amendments need to be backed - as a set - if any one of the principles is to be satisfied.

## Core principles of the Alliance

The Alliance wants to see:

### Open and accountable lawmaking:

- Respect for democratic processes, including the devolved nature of the UK constitution.
- Clear limits and safeguards on the powers given to ministers in the bill.
- Robust parliamentary scrutiny, with appropriate levels of transparency and debate both before and during the conversion process.

### A high standards UK:

- Ensure 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.

It is on the basis of these principles that the Alliance has assessed amendments that have been tabled so far, and devised an approach to prioritising which amendments to get behind. This is centrally underpinned by the interdependence of core principles.

Many Alliance members have already worked with MPs to table amendments that would achieve many of the above principles. However, it is important to recognise that a package of amendments is required in order to robustly amend the bill so that protections are secured for any one of these principles.

## The interdependence of parliamentary scrutiny, rights, and institutions

There is a growing consensus that concerns 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.

The bill as presently drafted would treat retained EU law as secondary legislation for the purposes of amendment. This would allow retained EU law to be changed by the government using delegated legislative powers under any Act, with little or no parliamentary scrutiny.

So, for example, the government could use a power from an Act made in 2000 to remove legal protections and standards in retained EU law. The bill will also grant the government powers (in

clauses 7, 8, and 9) of unprecedented breadth, allowing it to remove vital rights and protections without accountability. As it stands, the bill strikes at three key components of constitutional protection for legal protections and standards:

- **Parliamentary scrutiny** - ensures that laws passed are subject to robust debate by MPs, the elected representatives of the people.
- **Limits on powers** – ensure that the government does not use its powers to remove or undermine legal protections, standards and rights.
- **Governance** – ensure that the means exist for individual rights and protections to be realised on a day to day basis, and that the devolved legislatures' powers are not eroded or undermined.



Take for example, if the government agreed to an amendment that specifically exempted the EU derived workers' rights legislation from being subject to changes by delegated legislation in the bill.

This would only be effective if there was also an amendment to limit the Henry VIII powers in the bill - otherwise these powers could be used to amend the bill itself and retroactively remove the protection for workers' rights legislation.

Additionally, an amendment would also be needed to preserve the appropriate institutions that enforce these rights, otherwise their preservation in theory is meaningless.

### Three steps for amending the bill

Amendments in three key areas are required to ensure that vital rights and protections, as well as parliamentary scrutiny and robust accountability of the government's actions, are secured:

1. **Protect legal protections, standards and rights** so that they can only be removed or amended by primary legislation -
  - a. **Amending by primary legislation** - amendment to provide that retained EU law can only be amended by primary legislation (legislation made by Parliament), and that secondary legislation cannot undermine or remove protections, rights and standards in retained EU law.
  - b. **Limits on the powers in clauses 7, 8, and 9** - to ensure these powers can only be used to make "technical changes" (as the government has promised), and not to remove substantive rights and protections. This will allow individuals to hold the government accountable in court if they act beyond the scope of the powers.
2. **Securing parliamentary scrutiny** – a "sift and scrutiny" amendment, creating a more robust system for scrutinising delegated legislation, will ensure that Parliament, not the government, decides the level of scrutiny delegated legislation in the bill is subjected to.

3. **Equivalent governance clause** – to create a duty to ensure that any relevant regulatory function previously exercised by an EU institution will be exercised by a UK institution (or through a continuing connection with a specific EU institution) after Brexit. This ensures that rights cannot be eviscerated by the “back door” by removing the institutions that protect and uphold them.

Each of these amendments are interdependent, that is, none will be as effective without the others:

- Providing for amendment by primary legislation would not limit the powers established by the bill itself.
- Limits on the powers in clauses 7, 8, and 9 alone would leave vital rights and protections (such as protections for the environment) vulnerable to evisceration by the “back door”, by simply removing the institutions that enforce them, leaving them as rights in name only.
- A scrutiny amendment alone would mean that important issues could fall through the cracks. Even if scrutiny arrangements for delegated legislation are changed as part of the bill - which would be a very positive development - there will still be 1,000s (or more) statutory instruments to scrutinise. Without limitations on the broad delegated and Henry VIII powers in the bill, no matter what scrutiny system we have in place the government could still sneak policy changes through the back door.
- A governance amendment alone would leave the security of rights and protections to institutions that may not be set up for several years or never exist.

## Contact

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