

## BRIEFING: BREXIT, PARLIAMENT, AND THE REPEAL BILL

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### About the alliance

Many charities, NGOs and other organisations in civil society are deeply concerned about the Repeal Bill and the powers that it proposes giving to ministers.

A number of grant-making Trusts and Foundations have agreed to fund a post that will coordinate capacity work on the Repeal Bill. This is to ensure that an alliance of campaign, advocacy and civic society organisations can be built to make sure individual and collective voices are heard.

The alliance does not take a position on Brexit per se and activity will be in line with charitable purposes.

For more information contact the alliance's coordinator, Jane Thomas, at [jane.thomas@repealbill.org](mailto:jane.thomas@repealbill.org) or phone **07957 240826**.

*This briefing was jointly produced by the Repeal Bill Alliance, Unlock Democracy, and Victor Anderson (University of Surrey).*

## Context: Brexit in Parliament

### The eight Brexit bills

The Queen's Speech in June 2017 referred to eight Brexit bills, all of which the Government hopes to bring into law by March 2019.

The most important of these – and the only one published so far – is the European Union (Withdrawal) Bill. This will be debated in the House of Commons on the 7th and 11th of September at second reading.

The other bills are:

- **Customs Bill** - This will enable the UK to run its own customs system, including setting and collecting customs duties.
- **Trade Bill** - This will enable the UK to negotiate and operate its own international trade policy. There is a key issue here about achieving parliamentary control over trade agreements the Government wants to enter into.
- **Immigration Bill** - This will enable the UK to operate its own immigration system in relation to EU countries after it has left the EU.
- **Fisheries Bill** - This will enable the UK to run its own fisheries system.
- **Agriculture Bill** - This will establish a new system for payments to farmers and landowners after leaving the EU Common Agricultural Policy. This is potentially a way to incentivise stronger protection for the countryside.
- **Nuclear Safeguards Bill** - This ensures the UK continues to meet its international obligations for safe treatment of civil nuclear materials and for non-proliferation, after leaving the EU and Euratom. Many supporters of soft Brexit want to keep the UK in Euratom.
- **International Sanctions Bill** - This will enable the UK to operate its own policy to impose or remove sanctions on other countries. There is likely to be an opportunity here to put forward amendments about specific countries and sectors, e.g. arms sales to Saudi-Arabia.

### Refresher: The stages of a bill

Each bill consists of a series of clauses (called 'sections' when they become law in an Act of Parliament), followed by a series of schedules which fill in some of the details. Further details are filled in by ministers through statutory instruments.

The process whereby Parliament deals with a bill consists of a set number of stages. More controversial bills generally start in the Commons and then move to the Lords. This is what is outlined here, but it is also possible for bills to start in the Lords and go to the Commons afterwards.

- **First Reading** is purely a formality.
- **Second Reading** is the debate on the principle of the bill.
- **Committee Stage** is where a small cross-party committee goes through the bill and deals with proposed amendments. Exceptionally there can be a committee consisting of the whole House – this is conceivable, though unlikely, for the Withdrawal Bill.
- **Report Stage** is where the committee reports back to the whole House and is a further opportunity for amendments. These are often dealt with very rapidly, leaving the Lords to return to the issues raised.
- **Third Reading** is where the whole House debates the bill as amended and decides whether it should go ahead.
- Then (if it is passed) the bill goes to the **House of Lords**, where it goes through the same process (except that the Committee Stage is for all members rather than a small committee).
- Then the **Commons considers the Lords amendments**.
- And **then the Lords consider what the Commons has done with its amendments**. Often the Lords give way to what the Commons has decided, but they may send their amendments (or a compromise version) back to the Commons. How far the Lords are prepared to push a disagreement depends mainly on whether it thinks there is a mandate for the bill from the public and whether it thinks there are important legal principles at stake.

## The European Union (Withdrawal) Bill

### What's the bill about?

The main Brexit bill is the European Union (Withdrawal) Bill. More commonly known as the **Repeal Bill**, it was originally referred to as 'the Great Repeal Bill' by the government.

This proposed law would do three broad jobs:

1. **Repeal** the European Communities Act 1972, which sets out our relationship with the EU and allows UK laws to be updated in line with EU rules.
2. **Copy and paste**, or convert, the existing body of EU law into UK law and amend it so it "functions sensibly," so that there isn't a sudden legal vacuum on the day after Brexit is complete.
3. **Implement** the final deal we come to with the EU.

### Delegated powers in the bill

A lot of EU laws, rules and regulations can't simply be copied and pasted into UK law. For example, some laws will refer to EU regulators and bodies that will not play a role in the UK after Brexit. Additionally, some EU rules have come in the form of directives which instruct member states to achieve a particular end without necessarily having to put that directive into domestic law.

Delegated powers allow ministers to 'edit' a law that already exists, without having to create a new Act of Parliament that MPs must debate and vote on. These edits are meant to be only small changes to make sure laws still work after they have been voted on, and are not meant to change the overall policy. Henry VIII powers are one type of delegated legislation that allow ministers to make changes to primary legislation. You may also see these being referred to as delegated legislation, or statutory instruments - which are the most common type of delegated legislation.

This is where delegated powers in the Repeal Bill come in. To make sure all our laws work the day after Brexit, the bill proposes giving ministers these special powers to make 'technical' changes where they are needed for the law to function, and also giving them the power to make changes to our laws in light of what is agreed as part of the negotiations. For example, the bill proposes giving ministers the power to set the date of when exactly Brexit happens. This doesn't change the policy that Brexit is happening, but it gives ministers flexibility to set the date based on how negotiations take shape.

Hansard Society has done extensive work on the [problems with delegated legislation and existing scrutiny systems](#).

## Why is the bill controversial?

Despite what is often claimed, the bill does far more than simply transfer EU laws directly into UK law so that they continue to apply after leaving the EU.

The bill proposes giving ministers a significant amount of power because it enables them to sort out many of the 'details' just through bringing in statutory instruments - which receive little parliamentary scrutiny - instead of including them in the bill or having to bring in additional bills. This is proving to be the most widely controversial aspect of the Bill, amongst both Leavers and Remainers.

The heart of the problem lies in how broad the powers in the bill are, and the lack of opportunities there will be for MPs to scrutinise what ministers will actually be doing with the powers in practice.

**Statutory instruments are not amendable by Parliament and are often not debated or voted on at all.** Many automatically become law unless Parliament deliberately throws them out. Around [80% of changes made by delegated legislation](#) have become law without Parliament being able to vote on them.

It would not be practical to ban the use of statutory instruments altogether, because Parliament would simply be overloaded if a new bill was required for every technical change. But a lot of the

### Examples: Controversial clauses in the bill

**Clause 7** enables ministers to use statutory instruments to set up new public bodies to take over the UK responsibilities of EU bodies.

**Clause 9** enables ministers to implement the terms of the – so far unknown - exit deal, where these need to be implemented before exit.

debate about the Repeal Bill can be expected to be around amendments seeking to limit in various ways the government's ability to use statutory instruments.

Worth reading for more detailed analysis are the Hansard Society's [initial reflections on the bill](#), and Unlock Democracy's [briefing on the bill](#).

## Timeline of the bill process

The **Second Reading** debate for the Bill has been arranged for 7th and 11th September. **Committee Stage** is expected in October, after the party conferences.

The controversial nature of the Bill – both because of Brexit itself and its provisions on statutory instruments – is likely to mean it will take a long time to go through (if it does), perhaps in April.

## What the alliance is asking for

### Open and accountable lawmaking:

- 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 UK 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.

## Get involved

For more information contact the alliance's coordinator, Jane Thomas, at [jane.thomas@repealbill.org](mailto:jane.thomas@repealbill.org) or phone **07957 240826**. Victor Anderson can be contacted at [victoranderson7@aol.com](mailto:victoranderson7@aol.com).