

Briefing by the Repeal Bill Alliance: Brexit & Civil Society June 2018

About the Repeal Bill Alliance

The Repeal Bill Alliance is an alliance of over 80 advocacy, campaign and civil society groups that has been working collectively following the publication of the European Union (Withdrawal) Bill- the landmark Brexit legislation that aims to transpose EU law into UK law. Organisations and sectors in human rights, the environment, consumer and workers rights, equality, democracy, food, farming, trade and further education are working together to ensure that rights, standards, environmental protections and devolution is protected as we make our exit from the European Union. Read more about the Alliance and our work at www.repealbill.org .

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

Open and accountable lawmaking

- Respect for democratic processes- there must be robust parliamentary scrutiny at all levels with appropriate levels of transparency
- There must be clear limits and safeguards on executive powers
- There must be robust parliamentary scrutiny at all levels with appropriate levels of transparency and debate before and during the conversion process

A high standards UK

- The preservation of existing rights and standards
- Parity of institutions: where governance arrangements are changes 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
- Respect for the devolution settlements and the Good Friday Agreement

Open and accountable lawmaking

As we embark on the massive constitutional journey of exiting the European Union, the Repeal Bill Alliance want to make sure that legislating for Brexit is open, accountable and that the Government faithfully transposes EU law into UK domestic law with as few changes as possible.

Since the introduction of the EU (Withdrawal) Bill in September 2017, the Repeal Bill Alliance and our members have voiced concerns that the bill does far more than simply transfer EU laws into UK law so that they can continue to apply after leaving the EU. For instance, the bill transfers too much power from Parliament to the Executive without offering adequate parliamentary scrutiny of how these powers will be used in practice¹. The bill proposes giving ministers 'Henry VIII powers'- a form of delegated powers that allow ministers to make changes to Acts of Parliament. The issue with these powers is that they are incredibly broad and vaguely defined- creating a substantial risk of ministers making policy changes to retained EU with very little scrutiny from elected MPs. The bill also posed a significant risk to the Rule of Law by failing to assign retained EU law a legal status, leaving vital questions unanswered such as the potential conflict between the status of laws and how susceptible retained EU law is to legal challenges.

As the clock is ticking towards UK's exit from the EU, Parliament has very limited time to deal with a whole range of policy issues and legislation related to Brexit. It is estimated to be over 8,000 technical changes to domestic law². It would therefore not be practical for Parliament to spend that limited time scrutinising every single change in law where there is a reference to the EU. That being said, the tightness of the legislative timetable does not give justify cutting corners of parliamentary scrutiny. There must be robust parliamentary scrutiny and safeguards against the transfer of power to the Executive.

The Repeal Bill Alliance and particularly members like Unlock Democracy and the Hansard Society, friend of the Alliance have continuously fought to limit these powers and afford Parliament with greater scrutiny of statutory instruments (a form of delegated legislation used to add information or make changes to an Act of Parliament). The Government has recognised these widespread concerns about delegated powers by offering some concessions. Some of these include clarifying the legal status of retained EU law, limiting delegated powers so they cannot be used to impose or increase fees, establish public authorities or amend the devolution settlements as well offer a bit more parliamentary scrutiny of delegated legislation. However, there are still not sufficient safeguards on delegated powers nor sufficient parliamentary scrutiny

¹ Unlock Democracy (2017) Briefing: The EU (Withdrawal) Bill. 1 August. Available at: <http://www.unlockdemocracy.org/policy/the-repeal-bill-briefing>. Accessed 20.06.

² Institute for Government (2018) Preparing Brexit: How ready is Whitehall? Pp. 10. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ6279-Preparing-Brexit-Whitehall-Report-180607-FINAL-3c.pdf>. 07 June. Accessed 19.06.

of regulations made by ministers under the EU (Withdrawal) Bill³. But the fight is not over yet-there is still work to be done on resolving issues around delegated powers and parliamentary scrutiny that applies to other pieces of Brexit legislation like the Trade Bill and the Taxation (Cross-Border) Bill. Then when the Withdrawal Agreement is finalised, these issues will come to the fore again with the Withdrawal Agreement and Implementation Bill.

A high standards UK: protecting existing rights and standards

Leaving the EU should not and cannot result in a weakening of fundamental rights and standards that are currently in place and UK citizens depend on. Yet, the EU Withdrawal Bill has, for several reasons, been under fierce criticism from parliamentarians across parties as well as civil society due to the risk it poses to the protection of fundamental rights and standards.

Fundamental rights at risk post-Brexit?

The Government decided to exclude the EU Charter of Fundamental Rights from the bill, despite the promising that the Withdrawal Bill is merely a 'cut-and-paste' job and that "the same rules will apply on the day after exit as one the day before"⁴. The Charter provides the overarching frameworks for human rights in the EU. For years, the Charter has provided a clear framework for rights that are fundamental to the way we live, and enjoy, our lives- the right to life, human dignity, liberty, property, privacy and freedom of expression.

The Government have also repeatedly stated that it is unnecessary to keep the Charter as rights contained within it are rights recognised elsewhere in EU law and therefore adds nothing new. The Repeal Bill Alliance find this argument wholly unconvincing on the basis that independent legal advice obtained by the Equality and Human Rights Commission⁵ as well as Liberty and Amnesty's analysis⁶ point to several examples where Charter rights will not be replicated in its entirety in domestic law post-exit. For instance, the right to protection of personal data, the rights

³ The Repeal Bill Alliance (2018) Updated briefing by the Repeal Bill Alliance: protecting parliamentary sovereignty and fundamental rights in the EU Withdrawal Bill 11th June 2018. Available at: <https://static1.squarespace.com/static/59395e30f5e231e0d04a3ffe/t/5b1fe377758d461abdbbc8fa/1528816503882/180611+Ping+Pong+Briefing+by+Repeal+Bill+Alliance+protecting+parliamentary+sovereignty+and+fundamental+rights+in+the+EU+Withdrawal+Bill+14th+May+2018.pdf>. Accessed 20.06.

⁴ European Union (Withdrawal) Bill (2017) Explanatory Notes. 13 July. Available at: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/en/18005en.pdf>. Accessed 20.06

⁵ Equality and Human Rights Commission (2018), European Union (Withdrawal) Bill- E.U. Charter of Fundamental Rights <https://www.equalityhumanrights.com/sites/default/files/eu-withdrawal-bill-legal-advice-jason-coppel-qc.pdf>

⁶ Liberty and Amnesty International UK (2018) Joint Briefing on the EU (Withdrawal) Bill, Report Stage in the House of Lords. Available at: <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20and%20Amnesty%20International%20-%20Joint%20EU%20%28Withdrawal%29%20Bill%20Brief%20Lords%20Report%20Stage%20-%20April%202018.pdf>.

Accessed 20.06

of the child, the right to effective remedy, rights of the elderly and disability rights are left vulnerable as a result of excluding the Charter from the Withdrawal bill.

During the Withdrawal Bill's passage in the House of Lords, peers voted to keep the Charter in the bill, this was however rejected by the Commons. The Government also initially decided to remove the ability for citizens to go to court if EU general principles were breached- principles citizens have relied on in the UK to enforce their rights that include vital protections such as human rights and equality before the law. After much pressure from parliamentarians and civil society, the Government has now agreed to allow challenges to be brought up to three years after exit⁷. It is also worth noting that the European Commission has said that it wants to have 'Guillotine Clauses' in the new EU-UK security relationship. These clauses set out that any security relationship will be declared null and void if the UK leaves the European Convention of Human Rights or is condemned by the European Court of Human Rights for non-execution of a relevant ECHR judgment⁸.

No public appetite for weaker standards post-Brexit

Undoubtedly, Brexit will have profound implications for sectors like food, farming, fishing and the environment. It is still not clear whether, or indeed how standards will be maintained post-Brexit. What is clear, however, is that there is little public appetite for relaxing or removing EU standards post-Brexit, particularly in areas of environmental standards as well as consumer and workers rights⁹.

Widespread concerns about environmental standards and principles post-Brexit remain, despite Government promises to deliver a 'green Brexit'. About 80% of environmental law originates from the EU and the UK currently depends on EU processes and institutions to establish and enforce environmental standards¹⁰. The original drafting of the EU (Withdrawal) Bill failed to retain all EU environmental law, including vital environmental principles (like the 'precautionary principle' and

⁷ House of Commons Library (2018) European Union (Withdrawal) Bill 2017-19: Ping Pong [Briefing Paper, Nr. CBP-8345]. Available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8345>. Accessed 20.06.

⁸ European Commission (2018) Police and judicial cooperation in criminal matters. 18 June. Available at: https://ec.europa.eu/commission/sites/beta-political/files/slides_on_police_and_judicial_cooperation_in_criminal_matters.pdf. Accessed 20.06.

⁹ Institute for Public Policy Research (2018) No public appetite for deregulation post-Brexit according to new polling for IPPR. 19 February. Available at: <https://www.ippr.org/news-and-media/press-releases/no-public-appetite-for-deregulation-post-brexit-according-to-new-polling-for-ippr>. Accessed 20.06.

¹⁰ Client Earth (2017) Report The Withdrawal Bill: Destination and Journey. September. Available at <https://static1.squarespace.com/static/59395e30f5e231e0d04a3ffe/t/59b1541612abd93c94cb1495/1504793624664/ClientEarth+Withdrawal+Bill+Report+Sept+2017.pdf>. Accessed 20.06

the 'polluter pays principle') that shape and direct environmental law and policy. The bill also failed to recognise the environmental governance gap that would be created post-Brexit.

Alliance members like Greener UK, ClientEarth and Friends of the Earth have worked tirelessly to convince the Government that environmental standards must be protected post-Brexit. As a result of this, there have been some crucial wins for the environment. The Government have now promised to bring forward a bill on environmental principles and governance and published proposals for a new independent body to address the governance gap¹¹. That being said, there are major issues still to be resolved. For instance, the enforcement powers for the new green watchdog would only apply to government ministers and not to other public authorities¹². Moreover, the environmental bill only requires ministers to "have regard" to provisions in the bill—it's a technical detail, but an important one in legal terms. As the parliamentary select committee on the natural environment and rural communities noted, such wording of ministerial duties is "weak, unenforceable and lacks clear meaning"¹³.

Where are we now?

As the EU (Withdrawal) Bill has completed its passage through Parliament and will receive Royal Assent, it is clear that the bill is in a much better place than the original drafting. On the positive side, we have had movement on enhanced scrutiny of delegated powers which will make it harder to make sweeping policy changes without parliament having its say, there is now a legal requirement to continue North-South cooperation between the Republic of Ireland and Northern Ireland, environmental principles are better protected, so are general principles of EU law, it's now a formal negotiating objective for the Government to seek continued cooperation with Europe on unaccompanied child refugees and the Government has agreed to future interaction with the law and agencies of EU.

There remains disappointment over the rejection of Charter and the lack of agreement with the Scottish Government over the devolution aspects of the bill. There also remains confusion of parliament's role in approving the withdrawal agreement negotiated with the EU.

¹¹ Department for Environment, Food & Rural Affairs (2018) New environment law to deliver a Green Brexit. [Press Release]. Available at <https://www.gov.uk/government/news/new-environment-law-to-deliver-a-green-brexit> . Accessed 20.06

¹² House of Commons (2018) Commons Consideration of Lords Amendments as at 12 June 2018. Available at <https://services.parliament.uk/bills/2017-19/europeanunionwithdrawal/documents.html>. Accessed 20.06

¹³ Select Committee on the Natural Environment and Rural Communities (2018) The countryside at a crossroads: Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?. HL Paper 99. 22 March. Available at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldnerc/99/99.pdf> . Accessed 20.06.

Much of this positive movement was due to the rigorous and sustained work by civil society groups where much detailed policy knowledge resides and who are the best placed to talk about Brexit's impact for wider society. When the Alliance was founded formally in July 2017 the focus was on the EU Withdrawal Bill but our basic principles and values remain equally valid as we move into other Brexit legislation. We will continue to work together with our members to articulate concerns and advocate for the interests of civil society as we leave the EU.

There are many issues around standards, rights and principles related to Brexit not covered in this briefing- for more information you can access briefings from our members covering a range of sectors under our [Resource page](#).

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