

Briefing to peers ahead of Third Reading Repeal Bill Alliance

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

- Parliamentary scrutiny and democratic accountability in the transposition process
- The preservation of existing rights and standards
- Protection and respect for the devolution settlements and the Good Friday Agreement
- A high standards UK: as EU law is transposed into domestic law, rights and standards for all sectors are maintained

About the Repeal Bill Alliance

The Alliance is a loose coalition of over 80 civil society organisations. Represented in the Alliance are organisations large and small, operating in a wide range of sub-sectors and in all four nations of the UK. The Alliance does not take a position on Brexit per se and activity will be in line with charitable purposes. For more information, click [here](#). For more information please contact the Alliance's coordinator, Jane Thomas at jane.thomas@repealbill.org or 0207 278 4443.

Concerns ahead of Third Reading

Undoubtedly, the House of Lords have agreed to a range of amendments during Report Stage which significantly strengthens parliamentary scrutiny, legal certainty and fundamental rights. Some concerns remain however, particularly around the areas of retained EU law and environmental principles and standards.

Environmental principles and standards

The original drafting of the bill leaves gaps in environmental protections by excluding vital environmental principles such as the 'polluter pays' and 'precautionary principles' as well as EU directives that include environmental safeguards and obligations. On this basis we strongly encourage that peers vote in favour of Lord Krebs' amendment on maintenance of EU environmental principles and standards¹ at Third Reading of the bill.

¹ HL 102 Running list of all amendments on Third Reading, 11 May 2018, pp. 1-2

Status of retained EU law

We remain concerned about the lack of clarity around the legal status of EU retained law and have [previously](#) asked for an unambiguous definition of retained EU law. The recent package government amendments have done little to address our concerns, and indeed feel that to some degree the amendments have added to more confusion.

For instance, paragraph 5 (3) of Schedule states that ‘direct EU principal legislation’ can be modified using delegated powers as long as ‘direct principal’ legislation is ‘connected to the modification of direct minor legislation’². It is concerning that provisions that normally cannot be amended by delegated legislation can be modified in this way just because it is connected to a modification lower down in the legal hierarchy. It is also easy to argue that any modification of direct EU principal legislation is ‘supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation’. The fact that both direct principal EU legislation and directly effective provisions of EU law can still be amended through delegated powers does nothing to alleviate concerns that it is too easy to modify crucial retained EU laws through delegated legislation.

The government’s amendments effectively demote the status of delegated legislation that provides employment and equality protections derived from EU law. Previously that legislation could only have been modified in a way that was compatible with the protections conferred by EU law. Now, this restriction has been removed by virtue of Schedule 8 (7)³. We recommend that peers ask the Government to justify this effective demotion in light of their promises to preserve employment and equality protections.

We also encourage support for an amendment⁴ to Clause 8, tabled by Lord Pannick (co-signed by Baroness Taylor of Bolton, Lord Norton of Louth, Lord Beith) which not only has the benefit of removing the current ambiguity with the Government amendments, but also prevent ‘direct principal EU legislation’ to be modified through delegated legislation.

Protection of certain areas of EU law

Peers have also voted by strong majority to enhance protection for certain areas of EU

² European Union (Withdrawal) Bill [as amended in Report] (HL Bill 102) Schedule 8, paragraph 5 (3) p.78

³ European Union (Withdrawal) Bill [as amended in Report] (HL Bill 102) Schedule 8, paragraph 7 pp. 78

⁴ HL 102 Running list of all amendments on Third Reading, 14 May 2018 p. 3

law (Amendment 11, tabled by Baroness Hayter of Kentish Town)⁵. This amendment sets out that a Minister of the Crown may not amend, repeal or revoke retained EU law relating to employment, equality, health and safety entitlements, rights and protection as well as consumer and environmental standards, except by primary legislation or by subordinate legislation insofar as this subordinate legislation are subject to an enhanced scrutiny procedure.

While the Alliance strongly supports the scope (i.e. to which law they apply) of Amendment 11, we do, however, have some reservations about the enhanced scrutiny procedure in the amendment. It sets out a range of requirements that the enhanced scrutiny procedure must meet but does not adequately explain the substance of this procedure and it also raises questions about how this procedure will interact with the new sifting committee established as a result of the passing of Lord Lisvane's amendment 70⁶.

A solution to this problem would be to combine the scope of amendment 11 and the approach set out in Government Amendment 26 (agreed to during Report in the House of Lords)⁷. Amendment 26 has an advantage in that it distinguishes between 'principal' and 'minor' retained EU law. This distinction between different forms of EU law means that amendment 26 permits the modification of technical aspects of the law through an appropriate subordinate legislation procedure. A combination of the two amendments will prevent Parliament from spending unnecessary time on scrutinising technical regulations while also protecting essential law such as the Habitats Directive and the Working Time Directive from being modified without proper scrutiny. Lord Callanan said on behalf of the Government that both Amendment 11 and Amendment 26 are not "mutually exclusive" and they "can both stand"⁸. As such, we recommend that peers propose this solution to this Government during Third Reading.

⁵ European Union (Withdrawal) Bill [as amended in Report] (HL Bill 102) Clause 4, pp. 3-4

⁶ European Union (Withdrawal) Bill [as amended in Report] (HL Bill 102) Schedule 7 (3) pp.58-59

⁷ European Union (Withdrawal) Bill [as amended in Report] (HL Bill 102) Clause 8, pp.5-7

⁸ HC Deb, 18 April 2018, Vol 790, col 1124-1225