

Report Stage briefing for peers by the Repeal Bill Alliance

[The Repeal Bill Alliance](#) is a coalition of a wide range of civil society organisations working collaboratively to strengthen the EU (Withdrawal) Bill.

The 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

The Alliance is calling on peers to back amendments tabled at Report Stage that will protect these principles in the bill.

Status of retained EU law

The lack of clarity on what legal status retained EU law will receive contradicts the Government's own commitment to provide legal certainty, an issue that was raised by peers during Committee Stage of the bill.

To clarify the status of 'retained EU law' and what is included within the scope of this new category of law- an unambiguous definition of 'retained EU law' - is needed. That will help clarify how susceptible retained EU law is to legal challenges, and whether this new category of law can be repealed by statutory instrument as opposed to primary legislation. It would also resolve the current uncertainty around a potential conflict between the status of laws. As part of addressing this issue, we recommend support of amendment to clause 17 tabled by Lord Hannay of Chiswick, Lord Beith, Lord Goldsmith and Baroness Altmann.

We also welcome the amendments tabled by the Government which go some way in clarifying the status of retained EU law. However, a number of concerns remain, particularly the ongoing lack of clarity on retained EU-derived domestic legislation and the breadth of powers to amend retained direct EU legislation. For more information on this issue, we recommend that peers read the [briefing](#) from Alliance member, the Public Law Project.

Parliamentary scrutiny and democratic accountability in the transposition process

The Withdrawal Bill raises a number of concerns in relation to parliamentary scrutiny and sovereignty. This is evident throughout the bill, but particularly Clauses 7, 8, 9 and 17 significantly weakens the democratic accountability in the transposition process by giving ministers ill-defined, sweeping powers. **Even with the scrutiny procedures accepted by the Government in the Commons, there will still be a significant lack of parliamentary scrutiny of what these powers may actually be used for.**

To limit the breadth of Minister’s powers to amend retained EU law, we recommend support for amendments to clause 7 and 8 tabled by Lords Lisvane, Tyler, Goldsmith and Cormack, which would replace “the minister considers appropriate” with “necessary”.

In addition, we urge support for amendments to clause 7 by Lord O’Donnell, Lord Newby, Baroness Hayter of Kentish Town, Lord Bowness which would remove the ability to establish public authorities and amendment to Clause 8 laid by Lord Hannay of Chiswick, Baroness Hayter of Kentish Town, Baroness Kramer and Lord Cormack which would remove ministers ability to impose or increase taxation. We also welcome support for amendments to clause 7 and 8 that would remove the ability to create a relevant criminal offence, laid by Lord Judge, Baroness Hayter of Kentish Town, Lord McNally and Viscount Hailsham and amendment to Clause 9 which would remove the power to modify the Act itself, laid by Lord Lisvane, Baroness Hayter of Kentish Town, Lord Tyler and Baroness Wheatcroft.

To enhance the scrutiny procedure of secondary legislation, we recommend that peers support amendment to Schedule 7 tabled by Lord Lisvane, Lord Norton, Baroness Smith of Basildon and Lord Sharkey. **To strengthen parliamentary sovereignty**, the Alliance also recommend support for amendment to clause 9 on parliamentary approval of the deal negotiated with the EU, tabled by Viscount Hailsham, Lord Hannay of Chiswick, Baroness Hayter of Kentish Town and Lord Wallace of Saltaire.

In addition, **to provide clearer guidance for courts and tribunals on the role of EU case law after exit day**, we encourage support for amendment to Clause 6 by Lord Pannick, Lord Goldsmith, Lord Wallace of Tankerness and Viscount Hailsham.

The preservation of existing rights and standards

The bill still does not adequately preserve fundamental rights and standards. Removing the EU Charter of Fundamental Rights and the ability for domestic court action to be brought under the general principles of EU law means that fundamental rights UK citizens depend on are left vulnerable. Moreover, the bill leaves gaps in environmental protections by excluding vital environmental principles such as the polluter pays and precautionary principles and EU Directives that include environmental safeguards and obligations.

The ensure that fundamental rights are protected, we recommend support for amendment to Clause 5 (on including the EU Charter of Fundamental Rights) in the bill, tabled by Lord Pannick, Lord Goldsmith, Baroness Ludford and Lord Deben.

We also urge support for amendment to Clause 3, which gives enhanced protection of EU law in certain areas, laid by Baroness Hayter of Kentish Town, Lord Warner, Baroness Smith of Newnham and Lord Kirkhope of Harrogate. Please note that concerns remain that the list of

enhanced protection for certain areas of EU law in this amendment do not cover key protections such as access to housing, education, health and social care, privacy and data protection, immigration and asylum protections as well as criminal justice protections.

Although both of these amendments do not address the question of what status retained EU law should have- they go some way in preserving rights and standards.

We would also encourage support for amendment to Clause 4 tabled by Baroness Brown of Cambridge and Lord Deben, **as it addresses both the protection of rights and standards as well as the status of retained EU law.**

Protection of the devolution settlements & the Good Friday Agreement

As yet we are still waiting for Government amendments to clause 11 which, unless amended, significantly threatens hard-won devolution settlements. In addition, the issue surrounding the Irish border is a complex one and one that is not just about goods and services. Equally important is the protection of the Good Friday Agreement and the protection of fundamental rights in particular. To get a more detailed overview of the complex issues at stake, we recommend that peers read the briefing by civil society organisations in Northern Ireland on behalf of the Alliance [here](#).

We welcome the amendment before Clause 10 laid by Lord Patten of Barnes, Lord Murphy, Baroness O'Neill of Bengarve and Baroness Suttie which recognises the importance of continued North-South cooperation and the prevention of new border arrangements. However, **there are still concerns among affected communities in Northern Ireland that current rights they depend on may be lost.**

At the time of writing, we understand that there notable absences in areas of amendments, particularly to clauses 1, 11 and Schedule 1. Our reaction to these will be updated in our weekly E: Bulletin, which can be subscribed to [here](#).

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](#).

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