Getting ready for EU Withdrawal Bill ping pong
Briefing by Unlock Democracy

Overview

Unlock Democracy’s main concerns about the EU (Withdrawal) Bill:

- **Parliamentary sovereignty** - Parliament must have a meaningful vote on the withdrawal agreement. (HoL amendments 49 and 51)

- **Parliamentary scrutiny and democratic accountability** - The power to make, shape and scrutinise laws should sit first and foremost with Parliament, not the government. The delegated powers in the bill needs to be limited and subjected to greater scrutiny. (HoL amendments 31, 53 and 70)

- **Preserving existing rights, standards, and institutions** - ministers should not be granted powers to make changes to rights and standards without Parliament having a say. (HoL amendments 11 and 26)

- **Respecting the devolution settlements** - the bill threatens to undermine hard won devolution settlements by centralising power in Westminster. (HoL amendment 88)

About Unlock Democracy

Unlock Democracy is the UK’s leading campaign for democratic and constitutional reform. Owned and run by its members, Unlock Democracy is creating an inclusive movement to make politics work for everyone.

In July 2017 Unlock Democracy published its report, ‘*A Democratic Brexit: Avoiding Constitutional Crisis in Brexit Britain*’ which looked at the implications of Brexit for parliamentary sovereignty, the devolution settlements, and the power of the people.

Unlock Democracy is coordinating an Alliance of over 80 organisations from across civil society that are seeking to amend the Withdrawal Bill to guarantee open and accountable lawmaking, and maintain a high standards UK. More information here: [https://repealbill.org/](https://repealbill.org/)

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Parliamentary sovereignty

Taking back control, the very rallying cry that won the referendum, will ring hollow if what comes of Brexit is more power being concentrated in the hands of a few ministers. Parliament - and MPs as the elected representatives of the people - must be the final arbiters on significant policy decisions, including the Withdrawal Agreement and the terms of our future relationship with the EU.

Where are we now?

The government’s only defeat in the House of Commons was on the amendment to give MPs a vote on the final deal. At Report Stage in the House of Lords peers defended parliamentary sovereignty by amending the bill to allow Parliament to set the terms if they reject the deal the government negotiates with the EU, and requiring Parliament to approve the government’s mandate for negotiations of our future relationship with the EU.

What you can do

- Support changes made by peers which allow Parliament to set the terms if they reject the final deal the government negotiates with the EU (HoL amendment 49).
- Support changes made by peers which require approval by Parliament of a mandate for negotiations about the UK’s future relationship with the EU (HoL amendment 51).

Restrict delegated powers and enhancing parliamentary scrutiny

Despite concerns about delegated legislation having been raised as far back as the bill’s inception in October 2016, nothing was done in the drafting of the bill to add restraints to these powers. As the elected representatives of the people MP’s voices not only matter in parliamentary proceedings - they should be the driving force behind policy changes and legislation, not reduced to a rubber stamp.

There are many reasons to be worried about the lack of scrutiny of statutory instruments. In the past, sweeping policy changes have been made using these powers, such as: adding the rape clause to tax credit rules; the abolition of maintenance grants in England; granting permission to frack in national parks; and more recently, the government tried to abolish free school meals using SIs.

Where we are now?

In the Commons the government agreed to implement a new sifting committee for delegated legislation. While this was presented as a significant victory for Parliament, in practice it will make little difference.
There are numerous issues with this committee. For one, it is only advisory, meaning the government wouldn’t have to follow through with any recommendations for enhanced scrutiny. The committee is also temporary, dealing only with delegated legislation in the Withdrawal Bill - a bizarre move considering delegated legislation is expected in other Brexit bills. Fundamentally, this committee is built on rotten foundations; even if it recommends additional scrutiny it will be done by a committee controlled by party whips. We know this will not result in better scrutiny, as this is very similar to how the system currently works.

In the House of Lords, peers voted in favour of the cross-party supported amendments to restrict the scope of the Henry VIII powers.

What you can do

- Support changes made by peers which restrict the Henry VIII powers in the bill, by changing “considers appropriate” to “necessary” (HoL amendment 31).

- Support changes made by peers which stop ministers from using Henry VIII powers to amend the Withdrawal Bill itself (HoL amendment 53).

- Support changes made by peers to Schedule 7 which strengthen the scrutiny procedure for statutory amendments by creating a parliamentary committee to sift certain regulations and recommend whether they require further scrutiny peers (HoL amendment 70).

- Reform the procedures for the scrutiny of all statutory instruments. This system should be extended to ALL bills (not just the Withdrawal Bill), the committee’s recommendations should be mandatory not advisory, and wholesale reform of the scrutiny system should be undertaken.

Preserving our existing rights, standards, and institutions

Currently, our environmental, consumer and human rights, amongst others, are protected under the EU framework. After we leave the EU we as a country need to decide what rights are and what regulations we want to live by. Crucially, because the UK does not have a written constitution, the rights and protections we have come to enjoy - perhaps even take for granted - have very limited protections. As the Withdrawal Bill is simply meant to deal only with ensuring consistency on exit day this bill must not be used as a tool by the government to change by the backdoor what rights and protections we have.

Where are we now?

At Report Stage in the House of Lords peers made a number of substantial amendments to the Withdrawal Bill to enhance rights protections.

This included: transposition of the Charter of Fundamental Rights; preventing the repeal or revocation of EU law by regulations relating to a range of rights (employment
entitlements; rights and protections; equality entitlements, rights and protections; consumer protections; consumer standards; environmental standards); retaining the right of action in domestic law if there is a failure to comply with any of the general principles of EU law\(^1\). The government also agreed to set up a consultation on a new environmental watchdog.

What you can do

- Support changes made by peers to keep the Charter of Fundamental Rights (HoL amendment 15).

- Support changes made by peers which will keep enhanced protections for certain areas of EU law, so ministers cannot use delegated legislation to amend, repeal or revoke current rights and protections. The ideal option would be to combine the scope of amendment 11 and the approach of amendment 26. Without the scope of amendment 11 essential laws such as the Ambient Air Quality Directive, the Habitats Directive and the Working Time Directive will be vulnerable to modification without proper scrutiny (amendment 11 and amendment 26).

- Press the government to report back in detail on plans for new regulators that will ensure existing rights and standards are enforced.

- Challenge the government on its willingness to bend over backwards to put in place sweetheart deals and provisions for business, but not common sense rights protections for the people of the UK. For example, the government has already made provision to incorporate and regulate State Aid rules (EU rules relating to the provision of tax-payer funded assistance to organisations) but has been remarkably silent about having a clear plan for the protections of consumer standards and workers’ protections.

Respecting devolution in the UK

It is increasingly clear that without a codified constitution devolution remains the gift of Westminster, and that is borne out in the drafting of this bill. This bill threatens to undermine the Good Friday Agreement, and shift devolved powers away from the nations and regions and towards Westminster. Hard-won devolution settlements should not be lost, and the bill must be amended to protect these settlements.

Where are we now?

No meaningful consent

After a long running dispute over the powers in Clauses 10 and 11, the UK government eventually came to an agreement with the Welsh government in April. As a result the

\(^1\) Liberty and Amnesty UK in particular have long pointed out that the loss of this principles “will have profound consequences for the promotion and protection of human rights after withdrawal.”
government amended the bill at Report Stage in the House of Lords to insert provisions to obtain consent from the devolved legislatures. However a closer look exposes consent provisions to be meaningless - by the government’s definition, consent includes agreeing, not agreeing, or not even taking a decision on consent issues.

The impact of the bill on devolution is going to remain a key area of contention. Both the Scottish Parliament and Welsh Assembly have passed ‘continuity bills’ to try and protect their devolution settlements. The legality of this approach is going to be tested in the Supreme Court in July. The Scottish Parliament is also expected to refuse to give legislative consent to bill. While this does not prevent the government from proceeding with the bill it raises significant constitutional questions.

**Northern Ireland: It’s about human rights, not just customs**

Significant progress was made towards protecting peace in Northern Ireland at Report Stage in the House of Lords, where peers amended the bill to preserve North-South co-operation after Brexit, and prevent the establishment of new border arrangements which did not exist before exit day, unless agreed between the UK Government and the Government of Ireland (amendment 88).

Beyond that, no feasible solutions have yet arisen to prevent a hard border on the isle of Ireland. Through Unlock Democracy’s work with the Belfast-based NGO Committee on the Administration of Justice (CAJ) the message is clear - this is more than a customs issue: human rights are on the line.

It is against the backdrop of the Windrush Scandal and the wider debate about the hostile environment policy that concerns about a hard border on the isle of Ireland resonate forcefully. Debate about the border has largely focussed on the free movement of goods, detrimentally neglecting the free movement of people, and the impact that restrictions on this will have on individuals, families and communities in both Northern Ireland and the Republic of Ireland. As the recent [CAJ briefing](https://goo.gl/iJBbrs) (Committee of the Administration of Justice) highlighted, there are genuine concerns about the policing of border controls in Northern Ireland and some very specific concerns about racial profiling.

The question post March 2019 is how to reconcile the free movement when Ireland and the UK are no longer party to the same rules governing free movement. The current arrangements that form part of the CTA will change post Brexit. The Belfast Good Friday Agreement also has in place Irish citizenship rights for people in Northern Ireland, which are at risk. Additionally, an exit which involves no agreed common framework with the EU jeopardises the existing seamless border arrangement.

**What you can do**

- Support changes made by peers which guarantee **continued north-south cooperation** and **no new border arrangements without the agreement of both the UK government and the Irish government** (amendment 88)².

² Read Lord Patten of Barnes’ explanation of the amendment here: [https://goo.gl/iJBbrs](https://goo.gl/iJBbrs)