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Untangling EU law: How the Withdrawal Bill will reveal tensions between executive power and Parliamentary scrutiny

Written by Tom King, Senior Monitoring Content Specialist on 22 August 2017



The cornerstone of the Government's Brexit legislative programme is the [European Union \(Withdrawal\) Bill](#) [1]. Its aim is to untangle more than forty years' worth of UK and EU law whilst still maintaining a working statute book in an incredibly limited timeframe. However, concerns have been voiced over the wide ranging powers the Bill gives ministers in amending swathes of legislation.

The Bill's function is threefold. Firstly, it will repeal the 1972 European Communities Act. This will end the principle of supremacy of EU-derived law over other parts of UK domestic law. It will also close the mechanisms through which the various EU directives, regulations, treaty obligations and other documents automatically become UK law.

Secondly the bill will convert all EU-derived law into normal domestic law. This will provide the legal 'certainty' that the Government promised in its [white paper](#) [2]. Individuals and businesses will be subject to the same rules and regulations the day after exit as the day before. It is then for future Governments to legislate in the normal way to implement any changes to these laws.

Thirdly ministers will be given delegated powers to create secondary legislation such as statutory instruments to amend instances of what the Bill terms 'deficiencies' in this body of retained EU law.

The Bill and its [explanatory notes](#) [3] give a broad definition for these deficiencies, which include minor changes to wording and changing the organisations responsible for enforcing regulations from EU based bodies to the appropriate UK based ones.

Ministers will also be able to make any changes needed to implement any withdrawal agreement reached between the EU and UK. These powers are temporary, expiring two years after the UK leaves the EU. They will be exercised through statutory instruments, and it is here that the twin issues of the scope of ministerial power and scrutiny arise.

Provisions within SI are usually highly limited and normally involve implementing the policy detail that arises from an Act or adjusting rates, such as the level of student fees. However, the remit of the ones that can be created by ministers through the European Union (Withdrawal) Bill will allow for the amending of primary legislation such as previous Acts of Parliament. These provisions are examples of what are known as 'Henry VIII' clauses.

The Bill also contains vague wording. It adds terms such as 'include (but are not limited to)' when defining what a 'deficiency' in the retained EU law could be and '(among other things)' when stating what measures a minister will be able to implement. This kind of wording has led organisations such as the Hansard Society to claim that the bill will '[leave the legislative door wide open](#)' [4] when it comes to reformatting retained EU law.

Furthermore, SIs themselves are subject to much less scrutiny than primary legislation. Often MPs must actively oppose this type of legislation for a vote to be triggered. Scrutiny of some regulations will also likely be subject to 'delegated legislation committees' rather than the whole House of Commons. MPs such as Wes Streeting have criticised this, stating that '[the British people did not vote to take away powers from their elected representatives in our sovereign Parliament to give back control to Ministers in Whitehall](#)' [5]

Others have suggested that the powers are not excessive, with arch-Brexiteer [John Redwood](#) [6] stating that it is 'embarrassing to hear so much airtime given over to this non-story'. He has also drawn comparisons between the mechanisms within the Bill and the role that EU law has played in the UK, asking 'why did we never hear about the complete absence of democracy for all those laws the EU imposed on us'.

It is clear, however, that for the European Union (Withdrawal) Bill to have the confidence of both sides of the Brexit debate it must strike a delicate balance between giving the Government the appropriate leeway to maintain a working statute book, and parliamentary scrutiny. What is certain, however, is that the Bill has shone a light on a much ignored but important part of the UK's parliamentary processes.

[Government and politics](#) [7]

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[1] https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/cbill_2017-20190005_en_1.htm

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_

accessible.pdf

[3] <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/en/18005en.pdf>

[4] <https://www.hansardsociety.org.uk/blog/the-european-union-withdrawal-bill-initial-reflections-on-the-bill-s>

[5] http://www.open-britain.co.uk/streeting_repeal_bill_shows_no_attempt_at_compromise_despite_government_s_fine_words

[6] <http://johnredwoodsdiary.com/2017/07/17/in-the-eu-we-did-not-have-any-parliamentary-control-over-new-eu-laws/>

[7] <https://www.dodsinformation.com/categories/government-and-politics>