



BRIEFING PAPER

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The *European Union (Withdrawal) Bill 2017-19*: Summary of Commons Committee Stage

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Summary

The *European Union (Withdrawal) Bill* (the EUW Bill) was introduced to the House of Commons on 13 July 2017. The EUW Bill cuts off the source of European Union law in the UK by repealing the *European Communities Act 1972*, converts EU law and preserves EU-related domestic law onto the post-exit day statute book and provides delegated powers to make secondary legislation in order to prepare for leaving the EU.

The Committee Stage of the EUW Bill was held on the Floor of the House. The Programme Motion, agreed after the conclusion of the Second Reading Debate on 11 September 2017, provided for 8 days of debate. This paper summarises the main areas of debate, commitments made by the Government, and amendments agreed by the Committee of the Whole House.

Over 400 amendments and 80 new clauses were tabled to the Bill, with the amendment papers reaching 170 pages. A [spreadsheet](#) listing all the amendments and new clauses tabled and their fate is available on the EUW Bill page on the Parliamentary website.

Of the 41 divisions that took place, only one resulted in a Government defeat. However, Government amendments were passed, backbench amendments were accepted by the Government, and commitments were made by the Government to make further amendments at Report Stage.

In particular:

- The Government made a commitment to consider how to provide more certainty over the status of EU case law (clause 6, day 1).
- On 12 December the Government published a draft Bill on animal sentience (the *Animal Welfare (Sentencing and Recognition of Sentience) Bill*) after interest was raised by a new clause on animal sentience moved by Caroline Lucas on day 2.
- The Government reaffirmed its commitment to human rights and its commitment to publish a detailed memorandum setting out how each article of the European Charter of Fundamental Rights would be reflected in UK law after the UK leaves the EU. This has now been published (day 3).
- The Government agreed to work with Dominic Grieve to clarify paragraph 3 of schedule 1 on challenges to the validity of retained EU law (day 3).
- In response to a number of amendments tabled regarding the Francovich Rule (which allows individuals, under certain conditions, the possibility of obtaining compensation for directives whose transposition is poor, delayed or non-existent), the Government agreed to “consider further whether any additional specific and more detailed transitional arrangements” needed to be set out in regulations (day 3).
- The Government has committed to amend Clause 11, on devolution, at report stage in order to achieve consensus with the Scottish and Welsh Governments (day 4).
- The Government agreed to “work with Members across the House to absolutely ensure that the Belfast agreement is respected as we move forwards” (day 5).
- Amendments tabled by Charles Walker (Con) Chair of the Procedure Committee, to create a sifting committee to examine the SIs made under the Bill and report on the procedure they should be subject to were agreed without division (debated on day 6 and agreed on day 7).

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- A Government amendment which will require statements to be published in relation to regulations or draft regulations made under the Bill to deal with the appropriateness and with their relationship to equalities legislation was agreed without division (debated on day 6 and agreed on day 7).
- A commitment was made to work with Dominic Grieve on issues raised on the limits on the powers of ministers to make regulations to deal with deficiencies in retained EU law (day 6).
- The Government was defeated by 309 to 305 on an amendment which requires a statute to be passed on the withdrawal agreement before the powers to implement the agreement under Clause 9 are used. The amendment, tabled by Dominic Grieve, was passed despite the Government offering the concession that they would amend the Bill so that the powers would not be used until a resolution had been passed by both Houses agreeing the withdrawal agreement (day 7).
- The Government amended the Bill to set 'exit day' as 29 March 2019 at 11pm, and accepted an amendment tabled by Sir Oliver Letwin to allow the date specified to be changed by order (day 8).
- The Government has said that they will bring forward an amendment on Report to put the requirement that only one exit day could be set for the purposes of the Bill and that any statutory instrument amending exit day would be subject to the affirmative procedure.

The Bill has its Report and Remaining Stages scheduled for 16 and 17 January 2018. Amendments tabled for consideration at Report are available on the [EUW Bill](#) page on the Parliamentary website.

1. Introduction

The *European Union (Withdrawal) Bill 2017-19* was introduced in the House of Commons on 13 July 2017. It had its Second Reading over two days, on 7 and 11 September 2017.

The Bill had its Committee Stage on the Floor of the House over eight days. A programme motion was agreed by the House at the end of the Second Reading debate (see box 1).

This briefing paper summarises the debate at Committee Stage, including highlighting:

- how the Bill was amended;
- when divisions took place on amendments and new clauses; and
- commitments made by the Government to bring forward proposals to change the legislation.

Report stage is scheduled to take place on 16 and 17 January 2018.

Box 1: Programme Motion

<i>Proceedings</i>	<i>Time for conclusion of proceedings</i>
First day	
New Clauses and new Schedules relating to Clause 1, Clause 1	Four hours from the commencement of proceedings on the Bill on the first day.
New Clauses and new Schedules relating to Clause 6, Clause 6	Eight hours from the commencement of proceedings on the Bill on the first day
Second day	
New Clauses and new Schedules relating to Clause 2, Clause 2, new Clauses and new Schedules relating to Clause 3, Clause 3, new Clauses and new Schedules relating to Clause 4, Clause 4	Eight hours from the commencement of proceedings on the Bill on the second day
Third day	
New Clauses and new Schedules relating to Clause 5 or Schedule 1, Clause 5, Schedule 1	Eight hours from the commencement of proceedings on the Bill on the third day.
Fourth day	
New Clauses and new Schedules relating to Clause 11 or Schedule 3, Clause 11, Schedule 3	Eight hours from the commencement of proceedings on the Bill on the fourth day.
Fifth day	
New Clauses and new Schedules relating to Clause 10 or Schedule 2, Clause 10, Schedule 2	Four hours from the commencement of proceedings on the Bill on the fifth day.
New Clauses and new Schedules relating to Clause 12 or Schedule 4, Clause 12, Schedule 4	Eight hours from the commencement of proceedings on the Bill on the fifth day
Sixth day	
New Clauses and New Schedules relating to Clause 7, Clause 7	Eight hours from the commencement of proceedings on the Bill on the sixth day.
Seventh day	
New Clauses and new Schedules relating to Clause 9, Clause 9, new Clauses and new Schedules relating to Clause 16 or Schedule 7, Clause 16, Schedule 7, Clause 17	Six hours from the commencement of proceedings on the Bill on the seventh day
New Clauses and new Schedules relating to Clause 8, Clause 8	Eight hours from the commencement of proceedings on the Bill on the seventh day.
Eighth day	
New Clauses and new Schedules relating to Clause 13 or Schedule 5, Clause 13, Schedule 5	Four hours from the commencement of proceedings on the Bill on the eighth day.
New Clauses and new Schedules relating to Clause 14 or Schedule 6, Clause 14, Schedule 6, remaining new Clauses, remaining new Schedules, Clause 15, Schedules 8 and 9, Clauses 18 and 19, remaining proceedings on the Bill	Eight hours from the commencement of proceedings on the Bill on the eighth day.

2. Day 1: 14 November

2.1 Repeal of the *European Communities Act 1972*

Introduction

Clause 1 of the Bill seeks to repeal the *European Communities Act 1972* (the ECA) on “Exit Day”. The clause was not amended by the Committee of the Whole House and it was agreed that the Clause stand part.

Exit day

As introduced, the Bill did not specify a date for “exit day”, saying instead in Clause 14 (1) that “‘exit day’ means such day as Minister of the Crown may by regulations appoint” and that “different days may be appointed for different purposes” under Clause 19 (1).

The lead amendment in the group for debate on Clause 1 was tabled by Frank Field and sought to fix exit day on 30 March 2019. The Government also has sought to amend the Bill to fix exit day. However, their amendments (numbers 381-383.) were not moved until day 8 (see below) although they were debated alongside Mr Field’s amendment.

The Minister, Steve Baker, introduced the Government amendments:

The Government have, however, listened carefully to the debate about the setting of exit day for the statutory purposes of the Bill. There has been some uncertainty about whether the exit day appointed in the Bill would correspond to the day the UK leaves the EU at the end of the article 50 process. The Government sympathise with this uncertainty. ...

We would like to put this issue to rest. We recognise the importance of being crystal clear on the setting of exit day and are keen to provide the certainty that the right hon. Member for Birkenhead and others are seeking. In light of this, the Government have tabled amendment 381 to clause 14, along with the consequential amendments 382 and 383, which will set exit day at 11pm on 29 March 2019.¹

Dominic Grieve (Con) noted that he found the Government’s amendment “strange”:

It seems to me to fetter the Government, to add nothing to the strength of their negotiating position, and, in fact, potentially to create a very great problem that could be visited on us at a later stage.²

Mr Field withdrew his motion after debate, noting that “the Government, without the fingerprints of anybody else, have tabled an amendment stronger than my new clause”.³

¹ *Ibid*, c204

² *Ibid* c205

³ HC Deb 14 November 2017 c254

Repeal of ECA dependent on consent of devolved administrations

The Committee divided on amendment 79 tabled by Hywel Williams that repeal of the *European Communities Act 1972* on exit day would be conditional on the Prime Minister gaining consent from the devolved administrations. The Committee divided 52 in favour, 318 against.

That Clause 1 stand part

The Committee divided on the motion that Clause 1 stand part of the Bill. The Clause was ordered to stand part with 318 in favour and 68 against.

2.2 Court of Justice of the European Union

Introduction

Clause 6 of the EUW Bill seeks to provide instructions to the courts on the relevance of judgments of the Court of Justice of the European Union (CJEU) to the task of interpreting retained EU law post-exit. No amendments were made to the clause, which was agreed to stand part without division.

Box 2: Commons Library Briefing

The Commons Library published a briefing paper to inform debate on days 1 and 3 on [the European Union \(Withdrawal\) Bill: Supremacy and the Court of Justice](#).

During the debate, Sir Oliver Letwin stated that “clause 6 as it stands is a frightful mess”.⁴ He argued that the Bill created confusion for the courts regarding the supremacy of EU case law. The Supreme Court would not be bound by any retained EU case law, but the lower courts would be required to proceed “in accordance with any retained case law and any retained general principles of EU law”. He argued that, “if the Bill is trying to achieve a hierarchy, it needs to make it clear who governs whom. At the moment, the Bill does not do that”.⁵ In response, the Minister of State at the Ministry of Justice, Dominic Raab, stated that he thought the points made during debate were covered by Clause 6 as introduced but that “I will take them away and we will work further to make sure we provide the certainty that is required”.⁶

Transition

The lead amendment was New Clause 14 tabled by Chris Leslie (Labour) which would have ensured that Ministers must set out in detail how the provisions in Clause 6 would apply during a transitional period before the United Kingdom fully implements a withdrawal agreement. Introducing his amendment, Mr Leslie stated that his new clause sought clarification from the Government about how a transition would be put in place and would operate, including both how retained EU law would

⁴ *Ibid* c311

⁵ *Ibid* c315

⁶ *Ibid* c319

be interpreted during the transitional period and how the role of the European Court of Justice would operate. In response to debate about the way the Bill would operate alongside any transitional arrangements Dominic Raab, argued that “imposing a fixed timescale for sharing such information in this area would be out of sync with the actual progress of the negotiations and puts, if I may say, the cart before the horse”.⁷ The New Clause was defeated on division with 296 in favour and 316 against.⁸

An Opposition Front Bench amendment also raised matters relating to transition. Amendment 278 proposed that exit day “must not be before the end of any transitional period agreed under Article 50”. This amendment was also lost with 295 in favour and 316 against.

Consistency with the *Equality Act 2010*

In response to an intervention by Maria Miller, Chair of the Women and Equalities Select Committee, Dominic Raab, told the Committee that the Government would table an amendment at Report stage. The amendment “will require Ministers to make a statement before the House in the presentation of any Brexit-related primary or secondary legislation on whether and how it is consistent with the *Equality Act 2010*”.

Francovich

The Committee of the Whole House also debated amendments tabled by Cheryl Gillan (Conservative) regarding so-called “Francovich” damages. In response, the Minister stated that:

When we exit the EU, we will know exactly how many pending UK cases are registered with the European Court, awaiting a preliminary reference and thus covered by any proposed agreement with have with the EU on the treatment of pending cases. That is important to deliver certainty about how and when the Court’s jurisdiction will be brought to an end.... Individuals will not lose their ability to vindicate their rights in court after exit. They will be able to take such cases to our domestic courts.⁹

That “due regard” is given to relevant decisions of the European Court

An SNP backed amendment (Amendment 137) sought to ensure that the courts “pay due regard to any relevant decision of the European Court”. The Minister argued that the amendment “would alter the inherent discretion the UK courts already have to consider, without fetters, the case law in other jurisdictions, and it seeks to apply to the European Court a procedural requirement that is stronger but so vague that it is liable to create more, not less, confusion”.¹⁰ The amendment was not passed with 296 voting in favour and 316 voting against.

⁷ *Ibid* c280

⁸ *Ibid* c321

⁹ *Ibid*, c290

¹⁰ *ibid*, c287

3. Day 2: 15 November

3.1 Retained EU law

Introduction

The EUW Bill creates a new category of domestic law for the United Kingdom: 'retained EU law'. Retained EU law will consist of all of the converted EU law and preserved EU-related domestic law which was in force on the day before the UK left the EU.

- Clause 2 provides for domestic primary and secondary legislation that give effect to EU law obligations to be retained; this body of law is to be known as 'EU-derived domestic legislation' ;
- Clause 3 provides for the conversion of existing EU law that applies in the UK into domestic law; this body of law is to be known as 'direct EU legislation' ; and
- Clause 4 would save rights and obligations in EU law that take effect through section 2(1) of the ECA and that are not converted by Clause 3.

Box 3: Commons Library Briefing

The Commons Library published a briefing on [The European Union \(Withdrawal\) Bill: Retained EU law](#)

Amendments and new clauses were tabled to protect certain rights, such as employment and environmental protection. No amendments were made to the Bill. The clauses were ordered to stand part.

Protection of certain rights

The Labour frontbench proposed New Clause 58 which sought to protect certain rights. Speaking to the clause Matthew Pennycook stated that its purpose was: "to ensure that retained EU law, as preserved in clauses 2 to 4, in five key areas—employment, equality, health and safety, consumer and environment—is accorded a level of enhanced protection that it would otherwise not enjoy from delegated powers contained in Acts of Parliament other than the one before us today."¹¹ The House divided on the New Clause with 299 in favour and 311 against.

New Clause 25, like New Clause 58, sought the prevention of modification of retained EU law save by primary legislation or by subordinate legislation made under this Act. The New Clause, tabled by Kerry McCarthy (Labour), would have provided a mechanism for Ministers to establish a list of technical provisions of retained EU law that may be amended by subordinate legislation outside the time restrictions of the Bill. New Clause 25 was also defeated with 299 in favour and 311 against.

Another Labour frontbench amendment, New Clause 67, which sought to ensure that environmental principles under Article 191 of the Treaty

¹¹ HC Deb 15 November 2017 c394

on the Functioning of the European Union (TFEU) would continue to apply in the UK after exit day was defeated 297-313.¹² The Minister had stated that the amendment was not necessary because the Bill would convert the existing body of EU environmental law into UK law “making sure the same protections are in place in the UK and that laws still function effectively after exit”.¹³

An SNP amendment, Amendment 70, which listed directly effective rights contained in the TFEU to be transferred into UK law, was defeated 48-313. Speaking against the amendment, the Minister said that although the sentiment behind the amendment was “laudable” it was “unnecessary for the protection of rights”:

Clause 4 will save all the directly effective rights that arise under the EU treaties to the extent that they are available now; that is the point that I wanted to get across to the hon. Member for North Down (Lady Hermon). We have deliberately not included a list of those directly effective rights in clause 4 or in the rest of the Bill, because there is no single, comprehensive and reliable list of all directly effective rights in the EU treaties. They are not set out in legislation—UK, EU or otherwise—but they are determined by the courts. Our approach is therefore based on procedural as well as substantive legal continuity¹⁴

Animal sentience

Caroline Lucas (Green) moved New Clause 30 which sought to transfer the EU Treaty Article on animal sentience (Article 13 of Title II TFEU) into UK law, “so that animals continue to be recognised as sentient beings under domestic law”. The Minister, Dominic Raab, referred to the new clause as “superfluous” stating that:

We have made it clear that we intend to retain our existing standards of animal welfare once we have left the EU and, indeed, as my right hon. Friend the Secretary of State for Environment, Food and Rural Affairs has made clear, to enhance them. The vehicle of this legislation will convert the existing body of EU animal welfare law into UK law. It will make sure that the same protections are in place in the UK and that laws still function effectively after the UK leaves the EU.¹⁵

The amendment was lost on division by 295 to 313.

On 12 December the Government published [a draft bill](#), the *Animal Welfare (Sentencing and Recognition of Sentience) Bill*. The Department has stated that this Bill “would increase the maximum prison sentence for animal cruelty tenfold, from six months to five years, in England and Wales”. The draft bill also sets out that the government “must have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy”.

¹²

¹³ HC Deb 15 November 2017 c500

¹⁴ *Ibid* c503

¹⁵ *Ibid* c500

4. Day 3: 21 November

4.1 Exceptions to retained EU law

Introduction

Debate on Day 3, 21 November, was on Clause 5 and Schedule 1, and new Clauses relating to Clause 5 and Schedule 1. Clause 5 of the Bill is entitled “exceptions to savings and incorporations”. It specifies that the Charter of Fundamental Rights is not part of domestic law on or after exit day.

Charter of Fundamental Rights

The Committee of the Whole House debated a number of amendments that focused on the Charter of Fundamental Rights, including by removing the relevant clause from the Bill or by introducing new protections for the certain rights.

In his opening comments, responding to debate on the amendments set out below, Dominic Raab, stated that the Government would “approach the Bill in the spirit of collaboration”.¹⁶

Dominic Grieve spoke to his amendment (Amendment 8) which would have allowed the Charter of Fundamental rights to continue to apply domestically in the interpretation and application of retained EU law. The Opposition Front Bench also tabled an amendment that would have kept the Charter in retained EU law (Amendment 46). Dominic Raab set out the Government’s commitments to human rights:

The Government reaffirm and renew our commitment to human rights law. It is reflected through UK national law, including, most recently, the Human Rights Act, as well as a range of domestic legislation that implements our specific obligations under UN and other international treaties, from the convention against torture to the convention on the rights of the child. Of course, the principle international treaty most relevant to the UK’s human rights laws is the European convention on human rights. I again make it crystal clear the Government’s commitment to respecting and remaining a party to the ECHR. There will be no weakening of our human rights protections when we leave the EU.¹⁷

The Minister also reaffirmed a commitment which the Secretary of State for Exiting the EU had made to the Exiting the EU Select Committee, to publish a detailed memorandum setting out how each article of the Charter would be reflected in UK law after the UK leaves the EU. The [report](#) was published on 5 December.¹⁸

The House divided on the Opposition amendment (Amendment 46), which was defeated with 301 in favour and 311 against.

Validity of retained EU law

Responding to amendment 10, also tabled by Dominic Grieve, the Solicitor General, Robert Buckland, committed to bring forward the

¹⁶ HC Deb 21 November 2017 c894

¹⁷ *Ibid* c898

¹⁸ *Ibid* c899; [Charter of Fundamental Rights: Right by right analysis](#), 5 December 2017

Government's own amendments at Report to clarify when it would be possible to challenge the validity of EU retained law on the basis of the general principles of EU law copied into domestic law. Mr Buckland, stated that:

The rights landscape is indeed complex, and we are seeking with this Bill to maximise and not remove any substantive rights that UK citizens currently enjoy. In view of my commitment to look at this again, I invite my right hon. and learned Friend not to press amendment 10 and to agree to work with us in this shared endeavour. The Government will bring forward our own amendments on Report for the purposes of clarifying paragraph 3 of schedule 1.¹⁹

Francovich

The *Francovich* rule allows individuals, under certain conditions, the possibility of obtaining compensation for directives whose transposition is poor, delayed or non-existent. Mary Creagh's (Lab) amendment (Amendment 139), together with Amendments 140 and 141, would have ensured the *Francovich* rule would have continued to apply after exit day in respect of government failures before exit day to comply with EU obligations. This was defeated with 295 in favour and 315 against. In response to a number of amendments tabled regarding *Francovich*, the Solicitor General responded that the Government "will consider further whether any additional specific and more detailed transitional arrangements should be set out in regulations".²⁰

Family friendly employment rights and gender equality

An amendment tabled by Ellie Reeves (Lab) (New Clause 79) sought to ensure that the rights of workers and employees in the UK are no less favourable than they would have been had the UK remained a member of the EU or EEA. The new clause would have ensured that Parliament was informed of changes to EU and EEA provisions that might have amended UK laws around family-friendly employment rights and gender equality and their potential impact, as well as committing the Government to consider their implementation. The amendment was negated on division with 296 in favour and 314 against.

¹⁹ *Ibid* c972

²⁰ *Ibid* c979

5. Day 4: 4 December

5.1 Devolution provisions

Introduction

The devolution provisions in the Bill were debated on days 4 and 5 (4 and 6 December 2017). On 4 December the House debated new clauses and amendments to Clause 11 and Schedule 3. Clause 11 concerns the legislative competencies of the devolved legislatures and Schedule 3 concerns executive competences and consequential amendments.

Box 4: Commons Library briefing

The relevant Commons Library briefing is [The European Union \(Withdrawal\) Bill: Devolution](#).

Since the Bill's introduction, the Public Administration and Constitutional Affairs Select Committee has published an interim report on Clause 11 of the Bill, [Devolution and Exiting the EU and Clause 11 of the European Union \(Withdrawal\) Bill: Issues for consideration](#). The report contained no conclusions but presented the evidence received so far. The Committee has committed to publishing a further report on Clause 11 early in 2018.

The Government has committed to amend Clause 11 of the Bill at report stage.²¹ The Minister, Chris Skidmore, told the House that "we are determined to approach the clause with a view to consensus".²²

No amendments were made on Day 4 and Clause 11 and Schedule 3 were agreed to stand part of the Bill in a single division with 315 in favour and 290 against.

UK wide frameworks

The lead amendment debated on 4 December was an Opposition amendment (New Clause 64) which would have established a collaborative procedure for the creation of UK-wide frameworks under the Bill. It would have required the Secretary of State to "lay before each House proposals for replacing European frameworks with UK ones". Introducing the amendment, Jenny Chapman (Lab) stated that:

...we need those frameworks to enable the functioning of the UK internal market; to ensure compliance with international obligations; to ensure the UK can negotiate and enter into international treaties, or, if we leave the customs union, trade agreements, to enable the management of common resources; to administer and provide access to justice in cases with a cross-border element; and to safeguard security of the UK. The frameworks will have a significant impact on the carefully constructed devolution settlements in the Union. They must be created in collaboration with the devolved administrations.²³

²¹ [HC Deb 6 December 2017 c1021](#)

²² HC Deb 4 December 2017 c808

²³ HC Deb 4 December 2017 c708

The Conservative backbench MP, Paul Masterton, stated that in his view “Clause 11, as drafted, is not fit for purpose and must be changed”.

He continued:

It does not need to be tweaked a little; it needs to be amended and replaced with a new version. However, I do not consider now to be an appropriate stage in the process at which to demand a new draft to be brought to the House.²⁴

He noted that most of the 111 powers which have been listed as currently exercised at the EU level that do not fall within the reserved competence of the *Scotland Act 1998* were “technical and regulatory” and that:

They cover areas either where divergence in policy between UK and Scottish Government Ministers would not be a threat to the integrity of the UK internal market, or where consistency could be maintained through non-legislative options. Those powers should be devolved to the Scottish Parliament on exit day, or as close to it as can safely and realistically be expected.

In response of those powers where there is a legitimate UK interest in uniformity across the UK – that is, where divergence between the nations of the UK would be contrary to the UK’s interests – it would be unsafe to allow them to be devolved without providing for constraints on how they may be used. In those latter cases that we will need common frameworks, a concept accepted as necessary by UK, Scottish and Welsh Ministers.

Mr Masterton asked for assurance from Ministers that the Government would move forward “urgently” with identifying and agreeing areas where there is a need for common frameworks and that other powers can be devolved immediately on exit, and for information about how these common frameworks will be agreed.

The Opposition amendment (Amendment 64) on common frameworks was negated on division by 256-313.

Competencies

A further Opposition amendment (Amendment 42) on consent which would have removed the Bill’s proposed restrictions on the ability of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly to legislate on devolved matters was lost on division with 292 in favour and 316 against. The Minister had argued against the amendment stating that the approach in the Bill “means that where we have common approaches across the UK by virtue of EU law, they will continue to apply as they currently do after exit day”.²⁵

Devolved legislatures’ consent

Ian Blackford, speaking for the SNP, described clause 11 as a “bare, naked power grab and it completely undermines the devolution settlements across the United Kingdom”. He noted that “there is a long way to go on this Bill and, as it stands, the Scottish National Party cannot support it”.²⁶ He described Amendment 72, as seeking to ensure

²⁴ *Ibid* c731

²⁵ *Ibid* c821

²⁶ *Ibid* c718

that “all the devolved Administrations have a vote on approving clause 11 before it comes into effect”.

The Minister, Chris Skidmore, stated that the Government did not see the need for the amendment as the Sewel convention had already been recognised in the *Scotland Act 2016* and the *Wales Act 2017*; and that “the Government was committed to the devolution settlements and the conventions we have established”.²⁷

The House divided on this amendment with 290 and 316 against.

6. Day 5: 6 December

6.1 Devolution provisions

Introduction

The first half of the debate on day 5 covered Clause 10 and Schedule 2 of the Bill. Clause 10 gives effect to Schedule 2 which sets out the power of “devolved authorities” to correct deficiencies in domestic devolved legislation that arise from withdrawal from the EU, to remedy potential breaches of international obligations, and to implement the withdrawal agreement. These are Henry VIII powers: regulations using these powers may make “any provision that could be made by an Act of Parliament”.

No amendments were made to the clause or the schedule, and both were ordered to stand part without division.

Principles of the Belfast/Good Friday Agreement

The lead amendment was tabled by Lady Sylvia Herman (Ind). Her amendment, New Clause 70, was intended to preserve the principles of the Belfast/ Good Friday Agreement. In response, the Minister for Exiting the EU, Robin Walker, argued that the amendment would place a much greater constraint on the provision for Northern Ireland as compared with the rest of the UK, even in circumstance where there was no impact on the Belfast Agreement. He asked for the amendment to be withdrawn, stating that the Government would “work with Members across the House to absolutely ensure that the Belfast agreement is respected as we move forwards”.²⁸ Lady Herman withdrew her new clause following further comments from the Minister. She noted, “I will take that as a commitment that ... we will agree the Good Friday agreement will be written into the next Bill – perhaps the withdrawal Bill”.²⁹

Powers delegated to Scottish Ministers

Stephen Gethins (SNP) spoke to amendments suggested by the Scottish and Welsh Governments. He stated that:

Amendments 166 and 167 were put together by the Scottish and Welsh Governments, and confer further powers to legislate and give Scottish Ministers the ability to make their own amendments to the directly applicable EU law...

...Amendment 167 gives Scottish Ministers the ability to make a different change in Scotland, where Scotland’s circumstances require it.³⁰

The House divided on one of these amendments (amendment 167). The amendment was lost with 296 in favour and 316 against.

²⁸ HC Deb 6 December 2017 c1091

²⁹ *Ibid* c1119

³⁰ HC Deb 6 December 2017 c1074

6.2 Financial provisions

Introduction

Clause 12 and Schedule 4 of the Bill cover the financial provisions relating to the Bill. No amendments were made to the clause or the schedule which were both ordered to stand part without division.

Box 5: Commons Library briefing

The Commons Library paper [EU \(Withdrawal\) Bill: Financial provision and fees and charges](#) provides information about these clauses.

Approval of the financial settlement by the House of Commons

Chris Leslie (Lab)'s New Clause 17 sought to ensure that the financial provisions would not allow the Government to make a payment in settlement of the UK's withdrawal from the EU unless it had been expressly approved by the House of Commons. This was negated on division with 288 in favour and 316 against.

An Opposition new clause (New Clause 80) which sought to ensure that any financial settlement must be transparent and approved by Parliament was also defeated with 287 in favour and 312 against.

The Minister, Steve Baker, had argued that:

New Clause 17 and amendment 54 show an understandable desire to protect the role of this House, but they are not necessary. The Government have always been clear that the negotiated financial settlement will be part of our withdrawal agreement and that the House will be given a vote on that agreement. My hon. Friend the Secretary of State for Exiting the European Union was very clear on 13 November when he announced the withdrawal and implementation Bill. He said that, as one of the principle elements of our agreement with the EU, we expect that legislation to include authorisation to pay any financial settlement that is negotiated with the EU. The Bill we are debating today is about ensuring that the statute book is operational on exit day, not about paying any settlement. The same argument applies to new clause 80.³¹

Fees and charges levied via tertiary legislation

A Labour amendment (Amendment 339) to remove the power of public authorities to levy fees or charges via tertiary legislation under the powers in the Bill was defeated 286-311.

³¹ HC Deb 6 december 2017 c1160

7. Day 6: 12 December

7.1 The “Correcting power”

Introduction

The Day 6 debate covered clause 7 of the Bill, which contains what is known as the “correcting power”: a power to make regulations in order to prevent, remedy or mitigate any “failure of” or “deficiency in” retained EU law. The Day 6 debate also considered Schedule 7 which sets out the scrutiny arrangements for secondary legislation made under the powers in the Bill (the votes on Schedule 7 were held on day 7).

Box 6: Commons Library Briefing

A Commons Library Briefing Paper, *The European Union (Withdrawal) Bill: clause 7 “the correcting power”*, provides detailed information about clause 7.

The Government announced its support for the amendments proposed by Charles Walker (Con), Chairman of the Procedure Committee, to create a sifting committee to examine the SIs flowing from the Bill and to report on the procedure they should be subject to. These amendments were made to the Bill on Day 7 (see below). The Government also spoke to its own amendment (Amendment 391) which will impose requirements on Ministers of the Crown to make explanatory statements in relation to regulations or draft regulations under Clause 7, 8 or 9. The statements will be published and must, in particular, deal with the appropriateness of the regulations and their relationship to equalities legislation as well as providing specified further information. These amendments were also made to the Bill on Day 7 (see below).

A commitment was made to work with Dominic Grieve on issues raised regarding the limits to the powers of ministers to make regulations to deal with deficiencies.

No amendments were made to Clause 7 which was ordered to stand part without division.

Use of delegated powers

Matthew Pennycook (Lab) described the delegated powers conferred on Ministers under Clauses 7, 8, 9 and 17 as “extraordinary in their constitutional potency and scope”. He continued:

They are, to put it plainly, objectionable and their flaws must be addressed before Third Reading. As such, when it comes to the correcting powers provided for by clause 7, what we are debating is not whether there is a need to place limits on these powers – that, I hope, is beyond serious dispute. What is at issue today... is what limits should be placed on these powers and why.³²

³² HC Deb 12 December 2017 c230

The House divided on Yvette Cooper's amendment (Amendment 49), which would have introduced a "necessity" test to the use of the delegated power. As currently drafted, the power can be used when Ministers considers it "appropriate" to mitigate prevent or remedy deficiencies. Her amendment would have meant that the powers would only be used when they were needed to "adapt the body of EU law to fit the UK's domestic legal framework". She noted that:

Such a "necessity clause" was recommended by the Lords Constitution Committee and the Lords Delegated Powers and Regulatory Reform Committee... "Necessary" is a much higher legal threshold. As the Bill is currently worded, Ministers will simply have to demonstrate, if faced with a legal challenge to their use of these powers, that they took a reasonable view that something was appropriate. With a necessity clause in place, they would have to satisfy the courts that the regulation was in fact required to address the deficiency in question.³³

Steve Baker argued that the power in Clause 7 was "inherently limited": "it is not a power for Ministers to change the law simply because they did not like it before we left the EU". He noted that "If an issue does not arise from our withdrawal from the EU, Ministers may not amend the law using the powers in the clause". He spoke against the "necessity" amendment stating that:

"Necessary" is a very strict test, which we would expect to be interpreted by a court as logically essential. Where two or more choices as to how to correct EU law are available to Ministers, arguably neither would be logically essential because there would be an alternative. Ministers therefore need to choose the most appropriate course.³⁴

The Committee divided on Amendment 49 with 295 in favour and 312 against.

Sifting Committee

Charles Walker, Chair of the Procedure Committee, tabled [amendments](#) 392-398 to the Bill which would establish a sifting committee to scrutinise SIs laid under the Bill. On 7 December 2017, the Procedure Committee had issued a [press notice](#) announcing that Mr Walker, would table amendments to create a committee that would be able to recommend that any SI laid that was subject to the negative procedure should instead be subject to the affirmative procedure and require a vote in the House before it could become law. On 11 December 2017, it was [reported](#) that the Government would accept the Committee's amendments. Separately, Andrea Leadsom, Leader of the House of Commons, tabled a Temporary Standing Order that provides for the establishment of the sifting committee – the European Statutory Instruments Committee.³⁵

Box 7: Commons Library briefing

[*The European Union \(Withdrawal\) Bill: scrutiny of secondary legislation \(Schedule 7\)*](#)

³³ HC Deb 12 December 2017 c253

³⁴ HC Deb 12 December c283

³⁵ [Future Business B](#), Item 47, 12 December 2017

Speaking to his amendments during the debate, Charles Walker asked the Government for some reassurance about the way in which the large number of statutory instruments expected to prepare for Brexit would be managed by Government:

Several speakers have rightly identified that the Bill will result in up to 800 or 1,000 SIs – it could be more; it could be a little less. The Government have reassured us that the Cabinet’s Parliamentary Business and Legislation Committee will look at the workload to manage an effective flow without peaks and troughs. That is a useful reassurance, but the Government need to go further. There needs to be a system, which was identified by the hon. Member for Wakefield (Mary Creagh), where the House can have sight and pre-warning of what is coming. That might be difficult to achieve, but I hear what she is saying and think that it is a sensible suggestion.³⁶

The Minister, Steve Baker, noted that he hoped the Government’s support for Mr Walker’s amendments together with their own amendment on explanatory memorandums (amendment 391) would assure the House of the effective scrutiny of the powers in the Bill.³⁷ He described amendment 391 as putting “the Government’s commitment to transparency into the Bill by requiring that the explanatory memorandums relating to each statutory instrument must include a number of specific statements”.³⁸

Categories of deficiencies

Dominic Grieve tabled probing amendments to seek to narrow the categories of deficiencies arising from our withdrawal from the EU. One of his amendments, Amendment 1, would have restricted the power of a Minister to make regulations to amend retained EU law to cases where the EU law is deficient in the way set out in the Bill. Steve Baker, noted that Amendment 1 had support from all sides of the Committee “including, I do not mind telling him, from me in spirit”. He continued:

The Secretary of State has asked me to put on record that he, too, is sympathetic to the idea of narrowing the Ministers’ discretion.

He went on to state that he was keen to meet Dominic Grieve to take his suggestions on board:

I am keen to address this, and I know that the Secretary of State is keen to do so, but I am not in a position today to have tabled or accepted an amendment. I ask them to bear with me and have further meetings with us and our legal teams to try to find a way through.³⁹

Devolution statutes

The Committee divided on Amendment 158, tabled by Stephen Doughty (Labour) with support from the SNP and Plaid Cymru. The amendment would have prevented the powers of a Minister of the Crown under Clause 7 of the Bill to fix problems in retained EU law from being exercised to amend the *Scotland Act 1998* or the

³⁶ HC Deb 12 December 2017 c267

³⁷ *Ibid* c277

³⁸ HC Deb 12 December 2017 c275

³⁹ *Ibid* c279

Government of Wales Act 2006. The Amendment was lost with 291 in favour and 315 against.

Single Market

Tom Brake (Lib Dem) spoke to Amendment 124 on the Single Market. The amendment was intended to prevent the regulation-making powers being used to create barriers to the UK's continued membership of the Single Market. In response, the Minister stated that it was not the Government's policy to remain in the Single Market and the customs union.⁴⁰ The Committee divided on Amendment 124 with 93 in favour and 215 against.

Protection for environmental standards

The Committee divided on New Clause 63 on environmental standards and protections. The New Clause, tabled by the Opposition, would have required the Government to establish new domestic governance arrangements following the UK's exit from the EU for environmental standards and protections, following consultation. The New Clause was rejected with 293 in favour and 315 against.

Protection of rights

The Committee also divided on Amendment 25 which would have prevented the Government from using delegated powers under Clause 7 to reduce protections currently conferred upon individuals, groups or the natural environment, or to repeal or revoke the *Equality Act 2010* or any subordinate legislation made under that Act. The Amendment, tabled by the Opposition, was lost with 292 in favour and 314 against.

⁴⁰ *Ibid* c299

8. Day 7: 13 December

8.1 Implementation

Introduction

Day 7 of debate covered the following clauses of the Bill:

- Clause 9 which provides the Government with the legislative authority to use secondary legislation to implement any withdrawal agreement agreed with the European Union under Article 50(2) Treaty on European Union (TEU);
- Clause 16 which gives effect to Schedule 7 on scrutiny of the powers to deal with deficiencies.
- Clause 17 which grants powers to make consequential and transitional provisions.

The Committee agreed the amendments debated on day 6 to create a sifting committee for SIs under the Bill and for certain information to be contained in explanatory memorandums for SIs made under the Bill (Amendments 392-398, Amendment 391).

Day 7 saw the only Government defeat during the Committee Stage. Amendment 7, tabled by Dominic Grieve, to require a new statute to be in place before any regulations are made to implement the withdrawal agreement using powers under Clause 9, was passed by 309 in favour to 305 against. Clause 9, as amended, was ordered to stand part without division. Clause 16 was also ordered to stand part of the bill without division.

A new statute required before powers under clause 9 are used

The main focus of debate was Dominic Grieve's amendment which requires a statute to be passed approving the final terms of withdrawal of the UK from the EU before regulations can be made under the Clause 9 power. The debate was preceded by a [written ministerial statement](#) by the Secretary of State made that morning committing the Government to bringing forward a resolution on the final withdrawal agreement for the House to vote on. Dominic Grieve spoke to his amendment, stating that Clause 9 was an "extraordinary and wide power to remove us from the EU by statutory instrument, and moreover – this is the most telling point – to ask the House to give the Government effectively a blank cheque to draft statutory instruments to achieve something when at the moment we do not know what that is".⁴¹

The Justice Minister, Dominic Raab, spoke against the amendment and in favour of clause 9, stating that:

Clause 9 highlights the interaction between diplomacy at the international level and the domestic legislative preparation for Brexit...

Clause 9 enables regulations to be made for the purposes of implementing the withdrawal agreement. It is now, as hon

⁴¹ HC Deb 13 December 2017 c443

Members have said, a supplementary provision to give us agility in the negotiations and the flexibility of legislative procedure to deliver the best deal under time pressure. The Secretary of State for Exiting the European Union announced to this House on 13 November the Government's intention to bring forward new primary legislation in the form of the withdrawal agreement and implementation Bill to give effect to the major elements of the withdrawal agreement...

...we intend to introduce the withdrawal agreement and implementation Bill after there has been a successful vote on the final deal in Parliament. Notwithstanding that, it remains essential that clause 9 stands part of this Bill. We do not know yet the precise shape or outcome of future negotiations, and it is important that the necessary legislative mechanisms are available to us so that we fully implement the withdrawal agreement in time for the exit date.⁴²

Dominic Raab also argued that the "crucial problem" was "the effect that amendment 7 would have in significantly curtailing the timely advantage that we gain from clause 9".⁴³

Towards the end of the debate on clause 9 Dominic Raab intervened to offer a concession:

the Government are willing to return on Report with an amendment on the face of the Bill clarifying the undertaking and assurance that I gave in my speech that statutory instruments under clause 9 will not come into force until we have had a meaningful vote in Parliament.⁴⁴

Dominic Grieve stated that "I have to say, it is too late. I am sorry, but you cannot treat the House in this fashion".⁴⁵ Kenneth Clarke (Con) described this as "some kind of concession" but suggested that "something better might be arrived at in the later stages of the Bill". Yvette Cooper (Lab) agreed saying that "something much better is needed, because the powers in the Bill are unprecedented".⁴⁶

Amendment 7 was passed by the Committee with 309 in favour and 305 against. This was the only Government defeat during the Committee stage of the Bill.

Amendment of the Act itself using powers within the Act

The Committee divided on Opposition Amendment 30 that would have removed the proposed capacity of Ministers to modify and amend the Act itself via delegated legislation. The Amendment was negated on division with 297 in favour and 316 against.

Reciprocal healthcare arrangements

The Committee divided on Amendment 241 which was tabled by Dr Edith Whiteford (SNP), which would have required the Secretary of State to publish a strategy for seeking to ensure that reciprocal healthcare

⁴² HC Deb 13 December 2017 c475

⁴³ Ibid c483

⁴⁴ Ibid, c516

⁴⁵ Ibid, c517

⁴⁶ Ibid, c520

arrangements continue after the UK leaves the EU. The amendment was negated on division with 294 in favour and 315 against.

Scrutiny committee

The Committee divided on New Clause 1 which was an Opposition amendment to establish the principle that there would be a Commons triage committee to work alongside the Lords Secondary Legislation Scrutiny Committee to determine the level of scrutiny each statutory instrument would receive. The New Clause was defeated with 292 in favour and 311 against.

8.2 International obligations

Introduction

The second half of the debate on day 7 was on Clause 8 of the Bill. Clause 8 gives Government the power, until two years after exit day, to make secondary legislation to prevent or remedy any breaches of the UK's international obligations that might arise from Brexit.

EEA agreement

A new clause moved by Heidi Alexander (Lab) to prevent the Government from using the powers to withdraw from the European Economic Area (EEA) (New Clause 22) was lost on division with 292 in favour and 314 against.

Complying with international agreements on rights and protections

Labour's Chris Leslie asked about the 759 treaties with 168 non-EU countries that will fall on exit day. The Minister said that "we will be coming forward with more information on this front in due course." Dominic Raab also said in response to Ed Vaizey (Con) that "The Government intend to present a written ministerial statement to Parliament before Report which will set out our vision, or strategy, for a close association with Euratom."

9. Day 8: 20 December

9.1 Publication and Rules of Evidence

Debate on Day 8 was again split in two with the first half of the day spent on Clause 13 and Schedule 5 on publication and rules of evidence. No divisions took place on amendments to the Clause or Schedule, or on related new clauses. Clause 13 was ordered to stand part without division.

Chris Leslie tabled the lead amendment, which would have required the Minister to publish copies of retained EU legislation accompanied by “plain English” and readily understandable explanatory documents (New Clause 21). He noted that he would not take up a great deal of time because he was aware that the second half of the day would be of more interest to Members as it was to cover matters relating to “exit day”.⁴⁷

Dominic Grieve raised a concern regarding the power of Ministers to make exceptions to the duty to publish retained direct EU legislation by giving a direction to the Queen’s printer “specifying the instrument or category or instruments that are excepted”. He noted that “there appear to be no limitations on that power and no guidance on when such an instruction might be appropriate”.⁴⁸ He noted that he “cannot believe that this will not be looked at in the House of Lords”. In response, the Solicitor General stated that the power “it is there merely to enable the Government to ensure that legislation that is obviously not retained EU law does not have to be published”.

9.2 ‘Exit day’, transition and implementation

Introduction

The remainder of the debate on Day 8 covered Clause 14, Schedule 6; Clause 15 and Schedules 8 and 9; and Clauses 18 and 19. Debate covered matters relating to exit day. The Government amendments to fix exit day were agreed to, along with Government supported amendments tabled by Oliver Letwin which allowed the day to be changed if the withdrawal agreement provides that the UK will leave on a date different from that set out in Clause 14. These Amendments (381 and 399-405) were agreed on a single division with 319 in favour and 294 against.

The House also divided on amendments relating to customs duties, limitations on statutory instruments to create criminal offences, health and social care, implementation and transition and a second referendum. None of these amendments were passed. The clauses and schedules were all ordered to stand part of the Bill.

⁴⁷ HC Deb 20 December 2017 c1075

⁴⁸ *Ibid* c1081

Exit day

Box 8: Commons Library Briefing

The Commons Library briefing paper, [The European Union \(Withdrawal\) Bill: exit day](#), sets out background to the debate on Day 8.

On Friday 10 November, the Government tabled Amendments 381, 382 and 383 in order to enshrine in law the commitment that exit day will be 11pm GMT, 29 March 2019 (mid-night Brussels time). David Davis stated: “We’ve listened to members of the public and Parliament and have made this change to remove any confusion or concern about what ‘exit day’ means”. The amendments reflected the UK Government and the EU’s stated intention, confirmed in the Joint Report on Phase 1 of the negotiations, that the UK will leave the EU on 29 March 2019. The Committee had discussed the Government’s amendments to fix exit day as 29 March 2010 during the debate on Day 1 (see above).

On 15 December, Sir Oliver Letwin tabled a package of amendments (Amendments 399-405) that would enable the definition of exit day in clause 14 to be altered, after the EUW Bill receives Royal Assent, by secondary legislation “if the day or time on or at which the United Kingdom ceases to be a member of the EU is different from that specified in the definition”. The Government agreed to support these amendments. Sir Oliver spoke about the amendments as a package:

What do the amendments do? They govern when clause 1 will become operative. Clause 1 repeals the European Communities Act 1972 and Government amendment 381 sets a date for that. That leads to a question. If the UK Government and the EU, according to the processes laid out by article 50 and by the remainder of the constitutional arrangements of the EU, come to some kind of agreement at a certain point, it would make sense to have a little more time than is allowed under the first clause of the article 50 process. Under the third clause of the article 50 process, we would have an odd situation, because there would be a slight delay in the timing of our withdrawal, where we would still, under amendment 381, be locked into abolishing the 1972 Act on a certain date, namely by 11pm on 29 March 2019. There would be an odd conflict of laws that obviously could not be allowed to persist.

Incidentally, there would be a perfectly obvious remedy: under Government amendment 400 there would be a need for emergency primary legislation to change the date. That is, of course, perfectly possible and I have no doubt the House and the other place would agree to such a measure, but it is a laborious process and might jam up the works at just the moment when it is important for the Government to have the flexibility to make an agreement of that sort. So, very modestly, all the Government amendment 400 does is to provide for the ability of Parliament to adjust the date under those circumstances for the repeal of the European Communities Act to match the article 50 process.⁴⁹

⁴⁹ *Ibid* c1139

Paul Blomfield, speaking for the Opposition, opposed the amendments, stating that “We would give that power directly to Parliament”.⁵⁰

The Minister, Steve Baker, stated that amendments 399 to 405 built on the Government amendments setting exit day:

We have always said that we would listen to the concerns of the House, as we have done throughout the Bill’s passage. As part of that, the Government have had discussions with my right hon. Friend the Member for West Dorset [Sir Oliver Letwin] and we are grateful that he has tabled his amendments.

Mr Baker also noted that only one exit day could be set for the purposes of the Bill and that any statutory instrument amending exit day will be subject to the affirmative procedure. He stated that the Government would bring forward an amendment on Report “to make this requirement clear on the face of the Bill”.⁵¹ Mr Baker also assured the Committee that the power would only be used “in exceptional circumstances to extend the deadline for the shortest period possible, and that [the Government] cannot envisage the date being brought forward”.⁵²

Customs Duties

Chris Leslie (Lab) tabled New Clause 13 which would have ensured that “we do not get past exit day without new legislation that allows the UK the option to remain a member of the customs union”.⁵³ Mr Baker argued against the amendment stating that:

We will leave the customs union when we leave the EU. Domestic legislation cannot implement unilaterally what would require international agreement.⁵⁴

The amendment was negatived on division with 114 in favour and 320 against.

Criminal offences

Opposition Amendment 349 which would have prevented Statutory Instruments creating criminal offences under the Bill was defeated with 295 in favour and 318 against. Paul Blomfield stated that the purpose of the amendment was to “seek clarification” from the Government “that they do not intend to use delegated powers to create criminal offenses of a seriousness that carry custodial sentences”.⁵⁵

Transitional arrangements

Kenneth Clarke (Con) spoke to New Clause 54, which would have put into law the commitment that the Prime Minister made in her Florence speech to a transitional arrangement. Speaking against the amendment, Mr Baker stated that:

The Government cannot accept these new clauses. The Prime Minister has set out a proposal that is now subject to negotiation. We are confident of reaching that agreement, but it would not be

⁵⁰ *Ibid* c1142

⁵¹ *Ibid* c1155

⁵² *Ibid* c1156

⁵³ *Ibid* c1130

⁵⁴ *Ibid* c1157

⁵⁵ *Ibid* c1143

sensible for the Government to constrain themselves domestically in any way while those negotiations continue.⁵⁶

The New Clause was lost on division with 296 in favour and 316 against.

Health and Social Care

Joanna Cherry (SNP) tabled New Clause 44, which would have required the UK Government to make arrangements for an independent evaluation of the impact of legislation on the health and social care sector. The amendment was lost with 294 in favour and 318 against.

Referendum

Amendment 120 tabled by Tom Brake (Lib Dem) would have required that before 29 March 2019, or the end of any extension to the two year negotiation period, a referendum on the terms of the deal would have to be held. The amendment was lost with 23 in favour and 319 against.

⁵⁶ *Ibid* c1157

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