

## European Union (Withdrawal) Bill: Summary of Lords Amendments

### HL Bills 79 and 102 of 2017–19

#### Summary

The [European Union \(Withdrawal\) Bill](#) was introduced in the House of Lords on 18 January 2018 and had its second reading over two days on 30 and 31 January 2018. It was considered in committee of the whole House over eleven sittings between 21 February and 28 March 2018. A total of 477 amendments were tabled to the Bill for consideration at committee stage, but no amendments were made.<sup>1</sup> The Bill was considered by the House of Lords at report stage over six days between 18 April and 8 May 2018. A total of 316 amendments were tabled for consideration at report stage and of these, a total of 192 amendments were made to the Bill.<sup>2</sup> Third reading of the Bill took place on 16 May 2018, when a further nine amendments were made.<sup>3</sup> This Briefing gives an overview of the main changes made to the Bill in the Lords, covering both the 15 government defeats and the numerous government amendments agreed.

The version of the Bill before the House at second reading, committee and report stage was [HL Bill 79](#). At third reading, a new version of the Bill, [HL Bill 102](#), was before the House, reflecting the amendments made on report. Because one clause was removed and several new clauses were added to the Bill at report stage, the numbering of clauses changed between HL Bill 79 and HL Bill 102. In this Briefing, where a clause or paragraph number changed as a result of amendments made at report stage, the new number as it appears in HL Bill 102 is given in square brackets [ ] after the number as it appeared in HL Bill 79. A [tracked changes version of the Bill](#) which shows the amendments made at report stage in the Lords (but not those made at third reading) is also available.

#### Government Defeats

Altogether the Government was defeated in 15 votes on the Bill in the Lords, 14 at report stage and one at third reading, as follows:

#### Report Stage

- Clause 1 was amended so the European Communities Act 1972 can be repealed only if the Government has laid a statement before both Houses of Parliament by 31 October 2018, outlining the steps taken in the Brexit talks to negotiate, as part of the framework for the future relationship, an arrangement which enables the UK to continue participating in a customs union with the EU (amendment 1, agreed on division by 348 to 225; amendment 4, agreed without division).
- A new clause [4] was inserted providing that retained EU law in the areas of employment rights, equality, consumer standards, health and safety standards and environmental standards can be amended, repealed or revoked only by primary legislation or, for

- “technical” changes only, by secondary legislation, subject to an enhanced scrutiny procedure (amendment 11 agreed on division by 314 to 217).
- Clause 5 [6] was amended so that the EU Charter of Fundamental Rights will be retained in domestic law after exit day (amendment 15, agreed on division by 316 to 245).
  - Provisions were removed from schedule 1 of the Bill that would have prevented legal cases being brought after exit day on the grounds of a failure to comply with the general principles of EU law (amendment 19, agreed on division by 280 to 223).
  - Ministers’ ability to specify in regulations when the validity of retained EU law could be challenged in court was removed from schedule 1 of the Bill (amendment 18, agreed on division by 285 to 235).
  - Clauses 7 and 17 [9 and 22] were amended so that ministers can make regulations to correct deficiencies in retained EU law and consequential regulations only when it is “necessary” (previously a minister could have used these powers when s/he considered it “appropriate”) (amendment 31 agreed by 349 to 221, and amendments 86 and 87 agreed without division).
  - A new clause [10] was added to give Parliament a ‘meaningful vote’ on the outcome of negotiations with the EU (amendment 49, agreed on division by 335 to 244).
  - Clause 9 [11] was amended so that delegated powers to implement a withdrawal agreement cannot be used until both Houses have approved a mandate for negotiations on the UK’s future relationship with the EU (amendment 51, agreed on division by 270 to 233).
  - A new clause [12] was added which seeks to maintain rights to refugee family reunion currently provided under the EU’s Dublin III Regulation (amendment 59, agreed on division by 205 to 181).
  - A new clause [13] was added which provides for the continuation of North-South cooperation and the prevention of new border arrangements in Northern Ireland (amendment 88, agreed on division by 309 to 242).
  - A new clause [18] was added which provides that nothing in the Bill can prevent the UK from replicating EU law in domestic law made on or after exit day, or from continuing to participate in, or have a formal relationship with, EU agencies after exit day (amendment 93, agreed on division by 298 to 227).
  - The fixed date of exit day was removed from clause 14 [19] of the Bill (amendment 95, agreed on division by 311 to 233; consequential amendments 99 and 74 agreed without division).
  - Clause 19 [24] was amended so that provisions of the Act (other than those expressly specified in clause 19 [24]) cannot come into force until it is a negotiating objective for the Government to ensure an international agreement has been made which enables the UK to continue to participate in the European Economic Area after exit day (amendment 110A, agreed on division by 247 to 218).
  - Schedule 7 was amended so that sifting committees in both Houses would have the power to insist that statutory instruments made under clause 7(1), 9 or 17(1) [9(1), 11 and 22(1)] of the Bill should be made under the affirmative procedure (amendment 70, agreed on division by 225 to 194; consequential amendment 77 agreed without division).

More detail on all these amendments is available in the House of Lords Library Briefing [European Union \(Withdrawal\) Bill: Lords Report Stage](#) (14 May 2018).

### **Third Reading**

- A new clause was added requiring the Secretary of State to take steps to ensure that EU environmental principles and standards would be maintained in the UK after exit day. Some of the specific requirements set out in the new clause were for the Secretary of State to:
    - publish within six months of the Act being passed proposals for primary legislation to establish:
      - a duty on public authorities to apply principles of environmental law established in EU law; and
      - an independent body to monitor public authorities' compliance with environmental law
    - lay before Parliament before 1 January 2020 a Statement of Environmental Policy setting out how certain environmental principles would be given effect.
- (amendment 1, agreed on division by 294 to 244)

### **Government Amendments**

#### **Report Stage**

A large number of government amendments were made to the Bill at report stage without division, in response to scrutiny at committee stage and other developments. The main areas these covered were:

- Clarifying how the UK courts should treat the judgments of the Court of Justice of the European Union after exit day;
- Setting out the status in domestic law of different categories of retained EU law for the purposes of making future amendments and when ruling on incompatibility with the Human Rights Act 1998;
- Removing delegated powers which would have allowed ministers to create new public bodies by statutory instrument;
- Placing further restrictions on the use of delegated powers to impose fees or charges;
- Removing clause 8 from the Bill (this clause would have given ministers the power to make regulations to enable continued compliance with the UK's international obligations by preventing or remedying breaches that might otherwise result from the UK's departure from the EU);
- Removing the power in clause 9 [11] which would have allowed ministers to modify the European Union (Withdrawal) Act itself through secondary legislation (this amendment was tabled by Lord Lisvane (Crossbench) and supported by the Government);
- Putting a ten-year sunset on the delegated power to make consequential provisions;
- Restructuring the provisions in clause 11 [15], and schedule 2, to a system where powers in devolved areas, returned to the UK from the EU, are returned to the relevant devolved institutions unless specific regulations are made to 'ring-fence' these areas. Sunset provisions, a new 'consent decision' mechanism, requirements for explanatory statements and a requirement for the UK Government to report on progress towards repealing the provisions were also added. The amendments would operate alongside an intergovernmental agreement and memorandum;

- Explanatory statement requirements were expanded to include a requirement to state the minister's 'good reasons' for the regulation and its impact (if any) on equalities legislation, in certain circumstances. Specific requirements were also added when criminal offences were created under the Bill's provisions, when the urgent procedures were used and when sub-delegated powers were used;
- And creating a two-year window after exit for *Francovich* claims to be brought, as long as the claim related to an alleged breach of EU law that occurred before exit day.

More detail on all these amendments is available in the House of Lords Library briefing [European Union \(Withdrawal\) Bill: Lords Report Stage](#) (14 May 2018).

### **Third Reading**

The House agreed without division to eight government amendments at third reading.<sup>4</sup> Baroness Goldie, a Government Whip, described these as “straightforward and essentially technical”.<sup>5</sup> She said that amendments 3 and 6 ensured there was consistent wording throughout the subsections of the new clause [8] on the status of retained EU law inserted by a government amendment at report stage. Amendments 4 and 5 added in missing cross-references in the same clause. Amendments 10 and 11 to schedule 3 inserted new provisions to update the numbering of cross-references contained in the Government of Wales Act 2006 in consequence of the amendments made at report stage to the Bill's provisions on devolution. Amendments 12 and 13 amended the wording of paragraph 37 of schedule 7 of the Bill, which Baroness Goldie said would “ensure greater clarity as to the legal effect of the provisions”.

### **Consideration of Amendments by the Other House**

The Bill will now return to the House of Commons for consideration of the amendments made in the Lords. The House of Commons Library has summarised the procedure for the consideration of amendments made by the other House as follows:

The amendments made by the other House are printed in a list (“Lords Amendments” or “Commons Amendments”), and are considered by the House to which they have been sent. The first House may agree to an amendment, with or without amending it, or it may disagree to an amendment:

- If it agrees to an amendment, it may also make consequential amendments to the Bill;
- If it disagrees with an amendment, it may make an alternative proposal (an “amendment in lieu”);
- If the receiving House does something other than agree to all the amendments made by the other House, the Bill has to be returned to the first House, so that the further amendments or disagreements can be considered.

Both Houses must agree on a final text for the Bill to pass. If the receiving House has disagreed to an amendment without proposing an amendment in lieu, it sends a reason for the disagreement, which is considered by the other House. This process can continue through several stages until either all the amendments have been agreed to or deadlock is reached, in a process known informally as “ping-pong”.

If House B rejects an amendment made by House A, House A insists on its amendment, and House B insists on its disagreement (in each case without any alternative amendments being offered), deadlock is reached. In practice, considerable efforts are made to avoid deadlock: in the last analysis the Lords will frequently accede to the wishes of the Commons. However, it is possible for deadlock to cause a Bill to fail.<sup>6</sup>

At the Bill's third reading in the Lords, Lord Adonis (Labour) moved an amendment to the motion "that the Bill do now pass" to add "and, in the light of the vital importance of the issues raised to the future of the United Kingdom, this House urges the Leader of the House to make representations to government colleagues to ensure amendments made by the House of Lords to the Bill are considered as soon as possible".<sup>7</sup> Lord Callanan, Minister of State at the Department for Exiting the European Union, said that the Commons would consider the Lords amendments "in due course".<sup>8</sup> Lord Adonis withdrew his amendment, and the Bill passed and returned to the Commons with amendments.<sup>9</sup>

The following day, Valerie Vaz, Shadow Leader of the House of Commons, asked whether the Lords amendments to the Bill would be considered in the Commons during the week of 21 May 2018.<sup>10</sup> Andrea Leadsom, Leader of the House of Commons, said the Bill would return to the Commons "once we have had the opportunity to fully consider and take into account the views expressed by the other place and what that will mean in this House".<sup>11</sup> She said this would happen "in due course". The *Guardian* reported that the Prime Minister's spokeswoman said the Bill would return to the Commons "within weeks rather than months", which the *Guardian* took to mean before summer recess begins on 24 July 2018.<sup>12</sup>

<sup>1</sup> House of Lords, '[Lords Amendments—European Union \(Withdrawal\) Bill](#)', accessed 17 May 2018.

<sup>2</sup> [ibid.](#) One of the 192 amendments was subsequently superseded by another one: clause 8 of the Bill was amended so that ministers could make regulations to enable continued compliance with the UK's international obligations only when "necessary" rather than when the minister considered it "appropriate" (amendment 42 moved by Lord Lisvane (Crossbench)). However, the House later agreed to government amendment 47A to remove clause 8 altogether.

<sup>3</sup> [ibid.](#)

<sup>4</sup> [HL Hansard, 16 May 2018, col 711](#) (amendments 3, 4, 5 and 6); and col 732 (amendments 10, 11, 12 and 13).

<sup>5</sup> [ibid.](#), col 711.

<sup>6</sup> House of Commons Library, [Public Bills in Parliament](#), 7 December 2012, p 10. More detailed descriptions of the procedure are available in: House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2017, pp 134–8; and Sir Malcolm Jack (ed), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 2011, pp 626–38.

<sup>7</sup> [HL Hansard, 16 May 2018, col 733](#).

<sup>8</sup> [ibid.](#), col 746.

<sup>9</sup> [ibid.](#) The House of Commons [Bill 212](#) of session 2017–19 was published on 16 May 2018, listing all the Lords amendments under the numbering system according to which they will be considered in the Commons. The Department for Exiting the European Union published [Explanatory Notes](#) to accompany this version of the Bill on 17 May 2018; these provide a commentary on the Lords amendments.

<sup>10</sup> [HC Hansard, 17 May 2018, col 428](#).

<sup>11</sup> [ibid.](#), col 430.

<sup>12</sup> Peter Walker, '[No 10 Says EU Withdrawal Bill Will Return to Commons Before Summer Recess](#)', *Guardian*, 17 May 2018.

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