

**European Union (Withdrawal) Bill**

**Second Reading in the House of Lords: Three Key Issues**

**Public Law Project, January 2018**

1. **The Bill weakens fundamental rights protections.** The Government’s stated purpose of the Bill is to take a “snapshot” of EU law rather than to make substantive policy changes such as to weaken rights protections. While the Bill deliberately excludes the EU Charter of Fundamental Rights (clause 5(4)), it purports to protect the fundamental rights which exist in EU law irrespective of the Charter (clause 5(5)). They include rights which are general principles of EU law, such as the right to an effective remedy and prohibitions on discrimination. The general principles of EU law also include broader principles such as legal certainty and proportionality. However, paragraph 3 of Schedule 1 would remove a right of action based on the general principles. This would prevent the courts from disapplying laws and overturning decisions which are incompatible with those principles, including where they breach fundamental rights, and including where a proper snapshot of EU law would have yielded a different result. Regardless of the merits of retaining a right of action based on a breach of these principles, the Withdrawal Bill is not the vehicle to make such a significant policy change. The Bill is vast in scope and offers limited opportunity for Parliamentary scrutiny. Debate as to the appropriate protection to be given to fundamental rights can, and should, take place at a later date.

1. **Ministers, rather than Parliament, are ‘taking back control’.**  The Bill confers unjustifiably broad powers on Ministers to amend both primary and secondary legislation, with inadequate oversight from Parliament. The Bill allows Ministers to make “any provision that could be made by an Act of Parliament” (clause 7(4)) that they consider “appropriate” (clause 7(1)) to ensure a smooth Brexit. The Government’s White Paper to the Bill recognised the need to balance the importance of Parliamentary scrutiny with giving Ministers the flexibility needed to act swiftly to ensure a smooth Brexit. However, the Bill in its present form strikes the wrong balance. The powers are so broadly drafted that they allow Ministers to set up entire public bodies or even introduce criminal offences with sentences of up to two years (clauses 7(7)c and 14(1)). Their scope is uncertain and their purpose ill-defined.
2. **The Bill is unclear on important issues arising from preserving and converting EU law into domestic law.** While the Bill purportedly takes a “snapshot” of EU law on exit day, it does not adequately address several difficulties with converting large swathes of EU law into domestic law. What status will retained EU law have? Will it be possible to challenge retained EU law? What role will the Court of Justice of the European Union play going forward? The final version of the Bill must provide absolute clarity on these issues to ensure legal certainty and uphold the Rule of Law.

For more information about these issues or to discuss the public law issues arising from the Bill, please contact PLP’s Legal Director, Alison Pickup, on [a.pickup@publiclawproject.org.uk](mailto:a.pickup@publiclawproject.org.uk).