



Public Law Project

WRITTEN EVIDENCE FROM THE PUBLIC LAW PROJECT TO THE HOUSE OF LORDS CONSTITUTION COMMITTEE INQUIRY INTO THE CONSTITUTIONAL IMPLICATIONS OF THE EUROPEAN UNION (WITHDRAWAL) BILL

Introduction

1. The Public Law Project (PLP) is an independent national legal charity. PLP's mission is to improve public decision-making and facilitate access to justice. We work through a combination of research and policy work; training, conferences and second-tier support; and legal casework including public interest litigation.¹ Our strategic objectives include promoting and safeguarding the Rule of Law; ensuring fair systems for public decision making; and improving access to justice.
2. PLP takes no position on the UK's decision to leave the European Union. Our work around the EU (Withdrawal) Bill ('the Bill') is intended to ensure that Brexit is a democratic success and Parliamentary sovereignty is strengthened; to minimise the availability of broad delegated legislative powers and ensure they are used appropriately; and to secure the retention of fundamental rights protections.
3. We welcome the opportunity to provide written evidence to the House of Lords Constitution Committee on the constitutional implications of the Bill. Our submissions focus on the impact of the Bill, as drafted, on two issues: 1) the relationship between Parliament and the executive; 2) the Rule of Law and legal certainty. Our evidence does not attempt to address the third issue highlighted by the Committee in their call for evidence, the consequences of the Bill for the UK's territorial constitution, as this not an area of public law in which PLP has significant experience.

¹ PLP is recognised as having particular expertise in public law: in 2013 it was awarded the Special Rule of Law award by Halsbury's Laws and in 2015 it received the Legal Aid Lawyer of the Year 'Outstanding Achievement' Award for its work identifying unlawfulness within the legal aid scheme, particularly in respect of actual and proposed secondary legislation. For more information about PLP's work please see our recently published 5 year Impact Report http://www.publiclawproject.org.uk/data/resources/255/PLP-5-year-Review_Impact_Report_1012_2016_view1.pdf

The relationship between Parliament and the executive

4. PLP shares the Committee's concerns, as set out in its interim report on the Bill ahead of its second reading,² that the Bill transfers too much power from Parliament to the executive, without providing for sufficient Parliamentary scrutiny of how those powers are used.
 - (a) The breadth and scope of the delegated powers in the Bill is unprecedented and unnecessary for the purpose of enabling a smooth transition
5. The Committee stated in its interim report that the proposed delegated powers would “fundamentally challenge the constitutional balance of powers between Parliament and Government and would represent a significant—and unacceptable—transfer of legal competence”.³ The House of Lords' Delegated Powers and Regulatory Reform Committee has also criticised the Bill, as drafted, as conferring “excessively wide law-making powers to Ministers”.⁴
6. In its White Paper on the Bill, the Government emphasised that the Bill was not intended to be “a vehicle for policy changes” but that the powers contained in the Bill were required to “give the Government the necessary power to correct or remove the laws that would otherwise not function properly once we have left the EU.”⁵ The White Paper further recognised the importance of limiting the powers, stating that the Government will “ensure that the power will not be available where Government wishes to make a policy change which is not designed to deal with deficiencies in preserved EU derived law arising out of our exit from the EU.”⁶ In introducing the White Paper to Parliament, the Secretary of State said that it “almost goes without saying” that “no change should be made to rights through delegated legislation”.⁷

² Constitution Committee, ‘European Union(Withdrawal) Bill: interim report’ (3rd Report, Session 2017–19, HL Paper 19)

³ *Ibid*, para 44

⁴ Delegated Powers and Regulatory Reform Committee, Third Report 3rd Report of Session 2017-19 - published 28 September 2017 - HL Paper 22, para 1

⁵ See forward to the White Paper by Rt Hon David Davis MP, Secretary of State for Exiting the European Union; see also paragraphs 3.10 and 3.17 of the White Paper and paragraph 14 of the Explanatory Notes.

⁶ Paragraph 3.17.

⁷ HC Hansard 30 March 2017 Col 431.

7. However, the Bill in its present form gives Ministers extensive powers to amend primary and secondary legislation with little Parliamentary oversight,⁸ including in such a way as to remove or change existing rights or obligations. This is contrary to the spirit of the assurance given by the Secretary of State.
8. The breadth and potency of these powers is unprecedented. The Bill gives Ministers the power to amend:
 - a. EU legislation, including EU Regulations which have effect equivalent to an Act of Parliament;
 - b. “EU-derived domestic legislation”. These are EU laws, particularly Directives that have been implemented by way of secondary legislation under the European Communities Act 1972 (ECA).⁹ These include provisions which would likely have been made by an Act of Parliament but for the ECA as they contain key environmental and workers’ rights protections;¹⁰
 - c. Acts of Parliament, including the Bill itself;
 - d. Potentially all legislation, if Ministers interpret their powers expansively.¹¹
9. Despite the statements of intent in the White Paper, the present draft of the Bill provides few restrictions on Ministers using these powers to implement wide-ranging policy changes.
10. The Bill gives Ministers the power to “make any provision that could be made by an Act of Parliament” to “prevent, remedy or mitigate” any failure of retained EU law to operate “effectively”, or any other “deficiency” in retained EU law, arising from the withdrawal of the United Kingdom from the EU. Nowhere in the Bill are the terms “prevent, remedy or mitigate” defined. The power is given to the Minister to use whenever s/he considers it “appropriate”¹² or to make amendments to provisions that are “no longer appropriate”.¹³ This language appears to give a broad discretion to Ministers.

⁸ Clauses 7 and 8.

⁹ Clause 2.

¹⁰ Examples include Working Time Regulations 1998 and Air Quality Standards Regulations 2010

¹¹ See Explanatory Notes at paragraph 115, which provide that the powers “could be used to amend law which is not retained EU law where that is an appropriate way of dealing with a deficiency in retained EU law.”

¹² Clause 7(1)

¹³ E.g. Clause 7(2)(c) and (d).

11. Similarly, the terms “effectively” and “deficiency” could be interpreted broadly and are not defined. The Explanatory Notes to the Bill clarify that the “law is not deficient merely because a Minister considers that EU law was flawed prior to exit” (paragraph 110). This could be an important restriction on the scope of the powers but it is not contained in the text of the draft Bill.
12. Parliament needs to clarify what constitutes a permissible technical change as opposed to an impermissible policy change and ensure that the provisions in the Bill are drafted sufficiently narrowly to limit the power actually being conferred to that which the Government has said it seeks.
13. The examples given in the Explanatory Notes¹⁴ give real cause for concern as to the nature of the changes which Government envisages being able to make under these powers. Some examples are uncontroversial, such as removing or amending references to “EU law” or “member states other than the United Kingdom”.
14. However, the Government fails to recognise that there are policy choices inherent in other examples which it gives, some of which would involve significant policy choices. For example, the Explanatory Notes state that when previously the UK would have been required to seek an opinion from the European Commission, Ministers would be able to “either replace the reference to the Commission with a UK body or remove this requirement completely”. This is not merely a technical change: it is a policy decision as to the extent of oversight to which decision makers will be subject after Brexit.
15. Strikingly, the Explanatory Notes suggest that issues arising out of “reciprocal arrangements” could be a basis for finding retained EU law deficient and that the powers could therefore be used to remove the rights of EU citizens in the UK.¹⁵ The explanation advanced is that because other EU states will no longer have any obligations to UK citizens, an obligation on the UK to respect EU citizens’ rights would be a “deficiency” in retained EU law. This is an extraordinarily broad interpretation of the concept of “deficiency”. If correct, it signifies that the powers in the Bill would allow Ministers through delegated legislation to make very significant changes to retained EU law not only in connection with the rights of EU citizens but more generally. Many other EU law obligations could be described as “reciprocal” in

¹⁴ See text box between paragraphs 25 and 26.

¹⁵ A [blog piece by Paul Daly](#), University Senior Lecturer in Public Law at the University of Cambridge, highlights some of the concerns raised by this passage in the Explanatory Notes.

this sense and therefore changed through delegated legislation if the powers in the Bill are not circumscribed.

16. Ministers are also given powers to introduce laws to prevent or remedy any breach of the UK's international obligations arising from withdrawal from the EU.¹⁶ This would give broad powers to Ministers to give effect to international law acts in domestic law. Importantly, this power could be used to make new international trade agreements binding in domestic law without Parliamentary oversight. The agreements could include important provisions regarding workers' rights or even privatisation of the NHS.

17. Several amendments have been tabled to the Bill to address the issues identified above. Perhaps the most significant are a series of amendments tabled by a group of Conservative MPs led by Dominic Grieve, which are attracting cross-party support. Amendment 1 would restrict the power of a Minister under clause 7 to make regulations to amend retained EU law to cases where the EU law is deficient in the ways set out in the Bill in clause 7(2). This addresses the Committee's concerns that 'Ministers are likely to have considerable latitude when it comes to determining what counts as a 'deficiency''.¹⁷ However, this amendment does not address problems with the examples of 'deficiency' set out in clause 7(2), including broad powers to correct deficiencies arising from reciprocal arrangements with the EU. Amendments 2, 12, and 13 would limit the scope and potency of clauses 7, 8, and 9 respectively. PLP considers these three amendments to be useful, in particular, in restricting the powers from being used to remove any necessary rights protections.

(b) The Bill puts the decision about when (and therefore what) EU law is transferred into domestic law in the hands of Ministers

18. In the White Paper, the Government described the purpose of the Bill as being to repeal the ECA "on the day we leave the EU"¹⁸ and to ensure that "the same rules and laws will apply after we leave the EU as they did before".¹⁹ However, the Bill gives Ministers the power to define "exit day" by way of regulations, and there is

¹⁶ Clause 8

¹⁷ Constitution Committee, 'European Union (Withdrawal) Bill: interim report' (3rd Report, Session 2017–19, HL Paper 19) at para 38.

¹⁸ Paragraph 1.11.

¹⁹ Paragraph 1.12. See also paragraphs 2.9, 2.14, 3.1, all of which describe a process of incorporating EU law as it stands on the day that "we leave the EU".

nothing in the Bill which will ensure that “exit day” is indeed the day that the UK leaves the EU.²⁰

19. The powers to make regulations under the Bill are governed by Schedule 7, which makes provision for the scrutiny of regulations by Parliament and the devolved legislatures.²¹ Schedule 7 contains no provision dealing expressly with the regulations to be made under clause 14(1). Therefore, it appears that such regulations may be made without any Parliamentary scrutiny. Paragraph 13 (*Scope and nature of powers: general*) makes general provision for regulations made under the Bill:

“Any power to make regulations under this Act—

(a) may be exercised so as to—

(i) modify retained EU law, or

(ii) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and

(b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision restating any retained EU law in a clearer or more accessible way).” (emphasis supplied)

20. It is also unclear whether Ministers could set different “exit days” for different purposes.²² On one reading of the Bill, Schedule 7, paragraph 13(a)(ii) confers a broad discretion to “make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas” that would allow for different “exit days”. However, on another reading of the Bill, “exit day” is used in the singular, and could not be defined differently for different purposes. To ensure legal certainty, this must be clarified. This could be achieved by an amendment, such as tabled amendment number 6.²³

²¹ See Clause 16 (*Regulations*).

²² Schedule 7, paragraph 13

²³ Amendment 6: Clause 14, page 10, line 26, at end insert “but exit day must be the same day for the purposes of every provision of this Act.” Member’s explanatory statement: To prevent the creation of different exit days for different parts of the Act by SI.

21. The definition of “exit day” has important consequences for the rules and laws which will become part of domestic law after Brexit. For example, the law which is retained by clauses 2, 3, and 4 is that which applies “immediately before exit day”. Some rights and liabilities are only to form part of retained EU law if they have been “recognised” before exit day²⁴ or in a case commenced before exit day.²⁵ The meaning and effect of retained EU law is to be decided in accordance with principles set out in case law having effect before exit day.²⁶

22. The definition of “exit day” also determines the duration of the powers given to Ministers to make regulations under the Bill.²⁷ Although on the face of the Bill these powers are limited to two years after “exit day”, because they are able to define “exit day”, Ministers could extend the time period in which they would be able to exercise these powers by several years.

23. In the interests of legal certainty, “exit day” should be defined as “the day on which the UK ceases to be subject to the EU Treaties”. This would allow sufficient flexibility for there to be a transition period while also enhancing legal certainty and appropriately limiting the period for which Ministers may exercise the extensive delegated powers contained in the Bill. Alternatively, and at minimum, the Bill should be amended so as to ensure that the power to define “exit day” by regulations is subject – at least – to the affirmative procedure so that there is Parliamentary scrutiny of Ministers’ exercise of this important power.

(c) The Bill will not enable proper Parliamentary scrutiny of Ministers’ exercise of the broad powers conferred

24. In her foreword to the White Paper, the Prime Minister said that “The same rules and laws will apply on the day after exit as on the day before. It will then be for democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate.”²⁸

25. Despite these assurances, under the Bill, Ministers will be able to exercise the broad powers described above with limited Parliamentary oversight. The Bill provides for

²⁴ See for example clause 4(2)(b); Schedule 1 paragraph 2.

²⁵ Schedule 8, Part 4, paragraph 26.

²⁶ Clause 6(7) definitions of “retained domestic case law” and “retained EU case law”

²⁷ Clause 7(7)

²⁸ Emphasis added.

many of these powers to be exercised by "negative resolution".²⁹ This means that the powers are enacted and take effect unless one of the Houses of Parliament takes steps to pass a motion to repeal it. Given the extent to which statutory instruments are likely to be used to ensure a smooth Brexit, with the government estimating between 800 and 1000 statutory instruments being needed,³⁰ it is particularly important that Parliament is able to adequately scrutinise important changes as they are made. Under the current provisions, Ministers could (for example) repeal workers' and environmental rights, abolish the data protection regime, introduce new forms of taxation, and extend the period a person could be detained without charge, all by negative resolution.

26. In certain circumstances, the Bill requires powers to be enacted using an "affirmative resolution" procedure.³¹ Here, a law only takes effect if approved by both Houses of Parliament. Although the statutory instruments must be voted upon in both Houses, there is rarely time for significant debate. Amendments are not an option and draft regulations have to be voted on as a package. It is very rare that instruments proposed by affirmative resolution are rejected. Yet the Bill allows Ministers to establish new public authorities, expand the powers or functions of a public authority, or create new criminal offences³² by regulations subject to approval under the affirmative resolution procedure.³³

27. Even where the affirmative resolution procedure is required, the Bill allows Ministers to bypass the procedure in "urgent" cases.³⁴ In such circumstances, approval is not needed but legislation can only take effect for a month, unless Parliament subsequently approves it. That month does not include any Parliamentary recess or prorogation longer than four days,³⁵ so could last for significantly longer than a calendar month.

28. The potency of the powers that could be exercised in "urgent" cases is hard to overstate. Ministers could deprive people of their liberty and Parliament would not be able to do anything about it. A person could be imprisoned or extradited pursuant to

²⁹ Schedule 7, paragraphs 1(3), 2(4), 5(3), 6(3) (3), 9, 10.

³⁰ White Paper at §3.19.

³¹ See Sch 7, Part 1, paragraphs 1(1)(2), 2(2)(3); Part 2, paragraphs 4, 5(1)(2), 6(2)(2), 7(1)(2), 8 and 10.

³² With sentences of up to two years' imprisonment: see n6* above.

³³ Sch 7, Part 1, paragraph 1(1) and (2)

³⁴ Sch 7, Part 1, paragraph 3; Part 2, paragraph 11.

³⁵ Sch 7, Part, paragraph 3(5); Part 2, paragraph 11(5).

an urgent measure. Particularly worryingly, acts done while the provisions were in force would retain the force of law, even if Parliament later struck down the law.³⁶

29. Ministers have asked for broad powers with little oversight before. Parliament did not permit Ministers to usurp its sovereignty then and it should not permit it now. The Legislative and Regulatory Reform Act 2006 was amended in Parliament after significant controversy. Compared to the present Bill, it provides for greater restrictions on the powers which might be exercised by negative resolution and makes provision for a parliamentary Committee to consider which parliamentary process might be appropriate of any specific Order made pursuant to that Act. Both this Committee and the Delegated Powers Committee have indicated that a similar triage model might be appropriate for the EU (Withdrawal) Bill.³⁷

30. Various amendments have been tabled to the Bill to enhance Parliamentary scrutiny of delegated legislation. The Hansard Society has proposed a triage and scrutiny system under the control of Parliament for determining how Statutory Instruments under Clause 7 of the Bill would be dealt with.³⁸ Their proposals are incorporated into amendment 3, tabled by a group of Conservative MPs led by Dominic Grieve. Of the various scrutiny amendments tabled, this has the most cross-party support.

Legal certainty and the Rule of Law

31. The scale of the task of converting vast amounts of EU law into domestic law is unprecedented. Unfortunately, the lack of clarity in the Bill in its present form will create significant legal uncertainty and undermine the Rule of Law.

a) *What status will retained EU law have?*

32. The purpose of the Bill is said to be to “provide a functioning statute book on the day the UK leaves the EU” while, as a general rule, providing that “the same rules and laws will apply” after exit day as before.³⁹ However the Bill does not simply convert

³⁶ Sch 7, Part, paragraph 3(6); Part 2, paragraph 11(6).

³⁷ See Second Submission to the House of Commons Procedure Committee, 26 April 2017. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/procedure-committee/delegated-powers-in-the-great-repeal-bill/written/69207.html>

³⁸ See report of the Hansard Society, *Taking Back Control for Brexit and Beyond: Delegated Legislation, Parliamentary Scrutiny and the European Union (Withdrawal) Bill* <https://www.hansardsociety.org.uk/resources/taking-back-control-for-brexit-and-beyond-delegated-legislation>

³⁹ Explanatory Notes, paragraph 10.

EU law into domestic law but places limitations on the scope of EU law that is converted and on its effect. In doing so, the Bill raises questions and creates ambiguity. Parliament should seek clarity and explanation from the Government in order to ensure that the scope of retained EU law is clear.

33. By way of example, under existing EU law, Directives which have not been fully or correctly implemented, can sometimes confer rights which can be relied on directly in domestic courts.⁴⁰ However, under the Bill, these rights will only be retained in EU law if they have been “recognised” by a UK or EU court before exit day.⁴¹ It is unclear what is meant by “recognised”. For example, would a passing reference in a judgment to part of a Directive be sufficient for it to be “recognised”? If a small part of the Directive is mentioned, has the entire Directive been “recognised”?
34. Under the principle of supremacy, EU law “trumps” domestic law and where there is a conflict, domestic law must be disapplied in order to give effect to EU law.⁴² The Bill is explicit that after exit day, retained EU law will not be supreme if it conflicts with a new “enactment”.⁴³ However, the Bill provides that modifications to pre-Brexit “enactments” might still be subject to the supremacy principle. Whether the supremacy principle continues to apply depends on whether that is consistent with the “intention” of the modification. This leaves considerable uncertainty and Ministers should be asked to clarify, including by giving examples of when a modification would or would not be consistent with the principle of supremacy.
35. The Bill is also unclear as to whether retained EU law should be treated as primary or secondary legislation, and whether it should be treated differently depending on the circumstances. For example, “retained direct EU legislation” is to be treated as primary legislation for the purposes of the Human Rights Act 1998 (HRA).⁴⁴ That means that the courts cannot strike down or disapply such laws on the grounds of incompatibility with the HRA, but only make a declaration of incompatibility. However, the Bill is silent on whether “retained direct EU legislation” should be treated as primary or secondary legislation for other purposes. This may have implications for the remedies available to challenge such provisions on grounds other than incompatibility with the HRA.

⁴⁰ See paragraph 92 of the Explanatory Notes.

⁴¹ Clause 4(2)(b)

⁴² See Paragraph 53 of the Explanatory Notes.

⁴³ Clause 5(1)

⁴⁴ Schedule 8, paragraph 19(1)

b) *Will it be possible to challenge retained EU law?*

36. For EU secondary legislation to be valid, it must have a legal basis and be within the competence of the EU. However, sometimes the EU overreaches and directives and regulations are made that are invalid. The Bill provides for all binding EU secondary legislation to be converted into domestic law. Post-exit day, if one of these instruments is found to be invalid following a challenge in the CJEU, it cannot be right that invalid EU law would still be binding in the UK.

37. However, the ability to bring a challenge to the validity of retained EU law is limited in the Bill to cases in which either (a) the CJEU has found the legislation invalid *before* exit day or (b) the challenge is “of a kind described, or provided for, in regulations made by a Minister of the Crown”.

38. The Delegated Powers Memorandum⁴⁵ states that the purpose of this provision is to “ensure that instruments which are converted on exit can be still be challenged post exit on the grounds that they are invalid.” The justification for the power is said to be the lack of any existing jurisdiction in domestic courts to declare EU law invalid. It is clearly important that domestic courts should be able to consider validity challenges to retained EU law for the reasons set out above but this jurisdiction should be conferred on domestic courts in the Bill. This is too important to be left to the discretion of Ministers.

c) *What happens to EU law fundamental rights that are not part of the ECHR?*

39. The Government has said that one of the three fundamental principles underlying the Bill is that, by converting EU law into UK law, the Bill will ensure that individuals’ “rights and obligations will not be subject to sudden change”.⁴⁶ In the White Paper, the Government stated that “The Government’s intention is that the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK.”⁴⁷ The Secretary of State gave an assurance in Parliament

⁴⁵ [Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee](#), 13.07.2017

⁴⁶ See, for example, comments of David Davis in the House of Commons debate on the White Paper, *Legislating for UK Withdrawal from the EU*, HC Hansard 30 March 2017, Vol 624, col 427

⁴⁷ Paragraph 2.25; see also HC Hansard 30 March 2017 col 429: “The fact that the charter will fall away will not mean that the protection of rights in the UK will suffer as a result.”

that the intention was to ensure that all relevant substantive rights in the Charter would form part of domestic law after Brexit.⁴⁸

40. The Bill provides that the Charter of Fundamental Rights will not form part of domestic law after exit day⁴⁹ but seeks to preserve fundamental rights and principles which exist irrespective of the Charter.⁵⁰ Many of the rights in the Charter are also protected in the European Convention on Human Rights ('ECHR') and therefore (for the most part⁵¹) already part of domestic law through the HRA. Some other fundamental rights protected by the Charter are protected by the common law or by existing statutory provisions.

41. It is welcome that there are provisions in the Bill that prevent Ministers from using their new powers to amend, repeal, or revoke the HRA or any subordinate legislation made under it.⁵² However, there are fundamental rights protected by EU law which are not protected to the same extent by the ECHR or by existing domestic law. For example, the High Court (in *David Davis and others*' challenge to provisions in the Data Retention and Investigatory Powers Act 2014) held that Article 8 of the EU Charter, which concerns data protection, "clearly goes further, is more specific, and has no counterpart in the ECHR".⁵³

42. The Charter has been used to challenge the indiscriminate bulk collection of personal data by the government, and to demand that the government protect the personal data it does collect.⁵⁴ It has been used by women to fight discriminatory insurance company rules that unfairly charged them more than men.⁵⁵ It is the source of the "right to be forgotten" – that is, a person's right to require that internet search engines do not spread false or hurtful information about them with impunity.⁵⁶

⁴⁸ HC Hansard 30 March 2017, Vol 624, col 432

⁴⁹ Clause 5(4)

⁵⁰ Clause 5(5)

⁵¹ The HRA does not incorporate all of the rights protected by the ECHR. In particular, the right to an effective remedy for breach of Convention rights in Article 13, ECHR is not incorporated.

⁵² Clause 7(6)(e)

⁵³ *David Davis and others v Secretary of State for the Home Department* [2015] EWHC 2092 (Admin), paragraph 80.

⁵⁴ *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others* C293/12

⁵⁵ *Association Belge des Consommateurs Tests v Conseil des Ministres* (2011) C-236/09

⁵⁶ *Google Spain SL v. Agencia Española de Protección de Datos*

43. Another example is the right to an effective remedy in Article 47 of the Charter. The right to an effective remedy is protected by Article 13 ECHR but that right is not incorporated by the HRA.

44. It is unclear what the status of these rights will be after exit day. Fundamental rights are also general principles of EU law which will form part of retained EU law (to the extent recognised before exit day) but the general principles will not be able to be relied on to enforce individual rights.⁵⁷ The Government has given assurances that no substantive rights will be lost and it needs to demonstrate that all of the substantive rights protected by the Charter will be protected to the same extent by domestic law, including the HRA, after exit day.

Conclusion

45. In light of the above, it is PLP's strong view that the Bill should be amended to protect Parliamentary sovereignty and to avoid profound legal uncertainty. PLP recognises the need for the Bill to give Ministers the powers to ensure a smooth Brexit process. However, it is essential for Parliamentary democracy and the Rule of Law that the Bill ensures effective Parliamentary oversight and provides absolute clarity on key issues: clarity about the duration and scope of Ministers' powers, clarity about the role of Parliament, and clarity about how retained EU law will operate.

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⁵⁷ Schedule 1, paragraph 3.