



# Public Law Project

## Problems with the Repeal Bill

- 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 minimal oversight from Parliament.<sup>1</sup> The Bill allows Ministers to make “any provision that could be made by an Act of Parliament”<sup>2</sup> that they consider “appropriate”<sup>3</sup> to ensure a smooth Brexit, with little oversight. The White Paper recognised the need to balance the importance of Parliamentary scrutiny with giving Ministers the flexibility needed to act swiftly to ensure a smooth Brexit.<sup>4</sup> 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, their scope is uncertain and their purpose ill-defined.<sup>5</sup>
- 2. The Bill is unclear on important issues arising from preserving and converting EU law into domestic law.** The Bill attempts to take a freeze-frame of EU law as it applies on Brexit day. However, the Bill 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 (‘CJEU’) play going forward? What happens to EU law fundamental rights that are not part of the ECHR? The final version of the Bill must provide absolute clarity on these issues to ensure legal certainty and uphold the Rule of Law.
- 3. Parliament should not rely on judges to fix the problems with the Bill.**  
When Ministers act unlawfully or legislation is unclear it leads to litigation.

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<sup>1</sup> Schedule 7, Part 1 makes provision for the nature of scrutiny of regulations.

<sup>2</sup> Clause 7(4)

<sup>3</sup> Clause 7(1)

<sup>4</sup> Department for Exiting the European Union, [Legislating for the United Kingdom’s withdrawal from the European Union](#) Cm 9446, 30.03.2017, paragraph 2.30 (‘the White Paper’).

<sup>5</sup> Clause 7(6)(c) excludes the creation of “relevant criminal offences” defined in cl. 14(1) as offences “for which an [adult] is capable of being sentenced to imprisonment for a term of more than 2 years”: p. 10, lines 44-48.



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Unless Parliament introduces proper safeguards on powers delegated to Ministers and provides clarity on how retained EU law will operate, aspects of the Bill, as well as decisions and/or delegated legislation made under it, will be questioned in the courts. It is unwise to rely on courts to remedy the deficiencies in the Bill. Litigation is expensive, lengthy, difficult to bring, and may be ineffective.

This is an extract from PLP's Parliamentary briefing on the EU (Withdrawal) Bill. The full briefing can be found [here](#).