



Department  
for Exiting the  
European Union

# The Repeal Bill

## Factsheet 1: General

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### The Repeal Bill

On 13 July, the Government took the next step in returning power from Brussels to the UK by introducing the Repeal Bill (formally known as the “*European Union (Withdrawal) Bill*”)

to the House of Commons. The Bill will ensure that the UK exits the EU with **certainty, continuity and control**.

The Bill ensures that, so far as possible, the same rules and laws will apply on the day after exit as on the day before. This will provide the maximum possible **certainty and continuity** to businesses, workers and consumers across the UK – so that they can have confidence that they will not be subject to unexpected changes on the day we leave the EU.

The Bill delivers on our promise to end the supremacy of EU law in the UK. It is the only way for the UK to leave the EU while taking back **control** – so that our future laws will be made in London, Edinburgh, Belfast and Cardiff.

### Explanation of the Bill

- The Repeal Bill is integral to ensuring that the statute book is able to function on the day we leave the EU. It is intended to promote continuity and certainty as far as possible. Therefore, the Bill is technical in nature rather than a vehicle for major policy changes.

#### Why are we repealing the European Communities Act 1972 (ECA)?

- The Bill repeals the ECA. It is important to repeal the ECA to ensure there is maximum clarity as to the law that applies in the UK, and to reflect the fact that following the UK's exit from the EU it will be UK law, not EU law, that is supreme.

#### Isn't repealing the ECA enough?

- If the Repeal Bill did not convert existing EU law into domestic law at the same time as repealing the ECA, the UK's statute book would contain significant gaps once we left the EU. There are a large number of EU regulations and many other EU-derived laws which form part of our law which, if we were to repeal the ECA without doing anything else, would no longer apply, creating large holes in our statute book.

- Therefore, the Bill will convert existing direct EU law (including EU regulations and decisions) into UK law as it applies in the UK at the date of exit. It will also preserve the laws we have made in the UK to implement our EU obligations (such as laws made to implement EU directives).
- This approach of converting EU law into domestic law maximises certainty and stability while ensuring Parliament is sovereign.

#### Is this enough to ensure a functioning statute book?

- Simply doing the above will not be enough to ensure the law operates properly on the day we leave the EU. Despite the Bill's conversion of EU-derived legislation, many areas of law will not function effectively once we have left the EU, because, for example, they refer to EU institutions that will no longer play a role in the UK.
- The Bill will therefore give ministers **temporary powers** to correct retained EU law which does not function effectively. The corrections will be made by statutory instruments made under the power(s) in the Bill, and these will need to have passed through the appropriate parliamentary procedures before we exit the EU.

#### In addition:

- The Bill will also replicate the common UK frameworks created by EU law in UK law, and maintain the scope of devolved decision making powers immediately after exit. This will be a transitional arrangement to provide certainty after exit and allow intensive discussion and consultation with devolved administrations on where lasting common frameworks are needed.

#### Other preparation:

- To ensure we are prepared for the process of withdrawal from the EU, the Government will also introduce a number of Bills (as announced in the Queen's Speech) over the course of the next two years including a Customs Bill and an Immigration Bill.

## Key facts

- According to the EU's legal database, there are currently over 12,000 EU regulations in force (this includes amending regulations as well as delegated and implementing regulations).
- In terms of domestic legislation which implements EU law such as directives, research from the House of Commons Library indicates that there have been around 7,900 statutory instruments that have implemented EU legislation.
- We estimated around 800 - 1,000 EU-exit related Statutory Instruments will be required in the White Paper "Legislating for the United Kingdom's withdrawal from the European Union". It is not possible to give a definitive figure for the number of Statutory Instruments needed. This is because the volume of legislation will depend on the outcome of negotiations, on policy decisions to be taken and on further work in how we bring forward the secondary legislation.

## Key quotes

- Mike Cherry, Federation of Small Businesses, "This gives small businesses stability and certainty that Brexit will not mean sudden big changes in regulation over the next two years. While transferring EU regulations into domestic UK law should eventually allow an overhaul of some of the more burdensome processes, which inhibit productivity, it is in no-one's interest for there to be a cliff-edge moment".
- Josh Hardie, Confederation of British Industry, "We welcome the Government's aim to give businesses certainty as the UK leaves the EU, as clarity and continuity on rules will be vital for business planning and investment. This is vital for companies to continue creating jobs and prosperity across all UK regions and nations."



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# The Repeal Bill

## Factsheet 2: Converting and preserving law

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### Conversion and preservation of EU law

The purpose of the Repeal Bill is to provide a functioning statute book on the day we leave the EU, and ensure that it is for our sovereign Parliament (and in some cases for the devolved administrations) to make any future changes.

The Bill aims to maximise certainty for individuals and businesses as we leave the EU. It is in no one's interests for there to be a cliff edge when we leave the EU, and so the laws and rules that we have now will, so far as possible, continue to apply. This gives the maximum possible certainty to individuals and businesses about their legal rights and obligations as we leave the EU, and provides the basis for a smooth and orderly exit.

The European Communities Act 1972 (ECA) gives effect in our legal system to our membership of the EU and existing EU-derived law. The ECA is being repealed.

Therefore, to avoid large gaps appearing in the statute book the Bill will convert existing EU law into UK law as it applies in the UK at the date of exit. It will also preserve laws we have made in the UK to implement our EU obligations.

### What are we retaining?

- The Bill will convert existing EU law which applies directly in the UK legal system (such as EU regulations and decisions).
- The Bill will preserve the laws we have made in the UK to implement our EU obligations (e.g. the laws which implement EU directives).
- The Bill will convert any other rights etc. which apply directly in the UK as a result of the ECA, including directly effective rights and obligations within EU treaties. An example is Article 157 of the Treaty on the Functioning of the European Union (TFEU) on equal pay.
- The Bill also converts directly effective rights arising under other treaties brought into domestic law by the ECA, such as international agreements made by the EU with countries outside the EU.
- The body of law that is converted and preserved under the bill is known as 'retained EU law'.

## What are we not retaining?

- Certain EU legislation which did not apply to the UK, for example because the UK did not adopt the Euro, or because the UK did not participate in certain aspects of the EU acquis, in the area of freedom, security and justice.
- Changes to EU law which apply after exit day.
- EU directives. Directives only apply to EU member states, so they will cease to have effect in the UK once the UK leaves the EU. The Bill is not preserving them as they have already been implemented in domestic law.
- The principle of supremacy of EU law, except where there is a conflict between pre-exit legislation and retained EU law, in which case the principle of supremacy will continue to apply. The principle of supremacy also means that domestic law must be interpreted, as far as possible, in accordance with EU law. That interpretative principle will be maintained in respect of pre-exit domestic legislation.
- The Charter of Fundamental Rights (see separate factsheet on the Charter).
- *Francovich* damages (damages that are available where there are breaches of EU law by the State).

## Court of Justice of the European Union (CJEU) case law

- The Bill also sets out how retained EU law is to be read and interpreted on and after exit day. Decisions of the CJEU made after exit day will not be binding on UK courts and tribunals, and domestic courts and tribunals will no longer be able to refer cases to the CJEU after exit day.
- Questions on the meaning of retained EU law will be determined by domestic courts in accordance with pre-exit CJEU case law. This case law will have the same binding or precedent status as that of the UK Supreme Court or the High Court of Justiciary.

## Frequently Asked Questions

### Why are you copying EU law into our law when we're leaving the EU?

- It is important to ensure there is maximum clarity as to the law that applies in the UK. Simply repealing the European Communities Act would leave large gaps in the statute book. To avoid this, the Bill will convert directly-applicable EU laws into UK law and preserve laws made to implement the UK's EU obligations. This maximises certainty for individuals and businesses, avoids a cliff edge, and provides a stable basis for Parliament to change the law where it decides it is right to do so.

### Will the UK be bound by judgments of the CJEU made after we leave the EU?

- No. In leaving the EU we will bring an end to the jurisdiction of the European Court of Justice (CJEU) in the UK, and the Bill provides that UK courts and tribunals will not be bound by CJEU decisions made after exit.
- UK courts will be able to take CJEU judgments into account when making their decisions, as they can currently do with judgments of other courts around the world - but they will not be required to do so.

### What about case law that preceded withdrawal?

- For as long as EU-derived law remains in force in the UK, it is essential that there is a common understanding of what that law means.
- To maximise certainty, therefore, the Bill will ensure that any question as to the meaning of EU-derived law will be determined in the UK courts, by reference to the CJEU's case law as it exists on the day we leave the EU.



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# The Repeal Bill

## Factsheet 3: The correcting power

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### The correcting power

The correcting power (clause 7 of the Bill) allows the UK Government and the devolved administrations to make corrections to retained EU law to deal with deficiencies that arise from the UK's withdrawal from the EU.

### Background

Converting and preserving EU law is not enough to provide the UK with a functioning set of laws on exit day. Retained EU law will contain a broad range of deficiencies, from inaccurate references to continued legal provision for arrangements that might no longer exist.

The Bill therefore gives a power for the UK government, and devolved administrations in relation to domestic legislation within areas of devolved competence, to make secondary legislation that corrects retained EU law. Without the power to make secondary legislation, we would require a prohibitively large amount of primary legislation to correct these problems. It is not possible to predict at this stage how every law is to be corrected, as in some policy areas the solution may depend on the outcome of negotiations or other factors.

The power can only be used to make corrections to deficiencies that arise as a consequence of the UK's withdrawal from the EU - it is not a power to change laws merely because the government did not like them before exit.

Parliament or the devolved legislatures will be able to scrutinise any statutory instrument made under this power. A vote of both Houses of Parliament (or an equivalent 'affirmative procedure' in a devolved legislature) will need to approve some uses of the powers, such as creating new public bodies.

The House of Lords Select Committee on the Constitution recognised that the circumstances of the Bill "will almost certainly necessitate the granting of relatively wide delegated powers to amend existing EU law and to legislate for new arrangements following Brexit".

## Key facts

The correcting power can only be used to deal with deficiencies that come as a consequence of the UK leaving the EU. Deficiencies might include:

- Inaccurate references. These could include references to EU law or to the UK as a member state.
- Law that gives the Commission or EU institution a function to provide services or regulate, if the UK and EU agree these arrangements won't continue.
- Law that gave effect to a reciprocal or other kind of arrangement between the UK and the European Commission or EU member states. If these arrangements do not continue to exist in practice, the law that gave effect to them will be deficient.

The power can deal with deficiencies in a variety of ways. It might, for example, be used to change references, transfer functions from an EU institution to a UK institution, or set up a UK institution. However, the power is restricted. It cannot:

- Impose or increase taxation
- Make retrospective provision
- Create a criminal offence that would result in a sentence of more than two years
- Alter the Human Rights Act 1998
- Alter the Northern Ireland Act 1998

The power is temporary. It can only be used for up to two years after exit day.

Any use of the power will be scrutinised by Parliament (or the relevant devolved legislature), and some statutory instruments will need the approval of both Houses of Parliament to become law.





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# The Repeal Bill

**Factsheet 4: Power to  
implement the withdrawal  
agreement**

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## Implementing power

The Government has stated its intention to secure a 'deep and special partnership' with the European Union following its withdrawal. Under the Article 50 process, the Government intends to agree the terms of our future partnership alongside those of our withdrawal from the EU. Once we have concluded the withdrawal agreement, we will need to implement what has been agreed in domestic legislation where it is necessary.

The aim of the Repeal Bill is to ensure that our statute book operates appropriately and reflects the outcome of the negotiations. The Bill therefore contains a power to implement a withdrawal agreement (Clause 9 of the Bill).

This power enables Government to make legislative changes appropriate for the purposes of implementing the withdrawal agreement. The power to implement the withdrawal agreement will provide legal certainty and continuity, ensuring a smooth and orderly exit from the EU. The changes will be made by secondary legislation.

This is a time-limited power that allows for the implementation of the withdrawal agreement reached with the EU, without delay, where it should be done before exit day. This power will enable us to give effect to an agreement concluded under Article 50 of the Treaty on European Union and Article 106a of the Euratom Treaty.

This is a separate process from that by which the Government will bring forward a motion on the final agreement to be voted on by both Houses of Parliament before it is concluded.

The withdrawal agreement will affect the whole of the UK and the implementing power will be conferred on the devolved administrations in relation to domestic legislation within areas of devolved competence.

## Key facts

- The power in the Repeal Bill enables Government and the devolved administrations to make legislative changes appropriate for the purposes of implementing the withdrawal agreement.
- The exact use of the power will depend on the contents of the withdrawal agreement, but it will ensure that a range of negotiated outcomes can be catered for.
- For example, if there was relevant provision in the withdrawal agreement, the power could be used to clarify the situation in relation to UK cases at the CJEU that started before exit but were not yet concluded by exit day.
- It could also be used to enable regulatory approvals for UK products that were pending at the point of exit if this was agreed with the EU.
- Any use of the power will be scrutinised by Parliament (or the relevant devolved legislature), and some statutory instruments will need the approval of both Houses of Parliament to become law.
- The Lords Select Committee on the Constitution recognised that the Bill might need to include a delegated power to implement the result of the UK's negotiations with the EU.



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# The Repeal Bill

## Factsheet 5: Devolution

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### Devolution

The Government is committed to ensuring that withdrawal from the EU is a successful and smooth process for the whole of the UK.

At present, EU rules create a consistent approach across the UK in a range of policy areas. This protects the freedom of businesses to operate across the UK single market, and the UK's ability to fulfil international obligations and protect common resources.

As powers are repatriated from the EU, our guiding principle is that no new barriers to living and doing business within our own union are created when we leave the EU. We will therefore need to examine these powers carefully to determine the level best placed to take decisions on these issues.

The Government expects that the return of powers from the EU will lead to a significant increase in the decision making powers of the devolved administrations.

### Key facts

- The Bill will replicate the common UK frameworks created by EU law in UK law, and maintain the scope of devolved decision making powers immediately after exit. This means that any decisions that the devolved authorities can take before exit, they can continue to take after exit.
- This will be a transitional arrangement to provide certainty after exit and allow intensive discussion and consultation with devolved authorities on where lasting common frameworks are or are not needed.
- Where it is determined that a common approach is not required, the Bill provides a power to lift the limit on devolved competence in that area.

## Frequently Asked Questions

### **Aren't you just re-reserving powers? Isn't this a Westminster land grab?**

- No. As the PM has made clear, under this Bill decisions that are currently made by devolved administrations will continue to be made by the devolved administrations. That is what is set out in the Bill.
- There will then be discussions about where lasting common frameworks are or are not needed. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved authority.
- This is about ensuring that decision making powers returning from the EU are allocated within the UK in a way that works - ensuring that no new barriers to living and doing business within the UK are created.
- This will be vital if we are to protect the UK internal market, and ensure we have the ability to strike the best trade deals around the world, protect our common resources, and fulfil our international obligations. This is in the interest of citizens in every part of the UK.

### **What input have the devolved administrations had on the development of the devolution provisions in the Bill?**

- The Government has discussed the Repeal Bill with the devolved administrations, and the Bill and White Paper were shared with the devolved administrations in advance of publication. UK Government officials have been engaging with their colleagues in the devolved administrations on the Bill and to help determine the scale of the changes needed to correct the statute book across the UK.



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# The Repeal Bill

## Factsheet 6: Charter of Fundamental Rights

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### The Charter of Fundamental Rights

- The Charter of Fundamental Rights of the EU (the Charter) brought together in a single document the fundamental rights protected in the EU. It did not create any new rights, freedoms or principles.
- The Charter was given legal effect by the Lisbon Treaty on its entry into force in December 2009. Article 6(1) Treaty on European Union (TEU) provides for the Charter to have the same legal status as the EU Treaties.
- The Charter applies to EU institutions all the time, but only applies to a member state when it is acting within the scope of EU law.
- It is comprised of rights drawn from many sources including the constitutional traditions and international obligations common to the member states and the European Convention on Human Rights (ECHR). Many of these are provided for in domestic law under the Human Rights Act 1998.
- Some Charter articles contain principles rather than rights, and others contain both. Article 52(5) states that principles 'may be implemented by legislative and executive acts' taken by the EU institutions and member states when implementing EU law, and are 'judicially cognisable only in the interpretation of such acts and in ruling on their legality'. So the Charter makes clear that principles are not capable of having the same effects as rights.

## Why is the Charter not being converted into UK law?

- The UK has a **longstanding tradition of ensuring our rights and liberties are protected domestically** and of fulfilling our international human rights obligations. The decision to leave the EU does not change this.
- **The Charter did not create any new rights.** Instead it was intended to catalogue the rights that already existed in EU law, including case law of the CJEU.
- **The substantive law and the principles which underpin the Charter will be converted into UK law.** As such, they will continue to be enshrined in UK domestic law, through domestic legislation or retained EU law.
- **The Charter only applies to member states acting within the scope of EU law.** As such, when we leave the EU it will cease to have any real relevance for the UK.
- 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.** The Charter was never in itself the source of those rights.
- The Charter of Fundamental Rights is only one element of the UK's human rights architecture. The Bill makes no changes to the UK's substantive obligations under the ECHR, nor under the Human Rights Act 1998 that gives effect to the ECHR. This Government has been clear that it has no plans to withdraw from the ECHR. Individuals will still be able to bring a claim under the Human Rights Act 1998 as they can now.
- It does not make sense for the UK to continue to be subject to EU judicial processes and remedies that do not exist in our legal system once the UK has left the EU. It is the Government's position that it cannot be right that the Charter could be used in its own right, post-exit, to bring challenges against the Government to strike down UK legislation after the UK's withdrawal from the EU.

## Key quotes

*"The application of the EU Charter is narrower than that of the European Convention on Human Rights for two main reasons: not all of its provisions have direct effect, and so they cannot be relied on directly by individuals in national courts; and it applies to Member States 'only when they are implementing Union law.'"*<sup>1</sup> (House of Lords European Union Committee)

*"It would be difficult to apply the Charter so that it would function in a domestic context alone."*<sup>2</sup> (House of Commons Women and Equalities Select Committee)

*"In all, whilst the Charter has made fundamental rights more visible, we conclude that it has made their application more complex, and question whether this defeats its primary purpose."*<sup>3</sup> (House of Commons European Scrutiny Committee)

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<sup>1</sup> House of Lords European Union Committee, "The UK, the EU and a British Bill of Rights; 12th Report of Session 2015-16" (para 71)

<sup>2</sup> House of Commons Women and Equalities Select Committee, "Ensuring strong equalities legislation after the EU exit", 22 February 2017, p12

<sup>3</sup> House of Commons European Scrutiny Committee, "The application of the EU Charter of Fundamental Rights in the UK: a state of confusion," 43rd Report of Session 2013-14, p5



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# The Repeal Bill

## Factsheet 7: Workers' rights

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### **Workers' rights**

The UK has a long-standing record of ensuring that workers' rights are protected. This includes employment and equality rights and protections for health and safety at work. The decision to leave the European Union does not change this. This Government has made a firm commitment to protect workers' rights, and to maintain protections covered in the Equality Acts.

In a number of areas, UK employment law already goes further than the minimum standards set out in EU legislation, and this Government has committed to protect and enhance the rights people have at work as we leave the EU.

The Repeal Bill will ensure that the workers' rights that are enjoyed under EU law will continue to be available in UK law after we have left the EU. This includes rights derived from EU law, such as the Working Time Directive and the Agency Workers' Directive. This will give certainty and continuity to employees and employers alike, creating stability in which the UK can grow and thrive.

Where protections are provided by the EU treaties they will also be converted by the Bill. And where rights have been extended by CJEU judgments, those rights will continue to be protected in the UK once we have left the EU, with those judgments having the same precedent status as the Supreme Court's own judgments.

This Government is also committed to ensuring that equalities are properly protected in UK legislation following our withdrawal from the EU. All the protections covered in the Equality Act 2006, the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once the UK has left the EU.

Any future changes to domestic legislation will be subject to the appropriate parliamentary scrutiny – with Parliament and the electorate continuing to hold the Government to account.



## Key facts

### Employment

- The UK labour market is one of the most flexible in the world. We define minimum standards in the workplace but employers and individuals are free to agree terms and conditions which go beyond the statutory minimum.
- Our labour market is strong, and above the EU and OECD averages. The UK employment rate (Feb – April 2017) is 74.9%, the highest rate since comparable records began in 1971.
- Our domestic legislation exceeds EU required levels of employment protections in a number of ways, including:
  - o 5.6 weeks of annual leave in the UK as compared to the EU requirement of 4 weeks;
  - o The right to request flexible working for all employees, as against the EU requirement for the right to request flexible working for parents on return from parental leave;
  - o 52 weeks of maternity leave, of which 39 weeks are paid – as compared to the 14 weeks of paid maternity leave required by the Pregnant Workers' Directive. The same rules apply to those who adopt;
  - o Paternity leave and pay for new dads or a mother's partner where there are currently no protections from the EU;
  - o Shared Parental Leave and Pay helps promote a greater attachment to the labour market for working parents, particularly women, as it gives working families more choice and flexibility – enabling them to combine work with childcare responsibilities;
  - o 18 weeks of parental leave per parent per child up to a child's 18<sup>th</sup> birthday, compared to the EU's requirement to the age of 8.

### Health and safety at work

- The Health and Safety at Work etc. Act 1974 is not reliant on our membership of the EU. It places a comprehensive set of duties on employers to protect employees and those who might be affected by work activities from risks in the workplace. The Act is supported by a set of regulations, including ones that implement EU directives and which will be become retained EU law under the Repeal Bill.
- The UK is already one of the safest places to work in the EU. In 2013, the standardised rate of fatal injuries to employees in the UK was amongst the lowest of those published by Eurostat.

## Equalities

- Decades of domestic legislation and implemented EU law have already been consolidated into the Equality Act 2010 in Britain, and in equivalent legislation in Northern Ireland; these are the cornerstone of domestic equality law.
- The Government is committed to ensuring that all the protections in the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once we have left the EU. This will ensure the continued protection of people's rights not to be discriminated against, harassed or victimised in the provision of goods, services and public functions, housing, transport and education.
- One of these ongoing protections is the public sector equality duty, and its equivalent in Northern Ireland. During the process of EU exit, the public sector equality duty will continue to apply to all relevant policy changes, as it does now. Public authorities will therefore need to give due regard to the potential equality implications of any changes that are being introduced as a result of the UK's exit from the EU, keeping equality at the heart of UK public policy.
- The Government is similarly committed to maintaining the continued role of the Equality and Human Rights Commission (EHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI), which all have important roles in enforcing and monitoring equalities and rights law within the UK.

## Frequently Asked Questions

### **Will the powers provided by the Repeal Bill be used to amend employment protections?**

- The secondary legislation we intend to bring forward will not make changes to the rights that workers have in the UK, but will instead correct legislation to ensure it is fit for purpose after exit.

### **Will the Repeal Bill preserve the employment rights given to individuals by CJEU case law where these extend beyond those set out in EU legislation?**

- Yes. To maximise certainty and continuity, retained EU law will continue to be interpreted in accordance with the pre-exit case law of the Court of Justice.

### **If the Supreme Court will be able to overrule CJEU judgements in the future, surely all the rights that are enshrined in CJEU case law are no longer safe?**

- It is very rare for the Supreme Court to depart from one of its own decisions or that of its predecessor, the House of Lords.

### **Will you commit to staying in line with EU legislation in this area, even after withdrawal, to ensure that UK workers will not be getting a raw deal compared to their counterparts in EU member states?**

- We do not need to be part of the EU, nor bound by EU legislation, to have strong protections for workers. According to statistics on health and safety at work, the UK is one of the safest places to work in the EU.
- The UK already goes beyond EU minimum standards in a number of areas, such as entitlement to annual leave and provisions for shared parental leave and flexible working.
- The government has shown its commitment to extending workers' rights when this is the right choice for the UK, and will continue to do so as we leave the EU.



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## Factsheet 8: Environmental protections

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### Environmental Protections and the Repeal Bill

- The UK has a long history of environmental protection and we are committed to safeguarding and improving this. This Government is committed to build on this and be the first generation to leave the natural environment in a better state than we inherited it.
- As a part of this work, we will produce a comprehensive 25 Year Environment Plan that will chart how we will improve our environment as we leave the European Union and take control of our environmental legislation again.
- We will also uphold all our obligations under international environmental treaties.

### Key facts

- The Repeal Bill will convert the existing body of EU environmental law into UK law, making sure the same protections are in place in the UK and laws still function effectively after the UK leaves the EU.
- This Government is committed to be the first generation to leave the natural environment in a better state than we inherited it. Leaving the EU means we now have a unique opportunity to design a set of policies to drive environmental improvement with a powerful and permanent impact, tailored to the needs of our country.
- This will make sure we can create a healthy environment and strong economy – and delivering on our commitment to leave the environment in a better state than we found it.
- Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will be fully involved in ongoing negotiations of new European legislation.

## **Frequently Asked Questions**

### **Will the UK continue to meet its international environmental commitments?**

- The UK will continue to play an active role internationally as demonstrated by the UK ratifying the Paris Agreement on Climate Change. We will continue to uphold our obligations under international environmental treaties such as the Montreal and Gothenburg Protocols, the Stockholm Convention, the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species (CITES).

### **How will the government be held responsible for making sure it complies with its own environmental regulations?**

- The UK has always had a strong legal framework for enforcing environmental protections and this will continue. This includes provisions for regulators to enforce our existing environmental regulations, and our system of judicial review and its body of public law that enables decisions and actions of public authorities to be challenged through the UK courts.
- It is, and it will remain, the role of Parliament to hold the executive to account, and Parliament is ultimately accountable to the electorate. That will not change on our departure from the EU.

### **Will the views of external stakeholders be taken into account during the renegotiation process?**

- We will produce a comprehensive 25 Year Environment Plan that will chart how we will improve our environment as we leave the European Union and take control of our environmental legislation again.
- Our ambition across Government is to work with the public and organisations right across the country to help us build our future plans for environmental protection. The Government has already begun engaging closely with the public, NGOs and industry, hearing from them how we should drive environmental protection and agriculture forward.

### **Will the Repeal Bill give government the power to change environmental laws without proper parliamentary scrutiny?**

- The correcting power in the Bill can only be used to correct deficiencies arising from the UK's withdrawal from the EU.
- Corrections need to be made via statutory instruments subject to the normal Parliamentary procedures and scrutiny. The Government will publish an explanatory memorandum alongside statutory instruments to explain clearly what is being done and why.

### **Will the Government bring in an environmental protection bill?**

- The UK's current legislative framework at national, EU and international level has delivered real environmental benefits. The Repeal Bill will ensure that the body of existing EU environmental law continues to have effect in UK law.
- We will then have the opportunity, over time, to ensure our legislative framework is outcome-driven and delivers on our overall commitment of improving the environment within a generation.

### **We have already made significant progress in improving our environment...**

- Our rivers, beaches and air are cleaner than they were 50 years ago and household recycling levels have quadrupled in the last 15 years.
- Over the last five years, we have planted more than 11 million trees, including one million trees in our towns and cities.
- We have seen successful reintroductions of species such as red kites and increases in the populations of otters and bird species.
- Forty per cent of England's seas are within designated Marine Protected Areas which provide protection for important and vulnerable habitats and species.
- In England, over 60% of our most important habitats for wildlife are now in good condition or have management in place to restore their condition and we have established or started to restore over 100,000 hectares (c. 250,000 acres) of important habitats for wildlife, including field margins, wetlands and woodlands.
- We have reduced the total emissions of some of our most hazardous organic pollutants chemicals over the last 20 years by over 90%.
- But we can go further. By returning power to the UK, we will have a unique opportunity to design a set of policies that drive environmental improvement, tailored to the needs of our country that has a powerful and permanent impact, and deliver on our commitment to leave the environment in a better state than we inherited it.



Department  
for Exiting the  
European Union

# The Repeal Bill

## Factsheet 9: Consumer protection

[repeal-bill@dexeu.gov.uk](mailto:repeal-bill@dexeu.gov.uk)

### Consumer Protection

- The UK has a strong history of protecting consumer rights. UK consumers have relied on laws that protected purchasers of goods and services and outlawed unfair contract terms, before the EU was competent to act in this area.
- Consumers in the UK benefit from a wide range of rights when buying goods and services from businesses based in the UK and in the EU. The UK has been influential in the EU in developing these rights.
- UK consumer protections that are based on EU law will be retained. This means that, when buying from traders in the UK, British consumers will be able to rely on the same rights they have now after we leave the EU.
- The way consumer protections apply internationally in future is a matter for negotiations, and Government will carefully consider how best to work on these issues with our EU partners after we leave the EU.

### What consumer protections do we have now?

- Consumers in the UK benefit from a wide range of rights when buying goods and services from businesses based in the UK and in the EU. The UK has been influential in the EU in developing these rights, and the UK's 2015 Consumer Rights Act builds on EU consumer law principles. It sets out a coherent framework of consumer protections across the spectrum of consumer goods, service and digital content supply contracts. Organisations like Citizens' Advice, Trading Standards and the Competition and Markets Authority, as well as Government, work to ensure that consumers are aware of their rights and what to do when things go wrong.
- For example, before making an online purchase of goods, consumers in the UK (and the EU) must be given all the key information about the transaction and can cancel the contract and return the goods within 14 days, whether or not they are faulty. They are also protected against a wide range of prohibited unfair, misleading and aggressive business practices, many of which are criminal offences and in relation to which a consumer may have a right of redress. Terms in goods and service contracts which are found to be unfair are invalid or

‘non-binding’.

- Once a sale is complete, UK consumers now have the statutory right to return faulty goods bought both online and in-store, and get a full refund within a set time period, and they have similar rights of redress (repeat performance, repair or refund) in relation to service contracts, as well as when they purchase digital content- such as music, games and apps.
- Today, UK consumer law goes beyond EU minimum requirements in some key areas, like unfair terms and consumer sale of goods. For example, the right for UK consumers to reject goods which aren’t of satisfactory quality or otherwise don’t conform to the contract within 30 days, and automatically get their money back is a UK-level protection (in other EU countries, a refund is only an option after repair or replacement has been tried).

## Frequently Asked Questions

### **What will the effect of the Repeal Bill be for consumers in the UK?**

As a result of the Bill, UK consumer protections that are based on EU law will be retained. This means that, when buying from traders in the UK, UK consumers will be able to rely on the same rights they have now after we leave the EU.

Where rights derived from EU legislation have been clarified by the CJEU, those rights will continue to be protected in the UK once we have left the EU, with those judgments having the same precedent status as the Supreme Court’s own judgments. Use of the powers in the Bill will be subject to parliamentary scrutiny procedures, as set out in the Bill, so Parliament will continue to hold the government to account.

### **What happens when consumers buy from an EU trader after EU Exit?**

Currently, foreign traders whose activities are directed towards the UK may be bound by UK law and transactions are usually protected by both UK and EU-derived consumer laws. When consumers buy from businesses based in the EU, or, in certain circumstances, from non-EU countries, their rights are enforceable because of the effect of EU law. The way consumer protections apply internationally in future is a matter for negotiations, and Government will carefully consider how best to work on these issues with our EU partners after we leave the EU.





Department  
for Exiting the  
European Union

# The Repeal Bill

## Factsheet 10: Glossary

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### Term

### Definition

Act of Parliament

An Act of Parliament is a law that both Houses of Parliament have agreed to and which has received Royal Assent. It is enforced in all the areas of the UK where it is applicable.

Affirmative procedure

Under the affirmative procedure a statutory instrument must be approved by both the House of Commons and the House of Lords to become law. There are two sub-categories of the affirmative procedure. Under the *draft affirmative* procedure, the statutory instrument must be approved before it becomes law. Under the *made affirmative* procedure, the statutory instrument becomes law but must be approved within a set period of time or it ceases to be law.

Bill

A proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration. Once agreed and made into law, it becomes an Act.

Charter of Fundamental Rights

The Charter of Fundamental Rights sets out 'EU fundamental rights' which is a term used to describe human rights as they are recognised in EU law. EU fundamental rights are general principles of EU law which have been recognised over time through the case law of the CJEU and which have been codified in the Charter which came into force in 2009. The Charter sets out 50 rights and principles, many of which replicate guarantees in the European Convention on Human Rights and other international treaties. See Article 6 TEU.

Coming into force

The process by which an Act of Parliament, secondary legislation or other legal instrument comes to have legal effect. The law can be relied upon from the date on which it comes into force but not any sooner. Also known as commencement.

Competence

Competence means all the areas where the treaties give the EU the ability to act, including the provisions in the

	<p>treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. It also means areas where the treaties apply directly to the member states without needing any further action by the EU institutions. The EU's competences are set out in the EU treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the treaties, and where the treaties do not confer competences on the EU they remain with the member states. See Article 5(2) TEU.</p>
Converted legislation	<p>EU laws that applied directly in the UK the moment before the UK left the EU, which are converted into domestic law through the European Union (Withdrawal) Bill.</p>
Court of Justice of the European Union (CJEU)	<p>The CJEU has jurisdiction to rule on the interpretation and application of the treaties. In particular, the Court has jurisdiction to rule on challenges to the validity of EU acts, in infraction proceedings brought by the Commission against member states and on references from national courts concerning the interpretation of EU acts. The Court is made up of two sub-courts: the General Court and the Court of Justice (which is sometimes called the ECJ). See Article 19 TEU and Articles 251 to 281 TFEU.</p>
Decision	<p>A legislative act of the EU which is binding upon those to whom it is addressed. If a decision has no addressees, it binds everyone. See Article 288 TFEU.</p>
Delegated Act	<p>A form of EU instrument which is similar to UK secondary legislation. A EU legislative act, such as a directive or a regulation, can delegate power to the Commission to adopt delegated acts to supplement or amend non-essential elements of the legislative act. See Article 290 TFEU.</p>
Devolution settlements	<p>The constitutional arrangements governing which decision making responsibilities and legislation making powers have been devolved and the mechanisms through which these operate.</p>
Devolution statutes (or Acts/legislation)	<p>The principal Acts of Parliament that set out the terms of the devolution settlements. These are the Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 2006. 'Devolution legislation' may refer either to the devolution statutes or to the statutes together with the secondary legislation made under them.</p>
Devolved administrations	<p>The governments of the devolved nations of the UK. These are the Scottish Government, the Welsh Government and the Northern Ireland Executive.</p>
Devolved competence	<p>The areas in which the devolved legislatures are responsible for making laws ('legislative competence') or</p>

	the devolved administrations are responsible for governing or making secondary legislation ('executive competence').
Devolved institutions	Used to refer collectively to both the devolved administrations and the devolved legislatures.
Devolved legislatures	The law making bodies of the devolved nations of the UK. These are the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.
Directive	A legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result. Directives must be transposed into national law using domestic legislation, in contrast to regulations, which are enforceable as law in their own right. See Article 288 TFEU.
EU agencies	EU agencies are legal entities (separate from the EU institutions) set up to perform specific tasks under EU law. They include bodies such as the European Medicines Agency, the European Police Office (Europol) and the European Union Agency for Railways.
EU institutions	There are a number of EU bodies which are defined under the Treaties as EU institutions including the European Parliament, the European Council, the Council of the European Union and the European Commission.
The EU Treaties (including TEU and TFEU)	The European Economic Community (EEC) was established by the Treaty of Rome in 1957. This Treaty has since been amended and supplemented by a series of treaties, the latest of which is the Treaty of Lisbon. The Treaty of Lisbon, which entered into force on 1 December 2009, re-organised the two treaties on which the European Union is founded: the Treaty on European Union (TEU) and the Treaty establishing the European Community, which was re-named the Treaty on the Functioning of the European Union (TFEU).
European Commission	The Commission is the main executive body of the EU. It has general executive and management functions. In most cases it has the sole right to propose EU legislation. In many areas it negotiates international agreements on behalf of the EU and represents the EU in international organisations. And the Commission also oversees and enforces the application of Union law, in particular by initiating infraction proceedings where it considers that a member state has not complied with its EU obligations. See Article 17 TEU and Articles 244 to 250 TFEU.
European Convention on Human Rights (ECHR)	An international convention, ratified by the UK and incorporated into UK law in the Human Rights Act 1998. It specifies a list of protected Human Rights, and establishes a Court (European Court of Human Rights

	<p>sitting in Strasbourg) to determine breaches of those rights. All member states are parties to the Convention. The Convention is a Council of Europe Convention, which is a different organisation from the EU. Article 6 TEU provides for the EU to accede to the ECHR.</p>
European Council	<p>The European Council defines the general political direction and priorities of the EU. It consists of the Heads of State or Government of the member states, together with its President and the President of the Commission. See Article 15 TEU and Articles 235 and 236 TFEU.</p>
European Parliament	<p>The European Parliament (EP) consists of representatives elected by Union citizens. The EP shares legislative and budgetary power with the Council, and has oversight over the actions of the Commission. See Article 14 TEU and Articles 223 to 234 TFEU.</p>
Implementing acts	<p>A form of EU instrument which is similar to UK secondary legislation. A legally binding EU act, such as a directive or a regulation, can enable the Commission (and in some cases the Council) to adopt implementing acts where uniform conditions for implementing the legislative act are needed. See Article 291 TFEU.</p>
Negative procedure	<p>A statutory instrument under the negative procedure will automatically become law once made without debate unless there is an objection from either House.</p>
Preserved legislation	<p>Existing domestic legislation which implements our EU obligations and will be preserved in domestic law through the European Union (Withdrawal) Bill.</p>
Regulation	<p>A legislative act of the EU which is directly applicable in member states without the need for national implementing legislation (as opposed to a directive, which must be transposed into domestic law by member states using domestic legislation). See Article 288 TFEU.</p>
Retained EU law	<p>The body of law that is converted and preserved under the Bill (as modified by or under the Bill or by other domestic law from time to time).</p>
Secondary legislation	<p>Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or delegated legislation.</p>
Statute book	<p>The body of legislation that has been enacted by Parliament or one of the devolved legislatures and has effect in the UK.</p>

Statutory instrument

A form of secondary legislation to which the Statutory Instruments Act 1946 applies.

<b>Title:</b> European Union (Withdrawal) Bill	<b>Impact Assessment (IA)</b>
<b>IA No:</b> DExEU001	<b>Date:</b> 12/07/2017
<b>RPC Reference No:</b> RPC-4105(1)-DExEU	<b>Stage:</b> Final
<b>Lead department or agency:</b> Department for Exiting the European Union	<b>Source of intervention:</b> Domestic
<b>Other departments or agencies:</b> N/A	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> Luke Montague repeal-bill@dexeu.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Green

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
Unknown: likely small	Unknown: likely small	Unknown: likely small	Not in scope	Qualifying regulatory provision

**What is the problem under consideration? Why is government intervention necessary?**

We have considered how to provide maximum possible certainty as the UK leaves the EU. Within the timeframe set out by the Article 50 process, we need to prepare the UK statute book, and the statute books in Scotland, Wales and Northern Ireland, so that they continue to function once we are no longer a member of the EU. Repealing the European Communities Act – a necessary step to end the supremacy of EU law in the UK – without any further action will leave holes on our statute book. Even when converted into UK law, some EU laws will no longer function properly as they (for example) make reference to an EU body. We need to correct these problems before we leave the EU so that our legal system continues to function.

**What are the policy objectives and the intended effects?**

The Government's first objective as we negotiate a new deep and special partnership with the European Union is to provide business, the public sector and the public with as much certainty as possible. This Bill will maximise certainty by converting EU law into UK law on the day we leave the EU, ensuring that businesses can be clear about the rules that will apply in the UK once we have left, and that those rules make sense. The power to make corrections will ensure that the law continues to function properly by enabling ministers to correct problems that will arise as a result of our withdrawal from the EU.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

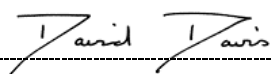
The Government does not consider that there are alternative ways to prepare the domestic statute book for our exit from the European Union within the timetable dictated by the Article 50 process. The proposed policy is justified because it brings the maximum possible certainty for businesses, workers and consumers while the Article 50 process takes place, and enables the domestic statute book to reflect our withdrawal from the European Union. The Bill and the approach to correcting the law mitigates the risk that the UK will leave the EU without a functioning statute book, which would present significant uncertainty and cost to businesses and everyone in the UK.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A**

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A		Non-traded: N/A

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



Date:

12/07/2017

# Summary: Analysis & Evidence

## Policy Option 1

**Description:** Take a power to make corrections to the law

### FULL ECONOMIC ASSESSMENT

Price Base Year: N/A	PV Base Year: N/A	Time Period Years: N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	Unknown: likely small		Unknown: likely small	Unknown: likely small

#### Description and scale of key monetised costs by 'main affected groups'

The Government's aim in this Bill is to maintain the existing laws that apply in the UK as we leave the EU. Substantive policy changes will be brought in through other new primary legislation. This means that there is no aim to create monetised costs through this Bill, though some may arise as a consequence of the corrections made to the law to ensure it continues to function outside the EU. These costs cannot be known in advance of the negotiations but we expect them to be limited.

#### Other key non-monetised costs by 'main affected groups'

The Bill will provide a power to correct the law where it will no longer function correctly once we have left the EU. The regulations causing any impacts will not be on the face of the Bill, as these are subject to the outcome of our negotiations with the EU. Existing statutory requirements on the making of statutory instruments will continue to apply. Under some of the possible changes brought forward by statutory instruments, limited familiarisation costs are likely, as are some changes to business and other processes.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	Unknown: likely small		Unknown: likely small	Unknown: likely small

#### Description and scale of key monetised benefits by 'main affected groups'

The Government's aim in this Bill is to maintain the existing laws that apply in the UK as we leave the EU. Substantive policy changes will be brought in through other new primary legislation. This means that there is no aim to bring in monetised benefits through this Bill, though some may arise as a consequence of the corrections made to the law to ensure it continues to function outside the EU. These benefits cannot be known in advance of the negotiations but we expect them to be limited.

#### Other key non-monetised benefits by 'main affected groups'

As above, the regulations which may bring benefits will not be on the face of the Bill, but rather will be brought into force later when our negotiations with the EU are complete.

#### Key assumptions/sensitivities/risks

Discount rate (%)

The impact of the regulations made under the power to correct the law is dependent on the detail of those regulations when they are brought forward. The Bill and the approach to correcting the law mitigates the risk that the UK will leave the EU without a functioning statute book, which would present significant uncertainty and cost to businesses and everyone in the UK.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: Unknown, likely small	Benefits: Unknown, likely small	Net: Unknown, likely small	

## Background to the Bill

1. On 23 January 2013 the then Prime Minister announced his intention to negotiate a new settlement on the terms of the UK's membership of the EU, followed by a pledge to subsequently hold an in-out referendum on the UK's membership of the EU.
2. On 17 December 2015 the European Union Referendum Act 2015 received Royal Assent. The Act made provision for holding a referendum in the United Kingdom and Gibraltar on whether the UK should remain a member of the EU. The Government committed to honouring the result. The referendum was then held on 23 June 2016.
3. The result – by 52% to 48% – was a clear instruction from the people of the United Kingdom to leave the EU.
4. The European Union (Notification of Withdrawal) Act 2017 was then passed into law on 16 March and gave the Prime Minister the legal authority to notify the EU of our intention to withdraw from the EU under Article 50 of the Treaty on European Union. That notification was given to the President of the European Council, Donald Tusk, on 29 March 2017.
5. Under Article 50, the UK has two years from the date of notification to negotiate a withdrawal agreement with the EU, after which our membership of the EU will end.
6. The Government's first objective as we negotiate a new deep and special partnership with the European Union is to provide business, the public sector and the public with as much certainty as possible as we move through this process.
7. The European Union (Withdrawal) Bill is an essential part of the Government's plan for leaving the EU, as it will give effect to our withdrawal in domestic law. The Bill will principally:
  - 7.1. repeal the European Communities Act 1972 (ECA);
  - 7.2. convert EU law as it stands at the moment of exit into UK law, and preserve the laws we have made in the UK to implement our EU obligations;
  - 7.3. create temporary powers to make secondary legislation, which will enable corrections to be made to the laws that would otherwise no longer operate appropriately once we have left the EU, so that our legal system continues to function correctly outside the EU, and will also enable domestic law to reflect the contents of any withdrawal agreement under Article 50 that should be in place for day one of exit; and
  - 7.4. replicate the common UK frameworks created by EU law in UK law, and maintain the scope of devolved decision making powers immediately after exit. This will be a transitional arrangement to provide certainty after exit and allow intensive discussion and consultation with devolved administrations on where lasting common frameworks are needed.
8. The ECA gives effect in UK law to the EU treaties. It incorporates directly applicable EU law into the UK domestic legal order and provides for the supremacy of EU law. Other parts of EU law need to be implemented in the UK through domestic legislation, which the ECA provides a power to do.
9. The Bill's conversion of EU law into domestic law ensures that EU law that applies directly (such as EU regulations) becomes part of UK law on the day we leave the EU. The Bill also ensures that laws we have made in the UK to implement EU obligations (such as statutory instruments made under the ECA) continue as part of our law on and after exit day. In that way, EU laws are not being 'copied out' line-by-line into UK law, but rather being simply preserved by the Bill as they exist at the moment we leave the EU. In the same way, the case law of the Court of Justice of the European Union (CJEU) as it exists at the moment we leave the EU will be given the same status as the case law of the UK Supreme Court and the High Court of Justiciary, maintaining a coherent approach to interpreting the law once we have left the EU.



10. EU directives will not be transposed again into UK legislation. The UK will already have transposed EU directives into domestic law – either through primary legislation or through statutory instruments under, for example, the ECA. It is these domestic laws the Bill will save, rather than the EU directives themselves. This means that the way in which the UK has transposed any particular EU directive will not change, unless any corrections are necessary to the domestic law that implements the directive using the correcting power in the Bill (because it will no longer function as expected outside the EU, for example).
11. While there is no single figure for how much EU law already forms part of domestic law (and how much will therefore be converted by the Bill), according to EUR-Lex, the EU's legal database, there are currently over 12,000 EU regulations<sup>1</sup> (that is, directly-effective EU laws) and over 6,000 EU directives<sup>2</sup> in force across the EU. In addition, research from the House of Commons Library indicates that there have been around 7,900 statutory instruments made in the UK which have implemented EU legislation.<sup>3</sup> Further House of Commons Library research indicates that out of 1,302 UK Acts between 1980 and 2009 (excluding those later repealed), 186 Acts (or 14.3%) exhibited a degree of EU influence.<sup>4</sup> These EU regulations, domestic regulations, and Acts of Parliament (where they implement EU law) represent – along with laws passed by the devolved legislatures and the EU treaties – the main sources of EU law in the UK.
12. The Government's white paper *Legislating for the United Kingdom's withdrawal from the European Union*, published on 30 March (Cm 9443) sets out that simply converting EU law into domestic law will not be sufficient. A proportion of this law will continue to operate properly once we have left the EU simply by converting it into UK law. For example, large parts of employment law will continue to function properly. But an even larger proportion of the law will not function effectively after we leave the EU unless we take action to correct it.
13. There is a variety of reasons why conversion alone may not be sufficient in particular cases. There will be gaps where some areas of converted law will be entirely unable to operate because we are no longer a member of the EU. There will also be cases where EU law will cease to operate as intended or will be redundant once we leave. In some cases EU law is based on reciprocal arrangements, with all member states treating certain situations in the same way. If such reciprocal arrangements are not secured as a part of our new relationship with the EU, it may not be sensible or workable to continue to operate those arrangements on a unilateral basis. These problems with the law will be corrected using a power in the Bill, via secondary legislation, helping make sure we have put in place the necessary corrections before the day we leave the EU.
14. The whole Bill is designed to bring the maximum possible continuity and certainty and is not designed to bring in any substantive policy changes. This does not only relate to the power to correct the law, but extends to the whole approach – for example, in the treatment of CJEU case law. The meaning of EU law has, over many years, been determined by the rulings of the CJEU. To achieve the Government's aim of ensuring the same rules and laws apply on the day we leave the EU as they did before, in order to provide continuity and certainty, we must convert into UK law both the text of the law and the interpretation given by the CJEU. On that basis, the Bill provides that any question as to the meaning of EU-derived law will be determined in accordance with the CJEU's case law as it existed immediately before exit day. This approach prevents undue confusion as to the meaning of the law, and will prevent undue costs for businesses and

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<sup>1</sup> EUR-Lex search run on 26 May 2017, [http://eur-lex.europa.eu/search.html?qid=1490700962298&VV=true&DB\\_TYPE\\_OF\\_ACT=allRegulation&DTC=false&DTS\\_DOM=EU\\_LAW&typeOfActStatus=ALL\\_REGULATION&type=advanced&lang=en&SUBDOM\\_INIT=LEGISLATION&DTS\\_SUBDOM=LEGISLATION](http://eur-lex.europa.eu/search.html?qid=1490700962298&VV=true&DB_TYPE_OF_ACT=allRegulation&DTC=false&DTS_DOM=EU_LAW&typeOfActStatus=ALL_REGULATION&type=advanced&lang=en&SUBDOM_INIT=LEGISLATION&DTS_SUBDOM=LEGISLATION)

<sup>2</sup> EUR-Lex search run on 26 May 2017, [http://eur-lex.europa.eu/search.html?qid=1495788221421&DB\\_TYPE\\_OF\\_ACT=directive&CASE\\_LAW\\_SUMMARY=false&DTS\\_DOM=ALL&excConsLeg=true&typeOfActStatus=DIRECTIVE&type=advanced&SUBDOM\\_INIT=ALL\\_ALL&DTS\\_SUBDOM=ALL\\_ALL&FM\\_CODED=DIR](http://eur-lex.europa.eu/search.html?qid=1495788221421&DB_TYPE_OF_ACT=directive&CASE_LAW_SUMMARY=false&DTS_DOM=ALL&excConsLeg=true&typeOfActStatus=DIRECTIVE&type=advanced&SUBDOM_INIT=ALL_ALL&DTS_SUBDOM=ALL_ALL&FM_CODED=DIR)

<sup>3</sup> 'Legislating for Brexit: Statutory Instruments implementing EU law', House of Commons Library Research Paper 7867, 16 January 2017, page 6, <http://researchbriefings.files.parliament.uk/documents/CBP-7867/CBP-7867.pdf>

<sup>4</sup> 'How much legislation comes from Europe?', House of Commons Library Research Paper 10/62, 13 October 2010, page 19, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-173/99>

individuals alike that would otherwise arise through, for example, fresh litigation of previously resolved issues.

## Do nothing option

15. We have not provided an assessment of a 'do nothing' option. If we left the EU but took no further action to prepare our domestic statute book, we would have an incomplete and confusing legal system. The ECA and domestic regulations made under it and other Acts, and primary legislation made to implement our EU obligations, would remain on the statute book. However, direct EU law (such as the 12,000 EU regulations that currently exist) would cease to apply in the UK at the moment we left, so we would be left with holes on our statute book.
16. Although some law would remain on our statute book, that law would contain a very large number of elements that would not operate sensibly and would need correcting, such as references to EU law or EU institutions, despite the fact we had left the EU. But there would in most cases be no existing delegated power to make these corrections. A few areas of policy might have pre-existing powers to make secondary legislation that were suitable to correct the law, but many would not.
17. This is a unique situation and, given the complex and wide range of issues regulated and affected – wholly or in part – by EU law, it would not be proportionate to quantify and monetise the impacts of the 'do nothing' scenario across these thousands of areas, particularly given the significant uncertainty involved. What is clear is that, in such a scenario, the UK statute book would no longer function correctly and this would cause widespread and severe confusion for business, Government and wider society. There would also undoubtedly be high volumes of litigation seeking to resolve the confusion. This would all bring long-term financial and reputational costs for the United Kingdom, which we have not attempted to quantify because it would not be proportionate to do so, although we have attempted to draw out the types of impacts and groups affected in the case studies in this impact assessment.

## Assessing the impact

### Introduction

18. As set out in the Prime Minister's letter triggering Article 50, the United Kingdom wants to agree with the European Union a deep and special partnership that takes in both economic and security cooperation. The precise shape of that partnership will be determined in negotiations, and its implementation will not primarily be through the European Union (Withdrawal) Bill. The purpose of the European Union (Withdrawal) Bill is to bring the maximum possible certainty for day one outside the EU.
19. This document assesses the impact of the European Union (Withdrawal) Bill, which is the Government's preferred option for preparing the statute book for our withdrawal. **It is an assessment of that Bill, and not an assessment of the decision to leave the European Union – a decision that has already been taken by the people of the United Kingdom.**
20. The assessment focuses in particular on the potential impact of the use of the correcting power in the Bill. The correcting power is an essential part of preparing the statute book for our exit from the EU, but does carry the risk that there may be some limited but necessary costs to its use, which are explored further below.
21. Some of the technical changes that will need to be made to the statute book – for example, amending references to "other EU member states" – will need to be made regardless of the outcome of our negotiations with the EU. Other changes, such as the transfer of functions from the EU to the UK, are much more dependent on the outcome of the negotiations, making it impossible to assess their impact in advance. But even where changes are not dependant on the negotiations, the volume of the changes means that we have not attempted to quantify the costs of the Bill across all sectors of the economy. Instead, we give an indication of the possible impacts.

## Determining the costs

22. The Government has been clear that the European Union (Withdrawal) Bill does not aim to make major changes to policy or establish new legal frameworks in the UK beyond those that are necessary to ensure the law continues to function properly from day one. This means the Government will bring forward a number of further bills during the course of the next two years to ensure we are prepared for our withdrawal – and that Parliament has the fullest possible opportunity to scrutinise this legislation. Subject to the Government's clear position of not disclosing material that could damage the United Kingdom's position in its negotiations with the European Union, **the Government's intention is, in line with normal processes, for these new pieces of primary legislation to be accompanied by impact assessments that will provide appropriate discussions of the impacts of any policy changes.**
23. In most circumstances we expect under this Bill that the same rules will continue with some modifications to make them function correctly outside the EU, so there should usually be no significant costs or benefits (except transitional or familiarisation costs, which are discussed later) – EU regulation is simply being brought into UK law, with appropriate corrections. Where there are costs, they might relate to making changes to, for example, IT systems or administrative processes where those systems and processes rely on an EU-derived rule that requires correcting as a result of our withdrawal from the EU. Any benefits that arise will depend on the changes made in the secondary legislation made under the Bill, but it is possible that in making corrections to the law, existing burdens could be reduced as a consequence of correcting a particular law.
24. The main groups that will be impacted by the Bill are business and public services – but, depending on the nature of the changes made through secondary legislation under the Bill, consumers, customers and the end users of Government services might also be impacted if the laws that are corrected affect those groups. The case studies at the end of this document give practical examples of the sorts of changes that might be brought forward.
25. The direct cost to business of the provisions within the Bill is unknown because the way in which the powers will be exercised has not been determined in all cases - in some instances because it will be dependent on the outcome of our negotiations with the EU. Some exercises of the powers will also be determined by ministers in devolved administrations, and the UK Government cannot assess how those administrations will exercise the powers. The changes that come into force could affect a range of sectors in different ways, which will make an overall assessment of impact difficult given the differing nature of regulation in each sector. However, the overall approach of seeking to maximise continuity wherever possible is intended to minimise such costs.
26. While it is possible to provide an estimate of the number of SIs that will be needed (the Government currently estimates it will bring forward between 800 and 1,000), the nature of each change and its significance for affected businesses cannot be known at this stage. The number of SIs in itself is not a meaningful indication of impact – it is the content of the SIs that is relevant.
27. The changes described in this paper would be made using the correcting power in the Bill and brought forward using statutory instruments. The power to correct the law will be time-limited, and will expire two years after exit day. This means no more changes will be able to be brought in using the power after this point. When making corrections to the law under the European Union (Withdrawal) Bill, existing requirements on the making of statutory instruments will continue to apply. The impact of secondary legislation made under the Bill should be assessed in line with the appropriate framework when there is an impact on business.
28. Some powers contained within the Bill, such as the correcting power, will also be conferred on devolved ministers. In making secondary legislation through exercising these powers, they will similarly have to follow their usual scrutiny procedures.
29. For the reasons set out above, it is not possible at this stage to set out in detail the scale of the impact the powers in the Bill will have. However, the Government's best estimate of this impact at this stage is set out in the following section through a series of indicative case studies. In some instances these changes could result in reduced burdens on business (eg by removing reporting

requirements), or slightly increased burdens on business, but this will depend on decisions yet to be taken. Any reduction in burdens could offset familiarisation costs in some instances. In no instance, though, is the Government's intention to create or remove burdens through the European Union (Withdrawal) Bill directly, but rather simply to ensure the statute book functions as we leave the EU.

30. We do not consider it useful to estimate the number of changes that will be required under each of the types of case study below. This is not only because the number of changes that will eventually be required is still to be determined, but also because the number of changes in each 'category' of change is not a guide to the impact of the changes. Each change would have to be assessed on its merits.

## Familiarisation costs

31. The Government does recognise that, even where there is minimal or no change to existing practice following our exit from the EU, there may be some familiarisation or transitional cost to business, for example, where functions are transferred from an EU regulator to a UK regulator. In such situations we start from the position that the UK regulator will apply the same rules as the EU regulator applied at the moment we leave the EU, but with amendments to correct any parts of those rules that no longer function appropriately or sensibly. But even if the rules are exactly the same, businesses will need to familiarise themselves with the fact that there is a new regulator and any basic administrative changes (such as a new address for correspondence with that regulator, which might take an employee a few minutes to familiarise his or herself with). We would expect businesses to need to familiarise themselves with the impact of our exit from the EU on their work in the round, which should have less of an impact than assessing each statutory instrument individually (many of which will not be relevant to a given business). We will work hard with the relevant industry bodies to ensure that any regulatory changes are communicated as early as possible.
32. While these familiarisation costs cannot be quantified at this stage for the same reasons as above, generally such costs do tend to be a small proportion of the impacts associated with policy changes (although there is clearly some variance in relation to how significant a policy change is). While there will potentially be a large volume of statutory instruments that will be introduced under the powers, the changes these bring forward are intended to provide stability and maintain existing policy rather than deliver substantive policy changes. As such, the familiarisation costs under the Bill should be low, as the nature of the changes will be such that businesses should not need to radically alter their processes and behaviour as a result of the corrections made to the statute book, and the costs of familiarising employees with such changes should be commensurately low.
33. The case studies that follow illustrate the sorts of changes that could be made to the statute book under the correcting power. They do not represent Government policy and should not be taken as such.

## Case studies for the correcting power

### Case study 1: references to "EU law"

34. Throughout the statute book, there are references which will no longer be accurate once we leave the EU, such as references to "*Member States other than the United Kingdom*" or to "*EU law*". Such references will need to be removed or amended to ensure the statute book makes sense post-exit.
35. For example, it may be desirable to make simple and non-substantive amendments to references in the Public Passenger Vehicles Act 1981, as without changes they will not make sense after the UK ceases to be an EU member state. There are references to "*in another member State*" in section 21(1); "*of the other member State*" in section 21(3)(b); and "*by another member State*" in schedule 3, paragraph 7(c). These references could be changed to "*in a member State*", "*of the member State*" and "*by a member State*" respectively.

36. These changes might have no impact on business, as the rules in force before and after exit could remain the same.

## **Case study 2: involvement of an EU institution**

37. There will be law which, upon leaving the EU, will no longer work at all and which will need to be corrected to continue to work. An example of this would be Regulation (EC) No 1829/2003 on genetically modified food and feed, which provides the framework for authorisations for the sale of genetically modified food and animal feed in the EU. The regulation confers power on the EU Commission to adopt implementing rules ('tertiary legislation') on this function.
38. In the event that the UK no longer had a relationship with the EU on genetically modified food authorisations post-exit, appropriate bodies in the UK would need to exercise the same functions. The correcting power could be used to enable appropriate bodies in the UK to carry out the same functions, including making implementing rules.
39. Without this, the UK would not have functioning systems of genetically modified food and feed authorisation renewals on exit day. Without an authorisation system, agricultural businesses may be unable to trade abroad, including with the EU, and UK consumers would not have confidence in the safety of genetically modified food products.
40. If an agreement is reached on this topic with the EU, the power to implement the withdrawal agreement could be used to implement aspects of the changes that needed to be in place on day one of exit. However, the exact approach that will be taken here cannot be determined at this stage. Our negotiations with the EU and the decisions that flow from that will determine the approach that needs to be taken and will therefore determine the actual impact on businesses. However, should functions need to be transferred to appropriate bodies in the UK the regulatory impact would be expected to be minimal irrespective of approach as the intention would be to retain existing rules.

## **Case study 3: information sharing with EU institutions**

41. Once we leave the EU, there will be areas of law where policy no longer operates as intended. This is the case where legislation would continue to work legally and can be complied with, but where the policy outcome delivered by that legislation might cease to make sense.
42. For example, this will happen where preserved legislation will continue to require the UK to send information to EU institutions (or offices, bodies or agencies) or EU member states. The UK may still be able to comply with such requirements in legislation to send information where there would be no barriers to doing so (i.e. the law could still function). However, where the UK had not explicitly agreed during exit negotiations to continue to provide such information to the EU, there may well be reasons why the UK would no longer wish to send such information after we exit the EU, and where it would make sense to amend the legislation to avoid previously reciprocal arrangements becoming one-sided. Of course in some cases we may want to continue to exchange data with the EU.
43. An example of a requirement to share information with EU institutions would be the requirement for the UK to provide the European Commission with data relating to inland waterways transport as set out in Regulation 1365/2006.<sup>5</sup> The power in the Bill will allow the Government to make changes to a law like this where it no longer functions as intended.
44. Should the UK no longer want, or have agreed with the EU, to submit information to the Commission, the law would need to be corrected. Options would be to (1) amend the regulation so that the requirement remains to produce data on inland waterways in the form specified by the regulation, but cease sending the data to the European Commission, or (2) repeal the regulation entirely and have the statistics become subject to the UK's existing statutory framework.

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<sup>5</sup> Regulation (EC) No 1365/2006 of the European Parliament and of the Council of 6 September 2006 on statistics of goods transport by inland waterways and repealing Council Directive 80/1119/EEC

45. Under option (1), the impact on businesses would remain the same as now, though the data would be sent to a UK rather than EU body. Some further amendments might be necessary to ensure that the regulation continues to function in a UK-only context. For example, the requirement on the Commission to produce a report about “the benefits accruing to the Community” would need to be removed or changed, even if the regulation can otherwise function broadly as it does now.
46. Under option (2), the requirements in the regulation would fall away, but as official statistics, their production would fall under the Statistics and Registration Services Act 2007 and its associated Code of Practice. This would mean that, while there would be no obligation to collect such statistics, the Government would be able to choose to collect them, either in the same form or a different form. The impact on business would depend on whether the Government, under this option, chose to continue to collect these statistics or not, and in what form. If the statistics were no longer collected that could be a reduction in the burden on business.
47. If information is no longer to be submitted to the EU, the Government would need to decide whether to adopt option (1) or (2).

## Other powers in the Bill

48. It will also be possible to make changes to the statute book using other powers in the Bill. The principal such powers are described below.

## Implementing the withdrawal agreement

49. The Bill’s power to implement the withdrawal agreement will be used before exit day to reflect the contents of the withdrawal agreement, once agreed, in our domestic legal framework. As this power is designed to implement a withdrawal agreement, it is not possible to assess in advance of the conclusion of the negotiations what the impact of the exercise of this power might be on business or others, as the changes will be entirely dependent on the negotiations.

## Fees and charges

50. The Bill will enable ministers, with Parliament’s consent, to set fees or other charges for services that we have taken over from the EU. It also enables fees which were previously capable of being modified under the Finance Act 1973 or the ECA to continue to be modified when the powers in those Acts are no longer available (which is an automatic consequence of leaving the EU). Devolved ministers will also be able to use this power where their devolved administration has responsibility for the relevant function. It is possible that existing fees could be kept the same, increased, or reduced depending on the decisions of the UK or devolved minister who sets the fee. The imposition or removal of fees and charges does not of course affect the overall cost of a service, but merely determines where that cost is borne.
51. Examples of areas where fees are currently charged include animal health inspection fees and electronic cigarette production license fees. Where a function for which EU bodies currently charge a fee is transferred to a regulator operating in the UK or a devolved administration, for example, fees might be reduced depending on the nature of that regulator. Where new fees are created, they may represent a burden on businesses or individuals – though any new fee would have to be taken in the context of any other changes on business burdens as we leave the EU.

## Small and Micro Business Assessment

52. Where the proposals in this Bill have an impact on business, that impact will affect all businesses whose activity is in some way regulated or affected at present by EU law, irrespective of the business’s size. A micro (up to 10 employees) or small (up to 50 employees) business might find it more difficult to adapt to any changes brought forward under the power in the Bill simply because of the business’s size. But there is nothing in these proposals that applies specifically to

small or micro businesses as distinct from other sizes of business.

53. Familiarisation costs will be more significant to a small business – something the Government is acutely aware of. We will work hard with the relevant industry bodies to ensure that any regulatory changes are communicated as early as possible, and with small businesses in particular in mind.
54. In addition, the European Union (Withdrawal) Bill is not intended to bring in substantive new policy in relation to the treatment of smaller businesses (or any other area). Trying to do so at this time might reduce the benefits of stability and certainty that the Bill is intended to bring.

## Post-implementation reviews

55. The Bill will disapply the requirement for post-implementation reviews of the statutory instruments that are brought forward under the Bill. Ordinarily the Government undertakes post-implementation reviews as a way of checking whether regulatory burdens are justified. The European Union (Withdrawal) Bill, however, brings a unique set of circumstances. The regulations made under it will be corrections to existing laws. There will be a large volume of corrections made in a concentrated period of time, and the regulations are being made under a power that will cease to exist when the reviews would be due. These circumstances mean that the Government takes the view that post-implementation reviews of correcting regulations would be of limited value and impractical. This does not remove the general need to review and improve legislation in due course and where appropriate, but rather removes rigid review requirements as they relate to statutory instruments under the Bill.

## **European Union (Withdrawal) Bill**

### **Department for Exiting the European Union**

### **RPC rating: fit for purpose**

#### **Description of proposal**

The European Union (Withdrawal) Bill is an essential part of the Government's plan for leaving the EU, as it will give effect, in domestic law, to the UK's withdrawal. The impact assessment (IA) states that the Bill will principally:

- repeal the European Communities Act 1972;
- convert EU law as it stands at the moment of exit into UK law, and preserve the laws made in the UK to implement EU obligations;
- create temporary powers to make secondary legislation, which will enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU, so that the UK's legal system continues to function correctly outside the EU, and will also enable domestic law to reflect the contents of any withdrawal agreement made under Article 50 that should be in place for day one of exit; and
- replicate in UK law the common UK frameworks created by EU law, and maintain the scope of devolved decision-making powers immediately after exit. This will be a transitional arrangement to provide certainty after exit and allow intensive discussion and consultation with devolved administrations on where lasting common frameworks are needed.

In addition, case law of the Court of Justice of the European Union (CJEU), as it exists at the moment the UK leaves the EU, will be given the same status as the case law of the UK Supreme Court and the High Court of Justiciary, maintaining a coherent approach to interpreting the law once the UK has left the EU.

The IA states that there are currently over 12,000 EU regulations and over 6,000 EU directives in force across the EU. In addition, there are around 7,900 statutory instruments (SIs) made in the UK that have implemented EU legislation. The IA states that a large proportion of this law will not function effectively after the UK



leaves the EU unless action is taken to correct it. The IA explains why the nature of these corrections will, in many cases, depend upon the outcome of negotiations and, therefore, why it is necessary to have a “correcting power” in the Bill to permit changes via secondary legislation. This power will expire two years after EU exit day.

## **Impacts of proposal**

The Department explains that the Government’s aim with the Bill is to maintain the existing laws that apply in the UK as it leaves the EU. The IA states that substantive policy changes will be brought in through other new primary legislation, which the IA states will be accompanied by separate impact assessments (paragraph 22). It is estimated that the correcting power will be needed for between 800 and 1,000 SIs. The IA explains that, in most circumstances, the existing rules will continue, with minimal modifications to make them function correctly once the UK is outside the EU. This means that there should usually be no significant costs or benefits, other than transitional costs such as familiarisation.

The IA states that the proposal will mainly affect business and public services but that, depending on the changes made through secondary legislation under the Bill, *‘consumers, customers and the end users of government services might also be affected’* (paragraph 24). The IA describes the direct cost to business as unknown, because the way in which the powers will be exercised has not been determined in all cases, for example where the corrections depend on the outcome of the UK’s negotiations with the EU.

The IA describes the costs of the proposal, with a focus on familiarisation costs (pages 6-7). The Department expects familiarisation costs even where the rules are exactly the same, for example if businesses need to familiarise themselves with the fact that there is a new regulator. The IA states, however, that the nature of the changes will be such that businesses should not need to radically alter their processes or behaviour as a result of the corrections made to the statute book. The Department expects, therefore, that familiarisation costs will be low. The Department states that it is not possible at this stage to set out in detail the scale of the impact of the powers in the Bill. The IA sets out the *“Government’s best estimate of this impact at this stage...through a series of indicative case studies”* (pages 8-9).

## Quality of submission

The Department's assessment is sufficient, on the understanding that separate impact assessments on substantive policy changes will follow in due course. The RPC welcomes *"the Government's intention..., in line with normal processes, [is] for these new pieces of primary legislation to be accompanied by impact assessments that will provide appropriate discussions of the impacts of any policy changes"* (paragraph 22). The RPC notes that there are likely to be various forms of regulatory change, for example as to freedom of movement of goods, services, labour and capital, and that such changes are likely to have significant impacts on business and wider society. The RPC emphasises that all such regulatory changes should be subject to impact assessment and independent scrutiny.

The IA could be improved significantly in the following areas.

### Indication of the scale of the overall impact of the proposal

The IA provides an explanation for why a robust estimate of the impact of the overall proposal, including impacts resulting from use of the new power conferred by the Bill, cannot be made at this stage. The IA would, however, be improved by providing some indication of the potential scale of overall impacts. In doing so, it could consider providing:

- further discussion of the provisions in the Bill repealing the European Communities Act and opening up the possibility to introduce new primary legislation, and the areas of legislation that could be particularly affected, for example in relation to migration and trade, and associated impacts on business and wider society. This could draw upon research, such as that undertaken by the Treasury and others in 2016;
- within this, some discussion of the impact of the new power for the UK to vary domestic regulation independently of the EU, particularly on businesses trading with the EU;
- further discussion of wider societal impacts (paragraph 24 refers to potential impact on consumers, customers and end users of government services);

- greater recognition that, even if the impact per business is expected to be small, aggregate and total impact could be significant because of the large number of businesses potentially affected (and accordingly change, or provide context to, the characterisation of costs being “*likely small*” in the summary sheets of the IA);
- any evidence from the “*relevant industry bodies*” that impacts are likely to be small, and on the scope for familiarisation being done “*in the round*” rather than for each individual statutory instrument (paragraph 31);
- an approximate percentage split of SIs falling into the three (case study) categories.

### Explanation of counterfactual

The analysis in the IA focuses on the impact of the provision in the Bill to “*create temporary powers to make secondary legislation...*”. In the discussion of the ‘do nothing’ option (page 5) it seems clear that the counterfactual for this analysis is that the UK leaves the EU. However, regarding the provision in the Bill to “*convert EU law as it stands at the moment of exit into UK law...*” there appears to be an assumption that businesses would incur the same costs as those presently incurred to comply with EU law. The implicit counterfactual here would, therefore, appear to be continued UK membership of the EU. The IA would benefit from including an explicit discussion of the counterfactual(s) used in its assessment, addressing this point in particular. The Department’s overall approach should be considered against better regulation framework requirements or guidance relating to EU exit counterfactuals, as those requirements are determined.

The discussion at paragraph 15 describes two effects under the do nothing option: an incomplete/confusing legal system and directly-applicable EU law ceasing to apply in the UK. The IA covers the impact of the former but does not address explicitly the costs and benefits of the latter. The RPC recognises that, even if appropriate, full estimation would not be possible. The IA would, however, benefit from describing this impact and addressing explicitly why it has not been assessed.

### Small and micro business assessment

The IA acknowledges that small and micro businesses might find it more difficult to adapt to any changes brought forward under the powers in the Bill, and that familiarisation costs will be more significant for small businesses (paragraphs 51-52). The Department should, however, address exemption and mitigation more explicitly, and provide further details of the intended communications strategy to mitigate impacts on small businesses.

### Options

The IA presents only one option. Whilst this is common practice at the final stage, the IA would benefit from a greater discussion of potential options. In doing so, it could consider:

- explaining further why there are no “*alternative ways*” (page 1), in particular whether this means that no other options are feasible or whether they have been ruled out on cost/benefit or other grounds;
- whether excluding some elements of the Bill, such as conversion of CJEU law into UK law, could be presented as sub-options;
- presenting ‘do nothing’ as an option in the summary sheets.

### Risk

Given the temporary powers to make consequential corrections to a very large number of existing SIs, the IA would benefit from discussion of the risks around completing this within the duration of the power (two years from the date of EU exit).

### Post-implementation review

The Department explains that the Bill will disapply the requirement for post-implementation reviews (PIR) of the SIs that are brought forward under the Bill. The IA explains that this is due to a unique set of circumstances involving a large volume of small corrections made in a short period of time and regulations made under a power that will cease to exist when the reviews would be due. The IA acknowledges that this does not remove the general need to review and improve legislation in due course. Nevertheless, a more specific commitment that any SIs with particularly

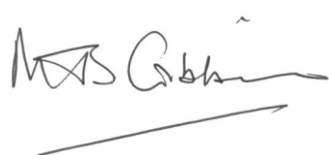
significant impacts would potentially be selected for a PIR, or that there would be a unified PIR covering the entire set of corrections, would be useful.

### **Departmental assessment**

Classification	To be determined
Equivalent annual net direct cost to business (EANDCB)	Not monetised
Business net present value	Not monetised
Societal net present value	Not monetised

### **RPC assessment**

Classification	Under framework rules for the 2015-17 parliament: qualifying regulatory provision
Small and micro business assessment	Fit for purpose



**Michael Gibbons CBE**, Chairman