

Briefing

EU Withdrawal Bill

Second Reading

Leaving the European Union presents an opportunity for the UK to create a new economy, where consumer rights and protections are not only maintained but enhanced, where essential markets that are failing consumers are reformed, and where consumers have the confidence to spend and propel growth. To achieve this, the EU Withdrawal Bill must be amended to ensure that the Government has the appropriate powers to make changes transparently to the UK's domestic regime, maintains vital consumer rights, fully considers the impact of any changes on consumers, and effectively consults with consumer organisations.

Consumers are key to the prosperity of the UK and integral to the economy. Every month consumers spend £100 billion in the UK and, in doing so, support UK businesses, manufacturers and employees. Delivering a Brexit which works for consumers will be vital to maintaining this support. The Government must therefore secure the right outcomes for consumers in the domestic regime, the UK's future relationship with the EU, and with countries around the world.

There are three critical areas where Which? believes that the Bill should be amended:

1. Enabling Ministers to enact technical changes

The Government has pledged that it will use the Bill to make only necessary technical changes to EU law when transferring it to domestic legislation. This would cover instances such as when EU institutions are referred to - but will be void following exit - with regard to enforcing EU law in the UK.

Which? supports the ability of Ministers to make technical changes to transferred law. This is a sensible way of ensuring that the law is fit for purpose in the UK and should enable any further changes to be subject to the scrutiny of Parliament at a later date. However, the current drafting of the text - in Article 7 - goes far beyond this, effectively offering a carte blanche to Ministers for what changes can be made.

Through this Section a Minister could realistically make sweeping changes to laws that impact on consumers in areas such as food and product safety standards, approval systems, and the oversight of financial services. This could potentially go beyond changes to law stemming from the EU to wider domestic legislation. Changes of this scale and nature which could impact on the Government's general policy approach, the nature of current consumer protections and even governance, oversight and enforcement arrangements, must be subject to wider scrutiny in order to ensure the best outcome for consumers.

Section 7 should therefore be amended so that it only extends to technical issues. It should ensure that far reaching issues undergo proper parliamentary scrutiny at a later date with a full impact assessment, which must explicitly include consumer impacts.

Which? is also concerned about the broad scope of powers being granted to Ministers in Section 9 (Implementing the withdrawal agreement) and Section 17 (Consequential and transitional provision). Section 9 allows Ministers to make regulations related to the withdrawal agreement "on or before exit day" as they consider appropriate "for the purposes of implementing the withdrawal agreement". Such implementing laws should be the subject of primary legislation and Section 9 should be deleted in its entirety. If it remains, then it should be amended, so that it is clear that these powers are limited to

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purely technical changes. Finally, in section 17(1), Ministers are empowered to use regulations to make such provision as he/she "considers appropriate in consequence of this Act". This should also be amended to relate to technical consequential amendments only.

2. Protecting consumer rights

Currently, UK consumers derive several fundamental consumer rights from the EU's Charter of Fundamental Rights. Critically this includes the right to a high level of human health protection (Article 35) and the right to a high level of consumer protection (Article 38). Alongside these, the precautionary principle is also enshrined in the EU Treaty (Article 191). None of these rights are generally protected in UK law through other legislation and at present will not be transferred through other existing EU laws. Sections 5(4) and 5(5) of the Bill propose that the Charter of Fundamental Rights not form part of UK law on or after exit day. However, it is crucial that the important consumer principles and rights mentioned above are still upheld, providing a framework that cuts across all legislative initiatives and wider policy.

The UK learnt to its cost the importance of the precautionary principle through the BSE crisis, where there was a failure to put public health first. This ultimately resulted in devastating consequences for consumers, the beef industry and wider confidence in food safety.

Maintaining a high level of consumer protection, whether in relation to consumer product safety or consumer rights when buying goods and services, is a fundamental right that benefits not only consumers, but the wider economy. While these examples are also included in certain specific pieces of legislation, the benefit of such overarching rights or principles is that the Government is required to consider them across all areas of policy including those where specific provisions have not been made. They must therefore be replicated in domestic law and the Bill should be amended to achieve this.

3. Engagement with consumer organisations

Consumer groups, alongside a range of other key interest groups from business and civil society, regularly engage with the Government on proposed legislation. This engagement is vital to ensure that expert analysis, data and real world scenario testing can be applied. It enables the Government to make changes to proposed legislation in an informed manner and ensure the positive impact of legislation is maximised and any negative impacts are minimised. Given the significant amount of legislative change that will be required during the process of leaving the EU, the Bill should hold the Government to high standards of consultation and external engagement.

This is particularly important given that engagement with consumers on Brexit to date has been lacking. While a business forum on Brexit has been established with organisations such as the Confederation of British Industry, the Engineering Employers Federation, the British Chambers of Commerce, the Federation of Small Businesses and the Institute of Directors, no consumer group has been invited to participate to reflect the critical role that consumers play in the economy.

Which? research shows that an overwhelming majority of businesses want to ensure that consumer interests are properly considered as part of the Brexit negotiations. Yet only two in five businesses believe that consumers' views will be adequately represented. It is essential that steps are taken via amendments to the Bill to ensure that the consumer voice is heard.

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