



Select Committee Evidence

Exiting the European Union Committee: The EU (Withdrawal) Bill Inquiry

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, apolitical, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

1. Which? welcomes this opportunity to submit evidence to the Exiting the European Union Committee's inquiry on the European Union (Withdrawal) Bill. 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.
2. To achieve this, Which? believes that 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.
3. Whilst the Government has pledged that the Bill will be used to make only necessary technical changes to EU law when transferring it in to domestic law, the text of the Bill goes much further than these powers. Which? supports enabling the Government to make necessary technical changes to ensure the law is fit for purpose in the UK on exiting the EU and therefore believes the Bill should be amended to specify these Ministerial powers extend to technical issues only.
4. In order to capitalise on the opportunity to create an economy that works for consumers it is essential that this Bill, and wider Brexit policy, does not diminish consumer rights. With the Bill's intention not to transpose the Charter of Fundamental Rights onto the UK statute books, UK consumers would lose several fundamental rights.

5. Likewise, under the current drafting of the Bill, the precautionary principle would not be transferred due to being founded in the EU Treaty. It is crucial that important consumer principles and rights are still upheld, providing a framework that cuts across all legislative initiatives and wider policy.
6. More generally, the Government needs to pay greater attention to consumer interests as part of its negotiating position for Brexit and in considering the implications of the UK's exit. Despite requests from Which? and other organisations, the Government's engagement with consumer groups has been disappointing, particularly when contrasted with its engagement with business. In order to ensure that consumer organisations have the input needed on Brexit, the Bill should commit the Government to engaging consumer groups.

Introduction

7. Which? welcomes this opportunity to submit evidence to the Exiting the European Union Committee's Inquiry into the EU (Withdrawal) Bill. It is essential that consumer interests, rights and protections are prioritised in the negotiations for our future relationship with the European Union (EU) and wider world, as well as the subsequent regulatory and policy framework beyond the EU's exit. The EU (Withdrawal) Bill plays an important role in setting the foundations for this by envisioning that, on the day the UK leaves the EU, UK consumers retain in UK law the rights that they already enjoy.
8. 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.
9. We have an opportunity through the Brexit process to create a new economy, where essential markets that are currently failing consumers are reformed, and where consumers have the confidence to spend and propel growth.
10. To achieve this, Which? believes that 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.
11. Our evidence focuses on the Committee's questions that are of most relevance for Which?.

Powers delegated to Ministers

12. 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.
13. Which? does not oppose 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.
14. 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 into 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.
15. 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.
16. 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 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.

Rights protected under EU law

17. With regard to the rights currently protected under UK law Which? is concerned that the current drafting of the EU (Withdrawal Bill) would lead to a loss of rights from the non-transposition of the rights contained in the Charter of Fundamental Rights into UK law.
18. 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).

19. 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.
20. 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.
21. 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.

Engagement with consumer organisations

22. The final aspect that Which? believes should be dealt with in the Bill relates to consumer engagement through the Brexit process.
23. 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.
24. 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.

The logo for 'Which?' is a red square with the word 'Which?' in white, bold, sans-serif font.

25. Which? research found that 80% of businesses said that consumers' interests were either very or fairly important to them, in relation to Brexit meetings or negotiations¹. 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.

Which?
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¹ Research was carried out between 26th April and 4th May by Populus on behalf of Which?, who conducted online interviews with 511 business owners and directors within SMEs in various sectors across UK.