

The legislative process – delegation of powers

House of Lords Constitution Committee

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.

1. Which? welcomes the opportunity to submit evidence to the Committee's inquiry into the 'delegation of powers' before the expected introduction of the Government's 'Great Repeal Bill' in the next session of Parliament. Our evidence focuses on the importance of enabling effective scrutiny of any changes to provisions that may impact on consumers either directly or indirectly.
2. A large body of EU legislation, that has evolved over many years, provides consumers with a wide range of protections from financial services to food safety, as well as a broad range of cross-cutting consumer rights. The UK's exit from the EU provides an opportunity to review some of these measures. Some may already be implemented into UK law, whereas others will be implemented through the Bill. In both cases, it is important that there is an open and transparent process for any amendments.
3. Much of EU law was implemented in the UK via secondary legislation in reliance on the powers in the European Communities (EC) Act. This was appropriate due to the fact that there was little if any discretion as to the content of that secondary legislation. However, it should not now be treated as capable of amendment as though it was similar to other secondary legislation (i.e. amendment without a requirement for primary legislation). The creation of any power to enable this via the Great Repeal Bill would be inappropriate. Secondary legislation passed using the powers in the EC Act should be considered for amendment in the same way as the processes that enable scrutiny of primary legislation.
4. Experience to date has been that rejection of a statutory instrument - even under the positive procedure (where the SI is tabled for debate) – is incredibly rare, suggesting that it would not facilitate meaningful scrutiny. If substantive changes were going to be made

to UK laws that derive from EU rules without reliance on primary legislation, then the scrutiny procedures around secondary legislation would need to be reviewed.

5. To put this in a wider context, there are five overarching principles that Which? considers need to be upheld to protect consumer interests as the UK's exit from the EU is negotiated. Any amendment or repeal of legislation must be assessed through this lens.
 - **The importance of monitoring and understanding the impact of any changes on the cost of living across different markets** - and managing this as effectively as possible so that consumers, or certain groups of consumers, are not unnecessarily 'squeezed.'
 - **Ensuring essential consumer rights are maintained** – many of the rights that consumers have come to expect (and may not necessarily even be aware of until they need them), are currently shaped and determined at EU level. Consumers need to continue to have access to a range of competitive products and services, confident that there is no undermining of these rights - and where appropriate, opportunities to enhance these protections should be taken.
 - **Safeguarding consumer protection and safety** - this includes a robust framework for product safety and standards - and ensuring that key principles established through EU law, such as the precautionary principle, are maintained.
 - **A robust system of consumer enforcement** - underpinning many of these aspects is the need to make sure that there is effective enforcement where EU law currently specifies responsibilities and rights.
 - **Consumers must have a seat at the table** - consumer interests have to be understood and their interests in both the short and longer-term addressed. Consumers spend on average almost £100 billion each month¹ and so consumer confidence is fundamental for successful economic growth.
6. In conclusion, any changes to the legislation that has evolved through our membership of the EU needs to be done in an open, inclusive and accountable way.

For more information,

Contact Simon Markall on 020 7770 7353 or simon.markall@which.co.uk

Which?, 2 Marylebone Road, London NW1 4DF.

Which?
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¹ Consumer Trends, Office for National Statistics. Average monthly consumer expenditure (Current Price Value) for Quarters 1 and 2 (January - June), 2016 was £99bn.
http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/reports/docs/rapex_annual-report_2007.pdf p15-16