



# EU (Withdrawal) Bill

Department  
for Exiting the  
European Union

Factsheet 3: The correcting  
power

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## The correcting power

The correcting power in the Bill allows a UK Government minister and the devolved administrations (using similar powers in Schedule 2) to make corrections to retained EU law in order to resolve deficiencies that arise as a consequence of the UK's withdrawal from the EU.

## Background

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

The Bill therefore grants temporary powers for UK Government ministers, and devolved administrations in relation to domestic legislation within areas of devolved competence, to make secondary legislation that corrects deficiencies arising from withdrawal in retained EU law.

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 because the Government did not like them before exit.

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.

Parliament and/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 be needed to approve some uses of the powers, such as transferring certain legislative functions from EU bodies to the relevant bodies in the UK, or creating a criminal offence.

Using existing types of statutory instrument procedure will allow Parliament to see all statutory instruments, with appropriate levels of scrutiny varying between instruments. The Government is mindful of the need to ensure that the right balance is struck between the need for scrutiny and speed.

Following votes in both Houses of Parliament, a sifting committee is to be established in both Houses which will scrutinise the use of this power and that of the other main powers in the Bill, and recommend further scrutiny and a vote in both Houses if considered necessary before the regulations can be made. The precise terms of how this will operate will need to be determined between the two Houses.

The Government has also introduced the requirement for a Minister to provide a number of written statements alongside all regulations made under the power, ensuring the purpose and the good reasons for the regulation are transparent to Parliament and help inform their deliberations.

## Key facts

The correcting power can only be used to deal with deficiencies that arise 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 may be deficient.

The power can deal with deficiencies in a variety of ways. It might, for example, be used to change references or transfer functions from an EU institution to a UK institution.

However, in addition to the restrictions inherent in only being usable to correct deficiencies in retained EU law arising from the UK's withdrawal from the EU, the power is further restricted in how it can make these corrections. It cannot:

- Impose or increase taxation or fees
- Make retrospective provision
- Create a criminal offence that would result in a sentence of more than two years
- Establish new public authorities in the UK
- Make provision to implement the withdrawal agreement

- Alter the Human Rights Act 1998
- Amend the devolution statutes

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

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