



EU (Withdrawal) Bill

Department
for Exiting the
European Union

Factsheet 10: Treaty rights

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Summary

The Bill saves directly effective rights in the “EU Treaties”. These include rights under:

- (a) the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU); and
- (b) a number of other treaties between the EU and other parties, such as the European Economic Area (EEA) Agreement and other international agreements made between the EU and other third party states.

When we exit the EU, the UK will by default cease to participate in many of these treaties. For example, the UK is only a party to the EEA Agreement in its capacity as an EU member state, so when the UK leaves the EU, the EEA Agreement will cease to operate in respect of the UK, notwithstanding the implementation period.

A number of rights under these EU treaties currently apply directly in UK domestic law as a result of the European Communities Act 1972 (ECA). Some provisions in the EU treaties have been found to be or are regarded as sufficiently clear, precise and unconditional to confer rights directly on individuals without needing to be implemented directly into UK domestic law. They are referred to as ‘directly applicable’ or ‘directly effective’ treaty rights.

The Bill will therefore continue to make available in domestic law all of the directly effective rights which are contained within the EU treaties to which we are currently party as an EU member state. The treaties and their text as such will not become a part of UK domestic law, but the substantive rights will.

The Bill does not (and cannot) legislate for the UK’s continuing or future participation in any treaties. UK domestic legislation is not capable of binding third countries or international organisations.

Why is this important?

The overall objective of the Withdrawal Bill is to maximise certainty for individuals and businesses as we leave the EU. This includes saving the rights from EU treaties to which they currently have access. For example:

- Individuals in the UK can directly rely upon the **right to equal pay provided by Article 157 of the Treaty of the Functioning of the European Union (TFEU)** within our domestic courts. This allows employees, regardless of their gender, to bring forward cases to any UK courts or tribunals where they believe they are being paid less than their colleagues of the opposite gender, for equal work.
- Individuals can rely on **rights within the Hague Convention of 19 October 1996 regarding cross-border children custody cases.**

The Bill ensures that these directly effective rights will be retained within UK law, subject to anything done under powers in the Bill or later in primary legislation and will be treated as akin to primary legislation for the purposes of amendability.

Frequently asked questions

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

- The primary purpose of the Withdrawal Bill is to provide a functioning domestic statute book on the day of exit. It is important to ensure there is maximum clarity and certainty regarding UK law to allow both individuals and businesses to rely on it as they move forward.
- In line with our approach to other EU law that currently applies to the UK as part of our EU membership (such as EU regulations), the Bill seeks to continue to make directly effective treaty rights available in domestic law.
- This provides continuity for individuals and businesses following exit day. It also provides a stable basis for changes that may be made subsequently where it is right to do so.

What happens if the treaty rights cannot work within UK domestic law?

- To ensure that people can have certainty and clarity about the extent of their rights, the correcting power provided for in the Bill allow treaty rights to be amended, restated or repealed in case of any deficiencies. This is essential to ensuring that the right can be properly relied on within UK domestic law.
- What may constitute a “deficiency” is described in clause 9. Clause 9 can only be used to make corrections to deficiencies that arise as a consequence of the UK's withdrawal from the EU. It cannot be used to simply remove rights where there is not a deficiency in the law arising from withdrawal from the EU.

What treaty rights will we be incorporating?

- The Bill will seek to retain in the UK's domestic law all those treaty rights that are sufficiently clear, precise and unconditional that they can be directly relied on through section 2(1) of the ECA (European Communities Act 1972).
- These are rights arising from the EU treaties which include treaties made between EU member states (such as the Treaty of the European Union, the Treaty on the Functioning of the European Union, and Euratom), as well as other international agreements made by the EU with third party countries.

What about the European Convention on Human Rights?

- The European Convention on Human Rights (ECHR) is an international treaty to protect human rights and freedoms. The UK participates in the ECHR in its capacity as a member of the Council of Europe. This organisation is separate and independent from the European Union, and the UK will continue to hold membership after we leave the EU. The Government has no plans to withdraw from the ECHR.

European Economic Agreement (EEA)

What is the Bill doing about the EEA Agreement?

- **The Bill treats any rights and laws that apply by virtue of our EEA membership in the same way as EU law.** As such the Bill will ensure that the directly effective rights provided under the EEA Agreement are retained in UK domestic law in the same way as rights in other "EU treaties".

What would happen if the directly effective rights from the EEA Agreement were not retained in UK law?

- Without the retention of the directly effective rights, including those within the EEA Agreement, we would risk creating confusion within our domestic law. Failure to retain directly effective treaty rights arising from the EEA Agreement would also cause uncertainty for EEA nationals within the UK.
- As part of our current membership of the EEA, EEA nationals enjoy substantially the same rights in the UK as EU nationals.

What will happen to the EEA Agreement during the implementation period?

- The UK is only a party to the EEA Agreement in its capacity as an EU Member State. When the UK is no longer a member of the EU, the EEA Agreement will cease to operate in respect of the UK, notwithstanding the implementation period.
- At the March 2018 European Council we agreed with the EU that the UK is to be treated as a Member State for the purposes of international agreements for the duration of the implementation period. This provides certainty and confidence that

there will be no disruption to existing relationships underpinned by international agreements as we move into the implementation period.

- This includes the EEA Agreement, which governs crucial elements of our trading and non-trading relationship with the three EEA EFTA states - Norway, Iceland and Liechtenstein.
- Once the implementation period ends, the EEA Agreement will cease to operate in respect of the UK. We will seek to put in place new arrangements for the end of the implementation period to secure our relationships with these countries.

What is the significance of the amendment made by the House of Lords on EEA membership?

- This amendment would prevent the Government from commencing aspects of the Bill until it is a negotiating objective of the Government to ensure that an international agreement has been made which enables the United Kingdom to continue to participate in the European Economic Area after exit day.
- This amendment is not final. The Bill will return to the House of Commons to either agree, disagree or make alternative proposals to the amendments made by the House of Lords.
- The Government has been clear that the UK will be leaving the Single Market.
- Seeking participation in the EEA Agreement beyond the implementation period would be incompatible as the UK would have to continue to accept all four freedoms of the Single Market. This would mean continuing free movement of people and the UK having to implement new EU legislation over which we would have little influence and no vote.
- Instead, we are seeking the broadest and deepest possible partnership - covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today.

The European Atomic Energy Community (Euratom)

What is Euratom?

- Established by the 1957 Euratom Treaty, this Community governs the peaceful use of nuclear energy within the EU. This includes the provision of nuclear safeguards, arrangements for non-proliferation of nuclear materials, cooperation in nuclear research and development, trade in the nuclear sector, and wider regulatory cooperation.

How does our withdrawal from the EU affect this?

- **As part of the process of leaving the EU, the UK will also be leaving Euratom.**
- Under the Euratom Treaty, Member States are subject to nuclear safeguards measures, currently conducted by the European Commission on behalf of Euratom. **The UK will set up a domestic safeguards regime to enable us to meet the our international safeguards and nuclear non-proliferation**

obligations, which will take effect once the Euratom regime is no longer applied in the UK.

- **The Nuclear Safeguards Bill, which was introduced to Parliament on 11 October, and subsequent supporting secondary legislation will establish the UK regime that replaces the Euratom arrangements. It will also ensure that the Office for Nuclear Regulation will be in a position to take on the role and responsibilities required to implement this regime.**

How does the Withdrawal Bill relate to Euratom?

- **The European Communities Act applies equally to the EU and Euratom Treaties.** Section 1 of the European Communities Act 1972 specifically lists the Euratom Treaty as being one of the 'EU Treaties'. Therefore, all and any legislation made under the EU Treaties (which includes Euratom) is covered by the scope of the Withdrawal Bill.
- The Nuclear Safeguards Bill will seek to ensure the Office for Nuclear Regulation will have the powers needed to deliver the UK's international safeguards obligations domestically after the UK leaves Euratom.

Why can't we stay in Euratom?

- Although Euratom is a separate legal entity it shares a common institutional framework with the EU, **making the EU and Euratom uniquely legally joined.** This includes a role for the Commission, European Parliament and decision-making by the Council.
- **So when we formally notified our intention under Article 50 to leave the EU we also commenced the process for leaving the Euratom Treaty** as Article 106(a) of the Euratom Treaty also applies the Article 50 withdrawal mechanism to the Euratom Treaty in identical terms.
- The Commission itself has said: 'It is recalled that in accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Agency, **Article 50 of the Treaty on European Union applies also to the European Atomic Energy Community.**'