
European Union (Withdrawal) Bill

Department for Exiting the European Union

RPC rating: **fit for purpose**

Description of proposal

The European Union (Withdrawal) Bill is an essential part of the Government's plan for leaving the EU, as it will give effect, in domestic law, to the UK's withdrawal. The impact assessment (IA) states that the Bill will principally:

- repeal the European Communities Act 1972;
- convert EU law as it stands at the moment of exit into UK law, and preserve the laws made in the UK to implement EU obligations;
- create temporary powers to make secondary legislation, which will enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU, so that the UK's legal system continues to function correctly outside the EU, and will also enable domestic law to reflect the contents of any withdrawal agreement made under Article 50 that should be in place for day one of exit; and
- replicate in UK law the common UK frameworks created by EU law, and maintain the scope of devolved decision-making powers immediately after exit. This will be a transitional arrangement to provide certainty after exit and allow intensive discussion and consultation with devolved administrations on where lasting common frameworks are needed.

In addition, case law of the Court of Justice of the European Union (CJEU), as it exists at the moment the UK leaves the EU, will be given the same status as the case law of the UK Supreme Court and the High Court of Justiciary, maintaining a coherent approach to interpreting the law once the UK has left the EU.

The IA states that there are currently over 12,000 EU regulations and over 6,000 EU directives in force across the EU. In addition, there are around 7,900 statutory instruments (SIs) made in the UK that have implemented EU legislation. The IA states that a large proportion of this law will not function effectively after the UK

leaves the EU unless action is taken to correct it. The IA explains why the nature of these corrections will, in many cases, depend upon the outcome of negotiations and, therefore, why it is necessary to have a “correcting power” in the Bill to permit changes via secondary legislation. This power will expire two years after EU exit day.

Impacts of proposal

The Department explains that the Government’s aim with the Bill is to maintain the existing laws that apply in the UK as it leaves the EU. The IA states that substantive policy changes will be brought in through other new primary legislation, which the IA states will be accompanied by separate impact assessments (paragraph 22). It is estimated that the correcting power will be needed for between 800 and 1,000 SIs. The IA explains that, in most circumstances, the existing rules will continue, with minimal modifications to make them function correctly once the UK is outside the EU. This means that there should usually be no significant costs or benefits, other than transitional costs such as familiarisation.

The IA states that the proposal will mainly affect business and public services but that, depending on the changes made through secondary legislation under the Bill, *‘consumers, customers and the end users of government services might also be affected’* (paragraph 24). The IA describes the direct cost to business as unknown, because the way in which the powers will be exercised has not been determined in all cases, for example where the corrections depend on the outcome of the UK’s negotiations with the EU.

The IA describes the costs of the proposal, with a focus on familiarisation costs (pages 6-7). The Department expects familiarisation costs even where the rules are exactly the same, for example if businesses need to familiarise themselves with the fact that there is a new regulator. The IA states, however, that the nature of the changes will be such that businesses should not need to radically alter their processes or behaviour as a result of the corrections made to the statute book. The Department expects, therefore, that familiarisation costs will be low. The Department states that it is not possible at this stage to set out in detail the scale of the impact of the powers in the Bill. The IA sets out the *“Government’s best estimate of this impact at this stage...through a series of indicative case studies”* (pages 8-9).

Quality of submission

The Department's assessment is sufficient, on the understanding that separate impact assessments on substantive policy changes will follow in due course. The RPC welcomes "*the Government's intention..., in line with normal processes, [is] for these new pieces of primary legislation to be accompanied by impact assessments that will provide appropriate discussions of the impacts of any policy changes*" (paragraph 22). The RPC notes that there are likely to be various forms of regulatory change, for example as to freedom of movement of goods, services, labour and capital, and that such changes are likely to have significant impacts on business and wider society. The RPC emphasises that all such regulatory changes should be subject to impact assessment and independent scrutiny.

The IA could be improved significantly in the following areas.

Indication of the scale of the overall impact of the proposal

The IA provides an explanation for why a robust estimate of the impact of the overall proposal, including impacts resulting from use of the new power conferred by the Bill, cannot be made at this stage. The IA would, however, be improved by providing some indication of the potential scale of overall impacts. In doing so, it could consider providing:

- further discussion of the provisions in the Bill repealing the European Communities Act and opening up the possibility to introduce new primary legislation, and the areas of legislation that could be particularly affected, for example in relation to migration and trade, and associated impacts on business and wider society. This could draw upon research, such as that undertaken by the Treasury and others in 2016;
- within this, some discussion of the impact of the new power for the UK to vary domestic regulation independently of the EU, particularly on businesses trading with the EU;
- further discussion of wider societal impacts (paragraph 24 refers to potential impact on consumers, customers and end users of government services);

- greater recognition that, even if the impact per business is expected to be small, aggregate and total impact could be significant because of the large number of businesses potentially affected (and accordingly change, or provide context to, the characterisation of costs being “*likely small*” in the summary sheets of the IA);
- any evidence from the “*relevant industry bodies*” that impacts are likely to be small, and on the scope for familiarisation being done “*in the round*” rather than for each individual statutory instrument (paragraph 31);
- an approximate percentage split of SIs falling into the three (case study) categories.

Explanation of counterfactual

The analysis in the IA focuses on the impact of the provision in the Bill to “*create temporary powers to make secondary legislation...*”. In the discussion of the ‘do nothing’ option (page 5) it seems clear that the counterfactual for this analysis is that the UK leaves the EU. However, regarding the provision in the Bill to “*convert EU law as it stands at the moment of exit into UK law...*” there appears to be an assumption that businesses would incur the same costs as those presently incurred to comply with EU law. The implicit counterfactual here would, therefore, appear to be continued UK membership of the EU. The IA would benefit from including an explicit discussion of the counterfactual(s) used in its assessment, addressing this point in particular. The Department’s overall approach should be considered against better regulation framework requirements or guidance relating to EU exit counterfactuals, as those requirements are determined.

The discussion at paragraph 15 describes two effects under the do nothing option: an incomplete/confusing legal system and directly-applicable EU law ceasing to apply in the UK. The IA covers the impact of the former but does not address explicitly the costs and benefits of the latter. The RPC recognises that, even if appropriate, full estimation would not be possible. The IA would, however, benefit from describing this impact and addressing explicitly why it has not been assessed.

Small and micro business assessment

The IA acknowledges that small and micro businesses might find it more difficult to adapt to any changes brought forward under the powers in the Bill, and that familiarisation costs will be more significant for small businesses (paragraphs 51-52). The Department should, however, address exemption and mitigation more explicitly, and provide further details of the intended communications strategy to mitigate impacts on small businesses.

Options

The IA presents only one option. Whilst this is common practice at the final stage, the IA would benefit from a greater discussion of potential options. In doing so, it could consider:

- explaining further why there are no “*alternative ways*” (page 1), in particular whether this means that no other options are feasible or whether they have been ruled out on cost/benefit or other grounds;
- whether excluding some elements of the Bill, such as conversion of CJEU law into UK law, could be presented as sub-options;
- presenting ‘do nothing’ as an option in the summary sheets.

Risk

Given the temporary powers to make consequential corrections to a very large number of existing SIs, the IA would benefit from discussion of the risks around completing this within the duration of the power (two years from the date of EU exit).

Post-implementation review

The Department explains that the Bill will disapply the requirement for post-implementation reviews (PIR) of the SIs that are brought forward under the Bill. The IA explains that this is due to a unique set of circumstances involving a large volume of small corrections made in a short period of time and regulations made under a power that will cease to exist when the reviews would be due. The IA acknowledges that this does not remove the general need to review and improve legislation in due course. Nevertheless, a more specific commitment that any SIs with particularly

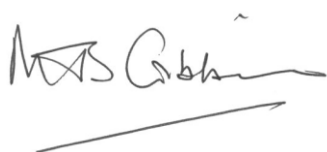
significant impacts would potentially be selected for a PIR, or that there would be a unified PIR covering the entire set of corrections, would be useful.

Departmental assessment

Classification	To be determined
Equivalent annual net direct cost to business (EANDCB)	Not monetised
Business net present value	Not monetised
Societal net present value	Not monetised

RPC assessment

Classification	Under framework rules for the 2015-17 parliament: qualifying regulatory provision
Small and micro business assessment	Fit for purpose



Michael Gibbons CBE, Chairman