

News story: David Davis' opening statement at the second reading of the Repeal Bill

Introduction

I beg to move, that the Bill be now read a second time.

Mr Speaker, when I introduced the European Union (Notification of Withdrawal) Bill earlier this year, I said that Bill was just the beginning – the beginning of a process to ensure that the decision made by the people in June last year is honoured.

And today we begin the next step in the historic process of honouring that decision.

Put simply, this Bill is an essential step. Whilst it does not take us out of the EU – that is a matter for the Article 50 process – it does ensure that on the day we leave, businesses know where they stand, workers' rights are upheld and consumers remain protected.

This Bill is vital to ensuring that as we leave, we do so in an orderly manner.

Summary of the Bill

Let me start with a brief summary of the Bill, before going on to set out its key provisions in more depth.

The Bill is designed to provide maximum possible legal certainty and continuity, whilst restoring control to the UK. It does so in three broad steps.

First, it removes from the statute book the key legislation passed by this Parliament in 1972 – the European Communities Act.

That Act gave EU law supreme status over law made in this country. It is therefore right that it be removed from our statute book on the day the UK leaves the EU, bringing to an end to the supremacy of EU law over laws made here in the UK.

Second, the Bill takes a snapshot of the body of EU law which currently forms part of the UK legal system, and ensures it will continue to apply in the UK after we leave.

This is to ensure that, wherever possible, the same rules and laws will apply the day after exit as they did before. Without this step, a large part of our law would fall away when the European Communities Act is repealed.

But simply preserving EU law is not enough. There will be many areas where the preserved law does not work as it should.

So, as its third key element, the Bill provides ministers in this Parliament and in the devolved legislatures, with powers to make statutory instruments to address the problems that would arise when we leave the EU.

These powers allow ministers to make those changes to ensure the statute book works on day one. This will be a major, shared undertaking across the UK.

Following this, it will be for UK legislators to pass laws and for UK courts to adjudicate those laws. Mr Speaker, the Bill enables us to leave the EU in the smoothest and most orderly way possible.

It is the most significant piece of legislation to be considered by this House for some time, and it will rightly be scrutinised clause by clause, line by line, on the floor of this House.

I stand ready to listen to those who offer improvements to the Bill, in the spirit of preparing our statute book for our withdrawal from the EU.

The right hon. member for Holborn and St Pancras likes to remind me of my past incarnation as a backbenchers' champion and my dedication to holding the Government to account.

Mr Speaker, I have not changed my views one jot. Let me be clear, this Bill does only what is necessary for a smooth exit and to provide stability.

Those who approach this critical Bill in a spirit of cynicism and look for conspiracies in it simply fuel popular mistrust of those of us who serve in this place.

However, as I have repeatedly said, I welcome and encourage contributions from those who approach the task in good faith and in the spirit of collaboration.

All of us as legislators have a shared interest in making this Bill a success for the national interest.

The key point of this Bill is to avoid significant and serious gaps in our statute book.

The Bill ensures consumers can be clear about their protections, employees can be clear about their rights, and businesses can be clear about the rules that regulate their trade.

Workers' rights, consumer and environmental protections will be enforceable through the UK courts, which are renowned the world over.

The Bill provides certainty as to how the law applies after we leave the EU, and ensures individuals and businesses can continue to find redress when problems arise. And of course, without this Bill, all of these things are put at risk.

The Bill must be on the statute book in good time ahead of our withdrawal, so that the statutory instruments that will flow from the Bill can be made in time for exit day, and so we are in a position to take control of our laws from day one.

The Bill provides a clear basis for our negotiation with the European Union by ensuring continuity and clarity in our laws, without prejudice to the ongoing negotiations. Without this legislation, a smooth and orderly exit is impossible.

The shape of any interim period would need to be determined by negotiations, but we cannot await the completion of negotiations before ensuring that there is legal certainty and continuity at the point of our exit. To do so would be reckless.

Repeal of the ECA

Mr Speaker, let me now talk the House through the Bill's main provisions.

The first clause of the Bill repeals the European Communities Act on the day we leave the EU, ending the supremacy of EU law in the UK and preventing new EU law from automatically flowing into UK law after that point.

When the then Prime Minister, Harold Wilson, led a debate here in May 1967 on the question of the UK's entry into the European Communities, he said:

"It is important to realise that Community law is mainly concerned with industrial and commercial activities, with corporate bodies rather than private individuals. By far the greater part of our domestic law would remain unchanged after entry." [Official Report, 8 May 1967; Vol. 746, c. 1088.]

I think the passage of time has shown he was mistaken. European Union law touches on all aspects of our lives, in a far wider way than the drafters of the European Communities Act could have envisaged.

This means that the Bill we have before us today has a difficult task: it must rebuild UK law in a way that makes sense outside the EU.

Preservation and conversion of EU law

To do this, the first step the Bill takes is to preserve all the domestic law we have made to implement our EU obligations.

This mainly means preserving the thousands of statutory instruments that have been made under the European Communities Act, with subjects ranging from aeroplane noise to zoo licensing. It also extends to preserving any other domestic law that fulfils our EU obligations or otherwise relates to the EU.

Equally, the Bill converts EU law – principally EU regulations, all 12,000 of them – into domestic law on exit day.

It also ensures that rights in the EU treaties that are directly effective – that is, rights that are sufficiently clear, precise and unconditional that

they can be relied on in court by an individual – continue to be available in UK law under the Bill.

I have no doubt that there is much about EU law that could be improved – and I know this Parliament will over time look to improve it.

But that is not the purpose of this Bill. This Bill simply brings EU law into UK law, ensuring that, wherever possible, the rules and laws are the same after exit as before.

Just as important as the text of EU law is the interpretation of that law.

For that reason, the Bill ensures that any question as to the meaning of retained EU law is to be decided in the UK courts in accordance with the CJEU's case law and retained general principles of EU law as they stood on exit day.

This approach maximises stability by ensuring that the meaning of the law does not change overnight, and only the Supreme Court and the High Court of Justiciary in Scotland will be able to depart from retained EU case law.

They will do so on the same basis that they depart from their own case law. Any other approach would either actively cause uncertainty, or fossilise CJEU case law forever.

Future decisions of the CJEU will not bind our courts, but our courts will have discretion to have regard to such decisions if they consider it relevant and appropriate to do so – in just the same way that our courts might at the moment refer to cases in other common law jurisdictions, such as Australia or Canada.

Exceptions to preservation and conversion

Overall, then, the Bill provides for very significant continuity in the law.

But there are some elements that would simply not make sense if they remained on the UK statute book once we have left the EU and in the years and decades to come.

It would not make sense, for example, for the Bill to preserve the supremacy of EU law, or to make the preserved EU law supreme over future legislation passed by this Parliament.

Laws passed in these two Houses after exit day will take precedence over retained EU law.

Mr Speaker, we also do not believe it would make sense to retain the Charter of Fundamental Rights. The Charter only applies to member states when acting within the scope of EU law.

We will not be a member state, nor will we be acting within the scope of EU law, once we leave the EU.

As I said to the House when I published the White Paper on the Bill, the Charter catalogues the rights found under EU law, which will be brought into UK law by the Bill.

It is not, and never was, the source of those rights. Those rights have their origins elsewhere in domestic law. Or relate to international treaties or obligations which the UK remains party to – for example the ECHR.

So let me be clear: the absence of the Charter will not affect the substantive rights available in the UK.

And I have said at this despatch box before, if Members opposite – or anyone in this House – find a substantive right that is not carried forward into UK law, they should say so, and we will deal with it. In the several months since I said that, no-one has yet brought to my attention a right we have missed.

Delegated powers

Mr Speaker, the conversion of EU law into UK law is an essential measure to ensure the UK leaves the EU in the smoothest way possible.

However, that action alone is not enough to ensure that the statute book continues to function. Many laws will no longer make sense outside the EU. If we were only to convert EU law into UK law, our statute book would still be broken.

Many laws would oblige UK individuals, firms or public authorities to continue to engage with the EU in a way that is both absurd and impossible for a country that is not within the EU.

Other laws would leave the EU Institutions as key public authorities in the UK, a role they would not be able to perform or fulfil.

The problems which would arise without making these changes range from minor inconveniences to the disruption of vital services we all rely on every day.

In practical terms this ranges from a public authority being required to submit reports on water quality to the EU, to causing disruption to the City by removing the supervision of the Credit Rating Agencies entirely.

It is essential that these issues are addressed before we leave the EU, or we will be in breach of our duty as legislators to provide a functioning and clear set of laws for our citizens.

That is why the Bill provides a power to correct problems that arise in retained EU law as a result of our withdrawal from the EU. This is clause 7 of the Bill, the so-called correcting power.

Unlike section 2(2) of the European Communities Act – which can be used to do almost anything to the statute book to implement EU law – the correcting power is a limited power.

It can only be used to correct problems with the statute book arising directly from our withdrawal from the EU – ministers cannot use it simply to replace EU laws they do not like.

It is designed to allow us to replicate as closely as possible existing EU laws and regimes in a domestic context. It is also restricted so that it cannot, for example, be used to create serious criminal offences, amend the Human Rights Act, or impose or increase taxation.

And we have ensured that it expires two years after exit day, so nobody can suggest that this is an attempt at a permanent transfer of power to the executive.

Mr Speaker, I accept that proposing a delegated power of this breadth is unusual. But leaving the EU presents us with a unique set of challenges that need a pragmatic solution.

Using secondary legislation to tackle challenges such as these is not unusual: secondary legislation is a process of long standing, with clear and established roles for Parliament.

Our current estimate is that the UK Government will need to make between 800 and 1,000 statutory instruments – possibly 12,000 pages of legislation – to make a exit a reality in UK law.

Mr Speaker, this may seem in some ways like a large number – it's a little less than one year's quota as it were.

And I understand members have concerns about the scrutiny of this volume of legislation. But let me contrast it to the 12,000 EU Regulations and 8,000 domestic regulations – 20,000 pieces of law – that have brought forward new policies while we have been members of the EU.

This one-off task is very different to the flow of new law we have had from the EU over the last 40 years – and is ultimately about ensuring that power returns to this House.

All of these changes must happen quickly to maintain stability as we leave the EU. Many of the changes will be minor and technical, replacing, for example, references to "EU law" or to "other member states".

It would not make sense, nor would it be possible, to make these numerous changes in primary legislation.

Some of the changes we bring forward will, by their nature, be more substantial and will demand more scrutiny.

An example would be a proposal to transfer a function currently exercised by the Commission to a new domestic body that needs to be set up from scratch.

We hope to minimise the need for such bodies – but where they are needed, I readily accept that these changes require fuller parliamentary scrutiny.

That is why the Bill sets clear criteria that will trigger the use of the affirmative procedure, ensuring a debate and a vote on the instrument in both Houses.

Over the course of the two days we will spend debating this Bill, I am sure we will hear calls for this secondary legislation to receive greater scrutiny, along the lines of that given to primary legislation.

I say to hon. Members that I am clear that the way to make significant changes is through primary legislation.

That is why the Queen's Speech set out plans for several further Bills to follow this one, including on immigration, trade and sanctions.

Bringing in significant new policy changes is not the task at hand: with this power we are making corrections to the statute book rather than bringing in new policies that take advantage of the opportunities offered by our withdrawal from the EU.

These corrections need to be made to ensure we have a functioning statute book. As far as we can see, the power we have proposed is the only logical and feasible way to make those corrections.

Our approach remains the only viable plan – we considered others – put forward in this House. While we have heard complaints from the benches opposite, we have not seen any alternative.

Power to implement the withdrawal agreement

Mr Speaker, the Bill also contains a limited power to implement the withdrawal agreement by statutory instrument if that proves necessary.

The Government's aspiration is to agree a new, deep and special partnership with the EU. Under the Article 50 process, we are negotiating a withdrawal agreement with the EU.

Provisions of that agreement will need to be implemented in domestic law, and some of that will need to be done by exit day.

Given the timetable set by Article 50, it is prudent to take this power now so that we are ready if necessary to move quickly to implement aspects of an agreement in domestic law.

This will be particularly important if the negotiations conclude late in the two year period.

This power will help to ensure that the UK Government and devolved administrations are able to implement the outcome of the negotiations.

The power is limited: it will only be available until exit day, at which point it will expire. The power is aimed at making the legislative changes that absolutely need to be in place for day one of exit to enable an orderly withdrawal from the EU.

The exact use of the power will of course depend on the contents of the withdrawal agreement. For example, the power could, depending on what the withdrawal agreement says, be used to clarify the status of UK cases at the CJEU that started before exit but were not yet concluded by exit day.

It could also be used, for example, to enable regulatory approvals for UK products that were pending at the point of exit – in line with the proposal set out in the UK's position paper on the Continuity of the Availability of Goods in the EU and UK this summer.

The power will also be able to modify the Bill itself. This is not unprecedented.

Depending on the outcome of the negotiations, we may need to amend the Bill's provisions to ensure that our domestic legislation correctly reflects the terms of the agreement.

Any regulations that modify the Bill itself would be subject to proper Parliamentary scrutiny as they would require the affirmative procedure. This means they would have to be debated and approved by Parliament before they could be made.

We have already committed to bringing forward a motion on the final agreement to be approved by both Houses of Parliament before it is concluded.

That vote is in addition to Parliament's scrutiny of any statutory instruments we propose under this power, and also in addition to the enormous amount of debate and scrutiny that will be applied to the primary legislation that will cover all and every major policy change around our exit from the EU.

So Parliament will be fully involved in taking forward a Withdrawal Agreement.

I want to reassure the House that the Government will do whatever is necessary to prepare for our exit – including bringing forward further legislation if necessary.

Devolution

Mr Speaker, let me now deal with the Bill's approach to devolution. As I have set out, the overall approach of this Bill is to provide for continuity wherever possible at the point of exit, not seek to take advantage of the opportunities of withdrawal immediately. That is the approach that guides the devolution provisions as well.

Let me be clear: we have a strong track record on devolution. Our commitment to strengthening the devolution settlements is clear from the statute book – most recently the Wales Act 2017 and the Scotland Act 2016.

Leaving the EU allows us to make sure that decision-making sits closer to the people than ever before; we expect a significant increase in the decision-making power of the devolved institutions.

The current devolution settlements have always created common frameworks within the United Kingdom by reflecting the context of the UK's EU membership.

So, in areas subject to EU law, all parts of the UK currently follow common rules and principles even where matters are otherwise devolved.

For example, England, Wales, Scotland and Northern Ireland each pass their own laws relating to food policy – but each nation has to ensure they comply with EU rules on food hygiene.

When we leave the EU, it is not in the interests of people and businesses – living and working across the UK – for all those arrangements to disappear, or for there to be new barriers to living and doing business within our own country.

So, the Bill provides certainty and continuity for people across the UK by recreating in UK law the common frameworks currently provided by EU law, and providing that the devolved institutions cannot generally modify them.

The Bill also ensures that every decision that the devolved administrations and legislatures could take before exit day, they can still take after exit day.

Mr Speaker, this is a transitional arrangement. It is an arrangement that ensures certainty and continuity whilst the UK undertakes negotiations with the EU on its future relationship, and the UK government and devolved administrations discuss precisely where we need to retain common frameworks within the UK in the future.

These common frameworks will be important, as they will enable us to manage shared resources such as the sea, rivers and the air, and enable the continued functioning of the UK's internal market.

They will also allow us to strike ambitious trade deals, administer and provide access to justice in cases with a cross-border element and enter into new international treaties. This includes our future relationship with the EU.

For example, they will mean a business in Wales knows that it only needs to comply with one set of rules on food labelling and safety in order to sell to the rest of the UK.

Or that a farmer in Scotland is able to sell her livestock in other parts of Great Britain, safe in the knowledge that the same animal health rules apply across that geographic area.

Certainty on common approaches is critical for the day-to-day life of people in the UK, on the day we exit the EU and into the future.

Just as important, are those areas where we do not need to keep common approaches in the future. We do not expect that we will need to maintain a framework in every single area the EU has mandated.

We can ensure our common approaches are better suited to the UK and our devolution settlements. And, therefore, the Bill provides a mechanism to release policy areas where no frameworks are needed.

This Bill gives time for us to work together with the devolved administrations to determine where we will continue to need common frameworks in the future. And, crucially, it will not create unnecessary short-term change that negatively affects people or businesses.

Before the summer recess, my right hon. friend the First Secretary of State wrote to the Scottish and Welsh Governments to begin intensive discussions about where common frameworks are and are not needed.

In the current absence of a Northern Ireland Executive, equivalent engagement has taken place at official level with the Northern Ireland Civil Service.

We will bring forward further detail on the process underpinning these discussions in due course for Parliament to decide.

Certainty in devolved legislation affected by EU exit is also vitally important. The key delegated powers in this Bill are conferred on the devolved administrations, so that the task of preparing the devolved statute books for exit can rightly be led from Scotland, Wales and Northern Ireland.

The Government is committed to ensuring the powers work for the administrations and legislatures. For instance, I have already confirmed that we will always consult the administrations on corrections made to direct EU law that relate to otherwise devolved areas of competence.

I firmly believe that the outcome of this process will be a significant increase in the decision-making power of each devolved administration and legislature.

It will mean that decisions and power sit in the right place and closer to people than ever before.

And, crucially, this Bill means that our UK businesses and citizens have confidence and certainty in the laws that allow them to live and operate across the UK as we exit the EU.

Conclusion

It is a privilege to stand here today and open two days of debate on this Bill.

As the PM said in January, the historic decision taken by the British people in June last year was not a rejection of the common values and history that we share with the EU.

But it was a reflection of the desire of the British people to control our own laws and ensure these reflect the country and people we want to be.

This Bill is an essential building block for this – it lays the foundation

for a functioning statute book which future policies and laws can be debated and altered.

This Bill itself is not the place for those substantive changes to the frameworks we inherit from the EU. We will have many more opportunities to debate those – both before and after we leave.

I hope hon. Members on all sides though will recognise that we have acted responsibly in leaving the EU by prioritising, first and foremost, a functioning statute book.

In bringing forward this Bill, we are ensuring the smoothest possible exit from the EU – an exit that enables the continued stability of the UK's legal system, and maximises certainty for business, consumers and individuals across the UK.

And as we exit the EU and seek a new, deep and special partnership with the European Union – the Bill ensures that we will be doing so from a position where we have the same standards and rules.

So in this Bill we are not rejecting EU law, but embracing the work done between member states in over forty years of membership and using that solid foundation to build on in the future, once we return to being masters of our own laws.

I hope everyone in this House recognises this Bill's essential nature – it is the foundation upon which we will legislate for years. to come –

Now, we have just had this morning proposals from the opposition on their proposal to move a reasoned amendment. I have just emphasised the critical nature of this Bill.

A vote for the Hon. Member's amendment is a vote against this Bill, a vote for a chaotic exit from the EU. The amendment suggests that this Bill provides some sort of blank cheque to ministers.

That is a fundamental misrepresentation of parliament and our democratic process. Using the Bill's powers does not mean avoiding parliamentary scrutiny. Secondary legislation is still subject to parliamentary oversight, using well-established procedures in no way provides unchecked unilateral powers to the government.

On rights, the government agrees that EU exit cannot and will not lead to weaker rights and protections in the UK. We have been clear we want to ensure workers' rights are protected and enhanced as we leave the EU.

This Bill provides for existing legislation in this area to be retained. After we leave the EU it will be for Parliament to determine the proper level of rights protection.

On devolution, I have just gone through in detail how we are going to deal with that.

And finally, the argument that this Bill undermines any particular approach to interim or transitional period for the implementation of our new arrangements with the EU is completely wrong.

The Bill provides a clear basis for our negotiation by ensuring continuity and clarity in our laws without prejudicing the ongoing negotiations.

Without this legislation a smooth and orderly exit is impossible.

We cannot await the completion of the negotiations before ensuring this legal certainty and continuity at the point of our exit, to do so would be reckless and extreme.