



Law Society
of Scotland

European Union (Withdrawal) bill

Commons amendments to amendments and reasons

House of Lords consideration

18 June 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Constitutional Law sub-committee welcomes the opportunity to consider the House of Lords Amendments to the European Union (Withdrawal) Bill.

The amendment references are to the list amending HL Bill 79, the bill as first printed for the House of Lords.

The sub-committee has the following comments to make which relate only to specific clauses in which we had a particular interest.

Lords Amendment 4

New Clause

This clause requires that retained EU law in Employment and Equality Rights Health and Safety Entitlements Consumer Standards and Environmental Standards and Protection can only be amended, repealed or revoked by primary legislation or, where the changes are technical in nature, by subordinate legislation.

Our Comment

We welcomed the amendments to the sifting procedure for regulations which were introduced by amendments to Schedule 7 paragraph 3.

We believe that if Amendment 4 is accepted into the bill by the House of Commons there may need to be changes to the procedural arrangements in the Sifting Committees both in the House of Commons and the House of Lords.

Lords Amendment 5

Clause 5

This amendment retains the EU Charter of Fundamental Rights in domestic law after exit day.

Our Comment

Clause 5(4) provided that the Charter of Fundamental Rights is not part of domestic law on and after exit day.

Paragraphs 103 and 104 of the explanatory notes argued that it was unnecessary to include it as part of retained EU law because the Charter merely codifies rights and principles already inherent in EU law and would therefore form part of that law when it becomes retained EU law.

However even if this was the case (and this is arguable), it would then make no difference if the Charter did form part of the retained EU law. This does not, therefore, appear to be a sufficient reason for excluding the Charter from forming part of retained EU law in the same way as other pre exit EU law.

It makes sense for the Charter to form part of retained EU law because it only applies in areas to which EU law applies. The Government should reconsider its decision not to include the Charter as part of retained EU law which would then form part of domestic law on and after exit day. It would at least be helpful to our domestic courts to rely upon its terms when determining the validity, meaning and effect of retained EU law. The Charter is part of EU law applicable at present to the UK and, as with any other aspect of EU law, should form part of retained EU law on exit day, subject to whatever modifications as may be necessary.

Lords Amendment 10

This amendment changes the wording in Clause 7 which considers the scope of the correcting power by replacing the text “the Minister considers appropriate” with the words “is necessary”.

Our Comment

We had argued for this change since the bill was introduced. We do not agree that this amendment will inappropriately restrict the regulation making power in clause 7(1).

Lords amendments 52 and 53

Schedule 1

Our Comment

Amendments 52 and 53 delete parts of schedule 1 including paragraph 1(2)(b) and (3).

We had concerns about the clarity and efficacy of these paragraphs in particular schedule 1, paragraph 3(1) which would not allow any challenge to be made on and after exit day, or allow any court to quash, any enactment or rule of law on the grounds that it does not comply with the general principles of EU law.



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