

Response of the Equality and Human Rights Commission to the Select Committee Inquiry: 'Exiting the EU: scrutiny of delegated legislation'

Title:	Exiting the EU: scrutiny of delegated legislation
Source of inquiry:	Procedure Committee
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Executive summary

The EU (Withdrawal) Bill will, with some important exceptions, convert the body of EU law, as it stands when we leave the EU, into domestic law. However, the means by which it does so is by delegating to Ministers wide-ranging powers to amend or repeal retained EU law and other domestic law, including primary legislation. Regulations made under this power will not be subject to the same degree of scrutiny by Parliament as would be required for primary legislation. While the purpose may be to facilitate the technical withdrawal from the EU, the Commission is concerned about the significant implications for parliamentary sovereignty and democratic accountability for potential changes to laws covering a range of social justice issues. While the Bill prohibits the use of delegated powers in relation to the Human Rights Act 1998, they could be used to amend the Equality Acts of 2006 and 2010, and other primary legislation which protects individuals' fundamental rights. The Commission considers that it is vital that Parliament retains the ability to fulfil its important constitutional role in fully scrutinising changes to the UK's equality and human rights legal framework. This would mean requiring changes to be made by primary legislation rather than through new delegated powers.

Our recommendations

- The Bill should explicitly rule out the use of delegated powers, including Henry VIII powers, to make changes to equality and human rights laws; and
- make equivalent provision in relation to the devolved administrations.

1. The Equality and Human Rights Commission welcomes the Procedure Committee's decision to conduct an inquiry into Exiting the EU: scrutiny of delegated legislation since there are some serious concerns raised by the EU (Withdrawal) Bill, in particular in relation to the use of delegated powers.
2. The Bill will, with some important exceptions, convert the body of EU law, as it stands when we leave the EU, into domestic law. However, the means by which it does so is by delegating to Ministers wide-ranging powers to amend or repeal retained EU law and other domestic law, including primary legislation. Regulations made under this power will not be subject to the same degree of scrutiny by Parliament as would be required for primary legislation. While the purpose may be to facilitate the technical withdrawal from the EU, the implications for parliamentary sovereignty and democratic accountability for potential changes to laws covering a range of social justice issues are significant.
3. The Bill prohibits the use of these powers in relation to the Human Rights Act 1998, which is welcomed by the EHRC, but does not in relation to other legislation which protects equality and human rights. We are therefore proposing an amendment to explicitly rule out the use of delegated powers, including Henry VIII powers, to make changes to equality and human rights laws. Our amendment sets out a definition of equality and human rights laws which is intended to be broad in order to protect against the use of delegated powers to make substantive changes to rights that are not found in the Human Rights Act (HRA) and the Equality Acts (EAs).
4. Without this amendment, delegated powers could be used to amend the Equality Acts of 2006 and 2010¹, other primary legislation which protects individuals' rights such as the Employment Rights Act 1996 (providing protection for pregnant/nursing mothers and maternity leave amongst other rights), or important secondary legislation made under powers in the European Communities Act 1972, such as the Working Time Regulations 1998.
5. It is vital that Parliament retains the ability to fulfil its important constitutional role in fully scrutinising changes to the UK's equality and human rights legal framework. This would mean requiring

¹ The Commission accepts that some technical changes would be necessary to correct or amend direct reference to the EU. We suggest these could be set out in a Schedule to the Bill so that it is completely clear to Parliament what such technical changes involve.

changes to be made by primary legislation rather than through new delegated powers.

6. It is important that the specific context of the devolved governments is fully considered with regards to the use of delegated powers. Equivalent provision will need to be to rule out the use of delegated powers to make changes to equality and human rights laws.
7. The Government's White Paper acknowledges that the purpose for which delegated powers in the Bill can be used should be limited. It states: "...Crucially, we will ensure that the power will not be available where Government wishes to make a policy change which is not designed to deal with deficiencies in preserved EU derived law arising out of our exit from the EU."
8. We do not think the Bill contains sufficient safeguards over the exercise of delegated powers to achieve this policy intention. We therefore recommend that the Bill should explicitly rule out the use of delegated powers to make changes to equality and human rights laws. This would mean that any changes would have to be made by primary legislation and would be subject to the full scrutiny by Parliament that this entails and equivalent provision should be made in relation to the devolved administrations.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission has been given powers by Parliament to advise on the equality and human rights implications of laws and proposed laws. The Commission's independent advisory role is crucial in ensuring that the legislative changes that flow from the UK's decision to leave the European Union fully deliver the Government's commitment to non-regression on a range of social justice issues, including workers' rights and the protections in the Equality Acts 2006 and 2010 and equivalent legislation in Northern Ireland.