



# Public Law Project

## The importance of “exit day” in the EU (Withdrawal) Bill

### Public Law Project, October 2017

#### Why does “exit day” matter?

##### **a) When a “snapshot” of EU law is taken**

EU law that is retained by the Bill is that which applies “immediately before exit day”. Some rights and liabilities are only to form part of retained EU law if they have been “recognised” by a court before exit day<sup>1</sup> or in a case commenced before exit day.<sup>2</sup>

##### **b) The expiry date of Ministers’ delegated powers**

Ministers’ powers to make regulations to correct deficiencies in retained EU law under the Bill expire two years from “exit day”.

#### When would “exit day” be?

Despite statements made by David Davis, “exit day” might not be the day that we leave the EU. Under the current draft of the Bill, Ministers would have the power to set the date for “exit day”<sup>3</sup>

##### **a) A later “exit day”?**

A later “exit day” might be needed to allow Ministers to use their delegated powers to provide for transitional arrangements with the EU after the UK leaves. But setting a later exit day would also extend the period for which Ministers are able to use delegated powers to amend retained EU law.

##### **b) Could there be more than one “exit day”?**

It is unclear whether Ministers could set different “exit days” for different purposes.<sup>4</sup> To ensure legal certainty, this must be clarified. This could be achieved by an amendment (see b)i below).

##### **c) Would Parliament have any control over when “exit day” is?**

As the Bill is currently drafted, Ministers’ powers to determine “exit day” through regulations would not be subject to any scrutiny. **Parliament would have no control over “exit day”.**

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<sup>1</sup> See for example clause 4(2)(b); Schedule 1 paragraph 2

<sup>2</sup> Schedule 8, Part 4, paragraph 26

<sup>3</sup> Clause 14(2)

<sup>4</sup> Schedule 7, paragraph 13



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## **How should the Bill be amended?**

### **a) Give Parliament greater control over “exit day”**

- i. “Exit day” set by an Act of Parliament (see tabled amendments 42,43 and 44);  
or
- ii. “Exit day” subject to affirmative resolution procedure;

### **b) Ensure legal certainty**

- i. “Exit day” to mean the same day for all purposes (see tabled amendment 6);
- ii. “Exit day” to mean “the day on which the UK ceases to be subject to the EU Treaties”.

This would allow sufficient flexibility for there to be a transition period while also enhancing legal certainty and appropriately limiting the period for which Ministers may exercise the extensive delegated powers contained in the Bill.

## **Questions to ask Ministers**

- a) Will “exit day” mean the same day for all purposes?
- b) Does “exit day” mean the day we stop being bound by the EU Treaties? If so, why not amend the Bill to make this clear?
- c) What is the Government’s current thinking on when “exit day” should be?
- d) “Exit day” is a hugely important term in the Bill. It determines how long Ministers can exercise their delegated powers for and it sets the date when a snapshot of EU law is taken and retained in domestic law. As the date is so significant, surely it should be set by an Act of Parliament?

For more information about this issue or to discuss other public law issues arising from the Bill, please contact PLP’s Legal Director, Alison Pickup, on [a.pickup@publiclawproject.org.uk](mailto:a.pickup@publiclawproject.org.uk).