



HRCS Briefing: The Brexit Process

Brexit Process in Europe

On 29th March 2017, Theresa May wrote a letter to the European Council to trigger Article 50 of the Treaty on European Union. This letter officially stated that the UK will withdraw from the EU and this immediately began a process of negotiation to reach an agreement about the terms and arrangements of the UK's withdrawal.

The final agreement reached has to have the consent of the European Parliament, and then has to be agreed to by a qualified majority (a set proportion higher than 50%) of the European Council – that is, all of the Heads of State from each member country plus the President of the European Council and President of the European Commission.

For now, nothing has officially changed and all EU directives and treaties and regulations etc continue to apply in the UK. However, these will cease to apply either when an agreement has been reached, or on 28th March 2019 – whichever comes first. This timetable can only be extended if the European Council, in agreement with the UK Government, unanimously decides to extend this period.

The European Convention on Human Rights (ECHR) is not directly related to the EU – this is a separate agreement that came out of a separate body, the Council of Europe. Therefore the UK is still party to this Convention and the UK Government has said they have no plans to withdraw from it, though Theresa May has also suggested that this could be a 2020 election issue.

Brexit Process at Westminster

After Theresa May triggered Article 50 and told the European Council of the UK's decision to withdraw from the EU, the next day the White Paper on the Great Repeal Bill was published. The Great Repeal Bill is arguably one of the biggest constitutional and legislative changes in Britain's history. In summary, the White Paper states that the Bill will:

1. repeal the European Communities Act – this Act currently means that European law supercedes all domestic law
2. convert EU law into UK law;
3. create powers to make secondary legislation. The Government argues that this secondary legislation power is needed because many EU laws cannot be simply converted into domestic law but that they need adjustment to being UK-only. For example if a regulation requires information sharing with an EU body. In addition, if all of the EU laws that cannot be converted easily were to be dealt with in primary legislation, there would be nowhere near enough Parliamentary time to allow this to happen within the 2 year period.

The Great Repeal Bill White Paper may now be scrutinised by Parliament Committees and there will be a public consultation on the Bill's contents. The Bill will then be introduced into the House of Commons and the House of Lords and be subject to debate and amendment. At the same time as the Houses of Parliament process, many Parliament Committees are likely to consider the Bill's details and many will accept public submissions as part of this.

In addition, once an agreement has been drawn up for the UK's exit from the EU, MPs will vote on whether to accept this agreement. If it is not accepted by the Houses of Parliament, it is possible that the UK will leave the EU with no agreement in place.

Brexit Process in Scotland

Scottish legislation that is directly related to EU law will also need to be amended when the UK leaves the EU. For this reason, the UK Government propose that the Great Repeal Bill will also give Scottish Ministers a delegated power to amend devolved legislation to correct law that will no longer work properly when we are outwith the EU.

The UK Government will also have 'intensive discussions' with the Scottish Government around which areas of law requires a common UK approach, and in which areas this common ground is not necessary and so can be devolved. It is the expectation of the UK Government that there will be a significant increase in the decision-making power of each devolved administration.

Currently, when Westminster legislates on a devolved area, it first seeks a legislative consent motion (referred to as the Sewel Convention). Indications from the UK Government are that the Scottish Parliament will be asked to pass a legislative consent motion on the Great Repeal Bill. However, the Supreme Court on Article 50 stated that the Sewel convention is not legally enforceable and so it is very unclear what the effect would be if the Scottish Parliament was to vote against the Great Repeal Bill.

The First Minister has set up a Standing Council on Europe to advise on securing Scotland's relationship with Europe including looking at social protections.

Possible opportunities to influence process

Much of the Brexit process is uncertain. However at this stage, it is likely there will be the following opportunities to influence Brexit:

- MEPs will vote on whether to accept terms of the negotiated agreement between the UK and the EU -therefore you can write to your MEP or meet with them to influence their part in the debate and decision-making. MEP contacts details are available here:
- Parliament Committees are likely to welcome written submissions on the Great Repeal Bill and are likely to hold evidence panels – details of these will be placed on the HRCS website www.hrcscotland.org as they are announced.
- MPs will have the opportunity to debate and propose amendments to the Great Repeal Bill, and will vote on the final agreement and therefore you could write to them or meet with them. MPs' contact details are available here:
- MSPs are likely to have a vote on the entirety of the Great Repeal Bill but not the content details. MSP contacts details area available here:

- The Scottish Government will be involved in many discussions with the UK Government about what areas of law should be devolved. There may be opportunities to influence their discussions – details of these will be placed on the HRCS website as they are announced.

The Human Rights Consortium Scotland is keen to work with others across civil society to speak for the non-regression and promotion of rights in the midst of the Brexit process. If you want to be part of this work and keep in touch with what is happening, become an HRCS member at www.hrcscotland.org

Want to find out more?

Here are a few suggestions of where you can find out more information on the Brexit process:

- Scottish Universities Legal Network on Europe – really useful, quite in-depth, set of position papers on different impacts of Brexit:

<https://sulne.ac.uk/position-papers/>

- Rights at Risk: A collection of Scottish civil society perspectives on the potential impact of Brexit – an HRCS publication that provides a useful overview of rights issues from Brexit

<https://hrcscotland.org/2017/03/30/new-rights-at-risk-a-collection-of-scottish-civil-society-perspectives-on-the-potential-impact-of-brexit-2/>

- Rights Info – a helpful article summarising some of the key Brexit and rights issues

<https://rightsinfo.org/great-repeal-bill-may-may-not-mean-human-rights/>

- Scottish Parliament SPICE Briefing – Brexit: the impact on equalities and human rights (October 2016)

http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-82_Brexit-the_impact_on_equalities_and_human_rights.pdf

- BBC outline of Brexit process

<http://www.bbc.co.uk/news/uk-politics-32810887>

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