

ANOTHER EUROPE IS POSSIBLE



# THE GREAT REPEAL BILL

ADDRESSING  
UNACCOUNTABLE POWER



### **About the author**

Sam Fowles is a researcher at the Centre for Commercial Law Studies, Queen Mary University of London. He provides advice and consultancy to MPs, NGOs, and commercial enterprises. He has held visiting positions at the University of Sydney in Australia and Georgetown University in the USA. Sam is a Fellow of the Royal Society of Arts, and a spokesperson for Another Europe is Possible.

### **Author's note**

This paper only begins to scratch the surface of the issues raised by the Great Repeal Bill. It should not be considered a comprehensive analysis, but a starting point for further research.

# EXECUTIVE SUMMARY

---

The Great Repeal Bill (“the Bill” or “GRB”) has the potential to grant the government an almost unprecedented level of unaccountable power. The Bill will grant exceptional legal powers. The political process by which it is passed will chill democratic scrutiny. Progressives must address the Bill’s accountability gaps if campaigns on substantive issues, such as free movement, the environment, and employment rights, are to be successful.

## Accountability gaps

The Bill, as proposed, creates four “accountability gaps”. These maximise the discretionary powers of government while, at the same time, minimising opportunities for scrutiny of those powers.

1. The **absence of transparency** about the contents of the Bill means that no proper public debate can take place about the substance of the Bill. Important questions that remain unanswered include:

- a. What EU law will be preserved by the Bill?
- b. In which class of UK law will EU norms be preserved by the Bill?
- c. How will these decisions be made?

2. The **discretionary powers** contained in the Bill will give the government the

power to repeal rights contained in EU law with minimal scrutiny and without the permission of Parliament. Moreover, it is not clear that the most extreme powers mooted for inclusion in the Bill are necessary to achieve its stated purpose.

3. **Sunset clauses** must be included in the Bill. Without them, the government will be able to exercise vastly expanded discretionary power indefinitely. This process may permanently alter the balance of power between Parliament and the government.

4. The **political process** by which the Bill will be passed is likely to strangle debate by withholding details of the Bill until the last minute then rushing the Bill through Parliament with the threat of a “regulatory cliff” if the Bill is not passed before Brexit day.

## Case studies

The impacts of the Bill are briefly illustrated in relation to three policy areas.

### Free movement

Free movement rights are likely to be eliminated before Brexit day. They will not be transferred into UK law by the GRB.

### The environment

Environmental law is dominated by EU law. This is, therefore, one of the most vulnerable policy areas in the GRB.

### Employment rights

The government has promised that all employment rights contained in EU law will be transferred to UK law. The accountability gaps in the GRB will, however, make it almost impossible to hold the government to that promise.

## Recommendations

In view of these challenges four recommendations are suggested:

1. The government must reveal specific details of the content of its Great Repeal Bill, and it must be a **clear and detailed Bill** (not a 'skeleton bill')
2. This must happen **very soon**, with a clear proposed timetable to ensure proper time necessary for the task with a minimum 6 months for consultation and 6 months for debate
3. The transfer of EU law into UK law must be transparent, clear and accountable:
  - It must include provisions to ensure that **delegated power to the government is clearly and precisely defined** in scope and purpose.
  - **Henry VIII powers should be avoided**, and when used, subject to the super-affirmative procedure.
  - **Sunset clauses should be used** to ensure that the delegated legislative powers do not last indefinitely.
  - There must be **enhanced processes and resources for screening and scrutinising** delegated legislation, including through new or existing parliamentary committees.
4. The government must guarantee, on the face of the Bill, clear explicit provisions to **prevent the Bill affecting human rights, equalities, or environmental laws and standards**, and to prohibit the use of delegated legislation to change or undermine such laws and standards.



# BACKGROUND

**The GRB broadly aims to repeal the European Communities Act 1972 and, at the same time, convert the body of EU law (or *aquis communautaire*) into UK law.<sup>1</sup> This is intended to maintain legal and regulatory certainty after Brexit day. All laws that take effect in the UK as a result of the UK's membership of the EU will be converted into UK law. They will then be repealed, replaced, or maintained piecemeal after Brexit.**

The Bill will thus, in effect, provide for a two-stage process for dealing with EU norms.<sup>2</sup> In the first, “Transferring Stage”, EU norms will be transferred into UK law. This will happen before Brexit day. The second, “Repealing Stage”, will take place after Brexit day. In this stage, the transferred norms will be considered and repealed, replaced, or maintained on a case by case basis.

This relatively simple description, however, masks the complexity of the task at hand. It is not clear what EU law will survive the process of conversion into British law, nor in what class of British law it will ultimately be enshrined. Most problematically, it is not clear how these decisions will be made or who will take them.

The opacity of the process and the powers proposed in the legislation itself risks side-lining Parliament as a decision-making body and public discourse as an effective forum for exploring the implications of public policy decisions. In its place the government will be empowered to take unscrutinised and unaccountable decisions behind closed doors, with implications that will last for generations.

<sup>1</sup> House of Commons Library, “Legislating for Brexit: The Great Repeal Bill”, (27th February 2017), p. 8, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793#fullreport> (last accessed 19th March 2017)

<sup>2</sup> *Ibid.*, pp. 4-9

# THE ACCOUNTABILITY GAPS

The Bill, as currently proposed suffers from four key accountability gaps. These gaps maximise the discretionary powers of officials and minimise the potential for democratic scrutiny. If these gaps are not addressed they will enable the government to “pick and mix” the EU norms that survive and are scrapped in the GRB. This, in effect, represents a power to legislate on a massive scale without the need to consult Parliament.

## 1. It is not clear what will be included in the Bill

Three fundamental questions remain unanswered about the content of the GRB. Until these questions are answered it is impossible to have a meaningful debate about the substance of the Bill.

### A. What EU law will be preserved by the Bill?

There are five different classes of EU law. It is not clear which classes will be transferred into UK law during the Transferring Stage.

EU law includes:

**The Treaties.** The Treaty on the European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) confer rights directly on to EU citizens, such as freedom of movement and the rights contained in the Charter of Fundamental Rights. They also provide rights and duties for states, such as those contained in the Common Commercial Policy.

**Directives.** These take effect in three ways:

- *Direct effect.* Rights are conferred directly on citizens and can be enforced in domestic courts in disputes with governments and, in limited cases, with other citizens.
- *Statute.* The norms for which some directives provide are already enshrined in primary legislation, such as Part 1 of the Consumer

Protection Act 1987, (which implements Directive 85/374/EEC), imposing strict liability on companies when people are injured or property is damaged as a result of defects in their products.

- *Section 2 of the European Communities Act 1972.* This provides for Directives to be given effect in domestic law through secondary legislation.

**Regulations.** These oblige member states to take steps to achieve certain objectives.

**Decisions.** These oblige the member states named therein to take specified actions:

**Decisions of the Court of Justice of the European Union (CJEU).** These settle disputes between member states, the legislative bodies of the EU, and individuals. In doing so they give guidance on how all areas of EU law are properly applied.

**Decisions of regulatory bodies.** Member States of the EU cooperate to enforce common standards in various sectors such as pharmaceuticals,<sup>3</sup> the environment,<sup>4</sup> and the registration of aeroplanes.<sup>5</sup> Regulatory bodies make day to day decisions involving individuals and companies on a continental scale to ensure all abide by the same common standards. Many of these decisions have the force of law within the EU.

For ease of reference and precision, these five classes will henceforth be collectively referred to as “EU norms”.

### B. What UK law?

The UK has different classes of law:

Primary legislation must be enacted by (at least) three votes in both Houses of Parliament and Royal Assent. Once it is law it cannot be overturned by the courts. Primary legislation is law created by the

3 The European Medicines Agency, see <http://www.ema.europa.eu/ema/> (last accessed 19th March 2016)

4 The European Environment Agency, see <http://www.eea.europa.eu/about-us/who> (last accessed 19th March 2017)

5 The European Aviation Safety Agency, see <https://www.easa.europa.eu> (last accessed 19th March 2017)

legislature (Parliament).

Secondary legislation is created without the necessity of a vote in Parliament. A statute (primary legislation) can give the government the authority to enact secondary legislation in a particular area. Secondary legislation can be overturned by the courts if the government has, in creating the legislation, gone beyond the powers conferred by the statute or, has acted inconsistently with its obligations in common law or the European Convention on Human Rights. Secondary legislation is law created by the executive (the government).

Primary legislation is thus subject to significantly greater scrutiny than secondary legislation. If EU norms are preserved in secondary legislation, they can be repealed, replaced, or maintained with relative ease and minimal accountability.

### **C. How will these decisions be made and who will make them?**

The questions of which EU norms are transferred to UK law and their status once transferred are highly important. It is not, however, clear who will take these decisions. There are three possible scenarios:

a. Decisions are taken by ministers and civil servants without Parliamentary scrutiny. In this scenario, the GRB will give ministers the power to (a) decide which EU norms are transferred into UK law during the Transferring Stage, (b) the class of law in which they are enshrined, and (c) which transferred norms will be repealed, replaced, or maintained in the Repeal Stage. This means that the executive will decide whether to give itself the power to dispense with EU norms without scrutiny.

b. The Bill includes a test. In this scenario, during the Transferring Stage, EU norms of a one class must be transferred into primary legislation, norms of a second class transferred into secondary legislation, and laws of a third class dispensed with altogether. The government will take operational decisions

about the specifics of the transfer, but must do so in accordance with the statutory test. The test itself would be written on to the face of the legislation and would thus be subject to scrutiny by Parliament. It will establish a clear standard by which the actions of officials can be judged during the Transferring Stage, which can be enforced by the courts through judicial review.

In the Repeal Stage those norms that fall into the first class will be repealed, replaced, or maintained with primary legislation. Those which fall into the second class will be repealed, replaced, or maintained through secondary legislation. In this scenario, therefore, Parliament does not decide which specific EU norms are transferred into which specific classes of UK law during the Transferring Stage, but it does decide how that decision is made. In doing so, Parliament, decides which classes of EU norms must be subject to full Parliamentary scrutiny before they can be repealed in the Repeal Stage.

c. All decisions are taken directly by Parliament. In the Transferring Stage officials submit which norms they intend to transfer into UK law, and the class of UK law into which they will be transferred, to full Parliamentary scrutiny, either on the face of the Bill or in schedules. In this scenario, Parliament thus decides which specific norms it intends to subject to full scrutiny in the Repeal Stage before they can be repealed, replaced, or maintained, and which it will leave to the discretion of ministers. This would make the progress of the Bill exceptionally slow. It would, on the other hand, mean that these important initial decisions are taken in the most transparent and accountable manner possible.

## **2. The powers the Bill gives the government**

If EU norms are transferred into secondary legislation during the Transferring Stage then the government can repeal them without parliamentary scrutiny during

the Repeal Stage. The Bill may, however, give the government the power to repeal, replace, or maintain EU norms during the Transferring Stage, without parliamentary scrutiny.

The Secretary of State for Exiting the EU, David Davis, has said that EU norms will be transferred into UK law “wherever practical” before Brexit day.<sup>6</sup> This indicates that, in some cases, it will be “impractical” to transfer a particular norm into UK law and that norm will, therefore, be scrapped. If this is the case the Bill must empower the government to repeal EU norms before Brexit day. It is not clear what this power will look like, how it will be applied, or how it will be scrutinised.

A power that allows ministers or officials to dispense with inconvenient EU norms during the Transferring Stage has the potential to confer an unlimited discretion to dispense with EU norms. If this is the case, parliamentary scrutiny in the Repeal Stage becomes almost meaningless because Parliament’s scrutiny will be, in effect, subject to the discretion of officials.

The GRB will also, however, grant the government a “Henry VIII” power.<sup>7</sup> This is a power to repeal primary legislation using secondary legislation. Normally primary legislation can only be repealed by primary legislation, thus requiring a multiple votes in parliament. A Henry VIII power thus gives officials the powers of parliament, yet subjects them to none of the same democratic scrutiny.

Henry VIII powers have been criticised by the judiciary. The former Lord Chief Justice, Lord Judge, describes them as a “self-inflicted blow” that boosts the power of the executive and should only be used in a national emergency.<sup>8</sup>

In relation to the GRB, Henry VIII powers may be used for two purposes:

a. Some existing primary legislation “hooks” certain

obligations to EU institutions or decisions. It makes the exercise of certain powers or the fulfilment of certain duties, for which the legislation provides, contingent on decisions, standards, or institutions at EU level. When the UK leaves the EU, these legislative hooks must be removed and replaced with references to equivalent decisions, standards, or institutions in the UK. Where the hooks are contained in primary legislation, a Henry VIII power enables the government to make these adjustments without consulting Parliament.

The justification for this is that it wastes Parliament’s time to devote the full legislative process to an essentially administrative adjustment. While this argument is compelling, its basis remains unclear. Legislative hooks are, in general, contained in secondary legislation. In these cases, a Henry VIII power is unnecessary because the administrative adjustment can be made with a normal statutory instrument.

Even where legislative hooks are found in primary legislation, a general Henry VIII power is not necessary. The desired effect can be achieved with targeted Henry VIII powers, linked (on the face of the Bill or in the schedules) to specific legislative hooks or drafted so as to apply only to legislative hooks. In view of the undemocratic nature of such powers, the case for limited, rather than general, Henry VIII powers seems overwhelming, if their only purpose is to address the issue of legislative hooks.

b. Some EU norms are already enshrined in primary legislation – these include the Equalities Act 2010 and the Consumer Protection Act 1990. General Henry VIII powers will enable the government to repeal these statutes, in whole or in part, without a vote in Parliament. If this is not the intention of the Bill then the powers contained therein should be limited so as to eliminate this possibility.

It is not clear how the Bill will limit these powers,

6 David Davis, Speech to the Conservative Party Conference, 2nd October 2016, available at <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79518/read-full-david-davis-speech-conservative> (last accessed 19th March 2017)

7 House of Commons Library, “Legislating for Brexit: The Great Repeal Bill”, (27th February 2017), p. 36, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793#fullreport> (last accessed 19th March 2017)

8 *Ibid.*, p. 38





how they will be made accountable and how long they will last.<sup>9</sup>

### 3. Sunset clauses

If the GRB grants the government significant powers, it is not clear how long they will last. Will the powers expire after the conclusion of the Transferring Stage? Will they continue until the conclusion of the Repeal Stage? In this case, the government will have the powers in the Bill, at minimum, for over a decade. Will the powers continue indefinitely, until the Bill is repealed?

Even if the powers in the GRB are as limited and accountable as possible, the objectives of the Bill cannot be achieved unless it grants the government exceptional legislative power.

Such a range of powers has the potential to exceed those of any peacetime administration in the last century. Unless a clear deadline is set for the expiry of these powers, there is a risk that the GRB could represent a permanent shift in legislative decision-making away from the elected legislature, towards the executive.

The worst-case scenario is, perhaps, unlikely. Yet,

even in more positive scenarios, the Bill cannot avoid creating the space for a gradual, low level, migration of decision-making power away from elected representatives and toward ministers and officials unless a sunset clause curtails those powers after a certain point.

A debate about sunset clauses comes with its own risks. Calls for sunset clauses on the government's powers under the Bill will create the space for supporters of a "hard Brexit" to demand sunset clauses on the EU rights preserved by the Bill. The issue must therefore be addressed with a degree of caution and any messaging must put a premium on precision.

### 4. The political process

An accountable process requires public consultation, parliamentary scrutiny, and democratic oversight. This takes time. One of the most complex pieces of legislation in recent times, the Investigatory Powers Act 2014, was subject to several years of consultation before it was introduced to Parliament. It then took nine months to complete the parliamentary process.<sup>10</sup>

The GRB requires at least an equivalent timescale

<sup>9</sup> For a detailed exploration of the possible powers in the GRB see S. Douglas-Scott, 'The 'Great Repeal Bill': Constitutional Chaos and Constitutional Crisis?', U.K. Const. L. Blog (10th Oct 2016), available at <https://ukconstitutionallaw.org/> (last accessed 19th March 2017)

<sup>10</sup> See UK Parliament, "Bill Stages – Investigatory Powers Act 2016", available at <http://services.parliament.uk/Bills/2015-16/investigatorypowers/stages.html> (last accessed 19th March 2017)

if it is to be properly scrutinised. On the other hand, if the Bill is not passed before Brexit day, individuals and business will be forced to grapple with massive regulatory changes overnight as the entire *aquis communautaire* ceases to take effect at once. This will be a powerful motivation for MPs to grant the Bill a quick passage if it is left to the last minute.

The government can therefore avoid scrutiny by delaying the introduction of the Bill until well into the second year of Art. 50 negotiations. This will effectively railroad Parliament into granting unprecedented powers without proper debate.

## Why this matters

Granting the government discretionary powers to dispense with or keep EU norms, which represent up to 14% of UK law,<sup>11</sup> enables the government to legislate, without accountability, on an unprecedented scale. EU law represents a balance of interests. While the EU is often criticised as a neo-liberal institution, the *aquis communautaire* represents a delicate balance between contrasting political perspectives. While some norms facilitate international finance and globalisation, others protect the environment and establish the most progressive employment rights in the world. The GRB can enable the government to disrupt this delicate balance, choosing to protect only the interests it likes, and dispense with all others.

The GRB thus represents a unique opportunity for the government to use the power of the state to benefit itself and its supporters. An unaccountable process would facilitate, for example, stripping out environmental protection, employment rights and fundamental rights while granting massive state aid to finance and fossil fuels, with little or no scrutiny in Parliament.

The accountability gaps create four key risks for democratic scrutiny and oversight:

### A. Parliament is side-lined as a decision-making body

If MPs are not given accurate information about the content of the Bill or the government is able to remove rights in EU law entirely through secondary legislation, Parliament will have little or no role in the decision-making process.

### B. Public discourse has less impact on decision-making

Similarly, if the public debate is limited to discussions of generalities rather than specifics, and the legislative control over the repeal of EU laws is side-lined, then the government's incentives to respond to public debate are limited.

### C. Decisions are uninformed

Without vigorous public debate, research centres, think tanks, NGOs, and universities will be unable to contribute to the process of determining which norms are preserved after Brexit day. Decisions will therefore be made based on limited information and research.

### D. Decisions driven by a purely ideological agenda

Reports from those working with DExEU already indicate that decisions are driven by ideological "red lines" rather than a balanced assessment of the long-term interests of the UK. Eliminating free movement and removing the UK from the jurisdiction of the Court of Justice of the EU, in particular, take precedence over all other concerns.<sup>12</sup> Without proper scrutiny or accountability, there will be no check on a purely ideological approach to determining which EU rights remain after Brexit, almost certainly leading to negative long-term consequences.

<sup>11</sup> House of Commons Library, "Legislating for Brexit: The Great Repeal Bill", (27th February 2017), p. 4, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793#fullreport> (last accessed 19th March 2017)

<sup>12</sup> Statements made in interviews conducted by the author.

# CASE STUDIES

## Free movement

The right to free movement is one of the “Four Pillars” contained in the TFEU. As an important political issue for the May government,<sup>13</sup> it is likely that free movement will be dispensed with during the Transferring Stage.<sup>14</sup> It is thus unlikely to be subject to parliamentary scrutiny unless the power to dispense with EU norms during the Transferring Stage is limited by Parliament during the passage of the Bill.

## The environment

Environmental protection is one of the most vulnerable policy areas in the GRB.

A significant subsection of environmental protection laws in the UK originate in the EU. These include laws concerning water standards, emissions into water or air, air quality, noise, toxic waste, waste disposal, product standards, asbestos, planning and development, protection of wildlife, protecting the countryside, and energy efficiency. The forms of these laws vary. Most are given effect in secondary legislation through Section 2 of the European Communities Act, while others have direct effect in EU law or are enshrined in primary legislation.<sup>15</sup>

A number of UK environmental statutes and statutory instruments are “hooked” to EU institutions and standards. The Air Quality Regulations 2010,<sup>16</sup> for example, designate the Secretary of State as a competent authority for the purposes of Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

Environmental protections currently enshrined in secondary legislation and legislative hooks will be subject to repeal in the GRB. Those norms given legal effect by Section 2 of the ECA may be transferred into domestic law, but the Brexit process offers an opportunity to strip out a body of law that many in the Conservative party see as an unnecessary burden on business.<sup>17</sup>

---

13 See, for example, Steven Swinford, “May poised to announce end of free movement for new EU migrants next month”, *The Telegraph*, (26th February 2017), available at <http://www.telegraph.co.uk/news/2017/02/26/theresa-may-poised-announce-end-free-movement-new-eu-migrants/> (last accessed 19th March 2017)

14 For a more detailed assessment of this issue see, *The UK in a Changing Europe*, “What Impact Would Brexit Have on Free Movement?”, available at <http://ukandeu.ac.uk/fact-figures/what-effect-would-brexit-have-on-free-movement/> (last accessed 19th March 2017)

15 For a full list see Stuart Bell and Donald McGillivray, *Environmental Law*, (8th Ed.), (Oxford; OUP, 2015), pp. 176-228

16 Air Quality Standards Regulations 2010, part 3

17 See, for example, National Archives, “Red Tape Challenge”, available at <http://webarchive.nationalarchives.gov.uk/20150522175321/http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/environment-2/> (last accessed 19th March 2017)

There is a danger that, rather than transferring EU environmental legislation into domestic law, then addressing (and possibly repealing) it piecemeal, the bulk of the law will be dropped during the Transferring Stage in the name of “practicality” or “convenience”, with the argument that due to the legislative “hooks” it is simply too difficult to transfer into domestic law. Even if environmental norms survive the Transferring Stage, if they are only found in secondary legislation, they may be repealed with minimum accountability post-Brexit.

## Employment

A number of key employment protections originate in EU law. These include rights enshrined in the treaties, such as the right to equal pay for men and women,<sup>18</sup> rights enshrined in Directives (and given effect through domestic primary and secondary legislation), such as legislation on collective consultation,<sup>19</sup> working time rules,<sup>20</sup> health and safety standards,<sup>21</sup> protections for agency workers,<sup>22</sup> and protections against discrimination.<sup>23</sup> Employment rights are also found in the decisions of the CJEU, such as the correct method for calculating holiday pay.<sup>24</sup>

The government has stated that all employment rights found in EU law will be preserved as long as it remains in office. The mechanisms of the GRB, however, make it difficult to hold the government accountable for this promise. If employment rights are reduced to secondary legislation (or if Henry VIII powers enable the government to eliminate employment rights found in primary legislation) then there is little that can be done to ensure the government keeps its promise.<sup>25</sup>

---

18 European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, Art. 157

19 Directive 98/59/EC

20 Directive 2003/88/EC

21 For example, Directive 89/391/EEC

22 Temporary Agency Work Directive 2008/104/EC

23 For example, the Employment Equality Framework Directive 2000/78

24 Z. J. R. Lock v British Gas Trading Limited, Case C539/12, CJEU

25 For a more detailed discussion see Michael Ford QC, “Workers Rights From Europe: The Impact of Brexit”, legal advice to the TUC, available at <https://www.tuc.org.uk/sites/default/files/Brexit%20Legal%20Opinion.pdf> (last accessed 19th March 2017)



# RECOMMENDATIONS

## 1. Force the government to reveal its plans

It is not possible to effectively scrutinise the Bill, campaign on issues it raises, or protect EU norms such as employment or fundamental rights until it becomes clear what the Bill will contain and how it will achieve its objectives. While the government is allowed to keep the details of the Bill under wraps, it can operate almost entirely without accountability.

The first step in a progressive response to the GRB must be to bring it out into the open. The government has promised a white paper on the Bill in the coming months. Such a paper can, however, obscure as much as it elucidates. The white paper released

in advance of the European Union (Notification of Withdrawal) Bill 2017 (now the European Union (Notification of Withdrawal) Act 2017) stated the general aims of the Bill but failed to address fundamental questions such as whether the Art. 50 notification would be unilaterally reversible. The result is that Parliament gave the government the power to submit the Art. 50 notification without full knowledge of what that notification will do. In effect, Parliament agreed to a contract without knowing the terms.

If the GRB white paper merely indicates general aims of the Bill, without laying down specific proposals as to the norms it will address and the legal mechanisms it will employ in doing so, it will stifle rather than facilitate scrutiny. A white paper

that provides only generalities gives the government political cover against accusations that it is avoiding scrutiny, without actually providing the necessary tools to subject it to scrutiny. It is therefore vital that pressure is brought to bear to ensure that the white paper contains specific information about key issues. Otherwise, that information must be obtained through alternative avenues such as parliamentary questions or freedom of information requests.

## 2. Address the mechanics

The mechanics of the Bill will determine what power the government has and to whom it is accountable in the exercise of that power. Addressing the mechanics of the Bill is therefore a prerequisite for campaigning on any substantive issue.

If (a) the broadest possible range of EU laws are transferred into UK law, (b) they are transferred into primary legislation or secondary legislation with legislative safeguards, and (c) those taking the relevant decisions are clearly identified and accountable to Parliament and the public, then campaigns on substantive issues can be focused, engaging to the public and the press, and effective.

If, by contrast, (a) the range of EU laws transferred into UK law is narrowed (for example, if a sizable subsection of laws are “dropped” during the Transferring Stage in the name of convenience or practicality), (b) those laws which survive the process are only preserved in secondary legislation or subject to repeal without effective oversight, and (c) the identity of decision-makers is obscured and those decision-makers are not subject to clear mechanisms for accountability, then it will be difficult to identify the focus for campaigns or engage the public or press in a clear narrative. The prospects of success will be correspondingly reduced.

## 3. Pick key rights to save

The *aquis communautaire* is vast and complex. This complexity creates two opportunities for the government. First, to dispense with substantive rights, second (and more problematically) to make seemingly innocuous legal changes that, while not ostensibly removing rights, have the impact of nullifying them as

effective legal entitlements. A progressive approach to the GRB cannot, therefore, merely focus on policy areas. It must identify the specific rights and mechanisms that must be preserved and it must educate the public about the importance of those rights and mechanisms.

A curtain of obscurity benefits those seeking to minimise the rights individuals enjoy after Brexit. Narratives about the complexity and impenetrability of the *aquis communautaire* serve to chill debate by alienating people from the issues. A progressive approach must penetrate this curtain and do so more effectively than during the referendum campaign.

This can be achieved by identifying a set of key rights on which to focus. When the monolith of the *aquis* is broken down into tangible rights, to which people can relate, then the public (and MPs) can be engaged more effectively in the debate. Campaigns on those issues are more likely to succeed. Specificity is vital. A campaign that focuses on policy areas without identifying specific rights is likely to have less effect because it creates space for the government to eviscerate rights in practice, while committing to the policy area in principle.

## 4. Insist on starting early

A ticking clock is the enemy of accountability. If the government is allowed to delay the issue until the last minute, it will be much more difficult to subject the GRB to proper scrutiny. The GRB will be one of the most complex Bills in living memory (even if it is presented as relatively simple). It will not be possible to subject it to proper scrutiny in a short period of time.

If debate about the Bill is delayed until a short time before the Art. 50 deadline (of two years from notification) expires, then those seeking to subject the Bill to proper scrutiny will be accused of risking the stability of the UK.

A progressive approach to the Bill has the potential to engage actors well beyond the traditional left (and, if it is to succeed, it must do so). Yet, if those advocating scrutiny are seen as risking Brexit without legal certainty, it will become impossible to engage business or large sections of the public in campaigns. The earlier scrutiny is begun, the more likely it is to be successful.



---

[WWW.ANOTHEREUROPE.ORG](http://WWW.ANOTHEREUROPE.ORG)