

The EU (Withdrawal) Bill days 4 and 5: devolution

Days 4 and 5 of Committee Stage are scheduled on **Monday 4th of December and Wednesday 6th of December**. Unlock Democracy recognises the complex challenge the government is seeking to solve with the EU (Withdrawal) Bill. However, in doing so, agreement with the devolved administrations must be sought, and the respective devolution Acts - which were endorsed by referendums - should not be undermined.

Unlock Democracy is coordinating an **Alliance of over 80 civil society organisations** that want the bill amended to guarantee **open and accountable lawmaking**, and a **high standards UK**. See more here: <https://repealbill.org/>

Context: devolution in the UK

- The current devolution settlements were **negotiated under the umbrella of the EU legal framework**. It is therefore especially important to take the negotiations over current devolved issues with great care.
- The devolution settlements were **agreed through referendums**, where the people of Scotland, Wales, and Northern Ireland each agreed to a unique reserved powers model.
- The Withdrawal Bill as currently drafted seeks to change those referendum endorsed settlements by **shifting from a reserved to a conferred powers model**. If the bill is not amended, tensions and grievances long solved can spark again.

Issues with the bill as drafted

Clauses 10 and 11 show that without a codified constitution devolution remains the gift of Westminster:

- **Clause 10** gives sweeping delegated powers to ministers in Westminster to make changes to the various referendum-approved devolution acts, in order to deal with deficiencies arising from withdrawal, comply with international obligations and implement the withdrawal agreement.
- **Clause 11** amends the respective devolution acts to restrict existing competences so that all powers from Brussels will flow directly to Westminster. While the government has attempted to provide assurances this is only a temporary measure, the lack of a sunset clause on this provision has raised concerns.

Pressure points for the government

- **The Good Friday Agreement** - If the bill were to pass without correction, the Good Friday Agreement, an international treaty which is underpinned by EU membership, would be undermined. The GFA is grounded on guarantees of parity of rights which are upheld by the **European Convention of Human Rights** and fall under the jurisdiction of the **European Court of Justice**. Other issues such as the dual citizenship of Northern Irish people, making them EU citizens, are also of great importance.
- The current approach **changes the nature and culture of devolved governance in the UK**. Devolved governments have been free to develop different policies on devolved competences, independently from Westminster. This would no longer be possible with issues that came under 'retained EU law'.
- Both the Welsh Assembly and the Scottish government have already expressed dismay at ministers in Westminster proposing to give themselves sweeping powers to **rewrite key devolution Acts and restrict the competence of devolved administrations, centralising power in Westminster as it returns from Brussels**.
- Membership of the EU has enabled the devolved administrations to take **divergent approaches to policy, and the UK government has yet to set out plans outlining**

how this core feature of devolution will continue to function. The underlying principle here is that on devolved policy matters the respective legislatures are able to make policy decisions that best suit their nation. For example, Scotland has a different offering on personal social care to that of the other nations and regions, and residents of Scotland, Wales and Northern Ireland don't pay NHS prescription charges.

What committees have had to say about the bill's impact on devolution:

The House of Commons Exiting the European Union Committee, [European Union \(Withdrawal\) Bill](#) (1st Report of Session 2017–19, p.5):

“The Government must improve engagement with the devolved administrations to resolve this deadlock. It must reach an agreement with the devolved administrations, which might result in changes to the Bill, setting out how and when reserved competencies will be devolved.”

The House of Lords European Union Committee, [Brexit: devolution](#) (4th Report of Session 2017–19, p.6):

“Brexit will be a major constitutional change for the United Kingdom, and thus potentially a source of instability. Any attempt to use Brexit to make a power grab, either to ‘re-reserve’ powers previously devolved, or to claim more devolved powers, could compound such instability: this is not the time to embark on controversial amendments to the devolution settlements. We therefore believe that the existing statutory balance of competences between the UK Parliament and the devolved legislatures should as far as possible be unchanged”

Amendments: The ones to watch

At this stage we do not know which amendments will be selected for debate, and so this briefing contains suggested amendments that meet the criteria we have set for improving the bill.

- Require Ministers of the Crown to gain consent from Scottish and Welsh Ministers before making regulations under clause 9 on devolved matters (**79; 162; 163**)
- Prevent the powers in Clause 7 and Clause 8 from amending the Scotland Act 1998 of the Government of Wales Act 2006 (**89** and **159** respectively)
- Replicate the current consultative role that UK local government has via the EU Committee of the Regions (**NC8**)
- Create UK wide frameworks (**NC64**)
- Give greater powers to the Joint Ministerial Committee (**NC65**)

About Unlock Democracy

Unlock Democracy is the UK's leading campaign for democratic and constitutional reform. Owned and run by its members, Unlock Democracy is creating an inclusive movement to make politics work for everyone. In July 2017 Unlock Democracy published its report, '[A Democratic Brexit: Avoiding Constitutional Crisis in Brexit Britain](#)' which looked at the implications of Brexit for parliamentary sovereignty, the devolution settlements, and the power of the people.

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