

Parliament and Brexit

The Prime Minister has now lifted the veil on her objectives in taking the UK out of the European Union. One unexpected announcement was that both Houses of Parliament would be given a vote on the final deal. Welcome though that is, it is not, in the interests of good government, a sufficient role for Parliament in a complex and momentous process.

We now expect there to be a Parliamentary vote of some sort at the formal start of the Article 50 process and a vote at the end, although the significance of a final take it or leave it vote is unclear¹. We also know there will be a Great Repeal Bill. The intention is to repeal the European Communities Act of 1972, but to preserve initially the effect of any provisions made under it so that there is no hiatus in UK law. In principle this is a sensible approach.²

The question is how, having created a relatively stable platform, changes to existing EU-based regulations should be made. The standard approach would be a delegated power for Ministers to change the regulations using either affirmative or negative resolution procedures. As we have argued before in [Whose Sovereignty](#) this would not be the right approach.

The principles of good policy making should not be suspended when considering post-Brexit changes to the law. Parliament should expect to see that changes have a clear rationale, that alternatives have been considered and properly appraised, and that those affected or required to implement the new regulations have been properly consulted.

Where the issues concerned are significant, such as the replacement of the Common Agricultural Policy with domestic subsidy regimes, we would expect to see changes effected by primary legislation so that they can be fully scrutinised.

In other cases we believe that it is time to increase Parliament's control over the process and improve the statutory instrument procedures to allow amendments to ministers' draft regulations to be proposed by the relevant Departmental Select Committees or by a specialist Committee set up to oversee the use of the Great Repeal Bill's powers.

Such a reform will not be popular with the Government's business managers, but in our view in the case of Brexit related changes, it is justified to ensure that there is a broad support for policy choices made as a consequence of leaving the EU. It may be objected that many of the regulations potentially affected were made initially using statutory instruments, which could not be amended, but that is a false comparison. The transposition of an EU directive into domestic law will have followed very extensive scrutiny and consultation, both within Europe and the European Parliament, and domestically. Alternatives and specific amendments will have been debated before the directive was passed and the UK then had an obligation to transpose the finished article.

¹ [House of Commons Library Brexit and Parliament Deal or No Deal](#)

² Although questions have been raised about how this will cope with European Regulations which are directly applicable in law and do not require transposition under the 1972 Act.

One notable omission from the Prime Minister's speech was a commitment to a detailed White paper before triggering Article 50. We think that is a mistake. The Secretary of State for Exiting the EU has told Parliament that there are 57 separate work streams underway looking at the different sectors of the UK economy. He has not enumerated them and there are probably a lot more that could be added to the list. But at least Whitehall appears to be taking the basic practical step of trying to identify all of the key issues that the different interests that make up the UK need to have addressed in extricating ourselves from the Union.

Parliament should receive a White Paper describing the outcome of this work so that it can see and debate whether all the key issues have been identified, the key interactions between them and, at least in general terms, the outcomes the government is hoping to achieve.

Parliament's role cannot be confined to votes at the start and end of the process. The potential implications for different groups and interests within the UK will require on-going scrutiny as the negotiations evolve and trade offs between objectives begin to emerge. The government may not want to give a running commentary on the negotiations but in an environment where there are 27 other member states – who all have to agree – and a very sophisticated lobbying machine in Brussels, they would be wiser to think about how they can use the Parliamentary machinery, including the Select Committees, to have a more structured discussion rather than fire fighting a stream of leaks which are bound to emerge from the negotiations.

Nothing in this is arguing that the Government is so far taking the wrong approach. It is understandable that they do not have a developed plan until they have the conclusion of the detailed work the civil service is pulling together in the 57 work streams. Our concern is with how the complex interactions between issues will be identified and managed and with encouraging a proper engagement with Parliament as events unfold: both to inform the trade offs that must be made and to give legitimacy to the choices that are ultimately made.