

EUROPEAN UNION (NOTIFICATION OF WITHDRAWAL) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the European Union (Notification of Withdrawal) Bill as brought from the House of Commons on 8 February 2017 (HL Bill 103).

- These Explanatory Notes have been prepared by the Department for Exiting the European Union in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The European Union (Notification of Withdrawal) Bill (“the Bill”) has 2 clauses. A summary of, and background to, the Bill is provided below.
- 2 The Bill would give the Prime Minister power to notify the European Council of the United Kingdom’s intention to withdraw from the European Union.

Policy background

- 3 The European Union Referendum Act 2015 (section 1) provided for the question of whether the United Kingdom should remain a member of the European Union or leave the European Union to be put to a referendum. That referendum took place on 23 June 2016. A majority of those who voted in the referendum voted in favour of the United Kingdom leaving the European Union.
- 4 On 2 October 2016 the Prime Minister announced that the Government would commence the formal process of leaving the European Union before the end of March 2017.

Legal background

- 5 The procedure for withdrawing from the European Union is set out in Article 50 of the Treaty on European Union (‘TEU’). The first step in the procedure is for the Member State that has decided to withdraw to notify the European Council of its intention (Article 50(2)).
- 6 In *R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union* [2017] UKSC 5 the Supreme Court considered whether it would be inconsistent with the terms of the European Communities Act 1972 for the Prime Minister to give notice to the European Union, under Article 50(2) of the Treaty of the European Union, of the United Kingdom’s intention to withdraw from the EU Treaties, without a prior Act of Parliament. In an 8-3 judgment the Supreme Court concluded that a prior Act of Parliament is required. This Bill provides the Prime Minister with the necessary power to give notice of withdrawal under Article 50(2).
- 7 The Supreme Court also considered arguments relating to the devolution acts and whether consent of the devolved administrations is required before notice to withdraw can be served. The unanimous decision of the court was that EU and other foreign affairs matters are reserved to the UK Government and Parliament and that the devolved legislatures do not have a veto on the UK’s decision to withdraw from the EU.

Territorial extent and application

- 8 This Bill extends, and applies in relation to, England, Wales, Scotland and Northern Ireland.
- 9 The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Fast-track legislation

- 10 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards¹, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked².

Why is fast-tracking necessary?

- 11 The judgment of 24 January 2017 required the Government to complete an additional (and unexpected) step before the formal process of leaving the European Union can commence. Completing this step through the normal Bill timetable would delay commencing the formal exit process, making it impossible to do so before the end of March 2017. In the government's view, this would generate uncertainty as to the timetable for the United Kingdom's exit from the European Union.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 12 The Bill is being published on the same day it is introduced and arrangements are being made for amendments to be accepted in advance of second reading in the House of Commons.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why do the Government judge that their inclusion is not appropriate?

- 13 Due to the nature and content of the Bill, it does not include a sunset clause.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why do the Government judge that their inclusion is not appropriate?

- 14 The impact of the Bill itself will be both clear and limited, therefore mechanisms for post legislative scrutiny are not necessary.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in questions?

- 15 An assessment has been undertaken and existing legislation is not sufficient to give notice under Article 50(2) TEU.

Have the relevant Parliamentary committees been given the opportunity to scrutinise the legislation?

- 16 Given the need to introduce legislation as quickly as possible, it has not been possible to formally discuss with Parliamentary Committees.

¹ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

² House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

Commentary on provisions of Bill

Clause 1: Power to notify withdrawal

- 17 Clause 1(1) provides power for the Prime Minister to notify the European Council of the United Kingdom's intention to withdraw from the European Union.
- 18 The power that is provided by clause 1(1) applies to withdrawal from the EU. This includes the European Atomic Energy Community ('Euratom'), as the European Union (Amendment) Act 2008 sets out that the term "EU" includes (as the context permits or requires) Euratom (section 3(2)).
- 19 Clause 1(2) provides that the powers in clause 1(1) are conferred regardless of any restrictions which may arise from any other legislation, including the European Communities Act 1972.

Clause 2: Short title

- 20 Clause 2 confirms the intended short title of the Act.

Commencement

- 21 Commencement would be on Royal Assent.

Financial implications of the Bill

- 22 The Bill is not expected to have any financial implications.

Parliamentary approval for financial costs or for charges imposed

- 23 No money resolution is required.

Compatibility with the European Convention on Human Rights

- 24 It is considered that the provisions of the Bill are compatible with the Convention rights.

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