The European Union (withdrawal) Bill 2:- Power grab?

In the first article looking at the European Union Withdrawal Bill, we set out the principle behind it but pointed out that it was impossible for EU regulations and directives to be transferred verbatim onto out statute books. As an example, we used one of the shortest and indeed, most pointless of all Regulations, the so-called "Cuddly Toy Sheep" Regulation 1462/2006.

The object of this regulation is pretty simple – that the toy in question may be given the appropriate classification code for customs purposes. If we were to use the same codes on Brexit and use similar customs checking processes, transposition of this law into domestic law ought to be pretty simple. We remove all references to the Commission, the Treaties and references to Member states, extract the important bits, find a new template, perhaps even using the relevant bits of a piece of pre-1973 legislation, change a few words here and there and Bob's your uncle! All done.

Actually, no. The Regulation we have been using as an example cross-references another Regulation 2913/92. This reference will have to be changed. Then the regulation which is cross-referenced talks about the Community Customs Code. Even if we were to be as foolish as to seek some sort of customs union with the EU, which we argued was very unwise, this bit will need to be re-worked as the term "Community Customs Code" would not be appropriate to describe the customs arrangements of an ex-member state.

So it is quite apparent that even a simple piece of EU legislation which our Government may wish to retain in a way

that it works after Brexit exactly as it did before will need to be re-written in places. Given that in October 2015, the EU *acquis* amounted to 23,076 pieces of legislation and has grown further since, it is very apparent that our teams of Civil Servants will have a massive task on their hands if everything will be ready for Brexit day.

If this concept is relatively straightforward to explain, a more complex issue is concept of the superiority of EU law over domestic legislation. Our accession to the European Union granted power to the EU to introduce or amend legislation superior over British law "**without further enactment.**" (These three words come verbatim from the European Communities Act 1972.) On leaving the EU, what status do EU laws have relative to earlier domestic legislation? This is not an easy question to answer, even if you are a lawyer.

The concern among both Opposition MPs and the devolved assemblies in Edinburgh, Cardiff and Northern Ireland is that a combination of the re-writing process and the complexity of any new relationship between legislation which originated in Westminster and that which was passed down to us from Brussels will actually change the make-up of our statute books without Parliament being consulted or even being aware. In other words, the Government will use the EU (Withdrawal) Bill as an opportunity to further its own political agenda without requiring Parliamentary scrutiny. It certainly does appear to strengthen the hand of the executive, rather than Parliament, because of the delegated powers it contains.

At the heart of this so-called "power grab" is the use of the Statutory Instrument – a facility which, in certain situations allows the government to make or amend legislation without Parliament having he power to change or even debate it. Given that MPs are our elected representatives, the very existence of anything which allows the democratic process to be bypassed is unsatisfactory. There is, however, a certain irony in the loudest critics of the use of Statutory Instruments being

europhiles – after all they support our EU membership which reduced the power of Westminster. Ken Clarke famously said in 1996 "**"I look forward to the day when the Westminster Parliament is just a council chamber in Europe**" so any new-found commitment to Parliamentary democracy is somewhat hypocritical given the real loyalties of Europhile MPs lie in Brussels, not Westminster.

There is no doubt that Brexit provides us with an opportunity to re-boot our complete democratic process and indeed, this needs to go well beyond giving Parliament greater opportunity to hold the government to account by strengthening its powers of scrutiny. Our democratic process should be re-vamped to give us, the people, greater power over the people we elect to represent us and ot hold them to account if they, individually or collectively, do a bad job.

But that is for the future. The immediate concern of groups like Unlock Democracy is that the sheer complexity of repatriating EU law is that some legislation derived from EU Regulations and Directives may be weakened or lose its force completely. There is another possibility that the amount of work required in re-working all this legislation will end up with ambiguities more by accident than design.

The Hansard Society has come up with three proposals which at least mitigate these concerns:-

1. The EU (Withdrawal) Bill should be amended to circumscribe the powers it delegates more tightly.
2. A new, bespoke, EU (Withdrawal) Order strengthened scrutiny procedure should be introduced for the exercise of the widest delegated powers
3. A new House of Commons 'sift and scrutiny' system – with a dedicated Delegated Legislation Scrutiny Committee – should be established for all delegated legislation

These are eminently sensible suggestions. The only problem is

the timescale. We cannot afford to arrive at Brexit day with any gaping holes in our legal system. To take one obvious example – there will be little if any pre-1973 domestic legislation relating to information technology, the Internet or mobile phones. Massive developments have taken place in these fields since we joined what has become the EU. It is therefore very likely that most of the legislation regulation which govern them comes from the EU. If a given piece of EU legislation slips through the net, some important aspects of day-to-day life for many of us would be completely unregulated.

This piece only scratches at the surface of the complexities our politicians and civil servants face. A huge task lies ahead of them and one which is even more critical than securing a trade deal with the EU.

However given we are talking about well over 20,000 items of legislation, are there some which are so obviously inimical to our interests as an independent, sovereign nation that they should be excluded from the European Union (Withdrawal) Bill altogether? We will consider this subject in the next article.