



# Faculty of Public Health

Of the Royal Colleges of Physicians of the United Kingdom

Working to improve the public's health

## Peers' Briefing Paper – 'Do No Harm' amendment Report stage EU (Withdrawal) Bill 2017-19

### Summary

Lord Warner is seeking your support at Report stage for a [cross-party 'Do No Harm' amendment to protect the public's health in the EU \(Withdrawal\) Bill](#). The amendment is being championed by a large and growing number of Peers from across the political spectrum, [many of whom spoke at Committee stage](#). It has united the Royal Colleges and wider health community (see below for all those in support of the amendment) and we now urge Peers to unite at Report stage to vote in favour of this simple but vital amendment.

### The amendment

Insert the following new Clause — “**Public health**

In carrying out their duties and functions arising by virtue of this Act, a Minister of the Crown or a public authority must have regard to the principle that a high level of human health protection must be ensured in the definition and implementation of all policies and activities.”

### Why is this amendment needed?

- 1. The need for a guarantee on the face of the Bill** – during this unprecedented period of political, economic and social uncertainty, it would be a huge mistake to assume that the progress we have made in improving the public's health during our time in the EU cannot be undone, or that continued progress is guaranteed. At Committee stage, the Government assured the House that “...there will be no rollback of [public health] standards”. While this reassurance is welcome, in the same debate Ministers also confirmed that [“many of the aspects that we are touching on here will necessarily be part of ongoing negotiations”](#). The duty to 'Do No Harm' should not be part of the negotiations with the EU or any other country. Instead, it should be an essential guiding principle for our Brexit negotiations and for the future direction of our nation. It is only by putting the duty on the face of the Bill that the health community and the wider public can be certain that there will be no future erosion of our vital public health legislation, policy and practice. As Lords argued at Committee, if it is the Government's intention to not rollback on standards, it should [“enshrine that in the Bill”](#).
- 2. There isn't a comparable duty already on our statute books** – the Government has argued that the powers in the amendment are equal to the [Secretary of State's existing duty to protect the public's health](#). In fact, the duty to 'Do No Harm' is broader and more protective of the public's health. The duty is placed on the whole government, including a wide range of public authorities. This is a very important distinction. And, it covers the whole of the UK irrespective of whether legislation is made in Westminster, Belfast, Cardiff or Edinburgh.
- 3. We will no longer be bound by Article 168 of the Lisbon Treaty** – currently, UK governments are bound by Article 168 of the Lisbon Treaty which ensures that “a high level of human health protection shall be ensured in the definition and implementation of all EU policies”. The High Court has stated that Article 168 places the protection of the public's health [“at the epicentre of policy making”](#) – a “buttress” of other legal principles. Landmark cases such as the failed legal challenge by the tobacco industry to the Standardised Packaging of Tobacco Products Regulations 2015 demonstrate how it has been used to interpret and implement EU law. Ministers confirmed at Committee stage that [the UK would no longer be bound by Article 168 when we leave the EU](#). This new duty to 'Do No Harm' would ensure that British courts are clear about what Parliament expects them to continue doing after Brexit. British courts would have some legal precedent and interpretative guidance to draw on when seeking to protect the public's health in the future. But it would be for British courts, on the basis of our doctrines of parliamentary sovereignty, to decide the future interpretation of the law. In this way, the duty to 'Do No Harm' is, as Baroness Jolly emphasised in Committee, [‘Brexit-neutral’. It “should give remainers a rosy glow \[while\] Brexiteers will be grateful that \[it\] puts a marker down: British law for British people”](#).

4. **The public is clear that they do not want their future health and wellbeing traded away** – the Government has offered an assurance that our “principles [won't be] traded away”. Yet, [trade agreements have been associated with adverse health impacts](#). A future government may feel under significant pressure to trade away our public health standards in an effort to secure key trade deals. It is alarming that a recent US Foreign Trade Barriers report signals that the US is keen to [roll back our food safety and environmental standards](#). Recent polling shows that 82% of the public would [oppose a trade deal](#) negotiated on this basis. The new duty will help determine and interpret the standard by which freedom to trade versus public health is balanced post-Brexit. As well as being a vital safeguard, the amendment is also an opportunity to reassure business and our workforce that this and future governments are committed to a post-Brexit economy based on maintaining the current high levels of health, wellbeing and productivity.
  
5. **Similar arguments were made in opposition to ‘parity of esteem’** – the amendment has [parallels with an amendment agreed by the House of Lords giving mental health parity with physical health](#). Then, as now, Ministers argued that equal powers already existed and that ‘parity of esteem’ was therefore unnecessary. Subsequently, the Secretary of State has said he is “[proud \[the\] government legislated for parity of esteem](#)”. Far from being unnecessary, parity of esteem has delivered key achievements on mental health and is supported by all political parties. The health community is clear that the ‘Do No Harm’ amendment would have a similar positive effect.
  
6. **The health of the public must be of paramount importance to this and all future governments** – maintaining and improving the public’s health, alongside protecting our nation and our economy must surely be the most important duties of any government. At Committee stage Ministers agreed saying [“At the heart of good government must be the preservation of public health”](#). This Bill is where our constitutional stability and legal certainty will be determined. By voting in favour of the ‘Do No Harm’ amendment Peers have the opportunity to put the protection of the public’s health clearly at the heart of this and all future good governments. The ‘Do No Harm’ amendment would also be a fitting way to celebrate our wonderful NHS in its 70th year.

**How can you help?**

As we approach Report stage, Lord Warner would be very grateful if you could join the large and growing number of Peers championing the ‘Do No Harm’ amendment. FPH is also happy to brief you informally in advance of Report stage and can help with drafting speaking notes and articles.

1. Speak in support, and vote in favour of the #DoNoHarm amendment at Report stage
2. Talk to fellow Peers about the amendment and, if possible, introduce them to FPH
3. Re-Tweet the following to show your support <https://bit.ly/2JyHIY1>, and follow @FPH
4. Talk to your professional networks about how important this amendment is

For more information contact Mark Weiss, Senior Policy Officer: 020 3696 1479 [markweiss@fph.org.uk](mailto:markweiss@fph.org.uk)

