



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

Summary

Lord Warner is seeking your support at Committee stage for a cross-party 'Do No Harm' amendment after Clause 9 of the EU (Withdrawal) Bill ([number 227BD](#)). The aim of the amendment is to protect the public's health. Lord Warner is supported by Lord Patel and the Labour and Liberal Democrat frontbench Peers, Lord Hunt and Baroness Jolly. A growing number of cross-party Peers have already joined Lord Warner in support of the amendment, including Lord Crisp who spoke in favour at Second Reading. The amendment is also supported by a range of Royal Colleges and public health bodies (see below).

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."¹

Why is this amendment needed?

1. The Secretary of State has outlined the Government's commitment to "maintain participation in European cooperation on disease prevention [and] public health".² Whilst welcome, our conversations with **the public health community have highlighted that concerns still exist about the potential impact of the Bill on the public's health**. Without the safety-net of EU law, and in the context of cuts to public health and wider health budgets, the sector is concerned that we may well see a gradual erosion of our existing high level of vitally important public health legislation, policy and practice.
2. **This amendment is an opportunity for the Government to provide reassurance to the public health and wider health community, and the public, that Brexit will 'do no harm' to the public's health, including children and young people**. At this unprecedented time of political flux, the Government can update and reaffirm its commitment to ensuring the public's health is of paramount importance, and will be for future governments and public authorities. **Making this commitment in the Bill will reassure the public it has nothing to fear from Brexit for the nation's future health**.
3. The amendment offers clarity and reassurance on the tone and guiding principles for the UK's Brexit negotiations across the board – including our future trade negotiations with the EU and beyond. **And it is an opportunity to reassure business – in the UK and around the world – that this and future governments are committed to building a post-Brexit economy based on maintaining the current high levels of health, wellbeing and productivity within our workforce**.
4. We welcome Lord O'Shaughnessy's commitment that the UK will continue to play "a leading role in promoting and ensuring public health – in Europe and around the world."³ **This amendment will signal to EU members that the UK remains committed to maintaining our public health agenda to the high standards we have established together** – because ultimately the public health agenda is most effective when it can operate well across borders to similar standards, priorities and expectations.
5. While it may be argued that the Secretary of State for Health already has these powers (for example under the Health and Social Care Act 2012 a duty on the Secretary of State is added into the NHS Act

¹ Parliament, European Union (Withdrawal) Bill 2017-19, *HL Bill 79 Running list of amendments*, February 2018, <http://bit.ly/2CdG4AN>

² Jeremy Hunt MP. *House of Commons Health Committee Brexit and Health Evidence Session*, January 2017, <http://bit.ly/2G4MwfK>

³ Department of Health and Social Care, *Lord O'Shaughnessy on medical technologies and Brexit*, September 2017, <http://bit.ly/2jtUrqh>

2006⁴), **this amendment places the duty to ‘do no harm’ on the whole government.** It also places the duty on other public authorities, including the devolved nations (with repatriated health competencies) **and a wide range of ‘arms-length’ public authorities** who play a key role in determining health standards.

6. The EU (Withdrawal) Bill is where constitutional stability and certainty is to be secured within the UK’s legal system. It, not a future Health and Social Care Bill, is the place for an amendment of this nature.
7. The language of **the amendment**, which draws on Article 168 of the Lisbon Treaty,⁵ **has the advantage of existing legal precedent and interpretative guidance** on which to draw when determining its meaning. **However, it is not about preserving EU law and regulation in aspic** – it would be for British courts, on the basis of our doctrines of parliamentary sovereignty, to decide specifics of future interpretation in concrete cases. EU law will continue to change after the UK leaves the EU, and UK law will continue to change as well. **This is about acknowledging that we have made huge progress in public health during our time in the EU and**, as we leave, this Government and future governments are committed to **ensuring we do not roll back from that progress.**
8. Alongside the security of our nation and our economic stability, **maintaining the health of our citizens must surely be of paramount importance – not one issue amongst many others** governments must consider in deciding policy. By accepting this clause the Government would not set a precedent for other policy areas to expect similar reassurances. Instead, it provides another piece of the puzzle that is our British ‘constitution’ by ensuring that, **as we take back Parliamentary sovereignty, this and future governments, and public authorities, commit to ‘do no harm’** to the health of the people of the UK.

How you can help?

Lord Warner would be grateful if you could join the growing number of Peers in support of the ‘Do No Harm’ amendment and **speak in favour of it at Committee stage.** Please could you also draw attention to your support on **social media by retweeting the following link** <http://bit.ly/2FwhmHK>. FPH’s Policy and Communications Team is happy to brief you informally in advance of the Committee stage and to support the drafting of **speaking notes and articles.**

About the UK Faculty of Public Health (FPH)

FPH is a membership organisation for 4,000 public health professionals from across the UK and around the world, and is a registered charity. Our role is to improve the health and wellbeing of local communities and national populations. We support the training of public health professionals, new research, and campaign to improve health policy, in partnership with local and national governments.

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⁴ National Archives, *Health and Social Care Act 2012, S. 11: The Secretary of State’s duty as to protection of public health*, <http://bit.ly/2BX47IN>

⁵ Official Journal of the EU, *Treaty on the Functioning of the European Union – Article 168*, May 2008, <http://bit.ly/2DYerko>