

THE PROPOSED AMENDMENTS TO THE EUROPEAN UNION (WITHDRAWAL) BILL

A. UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION OF THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006

The established methods for modifying the 1998 and 2006 Acts which provide for the devolution settlements for Scotland and Wales are by new Parliamentary legislation, for which the devolved legislatures' consent is required in accordance with the Sewel convention, or by orders under those Acts, which again require the consent of the relevant legislature. But as currently drafted, UK Ministers' powers to make statutory instruments in clauses 7 to 9 of the Bill can be used to make amendments to the statutes containing the principles of the devolution settlements for Scotland and Wales, without any requirement for consent.

Proposed amendments 1 and 2 would prevent the power to correct deficiencies in retained EU law and the power to ensure compliance with international obligations being used to amend the Scotland Act 1998 and the Government of Wales Act 2006. Where however amendments to these Acts becomes necessary (perhaps urgently) in order to implement the withdrawal agreement, **proposed amendment 3** would continue to allow such amendments to the 1998 and 2006 Acts to be made, but with consent from the relevant devolved administration.

B. UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN DEVOLVED COMPETENCE

As currently drafted, UK Ministers' powers to make statutory instruments under clauses 7 to 9 of the Bill could be used to make provision in policy areas which are the responsibility of Scottish or Welsh Ministers. The Scottish Government and Welsh Government acknowledge that there may be circumstances justifying amendments to laws in devolved areas being made on a UK-wide basis, but they consider that this should only be possible with the consent of the devolved administrations

Proposed amendments 4 to 6 would mean that UK Ministers would be required to secure the consent of the Welsh Ministers or the Scottish Ministers, before making provision which would be within those Ministers' devolved competence. Devolved Ministers would then be accountable to their legislatures for any decision to consent to the UK Ministers legislating on such a basis.

C. LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF “RETAINED EU LAW” RESTRICTION / UK FRAMEWORKS PROVISION

As currently drafted, clause 11 of the Bill amends both devolution acts by inserting a new restriction on the competence of the devolved legislatures which would prevent the Scottish Parliament and the National Assembly for Wales from passing legislation which modifies retained EU law, even in areas of devolved responsibility. And provision in Part 1 of Schedule 3 to the Bill has the effect that Scottish or Welsh Ministers would have no powers to make, confirm or approve any subordinate legislation so far as it modifies retained EU law.

The Welsh Government and Scottish Government consider that these provisions fundamentally cut across the principles of the devolution settlements, and they are strongly opposed to them.

Proposed amendments 7 and 8 would remove these new restrictions in clause 11 and Schedule 3.

D. SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL OF RESTRICTIONS AND CONSENT REQUIREMENT

As currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers in the Bill which are not placed on UK Ministers. We are aware that there are significant concerns in Parliament about the very broad scope of the Henry VIII powers proposed in the Bill, and would be supportive of amendments which sought to define these more narrowly. However, we also believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

Proposed amendments 9, 13 and 16 remove the restrictions preventing the powers being used to confer a power to legislate, bringing the powers into line with those being given to UK Ministers.

Proposed amendments 10, 11, 14, 17 and 18 remove the restrictions placed on the Scottish and Welsh Ministers' ability to amend directly applicable EU law incorporated into UK law, again bringing the powers into line with those being given to UK Ministers.

Proposed amendments 12, 15 and 19 replace requirements imposed on Scottish and Welsh Ministers to seek UK Ministers' consent in certain circumstances with a requirement to consult UK Ministers before making certain types of provision.

CONSEQUENTIAL AMENDMENTS

Proposed amendments 20 to 38 are consequential on the principal amendments described above.

European Union (Withdrawal) Bill

UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION OF THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006

Clause 7

- 1 In clause 7, page 6, line 13, after <it,> insert—
<() modify the Scotland Act 1998 or the Government of Wales Act 2006,>

Clause 8

- 2 In clause 8, page 6, line 38, at end insert <, or
() modify the Scotland Act 1998 or the Government of Wales Act 2006.>

Explanatory statement

Amendments 1 and 2 prevent UK ministerial regulations being used to change the devolution settlements for Scotland and Wales.

They adjust the regulation-making powers which the Bill confers on the UK Government to deal with deficiencies in retained EU law in connection with withdrawal and ensure compliance with the UK's international obligations. Changes to the Scotland Act 1998 or the Government of Wales Act 2006 can be done by existing powers in those Acts with the approval of the Scottish Parliament or the Welsh Assembly, or by a UK Bill with the legislative consent of the Scottish Parliament or Welsh Assembly.

Clause 9

- 3 In clause 9, page 7, line 8, at end insert—
<() The consent of the Scottish Ministers is required before any provision is made in regulations under this section that modifies the Scotland Act 1998.
() The consent of the Welsh Ministers is required before any provision is made in regulations under this section that modifies the Government of Wales Act 2006.>

Explanatory statement

Amendment 3 prevents UK Government regulations which implement any withdrawal agreement between the UK and the EU changing the devolution settlements for Scotland and Wales without the consent of the Scottish or Welsh Government.

As unforeseen changes may arise from the detail of a withdrawal agreement, this amendment allows changes to the Scotland Act 1998 or the Government of Wales Act 2006 by UK Government regulations with the approval of the Scottish Parliament or the Welsh Assembly.

UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF
SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN
DEVOLVED COMPETENCE

Clause 7

4 In clause 7, page 6, line 25, at end insert—

- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 9 of Schedule 2.
- () The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 10 of Schedule 2.>

Explanatory statement

Clause 7 confers power on UK ministers to make regulations to deal with deficiencies in connection with withdrawal. As drafted it would enable UK Ministers to make regulations that deal with matters within the competence of devolved authorities in Scotland and Wales.

Amendment 4 ensures that the consent of the Scottish Ministers or Welsh Ministers is required before any such provision is made.

Clause 8

5 In clause 8, page 6, line 40, at end insert—

- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 18 of Schedule 2.
- () The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 19 of Schedule 2.>

Explanatory statement

Clause 8 confers power on UK Ministers to make regulations to ensure compliance with the UK's international obligations arising from withdrawal. As drafted it would enable UK Ministers to make regulations that deal with matters within the competence of devolved authorities in Scotland and Wales.

Amendment 5 ensures that the consent of the Scottish Ministers or Welsh Ministers is required before any such provision is made.

Clause 9

6 In clause 9, page 7, line 9, at end insert—

- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 18 of Schedule 2.
- () The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 19 of Schedule 2.>

Explanatory statement

Clause 9 confers power on UK Ministers to make regulations to implement any withdrawal agreement between the UK and the EU. As drafted it would enable UK Ministers to make regulations that deal with matters within the competence of devolved authorities in Scotland and Wales.

Amendment 6 ensures that the consent of the Scottish Ministers or Welsh Ministers is required before any such provision is made.

LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF “RETAINED EU LAW”
RESTRICTION / UK FRAMEWORKS PROVISION

Clause 11

7 In clause 11, page 7, line 16, leave out subsections (1) and (2) and insert—

- <(1) In section 29(2)(d) of the Scotland Act 1998 (no competence for Scottish Parliament to legislate incompatibly with EU law), omit “or with EU law”.
- (2) In section 108A(2)(e) of the Government of Wales Act 2006 (no competence for National Assembly for Wales to legislate incompatibly with EU law), omit “or with EU law”.>

Explanatory statement

To remove the changes the Bill makes to the competence of the Scottish Parliament and Welsh Assembly which stop matters devolving which are currently dealt with at EU level.

To amend the Scotland Act 1998 and the Government of Wales Act 2006 to remove the restriction that currently requires the Scottish Parliament and the Welsh Assembly to legislate in a way that is compatible with EU law. This restriction is unlikely to make sense if the UK ceases to be a member of the EU. The Scottish Parliament and the Welsh Assembly will still be able to legislate in a way that is compatible with EU law where that is considered appropriate.

Schedule 3

8 In schedule 3, page 25, line 37, leave out paragraphs 1 and 2 and insert—

<Scotland Act 1998

- 1 In section 57(2) of the Scotland Act 1998 (no power for members of the Scottish Government to make subordinate legislation, or otherwise act, incompatibly with EU law or Convention rights), omit “or with EU law”.

Government of Wales Act 2006

- 2 In the Government of Wales Act 2006, omit section 80 (EU law).>

Explanatory statement

To remove the changes the Bill makes to the competence of the Scottish and Welsh Ministers which stop matters devolving which are currently dealt with at EU level.

To amend the Scotland Act 1998 and the Government of Wales Act 2006 to remove restrictions that currently requires the Scottish and Welsh Ministers to act in a way that is compatible with EU law. These restrictions are unlikely to make sense if the UK ceases to be a member of the EU. The Scottish and Welsh Ministers will still be able to act compatibly with EU law where appropriate.

SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL
OF RESTRICTIONS AND CONSENT REQUIREMENT

Schedule 2

9 In schedule 2, page 16, line 30, at end insert—

<() Sub-paragraph (4)(b) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

Explanatory statement

To allow Scottish and Welsh Government regulations dealing with deficiencies in connection with withdrawal in devolved areas to confer power to legislate. This brings them into line with UK Ministers' powers in clause 7 of the Bill.

10 In schedule 2, page 17, line 9, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

11 In schedule 2, page 17, line 13, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

Explanatory statement

Amendments 10 and 11 give the Scottish and Welsh Ministers the power by regulations to amend direct EU legislation that forms part of domestic law on and after exit day in devolved areas. This applies to their regulation-making powers to deal with deficiencies in connection with withdrawal. This brings them into line with UK Ministers' powers in clause 7. The Bill currently only gives Scottish and Welsh Ministers power to make regulations in relation to EU-derived legislation that is saved into domestic law by clause 2.

12 In schedule 2, page 17, line 20, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

Requirement for consultation in certain circumstances

5A No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations—

(a) are to come into effect before exit day, or

(b) remove (whether wholly or partly) reciprocal arrangements of the kind mentioned in section 7(2)(c) or (e),

unless the regulations are, to that extent, made after consulting with a Minister of the Crown.>

Explanatory statement

The Bill currently requires UK Government consent to Scottish and Welsh Government regulations to deal with deficiencies in connection with withdrawal if the regulations come into force before exit day or remove reciprocal arrangements with the EU or EU State authorities. This amendment replaces the requirement for consent with a requirement for consultation.

13 In schedule 2, page 22, line 10, at end insert—

<() Sub-paragraph (4)(d) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

Explanatory statement

To allow Scottish and Welsh Government regulations ensuring compliance with the UK's international obligations in devolved areas to confer power to legislate. This brings them into line with UK Ministers' powers in clause 8 of the Bill.

14 In schedule 2, page 22, line 32, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

Explanatory statement

To give the Scottish and Welsh Ministers power by regulations to amend direct EU legislation that forms part of domestic law on and after exit day in devolved areas. This applies to their regulation-making powers to ensure compliance with the UK's international obligations. This brings them into line with UK Ministers' powers in clause 8. The Bill currently only gives Scottish and Welsh Ministers power to make regulations in relation to EU-derived legislation that is saved into domestic law by clause 2.

15 In schedule 2, page 23, line 11, at end insert—

- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

Requirement for consultation in certain circumstances

16A (1) No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations—

- (a) are to come into force before exit day,
- (b) are for the purpose of preventing or remedying any breach of the WTO Agreement, or
- (c) make provision about any quota arrangements or are incompatible with any such arrangements,

unless the regulations are, to that extent, made after consulting with a Minister of the Crown.

(2) In sub-paragraph (1)—

“the WTO Agreement” has the meaning given in paragraph 16(2),

“quota arrangements” has the meaning given in paragraph 16(3).>

Explanatory statement

The Bill currently requires UK Government consent to Scottish and Welsh Government regulations ensuring compliance with the UK’s international obligations if the regulations come into force before exit day, or are to prevent or remedy a breach of the World Trade Organisation (WTO) Agreement or are about or incompatible with quota arrangements. “Quota arrangements” are defined to include division of responsibility within the UK or an area wider than the UK for international obligations (or benefits arising therefrom) to achieve a result by reference to a quantity or benefit.

Amendment 15 replaces the requirement for consent with a requirement for consultation.

16 In schedule 2, page 24, line 33, at end insert—

- <() Sub-paragraph (4)(d) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

Explanatory statement

To allow Scottish and Welsh Government regulations implementing any withdrawal agreement between the UK and the EU in devolved areas to confer a power to legislate. This brings them into line with UK Ministers’ powers in clause 9 of the Bill.

17 In schedule 2, page 25, line 11, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

18 In schedule 2, page 25, line 15, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

Explanatory statement

Amendments 17 and 18 give the Scottish and Welsh Ministers power by regulations to amend direct EU legislation that forms part of domestic law on and after exit day in devolved areas. This applies to their regulation-making powers to implement any withdrawal agreement between the UK and the EU. This brings them into line with UK Ministers’ powers in clause 9. The Bill currently only gives Scottish and Welsh Ministers power to make regulations in relation to EU-derived legislation that is saved into domestic law by clause 2.

19 In schedule 2, page 25, line 28, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

Requirement for consultation in certain circumstances

25A (1) No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements unless the regulations are, to that extent, made after consulting with a Minister of the Crown.

(2) In sub-paragraph (1), “quota arrangements” has the meaning given in paragraph 25(2).>

Explanatory statement

The Bill currently requires UK Government consent to Scottish and Welsh Government regulations implementing any withdrawal agreement between the UK and the EU if the regulations are about or incompatible with quota arrangements. “Quota arrangements” are defined to include division of responsibility within the UK or an area wider than the UK for international obligations (or benefits arising therefrom) to achieve a result by reference to a quantity or benefit.

Amendment 19 replaces the requirement for consent with a requirement for consultation.

CONSEQUENTIAL AMENDMENTS

Schedule 2

- 20 In schedule 2, page 19, line 47, leave out <and retained EU law>
- 21 In schedule 2, page 20, line 23, leave out <and retained EU law>
- 22 In schedule 2, page 23, line 21, leave out <and retained EU law>
- 23 In schedule 2, page 23, line 25, leave out <and section 57(4) and (5) of that Act>
- 24 In schedule 2, page 23, line 31, leave out <and retained EU law>
- 25 In schedule 2, page 23, line 35, leave out <80(8)> and insert <80>

Explanatory statement

Amendments 20 to 25 are in consequence of Amendments 7 and 8 removing the restriction on competence added by the Bill to allow the Scottish Parliament and Welsh Assembly to change retained EU law in devolved areas, and the corresponding restriction on the Scottish and Welsh Governments. They adjust the restrictions on devolved competence of Scottish and Welsh Government regulations dealing with deficiencies in connection with withdrawal, ensuring compliance with the UK's international obligations and implementing any withdrawal agreement between the UK and the EU.

Schedule 3

- 26 In schedule 3, page 28, line 2, leave out from <, and> to end of line 3
- 27 In schedule 3, page 28, line 38, leave out from <for> to end of line 39 and insert <omit “or with EU law”>
- 28 In schedule 3, page 29, line 5, leave out paragraph 21
- 29 In schedule 3, page 29, line 28, leave out from <(4)(d)> to end of line 29 and insert <(4), omit paragraph (d).>
- 30 In schedule 3, page 30, line 4, leave out <before “EU” insert “Retained”> and insert <for “EU law, human” substitute “Human”>
- 31 In schedule 3, page 30, line 5, leave out paragraph 31

Explanatory statement

Amendments 26 to 31 amend schedule 3 of the Bill which makes further amendments to the Scotland Act 1998 and the Government of Wales Act 2006. The amendments are in consequence of Amendments 7 and 8 removing the competence restriction which the Bill would impose on the Scottish Parliament, the Welsh Assembly and the Scottish and Welsh Governments. The amendments update headings in the 1998 and 2006 Acts, the definition of “devolution issues” in the 1998 Act, and remove redundant consequential amendments and Order in Council procedure.

Schedule 8

- 32 In schedule 8, page 50, line 19, leave out <section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or>
- 33 In schedule 8, page 51, line 1, leave out <section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or>

Explanatory statement

Amendments 32 and 33 remove general consequential provision about existing and future powers to make subordinate legislation in consequence of removal of the restriction on the competence of the Scottish and Welsh Governments by Amendment 8.

- 34 In schedule 8, page 55, leave out lines 8 to 13 and insert—
- <(a) in paragraph (a), omit sub-paragraph (ii), and
 - (b) in paragraph (b), omit “or with EU law”.>

Explanatory statement

Amendment to the Criminal Procedure (Scotland) Act 1995 on the right of the Advocate General to take part in proceedings in consequence of the removal by Amendments 7 and 8 of the competence restriction which the Bill would impose on the Scottish Parliament, the Welsh Assembly and the Scottish and Welsh Governments.

- 35 In schedule 8, page 59, leave out lines 10 to 16
- 36 In schedule 8, page 59, leave out lines 23 to 29
- 37 In schedule 8, page 59, line 47, leave out from beginning to end of line 8 on page 60
- 38 In schedule 8, page 60, leave out lines 13 to 23

Explanatory statement

Amendments 35 to 38 are in consequence of the removal by Amendments 7 and 8 of Order in Council-making powers to adjust the competence restrictions which the Bill would impose on the Scottish Parliament, the Welsh Assembly and the Scottish and Welsh Governments.