Agenda - Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Lleoliad:

Ystafell Bwyllgora 2 - Y Senedd

Dyddiad: Dydd Llun, 30 Ebrill 2018

Amser: 11.00

I gael rhagor o wybodaeth cysylltwch a:

Alun Davidson

Clerc y Pwyllgor

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Rhag-gyfarfod preifat (11.00-11.15)

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

(11.15)

2 Sesiwn graffu gyda Llywodraeth y DU

(11.15-12.45) (Tudalennau 1 - 26)

Robin Walker AS, Is-ysgrifennydd Seneddol yn yr Adran Ymadael â'r Undeb Ewropeaidd

Chloe Smith AS, Gweinidog dros Ddiwygio Gwleidyddol a Chyfansoddiadol

2.1 Sesiwn graffu gyda Llywodraeth y DU

3 Papurau i'w nodi

(12.45)

3.1 Papur i'w nodi 1 - Brexit: Parliament's Five Transition Tasks, Cymdeithas Hansard - 13 Ebrill 2018

(Tudalennau 27 - 39)

3.2 Papur i'w nodi 2 - Gohebiaeth gan Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth ynghylch dyddiadau gweithgor ymadael â'r UE - 16 Ebrill 2018

(Tudalen 40)

3.3 Papur i'w nodi 3 - Gohebiaeth gan y Prif Weinidog ynglŷn â chanslo slot pwyllgor - 18 Ebrill 2018

(Tudalen 41)

3.4 Papur i'w nodi 4 - Gohebiaeth gan y Prif Weinidog ynghylch trefniadau craffu ym Mil yr Undeb Ewropeaidd (Ymadael) - 25 Ebrill 2018

(Tudalen 42)

3.5 Papur i'w nodi 5 - Gohebiaeth gan Ysgrifennydd y Cabinet dros Gyllid ynghylch ymchwiliadau manwl - 25 Ebrill 2018

(Tudalennau 43 - 44)

4 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod hwn

(12.50)

Egwyl (13.05-14.05)

5 Bil yr UE (Ymadael): Trafod datblygiadau

(14.00-14.30) (Tudalennau 45 - 85)

6 Rhaglen Waith: Mehefin a Gorffennaf 2018

(14.30-14.40) (Tudalennau 86 - 87)

7 Trafod Llythyr gan y Llywydd ynghylch adnoddau ar gyfer craffu ar Brexit

(14.40-14.45) (Tudalennau 88 - 95)

8 Trafod y cyfarfodydd ym Mrwsel ar 27 Mawrth 2018

(14.45-15.00) (Tudalennau 96 - 112)

Trafodaeth am y cyfarfodydd ym Mrwsel ac ail ran yr ymchwiliad ynghylch perthynas Cymru ag Ewrop yn y dyfodol

9 Edrych ymlaen at y mentrau sydd ar ddod gan y Comisiwn Ewropeaidd

(15.00-15.45)

David Hughes, Pennaeth y Comisiwn Ewropeaidd yng Nghymru

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Brexit: Parliament's Five Transition Tasks

Dr Brigid Fowler

April 2018

HANSARD SOCIETY
PROMOTING DEMOCRACY • STRENGTHENING PARLIAMENT

This note was published on 13 April 2018. The author would like to thank those with whom she has discussed the issues raised.

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Brexit: Parliament's Five Transition Tasks

On 19 March, the UK and the EU published a draft Withdrawal Agreement (WA) which provides for a 21-month transition period, from Brexit on 29 March 2019 to 31 December 2020, in which the UK would essentially remain within the EU legal order and subject to the authority of EU institutions. The UK would, in particular, continue to take on new EU law coming into force during the transition period.

According to the colour coding used in the 19 March draft, counting by number of articles (excluding Protocols) just under 80% of the draft WA is agreed, 3% is agreed in principle, and nearly 20% is not agreed.

Publication of the draft has prompted reaction and speculation mainly about the high politics of Brexit, and particularly about prospects for Parliament's promised 'meaningful vote' on the WA later in 2018.

But the prospective post-Brexit transition period also has a set of much more technical implications for Parliament.

In this briefing note, we outline five areas where this applies. These can be seen as making up Parliament's transition 'to do' list.

The first three 'to do's' relate to Parliament's role in EU affairs, and are closely mutually linked.

The remaining two areas concern the need to take account of the transition period in Parliament's legislative and scrutiny work.

But, at the end of the note, we suggest that the prospect of the transition period may not make much difference to Parliament's work now, before the WA is finalised and approved. Uncertainty - over both content and process - plus Brexit political needs will prevent Parliament from starting to operate now on the assumption that the transition period as provided for in the draft WA will definitely come about. Instead, the legislature will be obliged to carry on trying to accommodate the possibility of both transition and no-transition at least for another few months.

Parliament and EU affairs in transition

1. Scrutinising new EU law and policy in the EU system: no longer an EU national parliament

The EU Treaties give the national parliaments of EU Member States a role in the EU decision-making system, albeit a very limited one (Article 12 of the Treaty on European Union and Protocols 1 and 2 to the EU Treaties).

However, Article 123 (2) of the draft WA specifies that, with some exceptions, the UK Parliament is no longer to count as an EU national parliament during the transition period.

1.1 Direct engagement with the EU institutions

National parliaments' role in the EU system starts with their receipt from the EU institutions of European Commission policy and consultation documents and annual legislative programme (Protocol 1, Article 1), agendas for and outcomes of EU Council meetings (Protocol 1, Article 5), and all draft EU legislation (Protocol 1, Article 2). This may be the basis for national parliaments to send views to the European Commission, under the banner of 'political dialogue'.

However, under the 'yellow' and 'orange card' system (officially the 'subsidiarity control mechanism') introduced by the 2007 Treaty of Lisbon, national parliaments are also able to submit formal 'reasoned opinions' to the EU institutions making a case that an EU legislative proposal violates the principle of subsidiarity. If the number of 'reasoned opinions' passes a Treaty-set threshold, national parliaments can trigger a review of any proposal (Protocol 2, Article 7). In the UK, the submission of 'reasoned opinions' takes place via the European scrutiny committees in both Houses, the European Scrutiny Committee (ESC) in the Commons, and the EU Select Committee in the Lords.

Under Article 123 (2) of the draft WA, it appears that the UK has carved out an exception so that the EU institutions will still send Commission documents and draft legislation (but not Council agendas and outcomes) to the UK Parliament during the transition. (The exception was not in the European Commission's original, 7 February, paper on the WA, but first appeared in the UK's response to it, published on 21 February.)

But the UK Parliament will no longer be eligible to participate in the yellow/orange card system. Because of the possibility of triggering a review, EU national parliaments often use this subsidiarity mechanism - rather than the vaguer 'political dialogue' - to raise concerns which are not, in fact, related to subsidiarity but rather policy substance.

According to the European Commission's most recent annual report on the issue, in 2016 the House of Lords submitted views on EU proposals 17 times, and the Commons three, including one 'reasoned opinion' under the subsidiarity control mechanism.

Westminster's loss of 'EU national parliament' status is the - probably unavoidable - corollary of the UK government's loss of institutional representation during transition, once the UK becomes a non-EU state on 29 March 2019. There are well-grounded concerns, raised not least by UK parliamentarians and ministers, that the current 'card' system is an ineffective vehicle for national parliament influence (the yellow card threshold has been reached three times since the Lisbon Treaty came into force in 2009). And, as the ESC noted in 2017, falling out of the subsidiarity mechanism at least means one less task for UK parliamentary staff.

But, just like the UK's overall status during transition, Westminster's loss of 'national parliament' status raises concerns about the UK applying EU law while being outside the mechanisms to make and control it. Moreover, inasmuch as, to ensure continuity, EU law might be 'frozen' into UK law at the end of the transition period (rather than in March 2019), the post-transition UK might continue to be affected by law over which it has had no say (see section 4. below).

In its latest report, in March 2018, the ESC said that "if the transitional arrangement is implemented as described … it would require continued intensive scrutiny of EU affairs by Parliament" (paragraph 46). Working out how this is to be effected is Parliament's first transition task. The ESC suggested that looking at the work of the relevant committees of the Norwegian and Swiss parliaments might be a place to start (paragraph 49).

The solution which is arrived at, for the monitoring of new EU law and policy and for the parliamentary scrutiny of the government's EU-related action as outlined in 2. below, will have implications for parliamentary resources and staff. Because of the volume of business and the need for legal expertise, the ESC and the Lords EU Committee are two of Parliament's more resource-heavy select committees. If they were to need to carry on processing new EU material at something like the same volume as now, there could be less scope to transfer parliamentary resources to other areas where the UK is gaining policy powers as a result of Brexit, such as trade.

Parliament's engagement with the EU during transition could also have implications for the National Parliament Office (NPO), Westminster's 'eyes and ears' in Brussels. (According to the public list of NPOs, the Norwegian Parliament maintains such an office in Brussels; its Swiss counterpart does not.)

1.2 EU inter-parliamentary cooperation

The EU Treaties also provide for cooperation between EU national parliaments and the European Parliament (EP).

There is a panoply of EU inter-parliamentary bodies and forums. In addition to standing bodies, there are occasional meetings on particular policy issues organised by EP committees, or sometimes the national parliament of the country holding the EU Council Presidency. These bodies and forums have no formal role in EU decision-making (the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union - COSAC - is the only one mentioned in the EU Treaties). However, if national parliamentarians choose to use them, they can be useful channels to exchange information, build networks and relationships, question senior EU officials directly, exercise informal influence and coordinate activities with counterparts from other Member States and the EP.

For standing bodies, decisions about members, observers and invitees from non-EU parliaments are for the bodies themselves, and there is no consistent practice. National parliaments of European NATO members (as well as of EU candidate states) have observer status in the Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP), guaranteeing the post-Brexit UK Parliament representation in that forum should it want it. Beyond that, the picture is:

- EU Speakers' Conference: no provision for non-EU Speakers to attend;
- COSAC: EU candidate countries have observer status; other non-EU invitations are discretionary;
- Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU (SECG conference, or 'Article 13' conference): EU candidate countries have observer status; other non-EU invitations are discretionary;

- New Joint Parliamentary Scrutiny Group on Europol: may invite non-EU observers only from countries which have an agreement with Europol.

In its March report (paragraph 49), the ESC argued that the fact the UK will be applying EU law during transition but without representation in the main EU decision-making bodies *increases* the premium on retaining sight of EU developments where possible.

One channel for such activity is the 'tripartite' meetings that UK MPs and peers hold with UK MEPs usually twice a year, outside EU mechanisms. Without UK MEPs, this forum must presumably cease with Brexit; but UK participation in the EU inter-parliamentary bodies would appear potentially to remain available.

The UK Parliament's post-Brexit status does not seem to have figured largely in the formal proceedings of EU inter-parliamentary bodies since the UK referendum. The first step in arranging some kind of transition period status for the UK Parliament in EU inter-parliamentary bodies would presumably be behind-the-scenes soundings about the possible issuing and receipt of invitations.

Decisions about the status and size of non-EU delegations to EU inter-parliamentary bodies can be vexed. Participants on the EU side may not wish to invest significantly in developing a bespoke transition status for the UK Parliament given that the transition period is intended, not least on the EU side, to last only 21 months, and EU inter-parliamentary bodies typically meet only twice a year. During transition, it might be easiest for the UK Parliament simply to be an invitee to relevant meetings, pending greater clarity on the nature of the long-term UK-EU relationship. Who and how many Westminster parliamentarians might attend would remain to be determined.

In the context of UK parliamentarians' contacts with their European counterparts, it may be useful to note that the MPs' expenses scheme has already been modified to facilitate these. Previously, MPs could claim travel expenses for up to three visits per year to the EU institutions and the parliaments of Council of Europe member states. After a consultation ending in October 2016 and reporting in March 2017 which concluded that "given the UK's expected exit from the European Union, MPs may in future have an increased role in representing their constituents in Europe", the Independent Parliamentary Standards Authority (IPSA) amended the rules with effect from the 2017-18 financial year. MPs may now claim travel costs for an unlimited number of journeys related to their parliamentary work "to and from other states in Europe".

2. Scrutinising the UK government in EU decision-making: the UK's European scrutiny system

Independently of EU mechanisms, the UK Parliament operates a system of European scrutiny based on holding the UK government to account for its actions in EU decision-making.

This system is a matter for the UK, but institutionally it is linked to the UK Parliament's role in the EU decision-making system outlined above, through the central position occupied in both by the ESC and the Lords EU Select Committee (plus, on the staff information-gathering side, the NPO in Brussels). As well as providing for scrutiny and

accountability vis-à-vis the UK government, Parliament's European scrutiny system is a major vehicle for information about EU developments to reach Westminster.

The UK's European scrutiny system is triggered when the UK government deposits, with the ESC in the Commons and the EU Select Committee in the Lords, EU documents that it receives as an EU Member State government from the EU institutions. The committees' work is based primarily on the explanatory memorandums that the UK government submits, setting out its position on the EU documents. The whole system is geared around the positions and actions of UK ministers in the EU Council. Inasmuch as the system has bite, it derives from the 'scrutiny reserve', set out in resolutions of both Houses, which in theory prevents UK ministers from agreeing to an EU measure in the Council if it is not cleared from the UK scrutiny system. Ministers also make written parliamentary statements before and after Council meetings, an important source of ongoing information about EU business and UK positions.

However, in the transition period, it is not clear whether the UK government will receive documents from the EU institutions as it does now as a Member State. (Comparing the government's 21 February text with the 19 March draft WA suggests that UK government receipt of Commission proposals during the transition was a UK request which has not been met.)

More importantly, during the transition UK ministers will not be in the EU Council to vote and take a position. The ESC has said that this renders the UK's European scrutiny system "toothless" (paragraph 47).

The draft WA does, however, provide for the UK to have some limited consultation rights (Articles 123(5) and (7), 124(2) and (5)); to decline to be bound by some EU CFSP decisions where it would have had a veto as a Member State (Article 124(6)); and to continue to be able to opt in to new justice and home affairs law where that amends law to which the UK has already opted-in (Article 122(5)).

There will thus still be some UK government activity at the EU level for the UK Parliament to scrutinise and hold to account.

Apart from the wider questions about how this might be done (on which the ESC and the Lords EU Committee are both engaged), this will require both Houses to amend the parts of their Standing Orders which underpin the current European scrutiny system.

The extent of any continued European scrutiny system that Westminster operates during the transition will have implications not only for staff resources, but also for MPs' and peers' time, and for time allocations on the floors of both chambers.

3. Oversight of the Withdrawal Agreement

The draft WA's third EU affairs-related implication for Parliament concerns the legislature's role in oversight of the Agreement.

This is not limited to being a transition task, since the WA is intended to outlive the transition period; but Parliament will need to get relevant arrangements in place before the transition starts.

The draft WA (Article 157) establishes a UK-EU Joint Committee to ensure the Agreement's implementation. The Joint Committee has power to adopt binding decisions, and to amend the WA in certain cases. The Joint Committee will sit at the head of an architecture of specialised committees, and it is to issue an annual report. It *may* have power to refer UK-EU disputes about the WA to the EU Court of Justice (Article 162; this is not yet agreed).

The Commons ESC and the Lords EU Select Committee are already asking questions about the Joint Committee's parliamentary accountability. In its March report, to which a government response will be due in May, the ESC asked the government "to demonstrate how the Joint Committee will ensure a high level of transparency and accountability" (paragraph 52). And the Lords EU Committee has requested a response from Brexit Secretary David Davis by 13 April to a letter asking, among other things, whether he plans to make "proposals to ensure appropriate parliamentary involvement in or oversight of the work of the Joint Committee".

As with other aspects of legislative-executive relations in Brexit, the UK Parliament may be able to leverage the position taken by the EP: in the EP's 14 March resolution on the future UK-EU relationship, it "underline[d] that the EU representatives on [the Joint] Committee should be subject to appropriate accountability mechanisms involving the European Parliament".

The mechanisms the government and Parliament put in place for oversight of the Joint Committee could matter for the operation of the WA. But they could also come to stand alongside arrangements for parliamentary oversight of similar bilateral bodies created in new post-Brexit UK international agreements, including the UK-EU agreement(s) on the two sides' long-term relationship, and UK trade agreements. As such, the precedent-setting effect of the WA arrangements could be even more important.

Legislating and scrutinising for transition: more time?

4. Scrutiny of UK Brexit preparedness

Parliament's Brexit scrutiny - especially by select committees - has focused to a significant extent on the degree to which the UK will be ready to operate outside the EU by March 2019 in administrative, regulatory and practical, as well as legal, terms.

For example, the House of Commons Business, Energy and Industrial Strategy Committee said in March that leaving the European Aviation Safety Agency (EASA) in March 2019 was not an option, and that the UK Civil Aviation Authority would "need to undergo a major investment and recruitment programme if it is to take over the functions of EASA". In February, the Lords EU Select Committee called it "imperative to ensure that the Competition and Markets Authority is appropriately resourced – and has staff with the right skills and experience in place – in good time to prepare to take on its post-Brexit caseload". The Commons Home Affairs Committee said the same month that the Border Force "does not currently have the capacity to deliver" any additional checks at the border on EEA nationals entering the UK after March 2019 and would "struggle to put sufficient additional capacity and systems in place".

However, the transition period which is in prospect would appear to mean that the UK does not need to be ready to operate outside the EU system in these administrative and practical terms by March 2019, but only by December 2020. The gaining of more time to prepare is precisely one of the main aims of the transition.

Select committees might have cause to be aggrieved that the timing assumption that has underpinned their scrutiny work so far may be overtaken. On the other hand, their work will not be wasted, and agreement on a transition period is arguably a 'win' for those committees which had advocated this outcome.

Either way, select committees will have to adjust their scrutiny of Brexit preparations to the potentially longer timeframe.

In principle, this could allow more in-depth scrutiny, alongside more prioritisation and greater use of milestones along the way to December 2020. However, the timeframe for some preparations could still be tight. And, depending on how much is known about the post-transition UK-EU relationship before Brexit, and how much remains to be negotiated afterwards, select committees may still be scrutinising preparations during the transition period without knowing exactly what the UK is preparing for.

5. Legislating for Brexit: more time, or more time-points?

The legislative approach to Brexit so far has been to create a UK legal order that can operate essentially independently of the EU from Brexit on 29 March 2019.

The government's vehicle for this, the EU (Withdrawal) Bill, starts its report stage in the House of Lords on 18 April. Broadly, the Bill:

- repeals the 1972 European Communities Act (ECA) on exit day, to eliminate at that point the supremacy and direct effect of EU law;
- saves, into UK law, EU law as it exists on exit day, as a new category of 'retained EU law'; and
- (under Clause 7) gives ministers powers, from passage of the Bill until two years after exit day, to make delegated legislation to 'correct' retained EU law to make it work in a UK-only context after 29 March 2019.

But the draft WA provides that during the transition period the UK will essentially remain within the EU legal order and subject to the authority of EU institutions. (The exact role of the EU Court of Justice during transition remains one of the issues not yet agreed.) The UK would, in particular, continue to take on new EU law coming into force during the transition period.

As noted above, for business, and in some respects public authorities, the transition period is intended to make Brexit easier - by allowing more time to prepare for the long-term UK-EU end-state, and by requiring as far as possible only one adjustment, to that end-state once it is known.

But for Parliament, contemplating the Brexit legislative task, the prospective transition period arguably makes life more complicated, not less.

This is because there are still things that will happen when the UK leaves the EU on 29 March 2019 for which the legislature must make legal provision. However, Parliament must also provide a legal basis for the transition period, and for whatever comes afterwards. A Brexit with transition thus appears to involve multiple legislative time-points - multiple points at which different elements of the legislation for Brexit will need to fall into place. And yet Parliament must provide for this while still conducting proceedings on a Bill, the EU (Withdrawal) Bill, which essentially provides for a one-off severing of the UK and EU legal orders on 29 March 2019.

It might be thought that it would be easier to abandon the EU (Withdrawal) Bill and start over, with the government's promised Withdrawal Agreement and Implementation Bill (WAIB). However, even apart from the probably impossible politics of this, the basic legislative tasks of the EU (Withdrawal) Bill will still need to be carried out - just at different or additional times, in some cases. And work done in connection with the Withdrawal Bill on unavoidable - and unavoidably complex - issues such as retained EU law, and devolved and delegated powers, will not be wasted and should save valuable time when Parliament comes to consider the WAIB.

It therefore seems most likely that the WAIB will amend what will by then be the EU (Withdrawal) Act to make legislative provision for transition.

This raises the bizarre prospect of parliamentarians still working on a Bill, on which they have already spent over 200 hours, while knowing that they will be amending the resulting Act within months.

Legislative provision for the kind of transition foreseen in the draft WA would seem to require, in particular, re-creation of the most important elements of the ECA, to enable the UK to continue to take on new EU law and to allow for its supremacy and direct effect.

The Hansard Society will shortly be publishing a discussion paper by Swee Leng Harris of the Legal Education Foundation which looks in detail at how the EU (Withdrawal) Bill might be amended, and what the WAIB needs to do, to provide for transition.

Here, we flag three more general points.

First, the EU - including the EP, which must sign off on the WA - will have an interest in the legislative provision that the UK makes for transition, inasmuch as the EU will wish to ensure that the integrity of its legal order is protected and that the UK will implement the obligations it undertakes in the WA.

Second, the altered and/or multiple timings involved in legislating for transition could affect not only the EU (Withdrawal) Bill and the WAIB but also other Brexit primary legislation. For example, other bills - such as the Trade Bill - cross-reference to 'exit day' as defined in the EU (Withdrawal) Bill.

Third, delegated legislation and its scrutiny, on which the Hansard Society has focused much of its recent work, will also be affected.

Debate on the nature and scrutiny of the Clause 7 powers in the Withdrawal Bill has been conditioned by the fact that, absent a transition, they would need to be used relatively

speedily, in the time between passage of the Withdrawal Bill in early summer 2018 and Brexit in March 2019.

With a transition period of the kind envisaged in the draft WA, however, in which the UK will continue to apply EU law, the relevant 'corrections' to EU law to make them UK-only would presumably need to be ready to take effect only by December 2020, at the end of the transition. This longer timeframe could open the way to more extensive scrutiny.

However, just as there were always limits on the extent to which ministers could in practice use the Clause 7 powers before knowing whether there would be a transition, it may be that ministers also cannot fully use the Clause 7 powers during the transition as long as they do not know if and in what form there will be a different post-transition UK-EU relationship. In that case, the time for scrutiny before December 2020 would shorten again.

Preparing for transition - but not yet: continued uncertainty and contingency

This note has identified five areas where the prospective post-Brexit transition period has implications for Parliament which will require the legislature to take action: continued monitoring of EU developments; continued scrutiny and accountability of the UK government in EU affairs; oversight of the UK-EU Withdrawal Agreement Joint Committee; adjusting scrutiny of UK Brexit preparedness to a longer timeframe; and legislating for transition.

Parliament and government

The prospective transition period is intended to enable as much legal and practical continuity as possible after 29 March 2019. Brexit with transition is often characterised in terms simply of the UK government falling out of the EU institutions on exit day.

The discussion here on Parliament's role in EU affairs has highlighted that the legislature, too, will be implicated in an institutions-only Brexit. Parliament will lose both its own place in the EU institutional system, and, via the exit of UK ministers and officials from EU institutions, also its main locus to exercise scrutiny of the executive in EU affairs.

To ensure that effective arrangements are put in place for transition scrutiny and accountability in the EU-related areas identified here, the government will need to engage constructively with Parliament, as the relevant select committees are already requesting.

For the remaining two areas discussed in this note, legislation and scrutiny of UK preparedness, it would be hugely helpful to Parliament's work if the government to: set out how it envisages providing for transition in legislative terms; confirm the nature of the UK's relationship with and use of EU bodies and agencies during the transition period; and outline its own preparation plans over the somewhat longer timeframe now in prospect. Added to the draft WA itself, this would provide greater clarity about what Parliament might be dealing with after 29 March 2019.

Parliament and uncertainty

However, even with such a statement from the government, Parliament would be unlikely to start operating now on the assumption that the transition as provided for in the draft WA will definitely come about.

This is because, first, there are remaining unresolved issues - most notably arising from the Northern Ireland/Ireland border - which might yet cause the WA to fail to be agreed, or to fail to be approved by the two parties' parliaments.

Second, the UK government remains under domestic political pressure, including from parliamentarians, to continue to be seen to countenance the possibility of there being no WA and therefore no transition, as a negotiating tactic with the EU. (In the House of Commons debate following the 22-23 March European Council at which EU leaders welcomed the draft WA, the Prime Minister acceded to a request again to confirm that "no deal is better than a bad deal and that all necessary preparations are being made for such an eventuality".)

Third, if Parliament were to be seen now to assume that the transition is a done deal, it would undermine its own case for a 'meaningful vote' on the WA.

At least until the WA is approved, therefore, Parliament is likely to continue to have to try to accommodate both potential transition and potential no-transition in its legislative, scrutiny and EU-related activities. Useful preparatory work for transition can be done, but transition is unlikely to become the exclusive basis for Parliament's work.

It remains to be seen whether Parliament would take the transition as definite when its two Houses pass motions approving the WA, when the EP does so, or only when the WAIB receives Royal Assent.

Two linked final points can be made arising from the discussion here.

The WA is intended to come with a UK-EU document on the nature of the two sides' long-term post-transition relationship. The extent to which this document provides in detail for the future relationship may be critical in determining whether the WA is approved at Westminster.

But the level of detail on the future UK-EU relationship will also determine, first, the extent to which Parliament can operate from the start of transition knowing what will come afterwards, rather than simply embarking on a repeat period of uncertainty. (The legal status of the prospective UK-EU declaration, and of any Westminster approval of it, could also matter here.)

Second, in outlining the nature of the prospective post-transition UK-EU relationship, the level of detail in the document could also indicate the extent to which the kind of close parliamentary monitoring and scrutiny of EU law and policy which is warranted by the transition will also be required for the long term, or whether only a much more limited engagement with EU law will be needed.


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Cadeirydd
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16 Ebrill 2018

Annwyl Mick,

Ysgrifennaf atoch ar ôl ymddangos gerbron cyfarfod ar y cyd o'r Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol a'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar 12 Chwefror i ystyried Bil Masnach y DU. Yn y pwyllgor cytunais i rannu dyddiadau cyfarfodydd o'r Gweithgor Ymadael â'r UE gydag aelodau eraill o'r pwyllgor. Cyfarfu'r Gweithgor Gadael yr UE ar y dyddiadau canlynol:

4 Hydref 2017
7 Rhagfyr 2017
24 Ionawr 2018
22 Mawrth 2018

Er gwybodaeth cyn i'r Gweithgor Ymadael â'r UE gael ei sefydlu roedd Brexit yn eitem sefydlog ar agenda Cyngor Datblygu'r Economi. Sefydlwyd y Gweithgor Ymadael â'r UE fel is-grŵp o Gyngor Datblygu'r Economi.

Yn gywir

Ken

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SeneddMADY@cynulliad.cymru

18 Ebrill 2018

Annwyl David

Yr wyf yn ysgrifennu atoch i ymddiheuro i chi a'r Pwyllgor fy mod i bellach methu â dod i gyfarfod y Pwyllgor ddydd Llun 30 Ebrill.

Yr wyf wedi cytuno i deithio i Doha ar hediad cyntaf Qatar Airways sy'n cyrraedd Caerdydd ddydd Mawrth 1 Mai. Yr wyf yn siŵr y byddwch yn cytuno bod hwn yn ddatblygiad arwyddocaol i'r maes awyr wrth greu cysylltiad uniongyrchol hanfodol rhwng Cymru a'r Dwyrain Pell.

Byddaf, wrth gwrs, yn hapus i ddod i'r Pwyllgor ar ddyddiad arall.

Yn gywir

CARWYN JONES

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Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

David Rees AC
Cadeirydd
Y Pwyllgor Materion Ewropeaidd a Deddfwriaeth Ychwanegol
Cynulliad Cenedlaethol Cymru
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25 Ebrill 2018

Annwyl David

Ysgrifennaf mewn ymateb i'ch llythyr dyddiedig 23 Mawrth ynghylch trefniadau craffu ar gyfer y pwerau dirprwyedig sydd wedi'u gosod ym Mil yr Undeb Ewropeaidd (Ymadael).

Mae'ch llythyr yn cyfeirio at lythyr Ysgrifennydd Gwladol Cymru at y Llywydd ar 16 Mawrth, ac adroddiad diweddar y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ynghylch craffu ar reoliadau a wneir dan y Bil.

Amgaeaf gopi o lythyr Arweinydd y Tŷ a'r Prif Chwip at gadeirydd y Pwyllgor, dyddiedig 27 Mawrth, sy'n egluro safbwynt Llywodraeth Cymru mewn perthynas â phob un o'i argymhellion.

Rydych hefyd yn gofyn am ein safbwynt ynghylch deunydd esboniadol gwell y mae'r Bil yn gofyn amdano i gyd-fynd â rheoliadau sy'n cael eu gosod gerbron y Senedd dan y pwerau dirprwyedig sydd wedi'u cynnwys yn y Bil.

Ni wnaeth y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol wneud argymhellion mewn perthynas â'r wybodaeth hon, felly nid yw'n cael sylw yn ein hymateb i'w adroddiad. Fodd bynnag, gallaf gadarnhau mai safbwynt Llywodraeth Cymru yw bod yr wybodaeth y disgwylir iddi gael ei chynnwys yn y datganiadau yn ddeunydd y byddem yn disgwyl ei ddarparu beth bynnag, felly nid ydym yn gweld bod angen ymestyn y gofyniad i Weinidogion Cymru gynhyrchu deunydd esboniadol mewn perthynas â rheoliadau sy'n cael eu gosod gerbron y Cynulliad Cenedlaethol.

Rwy'n anfon copi o'r llythyr hwn at y Llywydd ac at gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Yn gywir

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Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Llywodraeth Cymru
Welsh Government

David Rees AM,
Chair of the EAAL Committee

25 April 2018

Dear David

External Affairs and Additional Legislation Committee on 16 April

Thank you for the opportunity to give evidence to the Committee on 16 April. At that time I gave a verbal update on the progress made on the deep dive meetings that had taken place since January.

This series of meetings were prompted by the Joint Ministerial Committee (European Negotiations) (JMC (EN)) meeting on 12 December. It was agreed that work on Framework areas, focusing on those where legislative framework arrangements may be needed and cross-cutting issues and dependencies identified in the initial deep dives, covering matters such as trade, international obligations, governance and the UK internal market, should now proceed.

The aim of these discussions would be in line with the requirements set out in the statement of principles. The workshops would aim to clarify the nature of the intersection of EU law with devolved competence, policy perspectives in relation to these matters and to identify, in principle, where co-operation may be necessary in the future and which could form the basis for a framework. Where possible they would test the extent to which legislation may be necessary as part of a framework, what further arrangements may be required and how these could most effectively be established.

These discussions were not intended to consider the terms or content of common Frameworks at this stage. All discussions were held without prejudice to the views of Ministers or legislatures in regards to the EU (Withdrawal) Bill.

In total formal workshops covering 28 policy areas (two additional areas only relevant to Northern Ireland were also considered), took place over January and February:

- **Agricultural Support** (8-9 January)
- **Fisheries** (17-18, 23-24 January, 6-7 February)
- **State Aid** (29 January)
- **Animal Health and Welfare** (29-30 January)

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- **Environmental Quality - Chemicals and Pesticides** (29-30 January)
- **Environmental Quality - Ozone Depleting Substances and F-Gases** (31 January)
- **Plant Health** (2 February)
- **Public Procurement** (5 February)
- **Non-CAP Agriculture** (5-6 February)
- **Food and Feed** (7-8 February)
- **Air Quality** (8 February)
- **Mutual Recognition of Professional Qualifications** (14 February)
- **Production of Statistics** (15 February)
- **EU Citizen's Voting Rights** (15 February)
- **Hazardous Substances Planning** (19 February)
- **Environmental Quality - Waste** (20 February)
- **Radioactive Waste Management and Shipment** (20 February)
- **Civil use of explosives** (NI only) (21 February)
- **Internal Market** (23 February)
- **Vehicle standards** (NI only) (26 February)
- **Implementation of EU emissions trading system** (26 February)
- **Trade** (15 March)
- **International obligations** (6 March)
- **Governance** (7 March, 19 April)
- **Follow up session on plant health** (9 March)
- **Elements of reciprocal healthcare** (21 March)
- **Nutrition** (9 February)
- **Domestic biodiversity and access benefits sharing** (26 February)
- **Varieties and seeds** (8 March)
- **Data infrastructure** (16 March)
- **Services Directive** (9 April)

This list does not include a number of preparation, and follow up, meetings which helped to facilitate or which naturally developed from these meetings. These workshops represent the beginning of a large body of inter-governmental work which will continue past the UK's exit from the European Union, throughout the transition period and beyond.

In each of these topic areas we are challenging the UK Government to work in an open and transparent way as the basis for a future relationship where joint policy development will be the norm and not the exception.

Best wishes,

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Mark Drakeford AM/AC
Cabinet Secretary for Finance

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

Rt Hon David Lidington CBE MP

24 April 2018

Dear David

European Union (Withdrawal) Bill: amendments and Intergovernmental Agreement

Further to the intensive trilateral discussions which have taken place between our two Governments and the Scottish Government, I am writing to tell you that the Welsh Government, on basis of the intergovernmental agreement, will support an LCM linked to the EU (Withdrawal) Bill. Although the position we have currently developed does not meet the whole of our aims I recognise that the trilateral discussion process represents very significant progress from where we started.

As you know, our position is that the best way forward within the framework of EU legislation is for the Governments of the UK to work together to create common approaches where we agree they are needed. We welcome the fact that this work is underway although I would have preferred such arrangements to have been developed without the need for legislative constraints, with respective Governments trusting each other's undertakings not to legislate in areas where we agree UK wide frameworks are needed until they have been agreed.

Nevertheless I recognise that the UK Government's latest amendments to Clause 11, together with the commitments and assurances set out in the Inter-Governmental Agreement, represent a significant step forward and a recognition that the default position is that responsibility for policy in areas devolved to Wales should continue to lie with the National Assembly.

Instead of the blanket restriction on the devolved legislatures amending retained EU law, with the possibility of specific areas being 'released' into devolved competence, the amendments recognise that only certain elements of EU law, specifically related to areas where it is agreed frameworks are needed, should be subject to a new, temporary, constraint. This is clearly much more compatible with the 'reserved powers' model of devolution.

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The Agreement also effectively means that secondary regulation-making powers which will not normally be used to put in place these new temporary restrictions on competence without the consent of the National Assembly for Wales. You have agreed not normally to put such regulations to Parliament for approval unless the devolved legislatures and administrations have given their consent. Moreover, in the event of a legislature withholding consent, Parliament will be asked, on the basis of even-handed information, to decide if the regulations should be made. We accept that, within our current constitutional system, this responsibility rests with Parliament, though as you know, we have put forward constructive proposals as to how inter-governmental working could be fundamentally reformed to minimise the risk of deadlock between the Governments. We look forward to the UK Government engaging more substantially with these ideas.

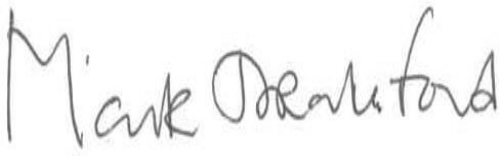
The Agreement also contains explicit assurance of a 'level playing field' in terms of legislation, in that you have undertaken not to bring forward new legislation relating to England in areas where our legislative competence is constrained. In addition your previous assurances that the constraints envisaged would be temporary are now reflected in the proposed amendments. Finally, the Agreement removes any doubt that primary legislation brought forward to put in place new UK-wide frameworks – for example, on agricultural support - could be construed as being outside the Sewel convention.

More generally, I believe the collaborative process of working set out in the Agreement will form the basis of a more equitable approach to inter-governmental working than has been the case with the JMC to date and will strengthen inter-governmental relations. In this context, we must all step up engagement on the development of frameworks and the broader work of the JMC (EN). Alongside our support for an LCM on the basis of the amendments laid in Westminster, the Welsh Government is committed to continued dialogue to explore refinements to the inter-governmental agreement on which we have all been working.

In summary, the Agreement and the new UK Government amendments to the EU (Withdrawal) Bill represent a substantive change in approach that balances our concerns on the risks to our devolution settlement and your position to seek certainty in law as we leave the European Union. On the basis of this Agreement, the Welsh Government intends to recommend to the National Assembly for Wales that it gives legislative consent to the EU (Withdrawal) Bill, we will also take steps to repeal our Law Derived from the European Union (Wales) Bill, and the Attorney General will withdraw his reference of the Bill to the Supreme Court.

I am copying this letter to the Minister for Negations on Scotland's Place in Europe, the Secretary of State for Exiting the European Union and the First Minster of Wales.

Yours sincerely



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Our Ref: CDL/1659

Mark Drakeford AM
Cabinet Secretary for Finance and Local Government
National Assembly for Wales
Cardiff Bay
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24 April 2018

Dear Mark

EU (WITHDRAWAL) BILL

Thank you for your letter of 24 April and for your telephone call earlier today. I am grateful for the work that you and your officials have put into our current proposals.

I am extremely pleased that we have been able to work together to develop a proposal on clause 11 that provides reassurance on the points you have raised, whilst also continuing to provide legal certainty across the UK. I am grateful to you for confirmation that you will put forward a recommendation of legislative consent for the EU (Withdrawal) Bill to the National Assembly for Wales.

I agree with you that our joint working over recent months has shown how successful our collaboration can be and the underlying strength of our intergovernmental relations. We are committed to continuing to work together on designing and implementing new frameworks that will replace the existing EU arrangements in place across the UK.

It is important that our governments have found a way forward that prioritises legal certainty for people and businesses across the UK. As was made clear in the Lords Committee debates on the EU (Withdrawal) Bill, we need to be able to protect the UK internal market as we leave the EU and give certainty that that will happen even where agreement between governments cannot be reached. That is why working with you we have developed a model which emphasises early, joint collaborative working and favours agreement with the devolved legislatures, while having a clear and transparent process when agreement cannot be reached. It is right that the UK Parliament provides that certainty.

We have come to an agreement which provides maximum reassurance and certainty and will be delivered through amendments to clause 11 and through the draft intergovernmental agreement that sits alongside the legislation. I hope that the Scottish Government will continue

to work with us so that we can maintain the prospects for its agreement both on the Bill and the inter-governmental agreement.

As part of our agreement, we have also agreed that steps will be initiated to secure the repeal of the Law Derived from the European Union (Wales) Bill before the EU (Withdrawal) Bill receives Royal Assent so that our statute book is clear. We have each also agreed to ask the Attorney General and the Counsel General to make or support applications to the Supreme Court to withdraw the Reference made in respect of that Bill.

I am copying this letter to the the First Minister of Wales, First Minister and Deputy First Minister of Scotland and Michael Russell MSP.

Rt Hon David Lidington CBE MP

Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks[1]

1. The UK Government and the Devolved Administrations ('the governments') will work together to ensure that the European Union (Withdrawal) Bill ('the Withdrawal Bill') and associated secondary legislation creates a fully functioning statute book across the UK on exit from the European Union. Building on the principles on the establishment of common frameworks ('the principles') agreed by the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017, the governments will also continue to work together to create future common frameworks where they are necessary.

2. This agreement and attached supplementary 'Memorandum on the EU (Withdrawal) Bill and the Establishment of Common Frameworks' ('the Memorandum'), together with agreed proposed amendments to the Withdrawal Bill, form the basis of an agreed approach between the governments. If the UK Parliament makes the amendments, the Devolved Administrations will recommend that the Devolved Legislatures give legislative consent to the Withdrawal Bill.

3. This agreement is without prejudice to the UK's Withdrawal Agreement (including any Implementation Period) and future relationship with the EU. It is is also without prejudice to the Devolved Administrations' policy positions in relation to the UK's withdrawal from the EU.

4. This agreement respects established constitutional conventions and practices. Consistent with those, the governments reaffirm their commitment to seek to proceed by agreement.

5. The governments agree that EU law should be temporarily preserved where it is envisaged that future common frameworks with a legislative underpinning may be necessary. The governments agree that this is likely, in whole or in part, in 24 areas. For the devolved institutions, temporary preservation will be given effect through regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations'). For England, temporary preservation will be given effect by the UK Government committing not to bring forward legislation that would alter areas of policy in so far as the devolved legislatures are prevented from doing so by virtue of clause 11 regulations, for as long as those regulations are in force. It is possible that some additional areas that the UK Government believes are reserved, but are subject to ongoing discussions between the governments, will also be subject to clause 11 regulations.

6. The implementation of this agreement will result in the UK Parliament not normally being asked to approve clause 11 regulations without the consent of the devolved legislatures. The UK Government commits to make regulations through a collaborative process and

[1] As of 24 April 2018, the UK Government and the Welsh Government have agreed to the terms of this IGA and Memorandum. The IGA and Memorandum remain open to the Scottish Government and a future Northern Ireland Executive.

in accordance with this agreement and the Devolved Administrations commit not to unreasonably withhold recommendations of consent. In the absence of the consent of the devolved legislatures, UK Ministers will be required to make an explanatory written statement to the UK Parliament if a decision is taken to proceed. This will be accompanied by any statement from the relevant devolved Ministers on why, in their view, the consent of their legislature has not been provided.

7. The power to make clause 11 regulations will expire 2 years after exit day (if not repealed earlier) in line with other powers in the Withdrawal Bill, while the temporary clause 11 regulations themselves will last for a maximum of five years after they come into force.

8. Under this agreement, the UK Government has committed to ensure that clause 11 regulations will not affect the operation of the Sewel convention and that related practices and conventions in relation to future primary legislation, including legislation giving effect to common frameworks, will continue to apply. Accordingly, those established practices and conventions will operate as if clause 11 regulations had not been made.

9. In the interests of transparency and accountability, the Withdrawal Bill will contain a duty on UK Ministers regularly to report to the UK Parliament on progress on implementing common frameworks and removing temporary clause 11 regulations and powers. UK Ministers will formally send any such report to the devolved administrations. Ministers in the devolved administrations will share this report with their own legislatures as part of the reporting arrangements agreed between them.

10. As part of the implementation of this agreement, the governments agree that steps will be initiated to secure the repeal of Bills passed by the devolved legislatures as possible alternatives to the Withdrawal Bill, before the Withdrawal Bill receives Royal Assent. The governments will also ask their principal legal officers to make or support applications to the Supreme Court by consent to withdraw the references made to that Court in respect of such Bills.

Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

1. This memorandum between the governments provides further detail on how the Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks will be put into operation by the governments.

Common frameworks

2. At the meeting of the Joint Ministerial Committee (EU Negotiations) on 16 October 2017, the governments agreed a set of principles that would determine the creation of common frameworks. Using these principles, the governments have made a joint initial assessment of the 153 areas of EU law that intersect with devolved competence in one or more settlement, assessing the impact that future divergence would have on the following criteria:

    a. the functioning of the UK internal market,while acknowledging policy divergence;
    b. compliance with international obligations;
    c. the UK's ability to negotiate, enter into and implement new trade agreements and international treaties;
    d. management of common resources;
    e. the administration of and provision of access to justice in cases with a cross-border element; and
    f. the security of the UK.

3. The UK Government published its analysis of the 153 areas, based on joint work between the governments, on 9 March 2018. This includes 24 policy areas where frameworks may require to be underpinned through subsequent primary legislation in whole or in part; 82 areas where non-legislative frameworks are being explored; and 49 areas where no further action is thought to be necessary. Also included in the analysis are 12 areas that the UK Government believes are reserved, subject to ongoing discussions between the governments.

4. 'Deep Dive' sessions between the governments, held without prejudice to the views of Ministers in each administration, have been used to begin to test and refine the analysis. These sessions indicate that legislative frameworks may not be necessary in all of the 24 areas identified, and that only specific elements of some areas will require legislation, with the remainder of the framework being established in a memorandum of understanding or other non-legislative approach. Deep dive sessions have also begun to explore areas where non-legislative frameworks are envisaged and cross-cutting issues, and the DAs role in them, including the governance of frameworks, the functioning of the UK internal market, and trade agreements.

5. Further discussions between the governments are now required to define the precise scope and form of future common frameworks. Deep dives in May and June 2018 will refine policy thinking on legislative frameworks and cross-cutting issues in conjunction

with a broader review of intergovernmental relations. Discussions on non-legislative frameworks are underway, but will be the focus on deep dive discussions from June onwards. The Joint Ministerial Committee (EU Negotiations) will retain oversight of the frameworks programme and will review the outcome of deep dive discussions periodically.

6. As these discussions proceed, It is anticipated that regulations made under clause 11 and related provisions will be made for all or part of the 24 areas where legislation may be required, and in such other relevant areas as the governments seek to agree to be appropriate, as set out in **Annex A**.

Clause 11 Regulations

7. Clause 11 regulations will be made in accordance with the following process, underpinned by provisions in the Withdrawal Bill:

    a. Building on the 'Deep Dive' process, which has been a collaborative effort between the governments, discussions will take place between the governments to seek to agree the scope and content of regulations. This process will continue to report into JMC(EN).
    b. Following those discussions between the governments, a UK Minister will formally send draft clause 11 regulations to the relevant devolved administration(s), notifying the relevant Presiding Officer(s) of the relevant devolved legislature(s) that the regulations have been sent.
    c. Where the draft regulations have been developed in line with this agreement, the relevant devolved administration(s) will lay them before their legislature(s) and will not unreasonably withhold an accompanying recommendation to their respective legislature(s) to provide consent.
    d. If the consent of a devolved legislature is not provided within 40 days of the draft regulations being sent to the relevant devolved administration, the UK Minister may decide either not to proceed with the regulations or to ask the UK Parliament to approve the regulations. If a UK Minister decides to proceed with the regulations, the Minister must provide a written statement to the UK Parliament indicating the reasons why, in the Minister's view, the devolved legislature did not provide consent.
    e. The relevant devolved administration(s) will also provide a written a statement to the UK Parliament setting out why, in their view, the consent of their legislature has not been provided.
    f. In these circumstances, the UK Minister may make the regulations where they are approved by the UK Parliament.

Use of Concurrent Powers in the Withdrawal Bill

8. The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement

of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency.

9. The UK Government will bring forward amendments to Schedule 2 to the Withdrawal Bill to enable the devolved administrations to amend retained directly applicable EU law which relates to areas that are otherwise devolved except where clause 11 regulations have been made. While the UK Government will also be able to use the powers in clause 7, 8 and 9 to amend this retained directly applicable EU law, as part of this agreement it commits it will not normally do so without the agreement of the devolved administrations. Where the UK Government is proposing to amend retained directly applicable EU law which relates to areas that are otherwise devolved, but which cannot be amended by the devolved administrations because clause 11 regulations have been made, the UK Government commits that it will first consult the relevant devolved administration(s).

Annex A: policy areas that are likely to be subject to clause 11 regulations

The governments are exploring the extent to which legislation could be required, in whole or in part, in 24 policy areas; these areas are likely to be subject, in whole or in part, to regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations') and are detailed below. It is possible that other areas that continue to be discussed by the governments will also be subject to clause 11 regulations - examples are provided below.

24 areas where legislation could be required, in whole or in part:

1. Agricultural support
2. Agriculture - fertiliser regulations
3. Agriculture - GMO marketing and cultivation
4. Agriculture - organic farming
5. Agriculture - zootech
6. Animal health and traceability
7. Animal welfare
8. Chemicals regulation (including pesticides)
9. Elements of reciprocal healthcare
10. Environmental quality - chemicals
11. Environmental quality - ozone depleting substances and F-gases
12. Environmental quality - pesticides
13. Environmental quality - waste packaging and product regulations
14. Fisheries management & support
15. Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls)
16. Food compositional standards
17. Food labelling
18. Hazardous substances planning
19. Implementation of EU Emissions Trading System
20. Mutual recognition of professional qualifications (MRPQ)
21. Nutrition health claims, composition and labelling
22. Plant health, seeds and propagating material
23. Public procurement
24. Services Directive

Other policy areas - which the UK Government believes are reserved (or excepted in the Northern Ireland Act 1998), but are subject to ongoing discussion with the devolved administrations - that could be subject to clause 11 regulations:

25. Food Geographical Indications (protected food names)
26. State aid

European Union (Withdrawal) Bill

AMENDMENTS

TO BE MOVED

ON REPORT

Clause 11

LORD CALLANAN

1 Page 7, line 25, leave out subsections (1) to (3) and insert—

"(1) In section 29(2)(d) of the Scotland Act 1998 (no competence for the Scottish Parliament to legislate incompatibly with EU law) for "with EU law" substitute "in breach of the restriction in section 30A(1)".

(2) After section 30 of that Act (legislative competence: supplementary) insert—

"30A Legislative competence: restriction relating to retained EU law

(1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.

(2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the legislative competence of the Parliament.

(3) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under this section unless—

(a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Parliament having made such a decision.

(4) For the purposes of subsection (3) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—

(a) provide a copy of the draft to the Scottish Ministers, and

(b) inform the Presiding Officer that a copy has been so provided.

(6) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Parliament).

(7) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.

(9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Scottish Parliament which receives Royal Assent after the end of that period.

(10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.

(11) In this section—

"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers,

and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days."

(3) In section 108A(2)(e) of the Government of Wales Act 2006 (no competence for the National Assembly for Wales to legislate incompatibly with EU law) for "with EU law" substitute "in breach of the restriction in section 109A(1)".

(3A) After section 109 of that Act (legislative competence: supplementary) insert—

"109ALegislative competence: restriction relating to retained EU law

(1) An Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.

(2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the Assembly's legislative competence.

(3) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(4) A Minister of the Crown must not lay a draft as mentioned in subsection (3) unless—

(a) the Assembly has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Assembly having made such a decision.

(5) For the purposes of subsection (4) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(6) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—

(a) provide a copy of the draft to the Welsh Ministers, and

(b) inform the Presiding Officer that a copy has been so provided.

(7) See also section 157ZA (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Assembly).

(8) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(9) Subsection (8) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.

(10) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Assembly which receives Royal Assent after the end of that period.

(11) Subsections (4) to (9) do not apply in relation to regulations which only relate to a revocation of a specification.

(12) In this section—

"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Welsh Ministers,

and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days."

(3B) In section 6(2)(d) of the Northern Ireland Act 1998 (no competence for the Northern Ireland Assembly to legislate incompatibly with EU law) for "incompatible with EU law" substitute "in breach of the restriction in section 6A(1)".

(3C) After section 6 of that Act (legislative competence) insert—

"6A Restriction relating to retained EU law

(1) An Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.

(2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the legislative competence of the Assembly.

(3) A Minister of the Crown must not lay for approval before each House of Parliament a draft of a statutory instrument containing regulations under this section unless—

(a) the Assembly has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Assembly having made such a decision.

(4) For the purposes of subsection (3) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—

(a) provide a copy of the draft to the relevant Northern Ireland department, and

(b) inform the Presiding Officer that a copy has been so provided.

(6) See also section 96A (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Assembly).

(7) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.

(9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Assembly which receives Royal Assent after the end of that period.

(10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.

(11) Regulations under this section may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Minister of the Crown making them considers appropriate.

(12) In this section—

"the relevant Northern Ireland department" means such Northern Ireland department as the Minister of the Crown concerned considers appropriate;

"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the relevant Northern Ireland department,

and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.""

2 Page 8, line 40, leave out "(3)" and insert "(3C)"

3 Page 8, line 41, at end insert—

"(4A) Part 1A of Schedule 3 (which imposes reporting obligations on a Minister of the Crown in recognition of the fact that the powers to make regulations conferred by subsections (1) to (3C) and Part 1 of Schedule 3, and any restrictions arising by virtue of them, are intended to be temporary) has effect.

(4B) A Minister of the Crown may by regulations—

(a) repeal any of the following provisions—

(i) section 30A or 57(4) to (15) of the Scotland Act 1998,

(ii) section 80(8) to (8L) or 109A of the Government of Wales Act 2006, or

(iii) section 6A or 24(3) to (15) of the Northern Ireland Act 1998, or

(b) modify any enactment in consequence of any such repeal.

(4C) Until all of the provisions mentioned in subsection (4B)(a) have been repealed, a Minister of the Crown must, after the end of each review period, consider whether it is appropriate—

(a) to repeal each of those provisions so far as it has not been repealed, or

(b) to revoke any regulations made under any of those provisions so far as they have not been revoked.

(4D) In considering whether to exercise the power to make regulations under subsection (4B), a Minister of the Crown must have regard (among other things) to—

(a) the fact that the powers to make regulations conferred by the provisions mentioned in subsection (4B)(a), and any restrictions arising by virtue of them, are intended to be temporary and, where appropriate, replaced with other arrangements, and

(b) any progress which has been made in implementing those other arrangements."

4 Page 8, line 42, leave out "other"

5 Page 8, line 43, after "legislation" insert "not dealt with elsewhere"

6 Page 8, line 43, at end insert—

"(6) In this section—

"arrangement" means any enactment or other arrangement (whether or not legally enforceable);

"review period" means—

(a) the period of three months beginning with the day on which subsection (4C) comes into force, and

(b) after that, each successive period of three months."

Clause 19

LORD CALLANAN

7 Page 15, line 12, at end insert—

"( ) paragraphs 3A, 3B, 19(2)(b), 40(b), 43(2)(c) and (d) and (4) of Schedule 3 (and section 11(4A) and (5) so far as relating to those paragraphs),"

8 Page 15, line 15, at end insert—

"( ) paragraph 29(9), 30A and 31 of Schedule 8 (and section 17(6) so far as relating to those paragraphs),"

9 Page 15, line 18, at end insert—

"(1A) In section 11—

(a) subsection (2) comes into force on the day on which this Act is passed for the purposes of making regulations under section 30A of the Scotland Act 1998,

(b) subsection (3A) comes into force on that day for the purposes of making regulations under section 109A of the Government of Wales Act 2006, and

(c) subsection (3C) comes into force on that day for the purposes of making regulations under section 6A of the Northern Ireland Act 1998.

(1B) In Schedule 3—

(a) paragraph 1(b) comes into force on the day on which this Act is passed for the purposes of making regulations under section 57(4) of the Scotland Act 1998,

(b) paragraph 2 comes into force on that day for the purposes of making regulations under section 80(8) of the Government of Wales Act 2006,

(c) paragraph 3(b) comes into force on that day for the purposes of making regulations under section 24(3) of the Northern Ireland Act 1998,

(d) paragraph 21(2) comes into force on that day for the purposes of making regulations under section 30A of the Scotland Act 1998,

(e) paragraph 21(3) comes into force on that day for the purposes of making regulations under section 57(4) of the Scotland Act 1998,

(f) paragraph 21A comes into force on that day for the purposes of making regulations under section 30A or 57(4) of the Scotland Act 1998,

(g) paragraph 36A comes into force on that day for the purposes of making regulations under section 80(8) or 109A of the Government of Wales Act 2006, and

(h) paragraphs 48A and 48B come into force on that day for the purposes of making regulations under section 6A or 24(3) of the Northern Ireland Act 1998;

and section 11(4) and (5), so far as relating to each of those paragraphs, comes into force on that day for the purposes of making the regulations mentioned above in relation to that paragraph."

10 Page 15, line 19, leave out "The remaining provisions of this Act" and insert "The provisions of this Act, so far as they are not brought into force by subsections (1) to (1B),"

Schedule 2

LORD CALLANAN

11 Page 17, line 29, leave out from "under" to end of line and insert "sub-paragraph (1) above"

12 Page 17, line 30, leave out from "8" to end of line 35

13 Page 17, line 37, leave out "regulations" and insert "provision"

14 Page 17, line 37, leave out from "made" to "unless" and insert "by a devolved authority acting alone in regulations under this Part"

15 Page 17, line 38, leave out "every provision of them" and insert "the provision"

16 Page 18, line 4, leave out paragraphs 3 and 4 and insert—

"3A (1) No provision may be made by the Scottish Ministers acting alone in regulations under this Part so far as the provision—

(a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and

(b) would, when made, be in breach of—

(i) the restriction in section 30A(1) of the Scotland Act 1998 if the provision were made in an Act of the Scottish Parliament, or

(ii) the restriction in section 57(4) of the Act of 1998 if section 57(5)(b) of that Act so far as relating to this Schedule were ignored.

(2) No provision may be made by the Welsh Ministers acting alone in regulations under this Part so far as the provision—

(a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and

(b) would, when made, be in breach of—

(i) the restriction in section 80(8) of the Government of Wales Act 2006 if section 80(8A)(b) of that Act so far as relating to this Schedule were ignored, or

(ii) the restriction in section 109A(1) of that Act if the provision were made in an Act of the National Assembly for Wales.

(3) No provision may be made by a Northern Ireland department acting alone in regulations under this Part so far as the provision—

(a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and

(b) would, when made, be in breach of—

(i) the restriction in section 6A(1) of the Northern Ireland Act 1998 if the provision were made in an Act of the Northern Ireland Assembly, or

(ii) the restriction in section 24(3) of the Act of 1998 if section 24(4)(b) of that Act so far as relating to this Schedule were ignored.

(4) No provision may be made by a devolved authority acting alone in regulations under this Part so far as, when made, the provision is inconsistent with any modification (whether or not in force) which—

(a) is a modification of any retained direct EU legislation or anything which is retained EU law by virtue of section 4,

(b) is made by this Act or a Minister of the Crown under this Act, and

(c) could not be made by the devolved authority by virtue of sub-paragraph (1), (2) or (as the case may be) (3).

(5) For the purposes of sub-paragraphs (1)(b), (2)(b) and (3)(b), sections 30A and 57(4) to (15) of the Scotland Act 1998, sections 80(8) to (8L) and 109A of the Government of Wales Act 2006 and sections 6A and 24(3) to (15) of the Northern Ireland Act 1998, and any regulations made under them and any related provision, are to be assumed to be wholly in force so far as that is not otherwise the case.

(6) References in this paragraph to section 80(8) of the Government of Wales Act 2006 are to be read as references to the new section 80(8) of that Act provided for by paragraph 2 of Schedule 3 to this Act."

17 Page 19, line 5, after "Ministers" insert "acting alone"

18 Page 19, line 9, after "department" insert "acting alone"

19 Page 19, line 19, after "authority" insert "acting alone"

20 Page 19, line 34, after "(b)" insert "and of a devolved authority acting alone or (as the case may be) other person acting alone"

21 Page 20, line 31, after "Ministers" insert "acting alone"

22 Page 20, line 36, after "Ministers" insert "acting alone"

23 Page 20, line 42, after "Ministers" insert "acting alone"

24 Page 21, line 2, after "department" insert "acting alone"

25 Page 21, line 35, after "Advocate" insert "acting alone"

26 Page 22, line 11, after "Ministers" insert "acting alone"

27 Page 22, line 43, after "authority" insert "acting alone"

28 Page 26, line 25, after "taxation" insert "or fees"

29 Page 26, line 28, leave out paragraph (d)

30 Page 26, line 37, leave out sub-paragraph (5)

31 Page 26, line 41, leave out from "under" to "are" and insert "sub-paragraph (1)"

32 Page 27, line 2, leave out "regulations" and insert "provision"

33 Page 27, line 2, leave out from "made" to "unless" and insert "by a devolved authority acting alone in regulations under this Part"

34 Page 27, line 3, leave out "every provision of them" and insert "the provision"

35 Page 27, line 8, leave out paragraphs 23 and 24 and insert—

"23A(1) No provision may be made by the Scottish Ministers acting alone in regulations under this Part so far as the provision—

(a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and

(b) would, when made, be in breach of—

(i) the restriction in section 30A(1) of the Scotland Act 1998 if the provision were made in an Act of the Scottish Parliament, or

(ii) the restriction in section 57(4) of the Act of 1998 if section 57(5)(b) of that Act so far as relating to this Schedule were ignored.

(2) No provision may be made by the Welsh Ministers acting alone in regulations under this Part so far as the provision—

(a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and

(b) would, when made, be in breach of—

(i) the restriction in section 80(8) of the Government of Wales Act 2006 if section 80(8A)(b) of that Act so far as relating to this Schedule were ignored, or

(ii) the restriction in section 109A(1) of that Act if the provision were made in an Act of the National Assembly for Wales.

(3) No provision may be made by a Northern Ireland department acting alone in regulations under this Part so far as the provision—

(a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and

(b) would, when made, be in breach of—

(i) the restriction in section 6A(1) of the Northern Ireland Act 1998 if the provision were made in an Act of the Northern Ireland Assembly, or

(ii) the restriction in section 24(3) of the Act of 1998 if section 24(4)(b) of that Act so far as relating to this Schedule were ignored.

(4) No provision may be made by a devolved authority acting alone in regulations under this Part so far as, when made, the provision is inconsistent with any modification (whether or not in force) which—

(a) is a modification of any retained direct EU legislation or anything which is retained EU law by virtue of section 4,

(b) is made by this Act or a Minister of the Crown under this Act, and

(c) could not be made by the devolved authority by virtue of sub-paragraph (1), (2) or (as the case may be) (3).

(5) For the purposes of sub-paragraphs (1)(b), (2)(b) and (3)(b), sections 30A and 57(4) to (15) of the Scotland Act 1998, sections 80(8) to (8L) and 109A of the Government of Wales Act 2006 and sections 6A and 24(3) to (15) of the Northern Ireland Act 1998, and any regulations made under them and any related provision, are to be assumed to be wholly in force so far as that is not otherwise the case.

(6) References in this paragraph to section 80(8) of the Government of Wales Act 2006 are to be read as references to the new section 80(8) of that Act provided for by paragraph 2 of Schedule 3 to this Act."

36 Page 28, line 2, leave out "without the consent of a Minister of the Crown"

37 Page 28, line 5, at end insert ", unless the regulations are, to that extent, made after consulting with the Secretary of State"

Schedule 3

LORD CALLANAN

38 Page 28, line 29, leave out from "law" to end of line 37 and insert "and the modification is of a description specified in regulations made by a Minister of the Crown.

(5) But subsection (4) does not apply—

(a) so far as the modification would be within the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or

(b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act 2018.

(6) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under subsection (4) unless—

(a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Parliament having made such a decision.

(7) For the purposes of subsection (6) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(8) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (6) must—

(a) provide a copy of the draft to the Scottish Ministers, and

(b) inform the Presiding Officer that a copy has been so provided.

(9) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under subsection (4) including a duty to explain any decision to lay a draft without the consent of the Parliament).

(10) No regulations may be made under subsection (4) after the end of the period of two years beginning with exit day.

(11) Subsection (10) does not affect the continuation in force of regulations made under subsection (4) at or before the end of the period mentioned in subsection (10).

(12) Any regulations under subsection (4) which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to the making, confirming or approving of subordinate legislation after the end of that period.

(13) Subsections (6) to (11) do not apply in relation to regulations which only relate to a revocation of a specification.

(14) The restriction in subsection (4) is in addition to any restriction in section *(Status of retained EU law)* of the European Union (Withdrawal) Act 2018 or elsewhere on the power of a member of the Scottish Government to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.

(15) In this section—

"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers,

and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days.""

39 Page 29, line 6, leave out from "law" to end of line 18 and insert "and the modification is of a description specified in regulations made by a Minister of the Crown.

(8A) But subsection (8) does not apply—

(a) so far as the modification would be within the Assembly's legislative competence if it were included in an Act of the Assembly, or

(b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act 2018.

(8B) No regulations are to be made under subsection (8) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(8C) A Minister of the Crown must not lay a draft as mentioned in subsection (8B) unless—

(a) the Assembly has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Assembly having made such a decision.

(8D) For the purposes of subsection (8C) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(8E) In subsection (8C)—

"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Welsh Ministers,

and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.

(8F) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (8B) must—

(a) provide a copy of the draft to the Welsh Ministers, and

(b) inform the Presiding Officer that a copy has been so provided.

(8G) See also section 157ZA (duty to make explanatory statement about regulations under subsection (8) including a duty to explain any decision to lay a draft without the consent of the Assembly).

(8H) No regulations may be made under subsection (8) after the end of the period of two years beginning with exit day.

(8I) Subsection (8H) does not affect the continuation in force of regulations made under subsection (8) at or before the end of the period mentioned in subsection (8H).

(8J) Any regulations under subsection (8) which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to the making, confirming or approving of subordinate legislation after the end of that period.

(8K) Subsections (8C) to (8I) do not apply in relation to regulations which only relate to a revocation of a specification.

(8L) The restriction in subsection (8) is in addition to any restriction in section *(Status of retained EU law)* of the European Union (Withdrawal) Act 2018 or elsewhere on the power of the Welsh Ministers to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.""

40 Page 29, line 29, leave out from "law" to end of line 44 and insert "and the modification is of a description specified in regulations made by a Minister of the Crown.

(4) But subsection (3) does not apply—

(a) so far as the modification would be within the legislative competence of the Assembly if it were included in an Act of the Assembly, or

(b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act 2018.

(5) A Minister of the Crown must not lay for approval before each House of the Parliament a draft of a statutory instrument containing regulations under subsection (3) unless—

(a) the Assembly has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Assembly having made such a decision.

(6) For the purposes of subsection (5) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(7) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (5) must—

(a) provide a copy of the draft to the relevant Northern Ireland department, and

(b) inform the Presiding Officer that a copy has been so provided.

(8) See also section 96A (duty to make explanatory statement about regulations under subsection (3) including a duty to explain any decision to lay a draft without the consent of the Assembly).

(9) No regulations may be made under subsection (3) after the end of the period of two years beginning with exit day.

(10) Subsection (9) does not affect the continuation in force of regulations made under subsection (3) at or before the end of the period mentioned in subsection (9).

(11) Any regulations under subsection (3) which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to the making, confirming or approving of subordinate legislation after the end of that period.

(12) Subsections (5) to (10) do not apply in relation to regulations which only relate to a revocation of a specification.

(13) Regulations under subsection (3) may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Minister of the Crown making them considers appropriate.

(14) The restriction in subsection (3) is in addition to any restriction in section *(Status of retained EU law)* of the European Union (Withdrawal) Act 2018 or elsewhere on the power of a Minister or Northern Ireland department to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.

(15) In this section—

"the relevant Northern Ireland department" means such Northern Ireland department as the Minister of the Crown concerned considers appropriate;

"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the relevant Northern Ireland department,

and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.""

41 Page 29, line 44, at end insert—

"PART 1A

REPORTS IN CONNECTION WITH RETAINED EU LAW RESTRICTIONS

Reports on progress towards removing retained EU law restrictions

3A (1) After the end of each reporting period, a Minister of the Crown must lay before each House of Parliament a report which—

(a) contains details of any steps which have been taken in the reporting period by Her Majesty's Government (whether or not in conjunction with any of the appropriate authorities) towards implementing any arrangements which are to replace any relevant powers or retained EU law restrictions,

(b) explains how principles—

(i) agreed between Her Majesty's Government and any of the appropriate authorities, and

(ii) relating to implementing any arrangements which are to replace any relevant powers or retained EU law restrictions,

have been taken into account during the reporting period,

(c) specifies any relevant regulations, or regulations under section 11(4B), which have been made in the reporting period,

(d) in relation to any retained EU law restriction which has effect at the end of the reporting period, sets out the Minister's assessment of the progress which still needs to be made before it can be removed,

(e) in relation to any relevant power that has not been repealed before the end of the reporting period, sets out the Minister's assessment of the progress which still needs to be made before it can be repealed, and

(f) contains any other information relating to any relevant powers or retained EU law restrictions, or the arrangements which are to replace them, that the Minister considers appropriate.

(2) The first reporting period is the period of three months beginning with the day on which this Act is passed.

(3) Each successive period of three months after the first reporting period is a reporting period.

(4) A Minister of the Crown must provide a copy of every report laid before Parliament under this section—

(a) to the Scottish Ministers,

(b) to the Welsh Ministers, and

(c) either to the First Minister in Northern Ireland and the deputy First Minister in Northern Ireland or to the relevant Northern Ireland department and its Northern Ireland Minister.

(5) In sub-paragraph (4) "the relevant Northern Ireland department" means such Northern Ireland department as the Minister of the Crown concerned considers appropriate.

(6) This paragraph ceases to apply when no retained EU law restrictions have effect and all the relevant powers have been repealed.

Interpretation

3B In this Part—

"appropriate authority" means—

(a) the Scottish Ministers,

(b) the Welsh Ministers, or

(c) a Northern Ireland devolved authority;

"arrangement" means any enactment or other arrangement (whether or not legally enforceable);

"relevant power" means a power to make regulations conferred by—

(a) section 30A or 57(4) of the Scotland Act 1998,

(b) section 80(8) or 109A of the Government of Wales Act 2006, or

(c) section 6A or 24(3) of the Northern Ireland Act 1998;

"relevant regulations" means regulations made under a relevant power;

"retained EU law restriction" means any restriction which arises by virtue of relevant regulations."

42 Page 31, line 34, leave out from "section" to end of line 35 and insert "30 insert—

"Section 30A	Type C"."

43 Page 32, leave out line 2 and insert—

""Section 57(4)	Type C"."

44 Page 32, line 2, at end insert—

"21A After paragraph 5 of Schedule 7 (procedure for subordinate legislation: special cases) insert—

"6 (1) This paragraph applies where a draft of an instrument containing regulations under section 30A or 57(4) is to be laid before each House of Parliament.

(2) Before the draft is laid, the Minister of the Crown who is to make the instrument—

(a) must make a statement explaining the effect of the instrument, and

(b) in any case where the Parliament has not made a decision to agree a motion consenting to the laying of the draft—

(i) must make a statement explaining why the Minister has decided to lay the draft despite this, and

(ii) must lay before each House of Parliament any statement provided for the purpose of this sub-paragraph to a Minister of the Crown by the Scottish Ministers giving the opinion of the Scottish Ministers as to why the Parliament has not made that decision.

(3) A statement of a Minister of the Crown under sub-paragraph (2) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(4) For the purposes of this paragraph, where a draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.

(5) This paragraph does not apply to a draft of an instrument which only contains regulations under section 30A or 57(4) which only relate to a revocation of a specification."

45 Page 33, line 7, leave out sub-paragraph (7)

46 Page 33, line 20, at end insert—

"36A After section 157 (orders, regulations and directions) insert—

"157ZAExplanatory statements in relation to certain regulations

(1) This section applies where a draft of a statutory instrument containing regulations under section 80(8) or 109A is to be laid before each House of Parliament.

(2) Before the draft is laid, the Minister of the Crown who is to make the instrument—

(a) must make a statement explaining the effect of the instrument, and

(b) in any case where the Assembly has not made a decision to agree a motion consenting to the laying of the draft—

(i) must make a statement explaining why the Minister has decided to lay the draft despite this, and

(ii) must lay before each House of Parliament any statement provided for the purpose of this sub-paragraph to a Minister of the Crown by the Welsh Ministers giving the opinion of the Welsh Ministers as to why the Assembly has not made that decision.

(3) A statement of a Minister of the Crown under subsection (2) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(4) For the purposes of this section, where a draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.

(5) This section does not apply to a draft of an instrument which only contains regulations under section 80(8) or 109A which only relate to a revocation of a specification.""

47 Page 34, line 34, at end insert—

"48A After section 96(4) (orders and regulations) insert—

"(4A) Regulations under section 6A or 24(3)—

(a) shall be made by statutory instrument, and

(b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament."

48B After section 96 (orders and regulations) insert—

"96A Explanatory statements in relation to certain regulations

(1) This section applies where a draft of a statutory instrument containing regulations under section 6A or 24(3) is to be laid before each House of Parliament.

(2) Before the draft is laid, the Minister of the Crown who is to make the instrument—

(a) must make a statement explaining the effect of the instrument, and

(b) in any case where the Assembly has not made a decision to agree a motion consenting to the laying of the draft—

(i) must make a statement explaining why the Minister has decided to lay the draft despite this, and

(ii) must lay before each House of Parliament any statement provided for the purpose of this sub-paragraph to a Minister of the Crown by a relevant Minister giving the opinion of the relevant Minister as to why the Assembly has not made that decision.

(3) A statement of a Minister of the Crown under subsection (2) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(4) For the purposes of this section, where a draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.

(5) In this section "relevant Minister" means the First Minister and the deputy First Minister acting jointly or a Northern Ireland Minister.

(6) This section does not apply to a draft of an instrument which only contains regulations under section 6A or 24(3) which only relate to a revocation of a specification.""

Schedule 7

LORD CALLANAN

48 Page 47, line 37, at end insert—

"Power to repeal provisions relating to retained EU law restrictions

7A A statutory instrument containing regulations under section 11(4B) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

49 Page 53, line 16, at end insert—

"22AA(1) This paragraph applies where—

(a) a Scottish statutory instrument containing regulations under Part 1 or 3 of Schedule 2 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or

(b) a draft of such an instrument,

is to be laid before the Scottish Parliament.

(2) Before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why it is appropriate to create a relevant sub-delegated power.

(3) If the Scottish Ministers fail to make a statement required by sub-paragraph (2) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.

(4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

(5) For the purposes of this paragraph references to creating a relevant sub-delegated power include (among other things) references to—

(a) amending a power to legislate which is exercisable by Scottish statutory instrument by a member of the Scottish Government so that it becomes a relevant sub-delegated power, or

(b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.

(6) In this paragraph "relevant sub-delegated power" means a power to legislate which—

(a) is not exercisable by Scottish statutory instrument, or

(b) is so exercisable by a public authority other than a member of the Scottish Government."

50 Page 53, line 16, at end insert—

"22BA(1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by the Scottish Ministers by Scottish statutory instrument under Part 1 or 3 of Schedule 2 or paragraph 1 of Schedule 4 must—

(a) if the power has been exercised during a relevant year, and

(b) as soon as practicable after the end of the year,

prepare a report on how the power has been exercised during the year.

(2) The person must—

(a) lay the report before the Scottish Parliament, and

(b) once laid—

(i) send a copy of it to the Scottish Ministers, and

(ii) publish it in such manner as the person considers appropriate.

(3) In this paragraph—

"relevant sub-delegated power" has the same meaning as in paragraph 22AA;

"relevant year" means—

(a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and

(b) in any other case, the calendar year."

Schedule 8

LORD CALLANAN

51 Page 60, line 38, leave out "29(4A)" and insert "30A(1)"

52 Page 66, line 43, at end insert—

"30A A consent decision of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly made before the day on which this Act is passed, or the commencement of the 40-day period before the day on which this Act is passed, is as effective for the purposes of—

(a) section 30A(3) or 57(6) of the Scotland Act 1998,

(b) section 80(8C) or 109A(4) of the Government of Wales Act 2006, or

(c) section 6A(3) or 24(5) of the Northern Ireland Act 1998,

as a consent decision made, or (as the case may be) the commencement of that period, on or after that day."

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