

EUROPEAN UNION (WITHDRAWAL AGREEMENT) BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the European Union (Withdrawal Agreement) Bill (Bill 8) as brought from the House of Lords on 21 January 2020.
- 2 These Explanatory Notes have been prepared by the Department for Exiting the European Union in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 16, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendment 1 was tabled by Lord Oates, Lord McNicol of West Kilbride, Lord Kerslake and Lord Warner, and was opposed by the Government.
- 6 Lords Amendment 2 was tabled by Lord Beith, Baroness Taylor of Bolton, Lord Anderson of Ipswich and Lord Pannick, and was opposed by the Government.
- 7 Lords Amendment 3 was tabled by Lord Mackay of Clashfern, and was opposed by the Government.
- 8 Lords Amendment 4 was tabled by Lord Dubs, the Lord Bishop of Durham, Baroness Hamwee and Lord Kerr of Kinlochard, and was opposed by the Government.
- 9 Lords Amendment 5 was tabled by Baroness Hayter of Kentish Town, Lord Bruce of Bennachie, Lord Thomas of Cwmgiedd and Baroness Finlay of Llandaff, and was opposed by the Government.

- 10 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords Amendments

Lords Amendment (New clause: Rights related to residence) instead of Clause 7: Rights related to residence: application deadline and temporary protection

Lords Amendment 1*

- 11 Lords Amendment 1* would remove Clause 7 of the Bill and replace it with a new clause. Subsection (1) of the new clause would require the Secretary of State to make regulations implementing Article 18(4) of the Withdrawal Agreement, Article 17(4) of the EEA EFTA separation agreement and Article 16(4) of the Swiss citizens' rights agreement. These Articles cover the rights of eligible citizens to receive a residence document if the host State has not required individuals to apply for a residence status as a condition of legal residence.
- 12 Subsection (2) would provide that the regulations must apply uniformly across both a) those who are within the personal scope of the Agreements having a right to reside in the UK and b) those eligible for indefinite leave to enter or remain, or limited leave to enter or remain, by virtue of residence scheme immigration rules. Residence scheme immigration rules is defined in Clause 17.
- 13 The new clause would include financial implications as regulations must be made under subsection 1 and would be required to make '*provision for a physical document providing proof of Residence.*' This would generate a significant level of unfunded expenditure. Indicative cost estimates for issuing physical residence documents are in excess of £36m.

Lords Amendments to Clause 26: Interpretation of retained EU law and relevant separation agreement law

Lords Amendment 2*

- 14 Lords Amendment 2* would remove the provision in the Bill which provides that a relevant court or relevant tribunal is not bound by retained EU case law as may be provided for in regulations made under subsection (5A).

Lords Amendment 3*

- 15 Lords Amendment 3* would have the effect of removing subsections (5A) to (5D) (which includes the power to make regulations referred to in the amendment immediately above)

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and in their place substitutes a new subsection (5A). New subsection (5A) would provide that any court or tribunal in the UK, other than the Supreme Court or High Court of Justiciary, where it considers that there should be a departure from retained EU case law which is relevant to an issue before it must (i) set out the reasons in its judgment for that opinion and (ii) refer the question to the Supreme Court or High Court of Justiciary.

- 16 If the Supreme Court or High Court of Justiciary gives leave for the case to proceed, it must decide whether to depart from EU case law on the issue before it.

Lords Amendment to Clause 37: Arrangements with EU about unaccompanied children seeking asylum

Lords Amendment 4*

- 17 Lords Amendment 4* would remove Clause 37 from the Bill.
- 18 This would reinstate the original Section 17 of the European Union (Withdrawal) Act 2018, preserving an obligation for the Government to negotiate an agreement with the EU to allow an unaccompanied child who has made an application for ‘international protection’ in the UK to join a relative in a member state and vice versa.

Lords Amendment to Clause 38: Parliamentary sovereignty

Lords Amendment 5*

- 19 Lords Amendment 5* would alter the statement on Parliamentary sovereignty in Clause 38, in recognition of the principle that Parliament should act in accordance with the Sewel Convention when exercising its functions.
- 20 The Sewel Convention states that the UK Parliament will not normally legislate in areas of devolved competence without the consent of the relevant devolved legislatures. This principle is already set out in the Scotland Act 1998 and Government of Wales Act 2006. The recognition of the Sewel principles in these Acts has been ruled to be non-justiciable by the Supreme Court.

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