

EUROPEAN UNION (FUTURE RELATIONSHIP) BILL

MEMORANDUM FROM THE CABINET OFFICE TO THE DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

A. Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the European Union (Future Relationship) Bill (“the Bill”). The Bill was introduced in the House of Commons on 30 December 2020.
2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.
3. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. Purpose and effect of the Bill

4. The people of the United Kingdom and Gibraltar decided by referendum on 23 June 2016 to leave the European Union (“EU”). The process for leaving the EU was initiated when Parliament passed the European Union (Notification of Withdrawal) Act 2017. This gave the Prime Minister the power to notify the European Council of the UK’s intention to withdraw from the EU under Article 50(2) of the Treaty on the European Union. This notification was given on 29 March 2017.
5. The terms of the UK’s departure from the EU were agreed and set out in a Withdrawal Agreement, which aims to ensure an orderly withdrawal of the UK from the EU, and covers citizens’ rights, the financial settlement, a transition period, protocols on Ireland/Northern Ireland, Cyprus and Gibraltar, governance and other separation issues. It was accompanied by a non-binding Political Declaration setting out a framework for the future relationship between the UK and the EU. Both were agreed by European Leaders at the European Council on 17 October 2019. On 19 October 2019, the Government laid the Withdrawal Agreement and the Political Declaration before Parliament.
6. On 19 December 2019, the European Union (Withdrawal Agreement) Bill was introduced in Parliament. Its purpose was to implement the Withdrawal Agreement, for it to have domestic legal effect and to enable the Government to ratify the Withdrawal Agreement, as well as to allow the Government to give effect to the EEA EFTA Separation Agreement between the UK and Norway, Iceland and Liechtenstein, and the Swiss Citizens’ Rights Agreement between the UK and Switzerland.
7. The Bill received Royal Assent on 23 January 2020, enabling the Government and the EU to complete their respective ratification and notification procedures prior to the Withdrawal Agreement coming into force at 11.00pm (UK time) on 31 January 2020. At this point, the UK left the EU and a time-limited transition period began, which will last until 11.00pm (UK time) on 31 December 2020, during which the UK and the EU have been negotiating to establish their future relationship.

8. The EU-UK Trade and Cooperation Agreement (TCA), the Nuclear Cooperation Agreement (NCA) and the Agreement on Security Procedures for Exchanging and Protecting Classified Information (SOIA) (together “the Agreements”) were agreed on 24 December. The Bill is required to implement those parts of the Agreements that cannot be implemented administratively, or by existing delegated powers in other Acts. The Bill will deliver the changes to domestic law required to implement obligations that become immediately active under the Agreements, and provide the mechanism to implement any other obligations before they come into force. This is to ensure that the UK can ratify the Agreements.
9. Parts 1 & 2 of the Bill make provision for detailed implementation of the Agreements. Part 1 relates to security matters, including the processing and sharing of information. Part 2 makes provision in relation to other subject areas, namely: market surveillance, use of relevant international standards, customs and tax, transport, social security, personal data, privileges and immunities and energy. Part 2 also includes provision for privileges and immunities that are likely to be granted under the Establishment Agreement and under the terms and conditions of the UK’s membership of the European Joint Undertaking for ITER and the Development of Fusion for Energy.
10. Part 3 of the Bill makes provision for general implementation. This includes a provision requiring existing domestic law to be modified to give effect to the Agreements, but only so far as necessary to implement the Agreements (clause 29). The Bill also provides a power to make regulations to make further provision to give effect to the Agreement(s) (clause 31).
11. Part 4 of the Bill sets out standard supplementary and final provision.

C. General commentary on the delegated powers in the Bill

12. The Bill and the powers in it have been designed both to implement the Agreements ready for the end of the transition period and to put the powers and frameworks in place to deal with future matters arising in relation to the Agreements as part of our ongoing relationship with the EU.

Powers and approach relating to immediately active obligations in the Agreements

13. Part 3 of the Bill makes provision for general implementation of the Agreements as follows, where more detailed implementation of the Agreements has not been made on the face of the Bill in Parts 1 and 2 :
 - a. Clause 29 provides that domestic law is to have effect with any modifications that are required for implementation of the Agreements. Clause 29 only applies to provisions of the Agreements which are not implemented by another mechanism and is designed to ensure that all aspects of the Agreements are implemented to the extent necessary to comply with international obligations. It does not pick up future post-ratification modifications to the Agreements which would have to be implemented by bringing forward new legislation, where domestic legal changes are required.
 - b. Clause 29 provides a power to implement the Agreements in further detail in secondary legislation. The intention is that this power can be used to implement parts of the Agreements before 31 December where appropriate, with implementation for other obligations in slower time.
14. Relying on these general implementation provisions, alongside the provisions in Part 1 and 2

of the Bill, will ensure that the Agreements are implemented in domestic law such that the UK can ratify the Agreements.

15. While it has been vital for the Government to continue negotiating to secure the best possible deal for the UK, this has reduced the amount of time available to implement the Agreements domestically. The provisions on the face of the Bill set out certain specific amendments to domestic law which are required to implement obligations under the Agreements, in as much detail as possible. Where that has not been possible, given ongoing negotiations, the Government intends to rely on appropriately constrained powers, with a range of procedures applied. Every effort has been made to balance the need to implement the Agreements reached with the EU in good faith with the need to afford Parliament appropriate opportunity to scrutinise the Government's legislative approach.
16. There are also some more minor powers that may need to be used ahead of the coming into force of the Agreements. For example there is clause 32 which is a power to deal with certain matters that could arise from the agreements being provisionally applied ahead of full ratification.

Powers relating to future matters relating to the Agreements

17. In terms of the powers to deal with matters that might arise in the future, these are matters that by their nature cannot be legislated for ahead of time, so require the use of delegated powers to avoid the need for further Bills.
18. Some of these powers to deal with future matters are quite discrete powers designed to deal with domestic changes - like the ability to update definitions of the "criminal records database" in clause 6(3) so that provisions on sharing criminal records information can be made to still operate properly if there are domestic changes to how these records are stored. Others like the powers relating to the functioning of the Agreements in clause 33 would ensure that we can act quickly to protect UK interests in the event that we needed to take safeguard measures, or to suspend parts of the Agreements in response to a given trigger including non-compliance in the context of a dispute. Others like the implementation power at clause 31 are designed to implement decisions agreed between the UK and the EU such as in the Partnership Council under Article INST.1 of the TCA.

Other secondary legislation making powers

19. In addition to powers to implement the Agreements, the Bill also includes two powers that could potentially be used to implement other agreements with the EU, or with EU Member States.
20. Clause 27 amends a power in the International Organisations Act 1968 to enable Orders to be made to extend privileges and immunities to EU and Euratom organisations and bodies despite the UK no longer being a member of these organisations. Some of the relevant privileges and immunities that could be implemented under this power might be agreed through agreements separate from the Agreements.
21. Similarly, the power to amend the PNR regulations for sea and rail travel in paragraph 18 of Schedule 2 enables the implementation of potential changes to the Agreements but also enables the implementation of bilateral agreements with EU Member States if there is a new agreement that extends the sharing of PNR data to sea and rail operators.

22. The Bill also contains standard consequential amendment, transitional provisions and commencement powers.

Sifting procedure

23. A sifting procedure has been introduced in paragraph 8 of Schedule 5. This will apply for 2 years after the end of the Transition Period to regulations proposed to be made under the general implementation power at clause 31 by the negative procedure. This procedure largely corresponds to the sifting procedure under the European Union (Withdrawal) Act 2018. The Government recognises the significant role Parliament has played in scrutinising instruments made under that Act and is committed to ensuring the appropriate scrutiny of any secondary legislation made under the delegated powers in this Bill.
24. Under this procedure, the negative instruments must be laid in draft alongside a memorandum from the relevant Minister stating that in their view negative is the appropriate procedure and giving reasons for that opinion. A Minister will not then be able to make the instrument until either the relevant committees of the Lords and the Commons make recommendations on the appropriate procedure or when the time limit for the committees making recommendations has expired. Where either committee recommends that the instrument should follow the affirmative procedure the Minister must either follow that recommendation or make a statement as to why they don't agree with the committee's recommendations.
25. In very urgent cases, where it is important for regulations to be made quickly, there is an exemption from following the sifting procedure contained in paragraph 14(8) of Schedule 5. Where a Minister relies on this exemption they are required to make a declaration that this was necessary by reason of urgency.

Urgency procedure

26. Paragraph 14 of Schedule 5 provides an urgency procedure which allows regulations that would normally have to be made via the draft affirmative procedure to be made by made affirmative instead in very urgent cases. Where a Minister makes use of this exception they are required to make a declaration that by reason of urgency it is necessary to follow this procedure.
27. This procedure only applies to regulations made under the general implementation power in clause 31, the powers relating to the start of agreements in clause 32 and powers relating to the functioning of agreements in clause 33 as these are the powers covering areas where it may be necessary to move quickly to either ensure the UK meets its international obligations or to protect the UK's interests.

Devolved administrations and powers

28. All the major powers that intersect with areas of devolved competence have been conferred on the devolved administrations to allow them to exercise those powers in areas of devolved competence (as defined in paragraphs 24 to 26 of Schedule 5). The majority of these powers have been conferred as concurrent powers meaning that they can be used either by a Minister of the Crown or the relevant devolved authority in devolved areas, or both acting jointly, to give the flexibility to ensure that the most efficient and appropriate approach to implementation can be taken in every situation. This will ensure we meet our international obligations by the end of the transition period. We will not normally make regulations under these powers in devolved areas without the agreement of the relevant devolved authority.

Further detail about the powers provided for in the Bill

29. Part 1 of Schedule 5 provides for the parliamentary procedure applicable to specific powers in the Bill and, where relevant, provides for equivalent procedures to apply in the devolved legislatures and for joint procedures to be available.
30. Part 2 of Schedule 5 provides that the devolved administrations can only exercise the relevant powers in so far as they are in devolved competence (and defines devolved competence for that purpose).
31. Part 3 of Schedule 5 makes general provision in respect of the powers in the Bill this includes:
- a. The manner in which powers in the Bill are to be exercisable (paragraph 27);
 - b. The scope of powers (paragraph 28) and their relationship with other powers (paragraph 29);
 - c. The anticipatory exercise of powers (paragraph 30);
 - d. The scope of the appointed day power (paragraph 31);
 - e. The disapplication of certain review provisions (paragraph 32);
 - f. The treatment of instruments made under this Bill that would otherwise constitute hybrid instruments (paragraph 33);
 - g. Procedures on re-exercising powers in this Bill (paragraph 34) or on combining instruments under this Bill that would normally be subject to different parliamentary procedures (paragraph 35).

Direction making powers

32. For completeness it is worth mentioning that as well as secondary legislation making powers the Bill also contains two direction making powers - one in clause 6(1) to set a “designated UK authority” for the purposes of certain matters to do with criminal records and one in paragraphs 2 and 4 of Schedule 2 to designate a “designated independent authority” for the purposes of the PNR Regulations. Both of these powers are discussed in the detailed analysis below.

D. Summary of delegated powers in the Bill

	Clause	Power Conferred	Purpose	Parliamentary Procedure
Part 1				
1.	Clause 6(1) Interpretation of the criminal records provisions	On the Secretary of State	Power to designate a UK authority responsible for requesting and receiving criminal records from, and providing criminal records to, authorities in Member States.	None

2.	Clause 6(3) Interpretation of the criminal records provisions	On the “appropriate national authority”. These are: Secretary of State for England and Wales, Scottish Ministers for Scotland and Department for Justice in Northern Ireland.	Power to amend the meaning of “criminal records database” through regulations.	Negative
Part 2				
3.	Clause 21 Powers to make regulations about movement of goods	The Commissioners for Her Majesty’s Revenue and Customs	Power to make regulations for the purpose of monitoring or controlling the movement of goods on the grounds of public health or public safety, national security or the environment. The Commissioners may also make regulations that implement international obligations.	Draft affirmative where a statutory instrument amends, revokes or repeals an Act of Parliament, an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation. Otherwise negative..
4.	Clause 22(7) Powers to make regulations about the relevant time for the Protocol in the UK-EU Partnership Agreement to have effect	The Commissioners for Her Majesty’s Revenue and Customs	Power to enable the UK to implement changes made to the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties through decisions or recommendations adopted by the Specialised Committee.	Draft affirmative (commons only)
5.	Clause 27 EU and Euratom organisations and bodies: privileges and immunities	On Her Majesty by Order in Council	Power to make an Order in Council, conferring Privileges and Immunities on the EU, Euratom, and related organisations and bodies.	Draft affirmative
Part 3				
6.	Clause 31 Implementation power	On a “relevant national authority” - a Minister of the Crown, a Devolved Authority or the two acting jointly.	Power to make regulations to implement the Agreements, or to deal with matters arising from the Agreements.	Draft affirmative procedure required where a statutory instrument is made before IP completion day, and/or where it

				<p>amends revokes or repeals primary legislation or retained direct principal EU law, or creates a power to legislate. Otherwise negative procedure can be used.</p> <p>For two years after IP completion day a sifting procedure applies to instruments that ministers propose to make under the negative procedure.</p> <p>Urgency procedure available.</p>
7.	Clause 32 Powers relating to the start of agreements	On a “relevant national authority” - a Minister of the Crown, a Devolved Authority or the two acting jointly.	Power to deal with certain matters relating to provisional application, including any gaps between the end of the IP and the beginning of provisional application or coming into force of all or part of the agreement, and the ability to terminate or suspend the effect of implementing provisions in the Bill in the case of non-ratification or other breakdown of provisional application, or resume effect of such provisions.	Draft affirmative procedure where a statutory instrument is made before IP completion day, and/or where it amends revokes or repeals primary legislation or retained direct principal EU law otherwise the negative procedure applies. Urgency procedure available.
8.	Clause 33 Powers relating to the functioning of agreements	On a “relevant national authority” - a Minister of the Crown, a Devolved Authority or the two acting jointly.	Power to make regulations that suspend, resume, or terminate aspects of the domestic implementation of the future relationship agreements, implement safeguard measures, and to implement agreed resolutions of any dispute.	Draft affirmative procedure where a statutory instrument amends, revokes or repeals primary legislation or retained direct principal EU law, otherwise the negative procedure applies. Urgency procedure available.
Part 4				

9.	Clause 39 Consequential and transition provision etc.	On a Minister of the Crown	To make such consequential provision and the other to make such transitional, transitory or saving provision as is appropriate in connection with the coming into force of any of the provisions of the Bill.	Negative procedure for the consequential power; no procedure in the case of the transitional, transitory and savings power
10.	Clause 40 Commencement	On a Minister of the Crown	To make regulations to bring into force those provisions not automatically commencing on Royal Assent.	No procedure
Schedules				
11.	Schedule 2, Part 1, paragraph 3(5)	On the Secretary of State	Power to amend by regulations the designation of a different authority as the Passenger Information Unit (PIU).	Negative
12.	Schedule 2, Part 1, paragraph 4	On the Secretary of State	To designate a person or body, as the independent authority in relation to the PIU.	None
13.	Schedule 2, Part 3, paragraph 18	On the Secretary of State	Power to, by regulations, implement a new agreement or to deal with matters arising out of, or relating to, an agreement concerning Passenger Name Records (PNR) Regulations for sea and rail travel.	Draft affirmative

E. Clause by clause analysis of delegated powers in the Bill

Clause 6(1): Interpretation of the criminal records provisions

Power conferred on: Secretary of State

Power exercised by: Direction

Henry VIII clause: No

Parliamentary Procedure: None

Context and Purpose

33. Clause 6(1) provides that the “designated UK authority” is such a person (including a body) as designated by the Secretary of State for the purposes of the criminal records provisions (as

defined by that clause). The designated UK authority will be responsible for requesting and receiving criminal records from, and providing criminal records to, the central authorities of Member States under the criminal records provisions.

Justification for taking the power

34. This direction-making power enables the Secretary of State to designate an appropriate person or body to carry out the functions of the designated UK authority under the criminal records provisions. It will also afford the appropriate degree of flexibility to amend the designation of the designated UK authority in the future in light of changing circumstances.

Justification for the procedure

35. The designated UK authority's functions, powers and duties are prescribed in the criminal record provisions. Therefore, the Department considers that this power need not be subject to any Parliamentary procedure, as the designation of the appropriate person or body as the designated independent authority is an administrative matter for the executive.

Clause 6(3): Interpretation of the criminal records provisions

Power conferred on: Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland

Power exercised by: Regulations made by Statutory Instrument¹

Henry VIII clause: Yes

Parliamentary Procedure: Negative procedure

Context and Purpose

36. Clause 6(1) defines the term “criminal records database” for the purposes of the criminal records provisions (as defined by that clause) by reference to the databases used in England and Wales, Scotland and Northern Ireland to record criminal convictions. Subsection (3) of that clause confers a power on the appropriate national authority to amend the meaning of that term. The appropriate national authority is defined by subsection (4) of that clause as the Secretary of State in relation to England and Wales, the Scottish Ministers in relation to Scotland and the Department of Justice in Northern Ireland in relation to Northern Ireland.

Justification for taking the power

37. A regulation-making power will afford the appropriate degree of flexibility to amend the definition of the term “criminal records database”, in the event that any changes are made to

¹ Instruments will be made as Scottish Statutory Instruments where made by Scottish Ministers and as Statutory Rules where made by a Northern Ireland Department in line with the devolved administrations normal arrangements for making secondary legislation.

the databases referenced in clause 6(1) to ensure that the criminal record provisions continue to operate effectively.

Justification for the procedure

38. The power is intended to ensure that the criminal record provisions remain effective if any organisational or technical changes are required that result in a change to the databases in which this data is stored. Any regulations made under the proposed power would not have a material impact on the substance of the criminal record provisions, and the amendment of the meaning of the term is unlikely to be controversial. Therefore, the Department considers that the negative procedure affords an appropriate level of parliamentary scrutiny.

Clause 21: Powers to make regulations about movement of goods

Power conferred on: The Commissioners for Her Majesty's Revenue and Customs

Power exercised by: Regulations made by Statutory Instrument

Henry VIII: Yes

Parliamentary Procedure: Draft affirmative procedure where a statutory instrument amends, revokes or repeals an Act of Parliament, an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation. Otherwise the negative procedure applies.

Context and Purpose

39. The clause confers powers on the Commissioners for Her Majesty's Revenue and Customs (HMRC) to make regulations about goods for the following purposes:
- a. monitoring, or controlling, the movement of goods that pose, or might pose, a risk to public health or public safety, national security, or the environment (including the health of animals or plants).
 - b. implementing any international obligation of the United Kingdom relating to the movement of goods.
40. The UK's customs rules consist of duty and non-duty elements. In preparation for the UK leaving the EU, customs matters relating to customs duty have already been legislated for in the Taxation (Cross-border Trade) Act 2018 and secondary legislation made under that Act. Customs matters that do not relate to customs duty are not within the scope of the Act but are integral to maintaining a secure border and therefore protecting citizens and businesses. Following the UK's exit from the EU, legislation relating to these non-duty customs matters will be governed by retained EU law.
41. In the absence of this Bill the only power available to make changes to the law on non-duty customs matters would be the power in section 8 of the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law. This power may only be used to correct deficiencies in retained EU law, and ceases to be available two years after IP completion day.
42. The TCA contains a commitment by the UK that its customs regime will remain consistent

with international instruments and standards applicable in the area of customs and trade. These standards include the SAFE Framework of Standards set by the World Customs Organization which sets baseline international standards for securing and facilitating global trade and underpins retained EU law relating to customs safety and security declarations and risk analysis. The SAFE Framework is dynamic, with the next periodic review cycle due to complete in 2021. Any changes that are required to non-duty customs legislation that arise from changes to the Framework would not be within the scope of the deficiency power in the European Union (Withdrawal) Act 2018.

43. The TCA also commits the UK and the EU to mutual recognition of their respective Authorised Economic Operator for Safety and Security (“AEO-S”) programs, which requires both parties to maintain compatible legislation on AEO-S. This legislation operates by granting exemptions from some of the safety and security declaration requirements mentioned above.
44. This clause (which inserts new sections 166A to 166C into the Customs and Excise Management Act 1979) therefore provides the Commissioners for HMRC with powers to make any resulting changes to non-duty customs legislation required to maintain consistency with the SAFE Framework or any other international agreements relating to the movement of goods, and therefore TCA obligations, and includes power to disapply requirements of that legislation in relation to AEO-S.

Justification for taking the power

45. The power ensures that HMRC has the capacity to discharge the UK’s obligations under the TCA to comply with relevant international arrangements and maintain a fully functioning customs regime in the fields of safety and security, including AEO-S. Taking a power to provide for the regime is required because the precise detail of the regime cannot be known until such time as those international arrangements are themselves updated.
46. It is anticipated that there will need to be frequent changes to adapt rules and processes to future developments in these arrangements. It is also possible that changes in the level of risk to safety and security, or ways in which trader behavior changes and requires a corresponding means of monitoring and control may require changes to legislation in this area.
47. For example, in 2010, there were a number of significant changes made in response to an incident where improvised explosive devices were concealed in a shipment to the US from Yemen, via the EU. This led to significant changes being made to the legislation governing the process for the provision of information prior to loading.
48. The rules and requirements relating to movement of goods require a significant level of technical and administrative detail, much of which is operationally focused or deals with the processes to be applied by HMRC or Border Force. Where there are changes to requirements under international arrangements and modifications to UK laws are required, it would not be appropriate or proportionate to set out the detail of the changes in new primary legislation. This type of technical, administrative or operational detail is most appropriately provided in secondary legislation or by way of public notice. A public notice is helpful for setting out supplementary detail that is purely administrative in nature and/or that will need to be regularly

updated or amended.

49. It will be necessary to amend primary legislation because much of the administrative and enforcement provision that will apply to these customs matters is contained in primary legislation (principally the Customs and Excise Management Act 1979) and therefore it will be necessary to update this when new substantive provision is required.
50. The power is however constrained by the list of restrictions at new sections 166C(4) and (5), which set out the things that the power may not do and the limits on what may be done in areas of devolved competence.

Justification for the procedure

51. Where the power at new section 166A is used to amend, repeal or revoke primary legislation, the draft affirmative procedure will apply. Otherwise, where the power at new section 166A is used, the negative resolution procedure will apply. This is because the modifications to secondary legislation or retained EU law that are anticipated will largely consist of procedural or technical changes required to allow customs procedures relating to the movement of goods to be updated in line with new international standards. The negative resolution procedure applies to technical modifications to secondary legislation or retained EU law for this narrow purpose. However, where such modifications are required to Acts of Parliament or Acts of the devolved legislatures (subject to the restriction at section 166C(5)), the draft affirmative procedure applies, to provide for appropriate scrutiny of the proposed legislation.

Clause 22(7) Powers to make regulations about the relevant time for the Protocol in the UK-EU Partnership Agreement to have effect

Power conferred on: The Commissioners for Her Majesty's Revenue and Customs

Power exercised by: Regulations made by Statutory Instrument

Henry VIII: No

Parliamentary Procedure: Draft affirmative procedure (approved by resolution of the House of Commons)

Context and Purpose

52. The context of this matter is the Protocol on administrative co-operation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to various taxes and duties contained in the TCA ("the Protocol"). The Protocol commits parties to co-operate and share information for the purposes of ensuring trader compliance with VAT legislation. It also commits the UK and EU Member State authorities to give assistance to each other in recovering debts relating to taxes and duties, by collecting claims referred from another country as if they were domestic claims. It is intended that this is going to be made part of domestic law as it stands on 1 January 2021. This will be by way of clause 22 of the Bill.
53. Clause 22(7) confers powers on the Commissioners for Her Majesty's Revenue and Customs

(HMRC) to make regulations which change the relevant date for the Protocol to have effect in United Kingdom law.

54. This will allow for future amendments to the Protocol to be implemented in domestic law without the need for further primary legislation.

Justification for taking the power

55. The power ensures that HMRC has the capacity to meet its obligations in the TCA to comply with relevant international arrangements. In particular, it ensures that we can continue to make any changes required to the Protocol so that we can continue to combat fraud in the field of VAT and continue to receive references from EU Members States requesting us to collect their debts arising from taxes and duties.
56. It is anticipated that there will need to be some changes to adapt rules and processes to future developments in these arrangements. It is also possible that we may have to adapt the Protocol if there are any significant challenges to its operation in the future.
57. For instance, there may be changes under Article 39 of the Protocol, as it provides for detailed rules and standard forms to be agreed for a range of purposes.

Justification for the procedure

58. Where the power at clause 22(7) is used to change the relevant date for the effect of the protocol in domestic law, the draft affirmative procedure will apply. This will provide for appropriate scrutiny by the House of Commons of the changes to domestic law following a change in the Protocol.

Clause 27: EU and Euratom organisations and bodies: privileges and immunities

Power conferred on: Her Majesty in Council (and Scottish Ministers² in respect of matters within devolved competence)

Power exercised by: Order in Council

Henry VIII clause: No

Parliamentary Procedure: Draft affirmative

Context and Purpose

59. The provision amends an existing delegated power in the International Organisations Act 1968 (IOA) (section 4B) to provide the power to confer privileges and immunities (P&Is) on the EU, Euratom, and related bodies and organisations, where the UK has obligations towards them by virtue of international agreements to which the UK (or HMG) is a party. Section 4B already

² Section 5 of The International Organisations Act 2005 (“the 2005 Act”) inserted section 4B into the International Organisations Act 1968, section 10 of the 2005 Act provided that section 5 was to be treated as a pre-commencement enactment for the purposes of the Scotland Act 1998. This means that the power is treated as falling under the section 53 Scotland Act 1998 provisions on transfer of functions.

provides the power to grant P&Is to certain EU bodies but needs to be amended in order to catch a wider range of entities.

60. The amended power will enable an Order in Council to be made by a Minister of the Crown (or Scottish Ministers in relation to matters within devolved competence) setting out the P&Is conferred on the organisation or body in question, and their staff, officers, members of their families who form part of their households, and other connected persons. This is consistent with how section 4B currently operates.

Justification for taking the power

61. The current powers under the IOA are not sufficient to confer P&Is on organisations of which the UK is not a member and only provides for the power to confer P&Is on certain EU bodies. The UK has agreed, or is in the process of agreeing, to grant P&Is to three specific entities as part of its future relationship with the EU and Euratom.
62. As part of TCA negotiations, the UK has reached an agreement with the EU and Euratom to participate in the Euratom Research and Training programme, and as a member of the Fusion for Energy ('F4E') which continues UK participation in the ITER project ('ITER'), subject to the adoption of the EU regulations establishing these programmes and the draft Protocol by the Specialised Committee on Participation in Union Programmes. As a condition of membership of F4E, the UK will need to grant certain P&Is to F4E and ITER. Such P&Is were originally agreed by all Euratom members in 2007 and their application under the TCA maintains UK practice.
63. The UK is also in discussions with the EU on the long-term P&Is of their Delegation to the UK. The clause will enable these P&Is to be granted to the EU Delegation in domestic law in order to implement the Establishment Agreement that is reached with the EU.
64. The UK may also be required to grant P&Is to other entities related to the EU or Euratom, as well as to the EU and Euratom themselves, where an agreement is reached in the future. The power is therefore necessary in order to enable the UK to implement its international obligations.
65. The power is limited to the EU, Euratom, and EU or Euratom related organisations and bodies where the UK has obligations towards them by virtue of agreements to which the UK (or HMG) is a party, so goes no wider than is necessary.
66. The power can be used to make consequential changes, including to retained EU law. This is needed given the potential overlap between retained EU law (which already confers some P&Is on the EU) and any order made under section 4B. This will ensure that the domestic statute book remains coherent.

Justification for the procedure

67. The power is subject to a high level of parliamentary scrutiny, requiring debates in both Houses, and also needs to be approved by the Privy Council. The amendments to the section 4B power made by this Bill do not make any changes to the scrutiny arrangements already in place in the

IOA and the procedure for orders made under section 4B is consistent with the procedure for other orders under the IOA.

Clause 31: Implementation power

Power conferred on: a Minister of the Crown, or a devolved authority, or a Minister of the Crown acting jointly with one or more devolved authorities

Power exercised by: Regulations made by Statutory Instrument³

Henry VIII clause: Yes

Parliamentary Procedure: Draft affirmative (before the end of the transition period), with the possibility of made affirmative in urgent cases. After that, where certain triggers are met, draft affirmative; otherwise, negative procedure. For two years following IP completion day, additional scrutiny requirements apply if a Minister of the Crown or a Welsh Minister decides a negative procedure is most appropriate for the instrument in question.

Context and Purpose

68. This clause ensures that the Agreements can be fully and effectively implemented in line with the UK's obligations under those Agreements. It does so by granting a power to make appropriate regulations to implement the Agreements or to deal with matters arising from or related to the Agreements. This power will be used to achieve further detailed implementation of the agreements before the end of the transition period and beyond. For example it will be used to achieve detailed implementation of provisions of the TCA which regulate drivers' hours and the use of tachographs in freight vehicles. It can also be used (for example) to make any amendments to cross-references to the Agreements, where the numbering or references within those Agreements has changed following the process of final legal revision.
69. It will also be used to implement obligations under the Agreements that apply after the end of the transition period. For example, the TCA establishes a framework through which arrangements on the recognition of professional qualifications, such as mutual recognition agreements (MRAs), can be agreed. The power will be used to implement such arrangements where necessary.
70. The power can also be used to implement measures referred to in the horizontal governance provisions or in other parts of the Agreements. By way of example this power may be used to give effect in domestic law to the decisions made by the Partnership Council or Specialised Committees or where the Partnership Council adopts a decision to amend the Agreements.

Justification for taking the power

³ Instruments will be made as Scottish Statutory Instruments where made by Scottish Ministers and as Statutory Rules where made by a Northern Ireland Department in line with the devolved administrations normal arrangements for making secondary legislation.

71. The power is required for the following key reasons:

- a. Instantly active obligations: to ensure the legislation is in place before the end of the TP we have drafted the Bill in the most efficient and effective way. This power is necessary to ensure the UK can implement its instantly active international obligations, as set out in the Agreements, as well as to ensure that the UK is not in breach of its obligations.
- b. Future obligations: the power is necessary to implement obligations that arise after the end of transition period. There may also be certain arrangements or agreements envisaged in the Agreements, that are not yet known or sufficiently developed at the end of the implementation period. This power will enable their implementation. For example, the power will be used to implement the competition cooperation agreement which is envisaged in the competition chapter in the TCA.
- c. Governance: it will also ensure that relevant decisions taken at an international level by the UK and EU, in the forums that form part of the institutional framework of the Agreements, can be implemented domestically where necessary. These decisions could concern any aspect of cooperation, and it is therefore important that the power is sufficiently broad.
- d. Detailed legislation: whilst more specific changes related to some of these obligations are made elsewhere in the Bill, including all the necessary detail for all obligations on the face of the Bill would not be efficient in all cases. For example, this power will implement the detailed arrangements under the energy part of the TCA, to ensure operators and regulators can facilitate the agreed new trading arrangements. It is more appropriate to set out the details of these arrangements in secondary legislation.

Justification for the procedure

72. There are effectively three categories of procedure provided for. The first concerns any regulations made under this power, before IP completion day, where the draft affirmative procedure applies but the made affirmative procedure can be followed instead under the urgency procedure. This is linked to the short timeframes available, and ensures that regulations can be effectively implemented within the necessary time period. It also ensures that Parliament has the opportunity to scrutinise these regulations.

73. The second concerns regulations made within two years of the end of the TP. There are affirmative triggers where regulations made under the power either amend, repeal or revoke primary legislation, or retained direct principal EU legislation, or create a power to legislate. Where the affirmative triggers do not apply there is a choice of procedure. If a Minister of the Crown or a devolved authority in Wales opts for the negative procedure, there is a sifting procedure similar to that which applies the exercise of the power under section 8 of the European Union (Withdrawal) Act 2019 whereby the minister must make a statement explaining this choice, and a committee in each of the Houses must give a recommendation on which procedure should be used. This affords additional scrutiny to the use of this power in the initial period post-TP, whilst retaining the flexibility of using the negative procedure where there are good reasons for doing so.

74. The third covers any regulations made under this power after this two year period has passed. The same triggers apply for the draft affirmative procedure. If none of these triggers are met, then the negative procedure may be used. This is to ensure that any significant changes to primary legislation receive adequate scrutiny, whilst allowing for more technical or minor amendments to follow the negative procedure as is standard and more efficient.
75. There is an urgency procedure for any exercise of the use of this power. This may be necessary to ensure that the UK can quickly come into compliance with legal obligations under the Agreements.

Clause 32: Powers relating to the start of agreements

Power conferred on: a Minister of the Crown, or a devolved authority, or a Minister of the Crown acting jointly with one or more devolved authorities

Power exercised by: Regulations made by statutory Instrument⁴

Henry VIII clause: Yes

Parliamentary Procedure: Draft affirmative

Context and purpose

76. This power gives the Government the ability to deal with certain matters that might arise as a result of the Agreements being provisionally applied ahead of ratification
77. Provisional Application is necessary due to the timeframe in which the agreements were concluded; as the EU will be unable to complete their internal processes ahead of the end of the transition period. There has been an agreement to provisionally apply the Agreements ahead of full ratification to bridge the gap between the end of the transition period and the entering into force of the fully ratified agreement.
78. It is therefore important that this Bill is capable of working correctly in a provisional application scenario.
79. Some of the elements required to deal with a provisional application scenario are already dealt with on the face of the Bill. For example in the interpretation provision at clause 37(3) a gloss is created so that in a provisional application scenario references to the Future Relationship agreement (or parts of those agreements) are to be read as references to the agreement as provisionally applied. Similarly in clause 29 on the general implementation of agreements the definition of relevant day in subsection (4) ensures that the clause operates correctly in a provisional application scenario.
80. This clause contains powers to deal with certain other matters that might arise in a provisional application scenario. First, it allows us to deal with matters that might arise if all or part of the agreement was to be provisionally applied (or come into force) at a later date

⁴ Instruments will be made as Scottish Statutory Instruments where made by Scottish Ministers and as Statutory Rules where made by a Northern Ireland Department in line with the devolved administrations normal arrangements for making secondary legislation.

than the end of the transition period. It is unlikely that this aspect of the power will be needed, and it is included on a contingency basis in case both parties have not been able to take the necessary steps to facilitate provisional application by the end of the transition period. The intention is for the Agreements to be provisionally applied from the end of the transition period as provided for (for example) in FINPROV.11.1 of the TCA. Secondly, it allows us to in effect switch ‘off’ domestic provisions that we have commenced to facilitate provisional application in the event that ratification was not to occur or provisional application to end for another reason. FINPROV.11.2 provides for provisional application to continue until 28 February 2021 - unless entry into force of the ratified agreement occurs before then - though the Partnership Council does have the ability to agree a different end-date for provisional application.

Justification for taking the power

81. As outlined above, there are a number of scenarios associated with provisional application that may need to be catered for. As the course of events will not be known at the time of the Bill passing, it is important that the ability to respond to all these scenarios is maintained through a power.

Justification for the procedure

82. The draft affirmative procedure will be used for this power with the option of following the made affirmative procedure in urgent cases. This will ensure that Parliament can provide an appropriate level of scrutiny while ensuring that where needed the government can act quickly to (a) ensure that any matters that need to be dealt with in relation to the start of provisional application can be dealt with ahead of provisional application beginning and (b) ensure that if for whatever reason provisional application ended swiftly (other than as result of ratification) the UK could act quickly to ensure our domestic legislation reflected this.

Clause 33: Powers relating to the functioning of the agreements

Power conferred on: A Minister of the Crown, the Devolved authority, or a Minister of the Crown acting jointly with one or more devolved authorities

Power exercised by: Regulations made by Statutory Instrument⁵

Henry VIII power: Yes

Parliamentary Procedure: Draft affirmative procedure where a statutory instrument amends, revokes or repeals primary legislation or retained direct principal EU law, otherwise the negative procedure applies. Urgency procedure is available in specific cases.

Context and purpose

83. Clause 33 provides the relevant authorities referred to above with the power to make regulations to amend domestic legislation as is considered appropriate, in order to give effect

⁵ Instruments will be made as Scottish Statutory Instruments where made by Scottish Ministers and as Statutory Rules where made by a Northern Ireland Department in line with the devolved administrations normal arrangements for making secondary legislation.

to decisions made by the UK or the UK and EU jointly in response to developments in the smooth and proper functioning of the Agreements. These decisions will in certain cases need to be implemented very rapidly. These actions could include the suspension, resumption or termination of all or part(s) of the Agreements; the taking of safeguarding, remedial, temporary, interim or rebalancing measures; the implementation of an agreed resolution to a dispute; or any other decision by the UK that relates to a dispute. These measures could be unilateral or bilateral, and may change the balance of rights and obligations in the Agreements. This will in certain cases need to be reflected in UK domestic law.

84. Clause 33 enables the Government to amend primary and secondary legislation to this effect, including the Act itself. The power is conferred concurrently on Devolved Authorities to allow the changes to be implemented in devolved areas in the most efficient and appropriate way in different circumstances.

Justification for taking the power

85. The power is required to ensure that the actions and decisions taken on the international stage under the Agreements can be given effect domestically, including anything that changes the rights and obligations in the Agreements, and including, for example, any mutually agreed solutions to disputes. Many of the actions taken in relation to this power, for example temporary remedies in response to a dispute, or remedial measures, are designed to come into effect rapidly and temporarily. Secondary legislation is therefore more appropriate than using future primary legislation to give effect to any necessary changes to domestic law.
86. Use of these powers by Ministers is limited to the circumstances set out in the Agreements. The Agreements include agreed detail and processes, and state which measures can be taken at the international level and the scope of those measures. Many of these mechanisms are, generally, based on highly unusual or unique circumstances arising. It will be made clear at the point the implementing regulations are made, the provision of the agreement under which the corresponding action has been taken, and in the case of termination, there will be a given lead-in period before it takes effect at an international level.
87. These powers are further limited domestically by the list of restrictions at subclause (5), substantially modelled on the limits to the European Union (Withdrawal) Act 2018 and powers in the European Union (Withdrawal Agreement) Act 2020.

Justification for the procedure

88. Where the power to make regulations is used to modify primary legislation or retained direct principal EU legislation, the draft affirmative procedure will apply, otherwise the negative procedure will apply. The power cannot be used to confer a power to legislate. The purpose of regulations made under the negative procedure will be to make largely technical amendments to secondary legislation. Where amendments are required to primary legislation or retained direct principal EU legislation, the draft affirmative procedure is adopted to provide for appropriate scrutiny of the proposed legislation.
89. In either scenario, regulations made under this power will be implementing decisions that HMG has already taken; therefore, the necessary processes for these decisions will have already taken place.

Clause 39: Consequential and transitional provision etc.

Power conferred on: A Minister of the Crown

Power exercised by: Regulations made by Statutory Instrument

Henry VIII clause: Yes (in relation to the consequential power)

Parliamentary Procedure: Negative procedure for the consequential power; no procedure in the case of the transitional, transitory and savings power

Context and Purpose

90. This clause contains two powers: one to make consequential provisions and the other to make transitional, transitory or saving provisions in connection with the coming into force of any of the provisions of the Bill.
91. Subsection (1) provides that a Minister of the Crown can make regulations as he or she considers “appropriate” as a consequence of the Bill.
92. Subsection (4) provides a Minister of the Crown with the power to make such transitional, transitory and saving provision as he or she considers appropriate, in connection with the coming into force of any provisions of the Bill.

Justification for taking the powers

93. A power to make consequential provision is a power commonly taken in Bills to deal with any small additional changes that are necessary in consequence of the changes contained in that Bill. As a result of changes made in this Bill there are likely to be consequential amendments required to ensure that the statute book functions appropriately.
94. While the government has endeavoured to include those consequential provisions identified so far on the face of the Bill (in Part 1 of Schedule 6), it is prudent that the government takes a power to deal with consequential amendments or modifications that may only be identified at a later date to provide legal certainty and clarity to citizens and businesses.
95. The transitional, transitory and savings power is a standard power to make transitional, transitory and saving provision in connection with the bringing into force of provisions in the Bill. The purpose of this power is to ensure a smooth transition of affairs under the law as it currently stands and the law as it will stand after the provisions of the Bill come into force.
96. While the government has endeavoured to include as much detail as possible about transitional arrangements on the face of the Bill (in Part 2 of Schedule 6), it is prudent to take this power so that any further transitional arrangements that are later identified can be provided for.
97. Clause 39 is drafted in substantially similar terms as the consequential and transitional powers passed by Parliament in the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020.

Justification for the procedure

98. The consequential power is subject to the negative procedure. Such an approach is justified because the consequential power, like consequential powers in other primary legislation, will be construed strictly by the courts and, in effect, to making the minimum amendments necessary to reflect the provisions of the Act or instrument concerned. In particular, there will be a presumption against substantive changes that interfere with rights or liabilities⁶. There is recent precedent for this procedure in relation to the consequential power, for example in section 41 of the EU (Withdrawal Agreement) Act 2020 and section 6(1) of the Direct Payments to Farmers (Legislative Continuity) Act 2020.
99. The transitional, transitory and savings power is subject to no procedure as is normal practice for such a power. There is recent precedent for this type of power to attract no procedure, for example in section 41 of the EU (Withdrawal Agreement) Act 2020, in section 6(4) of the Direct Payments to Farmers (Legislative Continuity) Act 2020 and section 26 of the Business and Planning Act 2020.

Clause 40: Commencement power

Power conferred on: A Minister of the Crown

Power exercised by: Regulations made by Statutory Instrument

Henry VIII clause: No

Parliamentary Procedure: No procedure

Context and Purpose

100. This clause contains a standard power for a Minister of the Crown to bring provisions of the Bill into force through commencement regulations. Clause 40(6) specifies which provisions in the Bill come into force on the day the Bill gains Royal Assent. For the remaining provisions which have not come into force, the Minister of the Crown is empowered by subsection (7) to appoint the day, or different days, on which they come into force.

Justification for taking the power

101. Some parts of the Bill may need to be commenced earlier than others. Where provisions are not expressly commenced upon Royal Assent by Clause 40(6), the Minister of the Crown is able to make commencement regulations for when provisions are needed.

Justification for the procedure

102. It is usual for commencement regulations to not be subject to parliamentary procedure. Parliament has already scrutinised and given its consent to the substance of the provisions by

⁶ *Ye Olde Cheshire Cheese Ltd v Daily Telegraph Plc* [1988] 1 W.L.R. 1173.

voting on the Bill. Commencement regulations enable the provisions to be brought into force at the appropriate time.

Schedule 2: Part 1, paragraph 3(5): Designation of passenger information unit

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Henry VIII clause: No

Parliamentary Procedure: Negative procedure

Context and Purpose

103. The Passenger Information Unit (PIU) is responsible under the Passenger Name Record (PNR) Data and Miscellaneous Amendments Regulations 2018 (“the 2018 Regulations”) for the processing of PNR data provided by air carriers in relation to flights to and from the UK. The 2018 Regulations were made under section 2(2) of the European Communities Act 1972 which was repealed (with certain savings) by the European Union (Withdrawal) Act 2018. The 2018 Regulations can therefore no longer be amended using the power they were made under.

104. PNR data comprises information collected from passengers by air carriers when processing travel reservations, such as the names of the passengers and their contact details. It is processed primarily by the PIU for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious crime under regulation 6 of the 2018 Regulations (as amended by paragraph 6(4) of Part 1 of Schedule 2). At present the Home Office is designated as the PIU under regulation 3(1) of the 2018 Regulations.

105. Paragraph 3(5) of Part 1 of Schedule 2 amends regulation 3 of the 2018 Regulations to confer on the Secretary of State a power to amend the designation of the PIU and designate a different authority. The Secretary of State may designate different authorities for different purposes, or in relation to different areas of the UK. The Secretary of State may also make supplementary, incidental, consequential, transitional, transitory or saving provision in connection with the designation, for example to make provision for the transfer of PNR data from one authority to another in the event that more than one authority is designated by the Secretary of State.

Justification for taking the power

106. The core functions, duties and powers of the PIU are prescribed in the 2018 Regulations (as amended) and the proposed power cannot modify these. The proposed power will afford the appropriate degree of flexibility to amend the designation of the PIU in the future in light of changing circumstances. The ability to designate different authorities for different purposes and in relation to different areas of the UK is intended to ensure that any changes to the structure of the UK’s arrangements in relation to the processing of PNR data can be adequately provided for. The inclusion of a power to make supplementary, incidental, consequential, transitional,

transitory or saving provision in connection with the designation ensures that provision can be made to enable the 2018 Regulations to continue to operate effectively in light of the amendment to the designation.

Justification for the procedure

107. Given that the core functions, duties and powers of the PIU are prescribed in the 2018 Regulations (as amended) and the proposed power cannot modify these, the Department considers that the negative resolution procedure affords an appropriate level of parliamentary scrutiny. The use of the negative procedure is also consistent with the procedure used to make the 2018 Regulations.

Schedule 2: Part 1, paragraph 4 (new regulation 4A: Designated independent authority)

Power conferred on: Secretary of State

Power exercised by: Directions

Henry VIII Clause: No

Parliamentary Procedure: None

Context and Purpose

108. New regulation 4A of the 2018 Regulations, inserted by paragraph 4 of Part 1 of Schedule 2, confers on the Secretary of State a power to designate a person or a body as the “designated independent authority” in relation to the Passenger Information Unit (PIU). The Secretary of State must be satisfied that such a person or body does not process any Passenger Name Record (PNR) data under the 2018 Regulations, acts independently of any person processing PNR data under the 2018 Regulations, has sufficient expertise and knowledge, and has had appropriate training to carry out the functions of the designated independent authority.

109. The designated independent authority will be responsible for consenting to the use and transfer of EU PNR data (as defined in regulation 2(1) of the 2018 Regulations, which is amended by paragraph 2 of Part 1 of Schedule 2) by the PIU, except where the data is processed for the purposes of security and border control checks and in cases of urgency, under new regulation 13A(4) of the 2018 Regulations (inserted by paragraph 13 of Part 1 of Schedule 2).

110. The designated independent authority will also be responsible, under new regulation 13B(5) of the 2018 Regulations (inserted by paragraph 14 of Part 1 of Schedule 2), for reviewing on an annual basis the operation of paragraph (3)(a) of that regulation, which permits the retention of restricted EU PNR data (as defined in paragraph (1) of that regulation) by the PIU where it considers on the basis of a risk assessment based on objectively established criteria that the retention of the data is necessary for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious crime.

Justification for taking the power

111. This direction making power enables the Secretary of State to designate an appropriate person or body to carry out the functions of the designated independent authority under the 2018 Regulations. It will also afford the appropriate degree of flexibility to amend the designation of designated independent authority in the future in light of changing circumstances.

Justification for the procedure

112. The designated independent authority will have two core functions, and these will be prescribed in the 2018 Regulations. The Secretary of State may only designate a person or a body as the designated independent authority where the requirements specified in new regulation 4A(3) of the 2018 Regulations (inserted by paragraph 4 of Part 1 of Schedule 2) are met. Therefore, the Department considers that this power need not be subject to any Parliament procedure, as the designation of the appropriate person or body as the designated independent authority is an administrative matter for the executive.

Schedule 2: Part 3, paragraph 18: Power to amend PNR regulations for sea and rail travel

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Henry VIII clause: No

Parliamentary Procedure: Draft affirmative

Context and Purpose

113. Paragraph 17 of Part 2 of Schedule 2 confers on the Secretary of State a power to make such provisions as the Secretary of State considers appropriate to implement a new agreement, or deal with matters arising out of or related to such an agreement, between the UK and the EU or a Member State. This power may only be exercised by the Secretary of State in relation to agreements that modify Title III of Part Three of the TCA by extending its provisions to passenger name record (PNR) data provided by rail or maritime operators or make provision in respect of such PNR data that correspond to the provisions of the TCA. The power may only be used to modify the PNR Regulations 2018 and cannot be used to modify any other legislation.

Justification for taking the power

114. The joint Political Declaration accompanying the TCA reaffirms the parties' intention to extend the scope of Title III of Part Three of the TCA to PNR data provided by rail and maritime operators in the future. It also affirms that the TCA does not affect the possibility for the UK to enter into bilateral agreements with Member States on transfers of PNR data from international rail and maritime operators.

115. The UK is currently in the process of developing its capability to receive PNR data from rail and maritime operators. Paragraph 27B of Schedule 2 to the Immigration Act 1971 and section 32 of the Immigration, Asylum and Nationality Act 2006 already enable immigration officers and the police to collect PNR data from such operators. This new power enables the Secretary of State to extend the scope of the 2018 Regulations and the data protection safeguards contained within it, which currently only apply to the processing of PNR data provided by air carriers, to the processing of PNR data provided by rail and maritime operators.

Justification for the procedure

116. The regulations are subject to the affirmative procedure. The proposed approach will enable Parliament to scrutinise the implementation of the new agreement between the UK and the EU or the relevant Member State and it is considered that this provides the appropriate level of scrutiny.

Cabinet Office
30/12/2020