
Committee Stage: Wednesday 20 July 2022

Northern Ireland Protocol Bill (Amendment Paper)

This document lists all amendments tabled to the Northern Ireland Protocol Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

This document should be read alongside the Chair's provisional Selection and Grouping, which sets out the order in which the amendments will be debated.

CLAUSES 13, 14, 18 AND 20; NEW CLAUSES AND NEW SCHEDULES RELATING TO THE SUBJECT MATTER OF THOSE CLAUSES

Mr David Lammy
Peter Kyle
Stephen Doughty

38

Clause 13, page 7, line 27, leave out "the Minister considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment changes the threshold for giving a Minister power to make regulations under this Clause. The threshold is amended to make it objective rather than subjective.

Mr David Lammy
Peter Kyle
Stephen Doughty

39

Clause 14, page 8, line 22, leave out "the Minister considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment changes the threshold for giving a Minister power to make regulations under this Clause. The threshold is amended to make it objective rather than subjective.

Hilary Benn

12

Clause 18, page 10, line 9, leave out subsection (1)

Member's explanatory statement

This amendment would remove the Minister's power to engage in any conduct in relation to any matter dealt with in the Northern Ireland Protocol, not otherwise authorised by this Act, if the Minister considers it appropriate to do so.

Mr David Lammy
Peter Kyle
Stephen Doughty

42

Clause 18, page 10, line 11, leave out "the Minister of the Crown considers it appropriate" and insert "it is necessary"

Member's explanatory statement

This amendment changes the threshold for giving a Minister power to make regulations under this Clause. The threshold is amended to make it objective rather than subjective.

Colum Eastwood
Claire Hanna
Stephen Farry

48

Clause 18, page 10, line 12, after "this Act" insert "and a motion approving the conduct has been passed by the Northern Ireland Assembly."

Member's explanatory statement

This amendment would subject the exercise of the Minister's power to engage in conduct in relation to any matter dealt with in the Northern Ireland Protocol that is not otherwise authorised by the Act to a motion approving the conduct in the Northern Ireland Assembly.

Colum Eastwood
Claire Hanna
Stephen Farry

49

Clause 18, page 10, line 15, at end insert—

"(3) Each Minister of the Crown must have due regard for the principle that the Belfast Agreement, including its subsequent implementation agreements and arrangements, should be protected in all its parts."

Member's explanatory statement

This amendment is based on the fourth point in the Preamble to Northern Ireland Protocol.

Stephen Farry 46
Layla Moran
Mr Alistair Carmichael
Claire Hanna
Colum Eastwood

Clause 20, page 10, line 32, at end insert—

“But this section may not be brought into force unless it has previously been approved by a resolution of the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would prevent the Bill’s proposed departure from the terms of the Northern Ireland Protocol, or from any related provision of the EU withdrawal agreement, in respect of the previously agreed role of the European Court (CJEU) unless clause 20 had first been approved by the Northern Ireland Assembly.

Hilary Benn 13

Clause 20, page 10, line 37, leave out subsection 2(b)

Member’s explanatory statement

This amendment would remove the prohibition on a court or tribunal referring any matter to the European Court, where the matter relates to the Northern Ireland Protocol or any related provision of the EU Withdrawal Agreement, or domestic law relating to the Northern Ireland Protocol or any related provision of the EU Withdrawal Agreement, given that subsection (4) would give ministers the power to make regulations regarding references on a question of interpretation of EU law to be made by Courts and Tribunals.

Mr David Lammy 43
Peter Kyle
Stephen Doughty

Clause 20, page 10, line 38, leave out “the Minister considers appropriate” and insert “is necessary”

Member’s explanatory statement

This amendment changes the threshold for giving a Minister power to make regulations under this Clause. The threshold is amended to make it objective rather than subjective.

CLAUSES 19, 21 TO 23, 25 AND 26; NEW CLAUSES AND NEW SCHEDULES RELATING TO THE SUBJECT MATTER OF THOSE CLAUSES; REMAINING PROCEEDINGS ON THE BILL

Colum Eastwood 50
Claire Hanna
Stephen Farry

Clause 22, page 11, line 16, at end insert—

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless a Legislative Consent Motion approving a draft of the regulations has been passed by the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless and until the consent of the Northern Ireland Assembly to said regulations has been obtained.

Colum Eastwood 51
Claire Hanna
Stephen Farry

Clause 22, page 11, line 16, at end insert—

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act before a Minister of the Crown has presented a draft of the regulations to the UK-EU Joint Committee for discussion and has laid a full report setting out the details of those discussions before each House of Parliament and provided a copy to the Speaker of the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless and until said regulations have been presented by a Minister to the UK-EU Joint Committee for a discussion and a report detailing those discussions had been laid before each House of Parliament and a copy provided to the Speaker of the Northern Ireland Assembly.

Colum Eastwood 55
Claire Hanna
Stephen Farry

Clause 22, page 11, line 16, at end insert—

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act in contravention of views agreed by the North-South Ministerial Council on EU matters, including those regarding future policies, legislative proposals and programmes under consideration in the EU framework as provided for in Paragraph 17 of Strand Two of the Belfast Agreement.”

Colum Eastwood 53
Claire Hanna
Stephen Farry

Clause 22, page 12, line 15, at end insert—

- “(6A) A Minister may not exercise the power to make regulations under subsection (6) with respect to a devolved authority in Northern Ireland unless the exercise of any power by that devolved authority is approved by the First Minister and deputy First Minister acting jointly—
- (a) on behalf of the Northern Ireland Executive,
 - (b) following a resolution by the Northern Ireland Assembly,
- or both.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by subsection (6) without the agreement of the First Minister and deputy First Minister of Northern Ireland acting jointly has been. The First Minister and deputy First Minister may be acting on behalf of the Northern Ireland Executive and/or following a resolution of the Northern Ireland Assembly.

Richard Thomson 19

Clause 23, page 12, line 25, leave out from “to” to “unless” in line 26 and insert “draft affirmative procedure”

Member’s explanatory statement

This probing amendment would apply “draft affirmative” procedure in place of regulations being subject to annulment.

Richard Thomson 20

Clause 23, page 12, line 33, leave out “draft affirmative procedure” and insert “super-affirmative procedure (see section (*Super-affirmative resolution procedure: general provisions*))”

Member’s explanatory statement

This probing amendment would replace draft affirmative procedure with super-affirmative procedure (see NC6).

Richard Thomson

21

Clause 23, page 12, line 33, leave out from “procedure” to the end of line 37

Member’s explanatory statement

This probing amendment would prevent Henry VIII powers (amending Acts of Parliament by regulations) being made using the “made affirmative” procedure.

Richard Thomson

22

Clause 23, page 12, line 38, leave out subsections (7) to (9)

Member’s explanatory statement

This probing amendment would remove the “made affirmative” procedure.

Sir Robert Neill
Sir Roger Gale
Damian Green

2

Clause 26, page 15, line 41, leave out subsections (2) to (5) and insert—

- “(2A) This section comes into force on the day on which this Act is passed.
- (2B) The other provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (2C) A statutory instrument containing regulations under subsection (2B) may not appoint a day for the commencement of any section unless—
- (a) a Minister of the Crown has moved a motion in the House of Commons to the effect that a section or sections be commenced on or after a day specified in the motion (“the specified day”),
 - (b) the motion has been approved by a resolution of that House,
 - (c) a motion to the effect that the House of Lords takes note of the specified day (or the day which is proposed to be the specified day) has been tabled in the House of Lords by a Minister of the Crown, and
 - (d) the day appointed by the regulations is the same as or is after the specified day.
- (2D) Regulations under subsection (2B) may—
- (a) appoint different days for different purposes;
 - (b) make transitional or saving provision in connection with the coming into force of any provision of this Act.”

Member's explanatory statement

The intention of this amendment, linked to Amendment 1 to clause 1, is to require parliamentary approval for bringing into force any provisions of this Act.

Mr David Lammy
Peter Kyle
Stephen Doughty 33

Clause 26, page 15, line 42, after "section" insert ", section [*consistency with international law*]"

Member's explanatory statement

This consequential amendment would bring NC11 into force on the day the Act is passed.

Colum Eastwood
Claire Hanna 54

Clause 26, page 15, line 42, after "sections" insert "section [*UK-EU Joint Committee: reduction of sanitary and phytosanitary checks*] and"

Member's explanatory statement

This consequential amendment would bring NC4 into force on the day the Act is passed.

Stephen Farry
Claire Hanna
Colum Eastwood
Layla Moran
Mr Alistair Carmichael 3

Clause 26, page 15, line 44, at beginning insert "Provided that the Northern Ireland Assembly has first passed a resolution indicating support for this Act,"

Member's explanatory statement

This amendment, together with Amendment 4, will make all operational aspects of the Bill dependent upon the approval of the Northern Ireland Assembly.

Stephen Farry 4
 Claire Hanna
 Colum Eastwood
 Layla Moran
 Mr Alistair Carmichael

Clause 26, page 15, line 45, at end insert—

“(3A) A motion for a resolution of the Northern Ireland Assembly referred to in subsection (3) must be tabled by either—

- (a) the First Minister and Deputy First Minister jointly, or
- (b) any Member of the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment, together with Amendment 3, will make all operational aspects of the Bill dependent upon the approval of the Northern Ireland Assembly.

Sir Robert Neill 47
 Damian Green

Clause 26, page 15, line 45, at end insert—

“(3A) Regulations under subsection (3) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament, except that regulations under subsection (2) relating to tax or customs matters may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the House of Commons.”

Member’s explanatory statement

This amendment would make all the commencement regulations subject to parliamentary approval.

Richard Thomson NC6

To move the following Clause—

“Super-affirmative resolution procedure: general provisions

- (1) For the purposes of this Act the “super-affirmative resolution procedure” in relation to the making of regulations subject to the super-affirmative resolution procedure is as follows.
- (2) The Minister of the Crown must have regard to—
 - (a) any representations,

- (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60-day period with regard to the draft regulations.
- (3) If, after the expiry of the 60-day period, the Minister of the Crown wishes to make regulations in the terms of the draft, the Minister of the Crown must lay before each House of Parliament a statement—
 - (a) stating whether any representations were made under subsection (2)(a); and
 - (b) if any representations were so made, giving details of them.
- (4) The Minister of the Crown may after the laying of such a statement make regulations in the terms of the draft if the regulations are approved by a resolution of each House of Parliament.
- (5) However, a committee of either House charged with reporting on the draft regulations may, at any time after the laying of a statement under subsection (3) and before the draft regulations are approved by that House under subsection (4), recommend under this subsection that no further proceedings be taken in relation to the draft regulations.
- (6) Where a recommendation is made by a committee of either House under subsection (5) in relation to draft regulations, no proceedings may be taken in relation to the draft regulations in that House under subsection (4) unless the recommendation is, in the same Session, rejected by resolution of that House.
- (7) If, after the expiry of the 60-day period, the Minister of the Crown wishes to make regulations order consisting of a version of the draft regulations with material changes, the Minister of the Crown lay before Parliament—
 - (a) revised draft regulations; and
 - (b) a statement giving details of—
 - (i) any representations made under subsection (2)(a); and
 - (ii) the revisions proposed.
- (8) The Minister of the Crown may after laying revised draft regulations and a statement under subsection (7) make regulations in the terms of the revised draft regulations if the revised draft regulations are approved by a resolution of each House of Parliament.
- (9) However, a committee of either House charged with reporting on the revised draft regulations may, at any time after the revised draft regulations are laid under subsection (7) and before the revised draft regulations are approved by that House under subsection (8), recommend under this subsection that no further proceedings be taken in relation to the revised draft regulations.
- (10) Where a recommendation is made by a committee of either House under subsection (9) in relation to revised draft regulations, no proceedings may be taken in relation to the revised draft regulations in that House under subsection (8) unless the recommendation is, in the same Session, rejected by resolution of that House.

- (11) For the purposes of subsections (4) and (8) regulations are made in the terms of draft regulations if the regulations contain no material changes to the provisions of the draft regulations.
- (12) In this section the “60-day period” means the period of 60 days beginning with the day on which the draft regulations were laid before Parliament under section 23 of this Act.”

Member’s explanatory statement

This new clause sets out the bi-cameral super-affirmative procedure regulations under the Act, except in relation to tax and customs matters

Mr David Lammy
Peter Kyle
Stephen Doughty

NC11

To move the following Clause—

“Consistency with international law

- (1) A Minister of the Crown must not make regulations under this Act unless both the conditions in subsections (2) and (5) have been satisfied.
- (2) The condition in this subsection is that a Minister of the Crown has laid before both Houses of Parliament a consistency report from a qualified person in relation to the provisions of the Northern Ireland Protocol that are, in consequence of the regulations, to become excluded provision (“the provisions at issue”).
- (3) For the purposes of subsection (2), a “consistency report” is a report as to whether, in the opinion of the qualified person, it is consistent with the international obligations of the United Kingdom for the provisions at issue to become excluded provision, and which—
 - (a) sets out the reasons for its conclusions;
 - (b) sets out the steps taken by the qualified person to obtain the views of persons appearing to the qualified person to have appropriate expertise in questions of international law; and
 - (c) attaches, or contains references to a publicly available version of, all materials considered by the qualified person in the course of preparing the report.
- (4) For the purposes of subsection (2) a “qualified person” is a judge or former judge of—
 - (a) the Supreme Court of the United Kingdom;
 - (b) the Court of Appeal of England and Wales;
 - (c) the Inner House of the Court of Session; or
 - (d) the Court of Appeal of Northern Ireland.
- (5) The condition in this subsection is that—
 - (a) the House of Commons has approved a resolution to take note of the consistency report on a motion moved by a Minister of the Crown; and
 - (b) a motion for the House of Lords to take note of the consistency report has been tabled in the House of Lords by a Minister of the Crown and—

- (i) the House of Lords has approved a resolution to take note of the report, or
- (ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (a)."

Member's explanatory statement

This new clause would prevent any clause of the Bill (or regulations made under it) that create 'excluded provision' from coming into force until (a) an authoritative and independent legal expert presents a report to parliament as to whether it is consistent with the international obligations of the United Kingdom, and (b) the House of Commons has passed a motion noting that report, and the House of Lords has debated that report.

Mr David Lammy
Peter Kyle
Stephen Doughty

NC12

To move the following Clause—

"Adjudications of matters pertaining to international law

No later than two weeks after any finding by any international court, tribunal or arbitration panel that any provision of this Act, or any action taken by a Minister in exercise of powers granted by this Act, is inconsistent with the international obligations of the United Kingdom, a Minister of the Crown must—

- (a) report to each House of Parliament setting out the extent to which the relevant court, tribunal or arbitration panel has found that any provision of, or any exercise of power under, this Act is inconsistent with the international legal obligations of the United Kingdom; and
- (b) set out what steps Ministers propose take in order to bring the United Kingdom into compliance with those international obligations."

Member's explanatory statement

This new clause would provide that, if an international court, tribunal or arbitration panel found as a matter of fact that any actions taken by the government under the Bill were inconsistent with the UK's international legal obligations, the Minister must report this finding to the House, and set out what steps the government will take to ensure the UK is in compliance with its international obligations.

Colum Eastwood
Claire Hanna

NC16

To move the following Clause—

“Impact assessment

Within six months of a Minister of the Crown exercising any power conferred by this Act to make regulations, a Minister of the Crown must publish a full impact assessment of the effect of the regulations on businesses and consumers in Northern Ireland.”

Member’s explanatory statement

This new clause would require a Minister of the Crown who has exercised any power conferred by this Act to make regulations to publish a full impact assessment of the effect of said regulations on businesses and consumers in Northern Ireland within six months.

Colum Eastwood
Claire Hanna

NC17

To move the following Clause—

“Consent of the Northern Ireland Assembly

- (1) A Minister of the Crown may not exercise the powers to make regulations conferred by this Act before a Legislative Consent Motion approving a draft of the regulations has been passed by the Northern Ireland Assembly.
- (2) A Minister of the Crown must, at the end of the relevant period, seek a Legislative Consent Motion approving the continued application of regulations made under the powers conferred by this Act.
- (3) For the purposes of subsection (2), the “relevant period” is—
 - (a) the period ending four years after the powers are exercised; or
 - (b) the period ending eight years after the powers are exercised where the original Legislative Consent Motion was approved by—
 - (i) the support of a majority of Members, a majority of designated Nationalists and a majority of Unionists,
 - (ii) the support of 60 per cent of Members, 40 per cent of designated Nationalists and 40 per cent of designated Unionists, or
 - (iii) the support of two thirds of Members.”

Member’s explanatory statement

This new clause would require a Minister of the Crown to obtain the consent of the Northern Ireland Assembly in order to exercise the power to make regulations conferred by this Act. It would also require a Minister of the Crown to obtain the consent of the Northern Ireland Assembly for the continued application of the said regulations within the relevant period. The relevant period would be four years unless the vote passes with a majority in any of the ways described in Clause 3(b), in which case the relevant period is eight years.

Colum Eastwood
Claire Hanna

NC19

To move the following Clause—

“Expiry

- (1) The powers conferred by this Act upon a Minister of the Crown will expire if the Northern Ireland Assembly passes a resolution pursuant to Article 18 of the Northern Ireland Protocol (Democratic Consent in Northern Ireland).
- (2) A resolution of the Northern Ireland Assembly under subsection (1) can only pass with one or more of the following measures of representational support—
 - (a) the support of a majority of Members, a majority of designated Nationalists and a majority of Unionists,
 - (b) the support of 60 per cent of Members, 40 per cent of designated Nationalists and 40 per cent of designated Unionists, or
 - (c) the support of two thirds of Members.”

Member’s explanatory statement

This new clause provides a sunset clause whereby the powers expire if the Northern Ireland Assembly does not vote to approve the continued application of the Northern Protocol in 2024 in the vote required by Article 18 of the Northern Ireland Protocol.

Colum Eastwood
Claire Hanna

NC20

To move the following Clause—

“Report on the Economy in Northern Ireland (No. 2)

- (1) A Minister of the Crown must, at least once in every six months from the day on which this Act is passed, lay before each House of Parliament and provide to the Speaker of the Northern Ireland Assembly a report detailing the Minister’s assessment of the state of economic sectors in Northern Ireland that are not addressed in the Northern Ireland Protocol.
- (2) The sectors include, in particular—
 - (a) financial services;
 - (b) tourism;
 - (c) telecommunications;
 - (d) labour availability;
 - (e) cross-border data sharing;
 - (f) healthcare;
 - (g) further and higher education; and
 - (h) research collaboration.
- (3) In preparing the report, the Minister must—

- (a) consult with such other persons as the Minister considers appropriate representatives of the sectors set out in subsection (2); and
- (b) take into account—
 - (i) relevant decisions and discussions in the North-South Ministerial Council,
 - (ii) the remits of implementation bodies, and
 - (iii) the UK-EU commitment to protect the basis for further potential North-South cooperation expressed in Article 11 of the Northern Ireland Protocol.”

Member’s explanatory statement

This new clause would require a Minister of the Crown to produce a report detailing his assessment of the state of economic sectors in Northern Ireland that are not covered by the Northern Ireland Protocol, including, but not limited to, those set out in subsection (2), at least once every six months after the day that the Act is passed. A Minister must consult with relevant persons, and take into account relevant decisions discussions of the North-South Ministerial Council, the remits of implementation bodies, and the UK-EU commitment to protect North-South cooperation. A copy of the report must be laid before each House of Parliament and a copy provided to the Speaker of the Northern Ireland Assembly.

Order of the House

[27 June 2022]

That the following provisions shall apply to the Northern Ireland Protocol Bill:

Committal

1. The Bill shall be committed to a Committee of the whole House.

Proceedings in Committee

2. Proceedings in Committee of the whole House shall be completed in three days.
3. The proceedings—
 - (a) shall be taken in the order shown in the first column of the following Table, and
 - (b) shall (so far as not previously concluded) be brought to a conclusion at the times specified in the second column of the Table.

Proceedings

Clauses 1 to 3, 15 and 16; new Clauses and new Schedules relating to the subject matter of those clauses

Clauses 4 to 6 and 24; new Clauses and new Schedules relating to the subject matter of those clauses

Clauses 7 to 11; new Clauses and new Schedules relating to the subject matter of those clauses

Time for conclusion of proceedings

Three hours after the commencement of proceedings on the Bill on the first day

Six hours after the commencement of proceedings on the Bill on the first day

Three hours after the commencement of proceedings on the Bill on the second day

Proceedings

Clauses 12 and 17; new Clauses and new Schedules relating to the subject matter of those clauses

Clauses 13, 14, 18 and 20; new Clauses and new Schedules relating to the subject matter of those clauses

Clauses 19, 21 to 23, 25 and 26; new Clauses and new Schedules relating to the subject matter of those clauses; remaining proceedings on the Bill

Time for conclusion of proceedings

Six hours after the commencement of proceedings on the Bill on the second day

Three hours after the commencement of proceedings on the Bill on the third day

Six hours after the commencement of proceedings on the Bill on the third day

Proceedings on Consideration and on Third Reading

4. Any proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

Programming committee

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings in Committee of the whole House, to any proceedings on Consideration or to proceedings on Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.

Withdrawn Amendments

The following amendments were withdrawn on 14 July 2022:

52 and NC18