

EUROPEAN UNION (WITHDRAWAL ARRANGEMENTS) BILL 2024

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the European Union (Withdrawal Arrangements) Bill introduced in the House of Commons on 16 October 2024 (Bill 18).

- These Explanatory Notes have been prepared by Jim Allister MP, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1. The European Union (Withdrawal Arrangements) Bill ("the Bill") has 25 clauses. A summary of, and background to, the Bill is provided below.
2. The Bill will provide the basis to amend the operation of the Windsor Framework, previously referred to as the Protocol on Ireland/Northern Ireland, ("the Northern Ireland Protocol") included in the UK-EU Withdrawal Agreement ("Withdrawal Agreement") in the domestic law of the UK. It will disapply elements of the Windsor Framework, and provide delegated powers to Ministers to make new law in connection with the Windsor Framework (including where provision ceases to have effect in the UK). Additionally, the Bill will provide delegated powers for Ministers to provide that other provisions of the Windsor Framework should cease to have effect in the UK. The Bill will also provide that any vote of the Northern Ireland Assembly in respect of continuing application of the Windsor Framework will be on a cross-community basis.

Policy background

3. The people of the United Kingdom and Gibraltar decided by referendum on 23 June 2016 to leave the EU.
4. The terms of the UK's departure from the EU were agreed and set out in the Withdrawal Agreement. This included the Northern Ireland Protocol setting out unique arrangements for Northern Ireland. On 19 October 2019, the Government laid the Withdrawal Agreement and the Political Declaration before Parliament; and on 23 January 2020 the European Union (Withdrawal Agreement) Act 2020 received Royal Assent. This enabled the United Kingdom to leave the European Union at 11pm (UK time) on 31 January 2020.
5. The Withdrawal Agreement provided for a time-limited transition period which ended at 11pm (UK time) on 31 December 2020. During 2020 the United Kingdom engaged in discussions which culminated in the UK-EU Trade and Cooperation Agreement, establishing the terms of the UK's future relationship with the EU. Alongside the Withdrawal Agreement, several elements of the operation of the Northern Ireland Protocol were left to be discussed and agreed by the Withdrawal Agreement Joint Committee. An agreement regarding those issues was reached at the Joint Committee meeting on 17 December 2020. This included several grace periods and easements before the application of the full requirements of the Northern Ireland Protocol, to avoid disruption for businesses and citizens. In addition significant work was undertaken by the Government to deliver the underpinning arrangements for the operation of the Northern Ireland Protocol, including IT systems and a new Trader Support Service. Following those preparations, the Northern Ireland Protocol came into force at the end of the transition period.
6. The Northern Ireland Protocol was intended to meet several overall policy objectives: to safeguard the Belfast (Good Friday) Agreement in all dimensions; to avoid a hard border on the island of Ireland; to protect Northern Ireland's place in the United Kingdom and its internal market; and to safeguard the EU's Single Market. Its operation has continued to support trade between Northern Ireland and Ireland as intended. However, its requirements—for full EU customs, sanitary and phytosanitary and other controls, as well as

for Northern Ireland to apply EU rules in a variety of areas concerning goods—have led to a significant degree of disruption and burdens in practice.

7. In recognition of these concerns, the Government took some steps to avoid further disruption. These included the extension of several easements in March 2021 and the application of "standstill" arrangements in September 2021, which continued to operate the initial set of grace periods and easements with the aim of maintaining a stable basis for trade and movements between Great Britain and Northern Ireland in the light of the difficulties experienced by businesses and citizens.
8. The Government looked to work with the EU to find joint solutions to the underlying challenges posed by the Northern Ireland Protocol and propose ways forward to operate the Northern Ireland Protocol sustainably. These discussions proceeded since January 2021 but in February 2022 the Co-Chairs of the Withdrawal Agreement Joint Committee took stock of the talks that had taken place, and noted that agreement had not been possible at that point.
9. The Government thereupon introduced the Northern Ireland Protocol Bill 2022, which would have disapplied portions of the Protocol in order to restore full UK lawmaking in Northern Ireland and unfettered trade within the United Kingdom. It could also have permitted an arrangement of mutual enforcement with the EU whereby each entity would enforce the rules of the other in respect of goods moving from one customs territory to the other. The 2022 Bill duly passed the House of Commons but was discontinued in the House of Lords when the Government reached 'The Windsor Framework' with the EU. The Windsor Framework, while changing the nomenclature of the Protocol to 'The Windsor Framework', did not alter the fundamentals of the Protocol, though it made the passage of some goods easier from GB to Northern Ireland, particularly for supermarkets. However, its retention in Northern Ireland of EU law, an Irish Sea Border and the authority of the ECJ, did not ameliorate unionist opposition to the post-Brexit arrangements.
10. In January 2024 the Government published 'Safeguarding the Union', which outlined further adjustments but retained the application of EU law and customs code in Northern Ireland. In the light of continuing concerns about the Windsor Framework, this Bill proposes more extensive changes to its operation and application in UK law.

The Bill

11. The purpose of the Bill is to provide Ministers with the power to make changes to the operation of the Windsor Framework in domestic law, restore the cross-community imperative of the Belfast (Good Friday) Agreement in respect of continuance of the Windsor Framework and to safeguard democracy, peace and stability in Northern Ireland.
12. The Bill makes certain provisions of the Windsor Framework "excluded provision". Where provision is excluded, clause 3 provides that section 7A(2) of the European Union (Withdrawal) Act 2018 no longer applies to it, and the provision will not be applicable in domestic law. Clause 4 provides that section 7C of the European Union (Withdrawal) Act 2018 does not apply so far as it would produce an effect which is incompatible with any provision made by or under the Bill.

13. The Bill specifies which elements of the Northern Ireland Protocol are "excluded provision", particularly Article 5(4) and Annex 2. The Bill in order to restore domestic law control excludes elements of the Windsor Framework dealing with the movement of goods and the regulation of goods in Northern Ireland; subsidy control; and the governance arrangements under the Northern Ireland Protocol. Where provisions of the Bill create "excluded provision" they are accompanied by a delegated power to make appropriate new provision in domestic law. Powers are also provided in relation to VAT and excise.
14. The Bill also provides powers to reflect in domestic law the disapplication of additional elements of the Northern Ireland Protocol and to make new law as appropriate in connection with this.

Legal background

15. The Windsor Framework is an integral part of the Withdrawal Agreement.
16. Section 7A of the European Union (Withdrawal) Act 2018 ("EUWA") gives effect to Article 4 of the Withdrawal Agreement. Article 4 provides that the Withdrawal Agreement and the provisions of EU law which it makes applicable are to have "the same legal effects" in the UK as those which they produce within the EU and its Member States. The effect of this is that the EU law applied under the Windsor Framework has supremacy in the UK's legal order (meaning incompatible domestic legislation would be disapplied); EU law applied under the Windsor Framework will have direct effect in the UK (provided that the EU law conditions for direct effect are satisfied); and EU law remedies will be available (including the availability of Francovich damages).
17. Section 7C supplements section 7A in ensuring the "same legal effect" of EU law in the UK that it produces in the EU by directing courts to interpret relevant separation agreement law in accordance with the Withdrawal Agreement. "Relevant separation agreement law" is defined in section 7C(3) and, amongst other things, includes anything which is domestic law by virtue of section 7A and the power to implement the Windsor Framework in section 8C, as well as anything else so far as it is domestic law for the purpose of, or otherwise in scope of, the Withdrawal Agreement.
18. Section 7A(2) works as a "conduit pipe" through which directly effective provisions of the Withdrawal Agreement (including the Windsor Framework) and EU law made applicable by it (e.g. regulations, decisions) flow into domestic law without the need for any further implementing legislation.
19. Although directives are not generally capable of direct application, to the extent they contain directly effective rights, those provisions are also capable of flowing through into domestic law. For provisions of directives and other EU law made applicable by the Withdrawal Agreement that are not directly applicable, EUWA provides powers to implement them. Section 8C EUWA provides powers to implement the Windsor Framework and to supplement the effect of section 7A in relation to the Windsor Framework.
20. The Withdrawal Agreement Joint Committee ("Joint Committee") is responsible for the implementation and application of the Withdrawal Agreement, including the Windsor Framework. The Joint Committee can take binding decisions in respect of all matters for

which the Withdrawal Agreement so provides and Joint Committee decisions have the same legal effect as the Withdrawal Agreement pursuant to Article 166.2. Article 13.4 of the Windsor Framework gives the Joint Committee powers to take a decision to add a new EU act which is within the scope of the Windsor Framework to one of the Windsor Framework's Annexes, provided that the act neither amends nor replaces an EU act made applicable by the Windsor Framework, following a procedure set out in Article 13.4.

21. Article 6.3 of the Withdrawal Agreement provides that references to provisions of EU law made applicable by the Withdrawal Agreement include "relevant Union acts supplementing or implementing those provisions". This means that any implementing and delegated acts enacted under the EU acts included in the annexes to the Northern Ireland Protocol apply to the United Kingdom. By virtue of Article 13.3 of the Windsor Framework, EU law made applicable by the Windsor Framework is also to be read as including amendments to the EU acts and replacements of such EU acts. It is not specified further how "amendments and replacements" is to be understood. Where these new acts are directly applicable, they will also be given effect by section 7A which in accordance with section 7A(1) gives effect to all rights, obligations etc "from time to time created or arising by or under the Withdrawal Agreement".

Territorial extent

22. The territorial extent and application of the Bill is UK-wide. Clause 25 sets out the territorial extent of the Bill.

Commentary on provisions of Bill

Clause 1: Overview of main provisions

23. Clause 1 summarises the effect of the Bill. It sets out that the Bill ends the effect of - i.e. disapplies - specific areas of the Windsor Framework in domestic law; provides Ministers with powers to disapply further areas of the Windsor Framework according to specific purposes; provides Ministers with powers to make new law related to the Windsor Framework, putting in place suitable domestic arrangements where needed; and provides that cross-community support in the Northern Ireland Assembly is required to approve continued application of Articles 5-10 of the Windsor Framework.
24. Subsection (1)(c) makes clear that where other enactments are subject to the Windsor Framework in domestic law, this ceases where the Windsor Framework is excluded under the Bill - as for example with respect to Article VI of the Act of Union (Ireland) 1800 and Act of Union with Ireland 1800 and section 38 of the European Union (Withdrawal Agreement) Act 2020.

Clause 2: Amendment of the European Union (Withdrawal) Act 2018

25. Clause 2 circumscribes the effect of section 7A of the EUWA by requiring compatibility with the Act of Union (Ireland) Act 1800, the Union with Ireland Act 1800, the territorial integrity of the United Kingdom, section 38 of the EUWA 2020 and the security interests of the United Kingdom, which includes effective control of the United Kingdom's borders. Clause 2 also prevents domestic legal effect being given to Article 2 of the Windsor Framework.

Clause 3: Limitation of general implementation of the Northern Ireland Protocol

26. Clause 3 allows the rest of the Bill to take effect. It removes the effect (in domestic law) of "excluded" provisions of the Windsor Framework and of the Withdrawal Agreement, which are currently given effect by section 7A of the EUWA.
27. Many of these provisions are EU law provisions that currently apply automatically in domestic law, without any further enactment. This is because section 7A of the EUWA allows them to retain their EU law characteristics of direct application, direct effect and supremacy.
28. Subsections (1) and (2) address section 7A of the EUWA to provide clarity in domestic law on the disapplication of the "excluded" provision of the Windsor Framework and Withdrawal Agreement, allowing new domestic law to operate clearly.
29. Subsection (3) amends section 7A of the EUWA to reflect this.

Clause 4: Other limitations in interpretation of law

30. Clause 4 has ancillary function to clause 3, limiting the relevant part of the EUWA that would otherwise require domestic courts to interpret domestic law in light of relevant separation agreement law (i.e. the Withdrawal Agreement, EEA-EFTA Separation Agreement and Swiss Citizens' Rights Agreement). Without this clause, courts could be placed in a contradictory position whereby they would be required to interpret domestic law in light of EU law that no longer applies in the UK.
31. Subsection (1) provides for the necessary change to section 7C of the EUWA, and subsection (2) amends the EUWA to reflect this.

Clause 5: Annex 2 of the Windsor Framework: excluded provision

32. Clause 5 makes Article 5(4) and Annex 2 of the Windsor Framework excluded provisions so as to address the application in Northern Ireland of EU laws.

Clause 6: Movement of goods (including customs): excluded Protocol provision

33. Clause 6 provides for a default exclusion for both UK and non-EU destined goods moving between Great Britain and Northern Ireland. The result is that these goods do not face the requirements placed on them under the Windsor Framework. This clause, along with clauses 7 and 8, provides the basis for the Government to administer a different regime for the movement of goods.
34. Clause 6 disapplies parts of Article 5.1 and Articles 5.2 and 5.3 of the Windsor Framework. These provisions set out that customs duty would only be due on goods entering Northern Ireland that were "at risk" of entering the EU. The clause removes the effect of these in domestic law as this "at risk" test will be replaced by an alternative model as per paragraph 36 above. Clause 6 when taken with Clause 5, which disapplies Article 5(4) and Annex 2 of the Windsor Framework, removes customs requirements, tariffs, and regulatory requirements on internal goods movements within the United Kingdom.

Clause 7: Movement of goods: new law about matters other than customs

35. Clause 7 allows a Minister of the Crown to make regulations in relation to clause 6. This clause enables a Minister to make provision for UK and EU destined goods to be distinguished, for example by providing for different requirements as to the checks and controls that will apply in respective cases.
36. Subsection (1) provides that a Minister of the Crown may, by regulations, make appropriate provision in connection with any provision of the Northern Ireland Protocol to which clause 6 relates.
37. Subsection (2) clarifies that subsection (1) cannot be used to make provision about customs matters, which are instead covered by clause 8.
38. Subsection (3) provides clarity that regulations made under subsection (1) may include provision for appropriate arrangements to apply to goods, regardless of destination. For example, this would enable the continued application of pre-EU Exit controls on the movement of live animals. It would also ensure that a 'trusted trader' regime in connection with mutual enforcement or alternative arrangements could be accompanied by appropriate underpinnings and restrictions to allow it to function effectively and avoid abuse of the scheme.

Clause 8: Customs matters: new law

39. Clause 8 allows the Treasury and HMRC to bring forward legislation in relation to customs matters including duties and the administration and enforcement of customs. This is in line

with standard legislative procedure in relation to legislating for the collection and administration of duties.

40. Subsection (2) provides clarity regarding elements that such regulations could include. As with clause 7, this provides the means to establish the underpinnings of any future mutual enforcement regime, and accompanying 'trusted trader' scheme, and enable it to function effectively.

Clause 9: Regulation of goods

41. Clause 9 provides for a Minister to make such regulations as are necessary to restore United Kingdom control over goods produced, traded and moving to and from the UK. Such would include manufactured goods, medicines and agri-food goods. This will change the present arrangements whereby goods are required to comply with the relevant EU requirements that are listed in Annex 2 of the Windsor Framework - meaning that goods that only meet UK requirements and not the applicable EU requirements cannot currently be placed on the market in Northern Ireland.

Clause 10: Meaning of "regulation of goods"

42. Clause 10 provides definitions in relation to the regulatory regime established in this Bill.
43. Subsection (1) clarifies that "regulation of goods" in this Bill means regulation of making goods available on the market; putting goods into service; production of goods (whether by manufacture or any other process); and use and import of goods. This subsection also makes clear that regulation of goods includes any matter relevant to the regulation of goods including matters that occur before or after goods are made available on the market, put into service, or produced.
44. Subsection (2) sets out a further non-exhaustive list of what these regulatory matters may include.
45. Subsection (3) makes clear that in the case of placing goods on the market or putting goods into service, those matters may also include production of goods (whether by manufacture or any other process).
46. Subsection (4) provides that a Minister of the Crown may, by regulations, make provision about the meaning of regulation of goods in this Bill, including changing the effect of other provisions in this section.

Clause 11: Subsidy control

47. Clause 11 provides the basis for a single UK-wide subsidy control policy, rather than two separate regimes as currently provided for under the Windsor Framework. The clause provides clarity in domestic law on the disapplication of Article 10 (including the obligation

to notify measures currently in scope of the Northern Ireland Protocol to the European Commission).

48. Subsection (1) excludes Article 10 and Annexes 5 and 6 of the Windsor Framework from the provisions given effect in domestic law under section 7A(2) of the EUWA.
49. Article 10 of the Windsor Framework applies EU State aid rules to the UK with regard to measures which affect trade in goods and wholesale electricity between Northern Ireland and the EU. Annex 5 of the Northern Ireland Protocol lists the substantive State aid rules which apply as part of the application of Article 10, and Annex 6 provides the procedures by which Article 10.2 is applied.
50. Subsection (2) of this clause makes consequential amendments to the Subsidy Control Act 2022. Section 42(8)(d) of the Subsidy Control Act ensures that the calculation of Minimal Financial Assistance ("MFA") and Services of Public Economic Interest ("SPEI") Assistance includes *De Minimis* aid given under Article 10 the Windsor Framework. The disapplication of Article 10 means that MFA and SPEI Assistance can exclude the calculation of *De Minimis* aid given under Article 10 of the Windsor Framework. Subsection (2) of this clause therefore amends Section 42(8)(d) of the Subsidy Control Act to confirm that this calculation is only necessary until Article 10 is disapplied and this Bill comes into force.
51. Subsection (2) of this clause also amends section 48(3) of the Subsidy Control Act so it ceases to disapply UK subsidy control rules where the State aid rules apply by virtue of Article 10 of the Windsor Framework. This will extend UK subsidy control rules to Northern Ireland once Article 10 is disapplied and this Bill comes into force.
52. Subsection (3) of this clause provides that a Minister of the Crown may, by regulations, make appropriate provision in connection with any provision of the Northern Ireland Protocol to which this clause relates.

Clause 12: Implementation, application, supervision and enforcement of the Windsor Framework

53. Clause 12 disapplies the effect in domestic law of provisions relating to implementation and enforcement of the Windsor Framework.
54. Subsection (1) sets out that any provision of the Windsor Framework or Withdrawal Agreement is excluded so far as it confers jurisdiction of the Court of Justice of the European Union ("CJEU") in relation to the Windsor Framework or related provision of the Withdrawal Agreement. That is the case whether the CJEU jurisdiction relates to excluded provisions or any other matter.
55. Subsection (2) sets out that Article 12.2 and 12.3 of the Windsor Framework are "excluded provision".
56. Subsection (3) sets out that other provision relating to the implementation, application, supervision and enforcement of the Windsor Framework is excluded under clause 13.

57. Subsection (4) provides that a Minister of the Crown may, by regulations, make appropriate provision in connection with any provision of the Windsor Framework to which this clause relates.

Clause 13: Provision of the Windsor Framework etc applying to other exclusions

58. Clause 13 disapplies other ancillary provisions in the Windsor Framework and Withdrawal Agreement, insofar as they might otherwise apply in relation to the provisions of the Windsor Framework and Withdrawal Agreement that are disapplied by this Bill.
59. Subsection (1) makes clear that, in domestic law, other provision of the Windsor Framework and Withdrawal Agreement does not apply, insofar as they otherwise would apply in relation to a provision that has been disapplied by this Bill.
60. Subsection (2) then provides examples of the ancillary provision that is covered by subsection (1). For example, this includes parts of the Withdrawal Agreement that govern how references to EU law in the Windsor Framework should be read.
61. Subsection (3) sets out that the matters which may be disapplied by this clause, so far as they apply in relation to other provision of the Windsor Framework that has been disapplied, this includes the responsibility of the authorities of the UK to implement EU law and the requirement that such provision is to be interpreted in conformity with the methods and general principles of EU law and relevant EU case law.
62. Subsection (4) provides that a Minister of the Crown may, by regulations, make appropriate provision related to the aspects of the Windsor Framework and other parts of the Withdrawal Agreement that are disapplied by this clause.

Clause 14: Changes to, and exceptions from, excluded provision

63. Clause 14 describes how Ministers may change which elements of the Windsor Framework or the Withdrawal Agreement are "excluded provision".
64. Subsection (1) defines the purposes for which Ministers may disapply further areas of the Windsor Framework. These purposes include ensuring the effective flow of trade between Northern Ireland and another part of the United Kingdom; safeguarding animal, plant or human welfare or health; and lessening, eliminating or avoiding difference between tax or customs duties in Northern Ireland and Great Britain (amongst other purposes). Subsections (1)(i)(i) and (1)(i)(ii) make clear that the international obligations included in subsection (1)(i) do not include the Windsor Framework or the Withdrawal Agreement.
65. Subsection (2) provides that a Minister of the Crown may, by regulations, make provision that amends the extent of "excluded provision". Subsections (2)(a) and (2)(b) make clear that this power can be used either to exclude additional provisions or to increase the extent to which an already-excluded provision is excluded, whilst subsections (2)(c) makes clear that

this power can be used to decrease the extent to which an already-excluded provision is excluded.

66. Subsection (3) provides a limit to the power in subsection (2). It states that the power may not be exercised to provide for Article 2, Article 3, or Article 11 of the Windsor Framework to become excluded provision to any extent.

Clause 15: Additional excluded provision: new law

67. Clause 15 describes how Ministers may make new law in connection with provisions of the Windsor Framework or Withdrawal Agreement which are additional "excluded provision" by virtue of the powers in clause 14.
68. Subsection (1) provides that a Minister of the Crown may, by regulations, make appropriate provision in relation to parts of the Windsor Framework or Withdrawal Agreement that are made "excluded provision" using the powers in clause 14.
69. Subsection (2) clarifies that the power to make regulations contained in this clause is not limited in any way by the other powers in the Bill.
70. Subsection (3) defines "additional excluded provision" as provisions made excluded under the powers in clause 14(2)(a) to 14(2)(c). This includes where that exclusion is subsequently precluded to a greater or lesser extent.

Clause 16: Value added tax, excise duties and other taxes: new law

71. Clause 16 provides that the Treasury may make provision related to VAT and excise law, and any other taxes, which they consider appropriate in connection with the Windsor Framework. This includes, but is not limited to, implementing VAT and excise measures UK-wide that might otherwise not be permitted in Northern Ireland under the Windsor Framework. As such, it provides Ministers with the ability to ensure that VAT, excise and other tax policy can be applied throughout the entirety of the UK where appropriate, including Northern Ireland.
72. Subsection (1) provides the Treasury with the power to make provision about VAT, excise duty and other taxes in relation to the Windsor Framework. It makes clear that this can include changes that would impose or vary the incidence of VAT, excise duty, and any other tax.
73. Subsection (2) clarifies that the Treasury may use this power in particular where doing so is necessary to lessen, eliminate, or avoid differences in VAT, excise duties or other taxes between Northern Ireland and Great Britain.

Clause 17: Other Ministerial powers

74. Clause 17 clarifies the relationship between powers provided by this Bill and those arising otherwise, including by virtue of the Royal Prerogative.
75. Subsection (1) provides that Ministers can engage in conduct (i.e. sub-legislative activity, such as producing guidance) relevant to the Windsor Framework if they consider it appropriate in connection with one or more of the purposes of this Bill.
76. Subsection (2) clarifies that this Bill does not affect powers otherwise provided to Ministers of the Crown, including any power to make subordinate legislation or powers under the Royal Prerogative.

Clause 18: Role of the European Court in court and tribunal proceedings

77. Clause 18 makes provision regarding the effect in domestic law of rulings of the CJEU.
78. Subsection (1) establishes the scope of clause 18, outlining that it applies to proceedings so far as they relate to: the Windsor Framework; related provision of the Withdrawal Agreement; or domestic law relating to the Windsor Framework or related provision of the Withdrawal Agreement.
79. Subsection (2) provides that domestic courts and tribunals are not required in domestic law to follow the jurisprudence of the CJEU, and cannot refer cases to it in relation to the Windsor Framework or related provision of the Withdrawal Agreement.
80. Subsection (3) provides that a Minister of the Crown may, by regulations, make appropriate provision related to subsection (2).

Clause 19: Continued application of Articles 5 to 10 of the Windsor Framework

81. Clause 19 provides that any democratic consent vote on the continued application of Articles 5 to 10 of the Windsor Framework requires cross-community consent in the Northern Ireland Assembly.

Clause 20: Preparatory expenditure

82. Clause 20 provides that Ministers of the Crown, government departments, or devolved authorities may properly incur expenditure in preparation for action undertaken under this Bill, for the making of statutory instruments under this Bill, or under other Acts or statutory instruments as modified by or under this Bill.

Clause 21: Regulations

83. Clause 21 sets out the general scope and nature of the powers contained in the Bill.
84. Subsection (1) confirms that regulations under this Bill can make any provision that can be made by an Act of Parliament; this includes amending this Bill or making retrospective provision.
85. Subsection (2) gives further non-exhaustive examples of what regulations under this Bill may do, including making provision notwithstanding that provision's incompatibility with the Windsor Framework or any other part of the Withdrawal Agreement.
86. Subsection (3) sets out that regulations under this Bill which are considered to be appropriate in relation to an exclusion, continue to be exercisable if said exclusion is modified or removed using the powers under clause 14(2)(b-d).
87. Subsection (4) provides that regulations brought forward under the powers in this Bill are never to be treated as hybrid instruments.
88. Subsection (5) provides that a Minister of the Crown may, by regulations, make the other powers under this Bill exercisable exclusively, concurrently or jointly with Devolved Administrations, and may provide for Devolved Administration scrutiny of said regulations.

Clause 22: Making regulations under this Act: general provisions

89. Clause 22 sets out the process and parliamentary procedure for the regulations made under the Bill.
90. Subsections (1) and (2) set out that the processes in clause 22 apply to regulations made under the Bill, excluding tax or customs regulations.
91. Subsection (3) sets out that regulations under the Bill are to be made by statutory instrument.
92. Subsection (4) sets out that statutory instruments are subject to the negative procedure (i.e. subject to annulment in pursuance of a resolution of either House of Parliament) except where they amend an Act of Parliament or make retrospective provision.
93. Subsection (5) sets out that where a statutory instrument amends an Act of Parliament or makes retrospective provision, it is subject to the draft affirmative procedure unless the instrument contains a declaration from the Minister that urgency requires it be subject to the made affirmative procedure.
94. Subsection (6) provides that a draft affirmative statutory instrument can only be made once a draft of the instrument has been laid before, and approved by a resolution of both Houses of Parliament.
95. Subsection (7) provides that once made, a made affirmative statutory instrument must be laid before Parliament and it will cease to have effect after 28 days (starting with the day on which the instrument is made) unless within those 28 days the instrument is approved by a resolution of each House.

96. Subsection (8) states that in calculating the above 28 day period, no account is to be taken of periods when Parliament is dissolved, prorogued, or when either House is adjourned for more than four days.
97. Subsection (9) sets out that, if regulations cease to have effect as a result of not receiving approval by a resolution of each House within 28 days under subsection (7)(b), that does not affect the validity of anything previously done under the regulations or prevent the making of new regulations.

Clause 23: Regulations relating to tax or customs matters

98. Clause 23 relates to tax or customs regulations under this Bill.
99. Subsection (1) confirms only the Treasury may take forward regulations relating to tax using a relevant power in this Bill.
100. Subsection (2) confirms only the Treasury or HMRC may take forward regulations relating to customs using a relevant power in this Bill.
101. Subsection (3) confirms that tax or customs regulations are to be made by statutory instrument.
102. Subsection (4) sets out that statutory instruments are subject to the negative procedure before the House of Commons only (i.e. subject to an annulment in pursuance of a resolution of the House of Commons), except where they amend an Act of Parliament or make retrospective provision.
103. Subsection (5) sets out that where a statutory instrument amends an Act of Parliament or makes retrospective provision, it is subject to the draft affirmative procedure before the House of Commons only, unless the instrument contains a declaration from the Minister that urgency requires it be subject to the made affirmative procedure.
104. Subsection (6) sets out that where a statutory instrument is subject to the draft affirmative procedure before the House of Commons only, it is only to be made once a draft of the instrument is laid before, and approved by a resolution of, the House of Commons.
105. Subsection (7) provides that where a statutory instrument is subject to the made affirmative procedure before the House of Commons only, it must, once made, then be laid before the House of Commons and it will cease to have effect after 28 days (starting on the day the instrument is made) unless within those 28 days the instrument is approved by a resolution of the House of Commons.
106. Subsection (8) states that in calculating the above 28 day period, no account is to be taken of periods when Parliament is dissolved, prorogued, or when the House of Commons is adjourned for more than four days.
107. Subsection (9) sets out that where regulations cease to have effect as a result of not receiving approval by a resolution of the House of Commons within 28 days under subsection (7)(b),

this does not affect the validity of anything previously done under the regulations or prevent the making of new regulations.

108. Subsection (10) provides that the relevant parts of this clause does not apply to regulations made in combination with regulations made using powers under other legislation where that legislation requires the statutory instrument containing those regulations to be made under the draft affirmative procedure and approved by a resolution of either the House of Commons or both Houses of Parliament.
109. Subsection (11) provides that a relevant power is any power in the Bill other than clauses 7 and 13 which are designed to relate to customs and tax respectively. Subsection (11) also defines tax or customs provision and tax or customs regulations.

Clause 24: Interpretation

110. Clause 24 provides the definition of relevant terms in the Bill, including by cross reference to their definition in other pieces of legislation.
111. Subsection (1) lists and defines a number of key terms in the Bill.
112. Subsection (2) defines what is meant by references in the Bill to provision of the Windsor Framework that does not have effect in the United Kingdom; and to an enactment being affected by provision of the Windsor Framework.

Clause 25: Extent, commencement and short title

113. Clause 25 makes a number of final provisions in the Bill.
114. Subsection (1) provides that the Bill extends to the legal jurisdictions of England and Wales, Scotland and Northern Ireland.
115. Subsection (2) deals with commencement, outlining that the Bill comes into force at the end of the period of three months beginning with the day on which the Bill is passed.
116. Subsection (3) sets out the short title of the Bill (the European Union (Withdrawal Arrangements) Act 2024).

Commencement

117. Clause 25 provides that the provisions of the Bill come into force at the end of the period of three months beginning with the day on which the Bill is passed.

Related documents

118. The following documents are relevant to the Bill and can be read at the stated locations:

- Protocol on Ireland/Northern Ireland:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

- Command Paper, Northern Ireland Protocol: The way forward:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible_1_.pdf

- The Windsor Framework

https://assets.publishing.service.gov.uk/media/63fccf07e90e0740d3cd6ed6/The_Windsor_Framework_a_new_way_forward.pdf

EUROPEAN UNION (WITHDRAWAL ARRANGEMENTS) BILL 2024

EXPLANATORY NOTES

These Explanatory Notes relate to the European Union (Withdrawal Arrangements) Bill as introduced in the House of Commons on 16 October 2024 (Bill 18).

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