

European Union (Withdrawal) Bill

AMENDMENTS TO BE MOVED ON REPORT

Clause 6

LORD CALLANAN

Page 3, line 34, at beginning insert “Subject to this and subsections (3) to (6),”

Page 3, line 34, leave out “need not” and insert “may”

Page 3, line 35, leave out from “the EU” to the end of line 36 and insert “so far as it is relevant to any matter before the court or tribunal.”

After Clause 6

LORD CALLANAN

Insert the following new Clause—

“Status of retained EU law

- (1) Anything which—
 - (a) was, immediately before exit day, primary legislation of a particular kind, subordinate legislation of a particular kind or another enactment of a particular kind, and
 - (b) continues to be domestic law on and after exit day by virtue of section 2, continues to be domestic law as an enactment of the same kind.
- (2) Retained direct principal EU legislation cannot be modified by any primary or subordinate legislation other than—
 - (a) an Act of Parliament,
 - (b) any other primary legislation (so far as it has the power to make such a modification), or
 - (c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—
 - (i) paragraph 3A, 3C(3)(a) or (4)(a), 3F(3), 5A(3)(a) or (4)(a), 5B(2)(a) or 5C(3) of Schedule 8,
 - (ii) any other provision made by or under this Act,

After Clause 6 - continued

- (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or
 - (iv) any provision made on or after the passing of this Act by or under primary legislation.
- (3) Retained direct minor EU legislation cannot be modified by any primary or subordinate legislation other than—
- (a) an Act of Parliament,
 - (b) any other primary legislation (so far as it has the power to make such a modification), or
 - (c) any subordinate legislation made under a power which permits such a modification by virtue of—
 - (i) paragraph 3A, 3C(2), 3F(3), 5A(2) or 5C(3) of Schedule 8,
 - (ii) any other provision made by or under this Act,
 - (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or
 - (iv) any provision made on or after the passing of this Act by or under primary legislation.
- (4) Anything which is retained EU law by virtue of section 4 cannot be modified by any primary or subordinate legislation other than—
- (a) an Act of Parliament,
 - (b) any other primary legislation (so far as it has the power to make such a modification), or
 - (c) any subordinate legislation made under a power which permits such a modification by virtue of—
 - (i) paragraph 3A, 3C(3)(b) or (4)(b), 3F(3), 5A(3)(b) or (4)(b), 5B(2)(b) or 5C(3) of Schedule 8,
 - (ii) any other provision made by or under this Act,
 - (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or
 - (iv) any provision made on or after the passing of this Act by or under primary legislation.
- (5) For other provisions about the status of retained EU law, see—
- (a) section 5(1) to (3) (status of retained EU law in relation to other enactments or rules of law),
 - (b) section 6 (status of retained case law and retained general principles of EU law),
 - (c) section 13(2) and Part 2 of Schedule 5 (status of retained EU law for the purposes of the rules of evidence),
 - (d) paragraphs 8 and 9 of Schedule 8 (status of certain retained direct EU legislation for the purposes of the Interpretation Act 1978), and
 - (e) paragraph 19 of that Schedule (status of retained direct EU legislation for the purposes of the Human Rights Act 1998).
- (6) In this Act—
- “retained direct minor EU legislation” means any retained direct EU legislation which is not retained direct principal EU legislation;
 - “retained direct principal EU legislation” means—

After Clause 6 - continued

- (a) any EU regulation so far as it—
 - (i) forms part of domestic law on and after exit day by virtue of section 3, and
 - (ii) was not EU tertiary legislation immediately before exit day, or
 - (b) any Annex to the EEA agreement so far as it—
 - (i) forms part of domestic law on and after exit day by virtue of section 3, and
 - (ii) refers to, or contains adaptations of, any EU regulation so far as it falls within paragraph (a),
- (as modified by or under this Act or by other domestic law from time to time).”

LORD WALLACE OF SALTAIRE
BARONESS SMITH OF NEWNHAM

Insert the following new Clause—

“Coordination of foreign and security policy

The Secretary of State must ensure that before exit day all necessary action has been taken to continue coordination of foreign and security policy with the EU, including association with the EU’s military staff and the European Defence Agency, and to integrate all relevant EU law and regulations into UK legislation.”

After Clause 8

LORD WHITTY

Insert the following new Clause—

“Transport connectivity

- (1) The Secretary of State must within two months of the passing of this Act lay before both Houses of Parliament a report indicating the manner in which continuity and safety of transport is to be maintained following the United Kingdom’s withdrawal from the EU.
- (2) The report referred to in subsection (1) must include proposals to maintain a relationship with the deliberations and operational activities of the European Union’s transport Executive Agencies, whether by continued participation in the European Agencies in some form or by establishing an effective equivalent within the United Kingdom or by other means.
- (3) The Agencies referred to in subsection (2) include—
 - (a) in respect of civil aviation, the European Aviation Safety Agency;
 - (b) in respect of maritime transport, the European Maritime Safety Agency;
 - and
 - (c) in respect of rail transport, the European Railway Agency.
- (4) A Minister of the Crown must seek approval for the proposals in the report under subsection (2) by means of motions in both Houses of Parliament.

After Clause 8 - continued

- (5) The Secretary of State may by regulations made by statutory instrument provide for the implementation of any proposal approved by both Houses of Parliament under subsection (4).
- (6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

After Clause 9

BARONESS SMITH OF NEWNHAM
BARONESS LUDFORD

Insert the following new Clause—

“Rights of EU citizens

- (1) A Minister of the Crown must by regulations made by statutory instrument make provision to maintain, preserve and protect the rights of any citizen of an EU member State who was lawfully resident in the United Kingdom immediately before exit day, and in particular to continue their right to be lawfully resident in the United Kingdom.
- (2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 14

LORD CALLANAN

Page 10, line 7, leave out “section 2” insert “sections 2 and (*Status of retained EU law*)”

Page 11, line 26, after “in” insert “section (*Status of retained EU law*) or”

Page 12, line 6, at end insert—

“(6A) In this Act references to anything which is retained EU law by virtue of section 4 include references to any modifications, made by or under this Act or by other domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.”

Clause 15

LORD CALLANAN

Page 12, line 25, at end insert—

“Anything which is retained EU law by virtue of section 4 | Section 14(6A)”

Clause 15 - continued

Page 13, line 33, at end insert –

“Retained direct minor EU legislation	Section (Status of retained EU law)(6)
Retained direct principal EU legislation	Section (Status of retained EU law)(6)”

Schedule 7

LORD CALLANAN

Page 51, line 42, at end insert –

“Anticipatory exercise of powers in relation to retained EU law

- 18A Any power to make regulations under this Act which modify retained direct EU legislation, anything which is retained EU law by virtue of section 4 or any other retained EU law is capable of being exercised before exit day so that the regulations come into force on or after exit day.”

Schedule 8

LORD CALLANAN

Page 55, line 33, leave out paragraph 3 and insert –

- “3A(1) Any power to make, confirm or approve subordinate legislation which –
- (a) was conferred before the day on which this Act is passed, and
 - (b) is capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in primary legislation,
- is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.
- (2) But sub-paragraph (1) does not apply if the power to make, confirm or approve subordinate legislation is only capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in Northern Ireland legislation which is an Order in Council.
- 3B(1) Any subordinate legislation which –
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and
 - (b) amends or revokes any retained direct principal EU legislation,

Schedule 8 - continued

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.

- (2) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and
 - (b) either—
 - (i) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct principal EU legislation, or
 - (ii) modifies (otherwise than as a connected modification) anything which is retained EU law by virtue of section 4,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.

- (3) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and
 - (b) amends or revokes any retained direct minor EU legislation,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.

- (4) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and
 - (b) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct minor EU legislation,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.

- (5) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and
 - (b) modifies as a connected modification any retained direct EU legislation or anything which is retained EU law by virtue of section 4,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to the modification to which it is connected.

Schedule 8 - continued

- (6) Any provision which may be made, confirmed or approved by virtue of paragraph 3A may be included in the same instrument as any other provision which may be so made, confirmed or approved.
 - (7) Where more than one procedure of a kind falling within sub-paragraph (8) would otherwise apply in the same legislature for an instrument falling within sub-paragraph (6), the higher procedure is to apply in the legislature concerned.
 - (8) The order of procedures is as follows (the highest first) –
 - (a) a procedure which requires a statement of urgency before the instrument is made and the approval of the instrument after it is made to enable it to remain in force,
 - (b) a procedure which requires the approval of the instrument in draft before it is made,
 - (c) a procedure not falling within paragraph (a) which requires the approval of the instrument after it is made to enable it to come into, or remain in, force,
 - (d) a procedure which provides for the annulment of the instrument after it is made,
 - (e) a procedure not falling within any of the above paragraphs which provides for the laying of the instrument after it is made,
 - (f) no procedure.
 - (9) The references in this paragraph to amending or repealing an enactment contained in primary legislation or amending or revoking an enactment contained in subordinate legislation do not include references to amending or repealing or (as the case may be) amending or revoking an enactment contained in any Northern Ireland legislation which is an Order in Council.
 - (10) In this paragraph “connected modification” means a modification which is supplementary, incidental, consequential, transitional or transitory, or a saving, in connection with –
 - (a) another modification under the power of retained direct EU legislation or anything which is retained EU law by virtue of section 4, or
 - (b) anything else done under the power.
- 3C(1) This paragraph applies to any power to make, confirm or approve subordinate legislation –
- (a) which was conferred before the day on which this Act is passed, and
 - (b) is not capable of being exercised as mentioned in paragraph 3A(1)(b) or is only capable of being so exercised in relation to Northern Ireland legislation which is an Order in Council.
- (2) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) is to be read –
 - (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
 - (b) so far as the context permits or requires,

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- as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.
- (3) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) –
- (a) any retained direct principal EU legislation, or
 - (b) anything which is retained EU law by virtue of section 4,
- so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).
- (4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) –
- (a) any retained direct EU legislation, or
 - (b) anything which is retained EU law by virtue of section 4.
- 3D Any subordinate legislation which is, or is to be, made, confirmed or approved by virtue of paragraph 3C(2), (3) or (4) is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were doing anything else under the power.
- 3E Any power to make, confirm or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on or after exit day without that restriction or any corresponding restriction in relation to compatibility with retained EU law.
- 3F (1) Paragraphs 3A to 3E and this paragraph –
- (a) do not prevent the conferral of wider powers,
 - (b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after exit day), and
 - (c) are subject to any other provision made by or under this Act or any other enactment.
- (2) For the purposes of paragraphs 3A and 3C –
- (a) a power is conferred whether or not it is in force, and
 - (b) a power in retained direct EU legislation is not conferred before the day on which this Act is passed.
- (3) A power which, by virtue of paragraph 3A or 3C or any Act of Parliament passed before, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day.”

Schedule 8 - continued

Page 56, line 26, leave out paragraph 5 and insert—

- “5A(1) This paragraph applies to any power to make, confirm or approve subordinate legislation which is conferred on or after the day on which this Act is passed.
- (2) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) may—
- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
- (b) so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.
- (3) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct principal EU legislation, or
- (b) anything which is retained EU law by virtue of section 4,
- so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).
- (4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct EU legislation, or
- (b) anything which is retained EU law by virtue of section 4.
- 5B(1) Sub-paragraph (2) applies to any power to make, confirm or approve subordinate legislation which—
- (a) is conferred on or after the day on which this Act is passed, and
- (b) is capable of being exercised to amend or revoke (or, as the case may be, result in the amendment or revocation of) any retained direct principal EU legislation.
- (2) The power may, so far as applicable and unless the contrary intention appears, be exercised—
- (a) to modify otherwise than by way of amendment or revocation (or, as the case may be, result in such modification of) any retained direct principal EU legislation, or
- (b) to modify (or, as the case may be, result in the modification of) anything which is retained EU law by virtue of section 4.
- 5C(1) Paragraphs 5A and 5B and this paragraph—
- (a) do not prevent the conferral of wider powers,
- (b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after exit day), and

Schedule 8 - continued

- (c) are subject to any other provision made by or under this Act or any other enactment.
- (2) For the purposes of paragraphs 5A and 5B—
 - (a) a power is conferred whether or not it is in force,
 - (b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed, and
 - (c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).
- (3) A power which, by virtue of paragraph 5A or 5B or any Act of Parliament passed after, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day.”

Page 61, line 2, at beginning insert “This paragraph has effect”

Page 61, line 2, leave out from “1998” to end of line 4 and insert—

- “() Any retained direct principal EU legislation is to be treated as primary legislation.
- () Any retained direct minor EU legislation is to be treated as primary legislation so far as it amends any primary legislation but otherwise is to be treated as subordinate legislation.”

Page 61, line 5, leave out “sub-paragraph (1)” and insert “this paragraph “amend”,”

Page 64, line 15, leave out “3 months” and insert “two years”

Page 64, line 29, at end insert—

- “(7) Paragraph 4 of Schedule 1 does not apply in relation to any proceedings begun within the period of two years beginning with exit day so far as the proceedings relate to anything which occurred before exit day.”

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11 April 2018
