

European Union (Withdrawal) Bill

COMMONS AMENDMENTS IN LIEU, AMENDMENTS TO AMENDMENTS AND REASONS

[The page and line references are to HL Bill 79, the bill as first printed for the Lords.]

LORDS AMENDMENTS 1 AND 2

Clause 1

- 1 Page 1, line 2, at end insert –
“(1) Subsection (2) applies if, and only if, the condition in subsection (3) is met.”
- 2 Page 1, line 3, at end insert –
“(3) The condition in this subsection is that, by 31 October 2018, a Minister of the Crown has laid before both Houses of Parliament a statement outlining the steps taken in negotiations under Article 50(2) of the Treaty on European Union to negotiate, as part of the framework for the United Kingdom’s future relationship with the European Union, an arrangement which enables the United Kingdom to continue participating in a customs union with the European Union.”

COMMONS AMENDMENTS IN LIEU

The Commons disagree to Lords Amendments 1 and 2 but propose Amendments 1A and 1B in lieu –

- 1A Page 9, line 21, at end insert the following new Clause –
“Customs arrangement as part of the framework for the future relationship
(1) A Minister of the Crown must lay before each House of Parliament a statement in writing outlining the steps taken by Her Majesty’s Government, in negotiations under Article 50(2) of the Treaty on European Union, to seek to negotiate an agreement, as part of the framework for the United Kingdom’s future relationship with the EU, for the United Kingdom to participate in a customs arrangement with the EU.
(2) The statement under subsection (1) must be laid before both Houses of Parliament before the end of 31 October 2018.”
- 1B Page 15, line 13, at end insert –
“() section (*Customs arrangement as part of the framework for the future relationship*),”.

LORDS AMENDMENT 3

After Clause 3

3 Insert the following new Clause –

“Maintenance of EU environmental principles and standards

- (1) The Secretary of State must take steps designed to ensure that the United Kingdom’s withdrawal from the EU does not result in the removal or diminution of any rights, powers, liabilities, obligations, restrictions, remedies and procedures that contribute to the protection and improvement of the environment.
- (2) In particular, the Secretary of State must carry out the activities required by subsections (3) to (5) within the period of six months beginning with the date on which this Act is passed.
- (3) The Secretary of State must publish proposals for primary legislation to establish a duty on public authorities to apply principles of environmental law established in EU law or on which EU environmental law is based in the exercise of relevant functions after exit day.
- (4) The Secretary of State must publish proposals for primary legislation to establish an independent body with the purpose of ensuring compliance with environmental law by public authorities.
- (5) The Secretary of State must publish –
 - (a) a list of statutory functions that can be exercised so as to achieve the objective in subsection (1); and
 - (b) a list of functions currently exercised by EU bodies that require to be retained or replicated in UK law in order to achieve the objective in subsection (1).
- (6) The Secretary of State must before 1 January 2020 lay before Parliament a Statement of Environmental Policy which sets out how the principles in subsection (7) will be given effect.
- (7) The principles referred to in subsection (3) include –
 - (a) the precautionary principle as it relates to the environment,
 - (b) the principle of preventive action to avert environmental damage,
 - (c) the principle that environmental damage should as a priority be rectified at source,
 - (d) the polluter pays principle,
 - (e) sustainable development,
 - (f) prudent and rational utilisation of natural resources,
 - (g) public access to environmental information,
 - (h) public participation in environmental decision making, and
 - (i) access to justice in relation to environmental matters.
- (8) Before complying with subsections (3) to (6) the Secretary of State must consult –
 - (a) each of the devolved administrations;
 - (b) persons appearing to represent the interests of local government;
 - (c) persons appearing to represent environmental interests;
 - (d) farmers and land managers; and

- (e) such other persons as the Secretary of State thinks appropriate.”

COMMONS AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 3 but propose Amendments 3A and 3B in lieu –

3A Page 9, line 21, at end insert the following new Clause –

“Maintenance of environmental principles etc.

- (1) The Secretary of State must, within the period of six months beginning with the day on which this Act is passed, publish a draft Bill consisting of –
- (a) a set of environmental principles,
 - (b) a duty on the Secretary of State to publish a statement of policy in relation to the application and interpretation of those principles in connection with the making and development of policies by Ministers of the Crown,
 - (c) a duty which ensures that Ministers of the Crown must have regard, in circumstances provided for by or under the Bill, to the statement mentioned in paragraph (b),
 - (d) provisions for the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law (as it is defined in the Bill), and
 - (e) such other provisions as the Secretary of State considers appropriate.
- (2) The set of environmental principles mentioned in subsection (1)(a) must (however worded) consist of –
- (a) the precautionary principle so far as relating to the environment,
 - (b) the principle of preventative action to avert environmental damage,
 - (c) the principle that environmental damage should as a priority be rectified at source,
 - (d) the polluter pays principle,
 - (e) the principle of sustainable development,
 - (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
 - (g) public access to environmental information,
 - (h) public participation in environmental decision-making, and
 - (i) access to justice in relation to environmental matters.”

3B Page 15, line 13, at end insert –

- “() section (*Maintenance of environmental principles etc.*),”

LORDS AMENDMENT 4

4 Insert the following new Clause –

“Enhanced protection for certain areas of EU law

- (1) Following the day on which this Act is passed, a Minister of the Crown may not amend, repeal or revoke retained EU law relating to –
 - (a) employment entitlements, rights and protection,
 - (b) equality entitlements, rights and protection,
 - (c) health and safety entitlements, rights and protection,
 - (d) consumer standards, or
 - (e) environmental standards and protection,
 except by primary legislation, or by subordinate legislation made under any Act of Parliament insofar as this subordinate legislation meets the requirements in subsections (2) to (5).
- (2) Subordinate legislation which amends, repeals or revokes retained EU law in the areas set out in subsection (1) must be subject to an enhanced scrutiny procedure, to be established by regulations made by the Secretary of State.
- (3) Regulations under subsection (2) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.
- (4) The enhanced scrutiny procedure provided for by subsection (2) must include a period of consultation with relevant stakeholders.
- (5) When making regulations relating to the areas of retained EU law set out in subsection (1), whether under this Act or any other Act of Parliament, a Minister of the Crown must –
 - (a) produce an explanatory statement under paragraph 22 of Schedule 7, and
 - (b) include a certification that the regulation does no more than make technical changes to retained EU law in order for it to work following exit.”

COMMONS REASON

The Commons disagree to Lords Amendment 4 for the following Reason –

4A *Because the Bill already contains sufficient protection for the areas of EU law concerned.*

LORDS AMENDMENT 5

Clause 5

5 Page 3, line 20, leave out subsections (4) and (5) and insert –

- “() The following provisions of the Charter of Fundamental Rights are not part of domestic law on or after exit day –
- (a) the Preamble, and
 - (b) Chapter V.”

COMMONS REASON

The Commons disagree to Lords Amendment 5 for the following Reason –

- 5A *Because none of the Charter of Fundamental Rights should be part of domestic law on or after exit day.*

LORDS AMENDMENT 10

Clause 7

- 10 Page 5, line 3, leave out “the Minister considers appropriate” and insert “is necessary”

COMMONS REASON

The Commons disagree to Lords Amendment 10 for the following Reason –

- 10A *Because it inappropriately restricts the power in Clause 7(1).*

LORDS AMENDMENT 19

Before Clause 9

- 19 Insert the following new Clause –

“Parliamentary approval of the outcome of negotiations with the European Union

- (1) Without prejudice to any other statutory provision relating to the withdrawal agreement, Her Majesty’s Government may conclude such an agreement only if a draft has been –
 - (a) approved by a resolution of the House of Commons, and
 - (b) subject to the consideration of a motion in the House of Lords.
- (2) So far as practicable, a Minister of the Crown must make arrangements for the resolution provided for in subsection (1)(a) to be debated and voted on before the European Parliament has debated and voted on the draft withdrawal agreement.
- (3) Her Majesty’s Government may implement a withdrawal agreement only if Parliament has approved the withdrawal agreement and any transitional measures agreed within or alongside it by an Act of Parliament.
- (4) Subsection (5) applies in each case that any of the conditions in subsections (6) to (8) is met.
- (5) Her Majesty’s Government must follow any direction in relation to the negotiations under Article 50(2) of the Treaty on European Union which has been –
 - (a) approved by a resolution of the House of Commons, and
 - (b) subject to the consideration of a motion in the House of Lords.
- (6) The condition in this subsection is that the House of Commons has not approved the resolution required under subsection (1)(a) by 30 November 2018.
- (7) The condition in this subsection is that the Act of Parliament required under subsection (3) has not received Royal Assent by 31 January 2019.

- (8) The condition in this subsection is that no withdrawal agreement has been reached between the United Kingdom and the European Union by 28 February 2019.
- (9) In this section, “withdrawal agreement” means an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU and the framework for the United Kingdom’s future relationship with the European Union.”

COMMONS AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 19 but propose Amendments 19A and 19B in lieu –

19A Page 8, line 43, at end insert the following new Clause –

“Parliamentary approval of the outcome of negotiations with the EU

- (1) The withdrawal agreement may be ratified only if –
- (a) a Minister of the Crown has laid before each House of Parliament –
 - (i) a statement that political agreement has been reached,
 - (ii) a copy of the negotiated withdrawal agreement, and
 - (iii) a copy of the framework for the future relationship,
 - (b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,
 - (c) a motion for the House of Lords to take note of the negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and –
 - (i) the House of Lords has debated the motion, or
 - (ii) the House of Lords has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (b), and
 - (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.
- (2) So far as practicable, a Minister of the Crown must make arrangements for the motion mentioned in subsection (1)(b) to be debated and voted on by the House of Commons before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the EU in accordance with Article 50(2) of the Treaty on European Union.
- (3) Subsection (4) applies if the House of Commons decides not to pass the resolution mentioned in subsection (1)(b).
- (4) A Minister of the Crown must, within the period of 28 days beginning with the day on which the House of Commons decides not to pass the resolution, make a statement setting out how Her Majesty’s Government proposes to proceed in relation to negotiations for the United Kingdom’s withdrawal from the EU under Article 50(2) of the Treaty on European Union.

- (5) A statement under subsection (4) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (6) This section does not affect the operation of Part 2 of the Constitutional Reform and Governance Act 2010 (ratification of treaties) in relation to the withdrawal agreement.
- (7) In this section—
- “framework for the future relationship” means the document or documents identified, by the statement that political agreement has been reached, as reflecting the agreement in principle on the substance of the framework for the future relationship between the EU and the United Kingdom after withdrawal;
- “negotiated withdrawal agreement” means the draft of the withdrawal agreement identified by the statement that political agreement has been reached;
- “ratified”, in relation to the withdrawal agreement, has the same meaning as it does for the purposes of Part 2 of the Constitutional Reform and Governance Act 2010 in relation to a treaty (see section 25 of that Act);
- “sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day);
- “statement that political agreement has been reached” means a statement made in writing by a Minister of the Crown which—
- (a) states that, in the Minister’s opinion, an agreement in principle has been reached in negotiations under Article 50(2) of the Treaty on European Union on the substance of—
 - (i) the arrangements for the United Kingdom’s withdrawal from the EU, and
 - (ii) the framework for the future relationship between the EU and the United Kingdom after withdrawal,
 - (b) identifies a draft of the withdrawal agreement which, in the Minister’s opinion, reflects the agreement in principle so far as relating to the arrangements for withdrawal, and
 - (c) identifies one or more documents which, in the Minister’s opinion, reflect the agreement in principle so far as relating to the framework.”

19B Page 15, line 12, at end insert—

“() section (*Parliamentary approval of the outcome of negotiations with the EU*),”

LORDS AMENDMENT 20

Clause 9

20 Page 7, line 7, after “to” insert—

- “(a) approval by Parliament of a mandate for negotiations about the United Kingdom’s future relationship with the EU; and
- (b) ”

COMMONS REASON

The Commons disagree to Lords Amendment 20 for the following Reason –

- 20A** *Because it is not consistent with the constitutional roles of Her Majesty's Government and Parliament in relation to the conduct of international relations.*

LORDS AMENDMENT 24

After Clause 9

- 24** Insert the following new Clause –

“Maintenance of refugee family unity within Europe

- (1) A Minister of the Crown must make appropriate arrangements with the aim of preserving specified effects in the United Kingdom of Regulation (EU) No. 604/2013 (the “Dublin Regulation”), including through negotiations with the EU.
- (2) “Specified effects” under subsection (1) are those provisions, and associated rights and obligations, that allow for those seeking asylum, including unaccompanied minors, adults and children, to join a family member, sibling or relative in the United Kingdom.
- (3) Within six months of the passing of this Act, and then every six months thereafter, a Minister of the Crown must report to Parliament on progress made in negotiations to secure the continuation of reciprocal arrangements between the United Kingdom and member States as they relate to subsection (1).”

COMMONS AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 24 but propose Amendments 24A and 24B in lieu –

- 24A** Page 9, line 21, at end insert the following new Clause –

“Family unity for those seeking asylum or other protection in Europe

- (1) A Minister of the Crown must seek to negotiate, on behalf of the United Kingdom, an agreement with the EU under which, after the United Kingdom's withdrawal from the EU, in accordance with the agreement –
 - (a) an unaccompanied child who has made an application for international protection to a member State may, if it is in the child's best interests, come to the United Kingdom to join a relative who is aged 18 or over and –
 - (i) is a lawful resident of the United Kingdom, or
 - (ii) has made a protection claim which has not been decided, and
 - (b) an unaccompanied child in the United Kingdom, who has made a protection claim, may go to a member State to join a relative there, in equivalent circumstances.
- (2) For the purposes of subsection (1)(a)(i) a person is not a lawful resident of the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.
- (3) For the purposes of subsection (1)(a)(ii), a protection claim is decided –
 - (a) when the Secretary of State notifies the claimant of the Secretary of State's decision on the claim, unless the claimant appeals against the decision, or

- (b) if the claimant appeals against the Secretary of State’s decision on the claim, when the appeal is disposed of.

- (4) In this section –

“application for international protection” has the meaning given by Article 2(h) of Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;

“protection claim” has the same meaning as in Part 5 of the Nationality, Immigration and Asylum Act 2002 (see section 82(2) of that Act);

“relative”, in relation to an unaccompanied child, means –

- (a) a spouse or civil partner of the child or any person with whom the child has a durable relationship that is similar to marriage or civil partnership, or
- (b) a parent, grandparent, uncle, aunt, brother or sister of the child;

“unaccompanied child” means a person under the age of 18 (“the child”) who is not in the care of a person who –

- (a) is aged 18 or over, and
- (b) by law or custom of the country or territory in which the child is present, has responsibility for caring for the child.”

24B Page 15, line 13, at end insert

“() section (*Family unity for those seeking asylum or other protection in Europe*),”

LORDS AMENDMENT 25

Before Clause 10

25 Insert the following new Clause –

“Continuation of North-South co-operation and the prevention of new border arrangements

- (1) In exercising any of the powers under this Act, a Minister of the Crown or devolved authority must –
- (a) act in a way that is compatible with the terms of the Northern Ireland Act 1998, and
- (b) have due regard to the joint report from the negotiators of the EU and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 of the Treaty on European Union.

- 11 (2) Nothing in section 7, 8, 9 or 17 of this Act authorises regulations which –
- 12 (a) diminish any form of North-South co-operation across the full
- 15 range of political, economic, security, societal and agricultural
- 17 contexts and frameworks of co-operation, including the continued
- operation of the North-South implementation bodies, or
- (b) create or facilitate border arrangements between Northern Ireland
- and the Republic of Ireland after exit day which feature –
- (i) physical infrastructure, including border posts,

- (ii) a requirement for customs or regulatory compliance checks,
 (iii) a requirement for security checks,
 (iv) random checks on goods vehicles, or
 22 (v) any other checks and controls,
 23 that did not exist before exit day and are not subject to an agreement
 25 between Her Majesty's Government and the Government of
 Ireland."

COMMONS AMENDMENTS TO LORDS AMENDMENT

The Commons propose Amendments 25A to 25E to Lords Amendment 25 –

- 25A** Line 11, leave out "8,".
25B Line 11, leave out "17" and insert "17(1) or (5)".
25C Line 12, leave out from "co-operation" to ", or" in line 15 and insert "provided for by the Belfast Agreement (as defined by section 98 of the Northern Ireland Act 1998)".
25D Line 17, leave out from "feature" to end of line 22 and insert "physical infrastructure, including border posts, or checks and controls".
25E Line 23, leave out from second "not" to end of line 25 and insert "in accordance with an agreement between the United Kingdom and the EU".

LORDS AMENDMENTS 37, 39 AND 125

Clause 14

- 37** Page 10, line 40, leave out from "means" to end of line 41 and insert "such day as a Minister of the Crown may by regulations appoint (and see subsection (2));"
39 Page 11, line 38, leave out subsections (2) to (5) and insert –
 "(2) In this Act –
 (a) where a Minister of the Crown appoints a time as well as a day as exit day (see paragraph 19 of Schedule 7), references to before, after or on that day, or to beginning with that day, are to be read as references to before, after or at that time on that day or (as the case may be) to beginning with that time on that day, and
 (b) where a Minister of the Crown does not appoint a time as well as a day as exit day, the reference to exit day in section 1 is to be read as a reference to the beginning of that day."

Schedule 7

- 125** Page 48, line 21, leave out paragraph 10 and insert –

"Power to appoint "exit day"

- 10 A statutory instrument containing regulations under section 14 which appoint a day as exit day may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

COMMONS REASON

The Commons disagree to Lords Amendments 37, 39, and 125 for the following Reason –

- 37A** *Because it is better for a default “exit day” to be specified in the Bill rather than appointed by regulations made under the Bill.*

LORDS AMENDMENT 43

Clause 17

- 43** Page 14, line 14, leave out “the Minister considers appropriate” and insert “is necessary”

COMMONS REASON

The Commons disagree to Lords Amendment 43 for the following Reason –

- 43A** *Because it inappropriately restricts the power in Clause 17(1).*

LORDS AMENDMENT 45

- 45** Page 14, line 22, leave out “the Minister considers appropriate” and insert “is necessary”

COMMONS REASON

The Commons disagree to Lords Amendment 45 for the following Reason –

- 45A** *Because it inappropriately restricts the power in Clause 17(5).*

LORDS AMENDMENT 51

Clause 19

- 51** Page 15, line 21, at end insert –
- “(2B) But none of the remaining provisions may come into force until it is a negotiating objective of the Government to ensure that an international agreement has been made which enables the United Kingdom to continue to participate in the European Economic Area after exit day.
- (2C) Regulations under this Act may not repeal or amend subsection (2B).”

COMMONS REASON

The Commons disagree to Lords Amendment 51 for the following Reason –

- 51A** *Because it is not the policy of the government for the United Kingdom to continue to participate in the EEA as part of its future relationship with the EEA States.*

LORDS AMENDMENT 52

Schedule 1

52 Page 16, leave out lines 11 to 15

COMMONS REASON

The Commons disagree to Lords Amendment 52 for the following Reason –

52A *Because it is important to retain a power to allow for certain challenges to be brought in domestic law where they would otherwise be excluded by paragraph 1(1) of Schedule 1.*

LORDS AMENDMENT 53

53 Page 16, line 21, leave out paragraph 3

COMMONS AMENDMENT IN LIEU

The Commons disagree with Lords Amendment 53 but propose Amendment 53A in lieu –

53A Page 64, line 15, leave out “3 months” and insert “three years”

LORDS AMENDMENTS 110 AND 128

Schedule 7

110 Page 44, line 35, leave out from beginning to end of line 20 on page 45 and insert –
“Parliamentary committees to sift regulations made under section 7, 8, 9 or 17

- 3 (1) This paragraph applies if a Minister of the Crown –
- (a) proposes to make a statutory instrument, whether under this Act or any other Act of Parliament, to which paragraph 1(3), 6(3), 7(3), or 11 applies or which has the same purpose as an instrument to which those paragraphs apply, and
 - (b) is of the opinion that the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament (“the negative procedure”).
- (2) Before making the instrument, the Minister must lay before both Houses of Parliament a draft of the instrument together with a memorandum setting out the reasons for the Minister’s opinion that the instrument should be subject to the negative procedure.
- (3) The negative procedure applies unless within the relevant period either House of Parliament requires the affirmative procedure to apply, in which case the affirmative procedure applies.
- (4) A House of Parliament is taken to have required the affirmative procedure to apply within the relevant period if –
- (a) a committee of the House charged with reporting on the instrument has recommended, within the period of 10 sitting days beginning with the first sitting day after the day on which the draft instrument was laid before the House, that the affirmative procedure should apply, and

- (b) that House has not by resolution rejected the recommendation within a period of 5 sitting days beginning with the first sitting day after the day on which the recommendation is made, or
 - (c) irrespective of the committee reporting on the instrument, that House has resolved, within the period of 15 sitting days beginning with the first sitting day after the day on which the draft instrument was laid before the House, that the affirmative procedure should apply to the instrument.
- (5) For the purposes of this paragraph –
- (a) where an instrument is subject to the affirmative procedure, it may not be made unless the draft of the instrument laid under sub-paragraph (2) has been approved by a resolution of each House of Parliament,
 - (b) “sitting day” means, in respect of either House, a day on which that House sits.
- (6) Nothing in this paragraph prevents a Minister of the Crown from deciding, at any time before a statutory instrument mentioned in sub-paragraph (1)(a) is made, that another procedure should apply in relation to the instrument.”

128 Page 49, line 4, leave out paragraph 13

COMMONS REASON

The Commons disagree to Lords Amendments 110 and 128 for the following Reason –

110A *Because the Commons prefer their proposed arrangements for sifting.*

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