

United Kingdom Internal Market Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 12th November 2020, as follows –

Clauses 1 to 10	Clauses 18 to 30
Schedule 1	Schedule 3
Clauses 11 to 17	Clauses 31 to 50
Schedule 2	Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 8

LORD CALLANAN
BARONESS MCINTOSH OF PICKERING

14 Page 7, line 4, at end insert –

“(8A) Before making regulations under subsection (7) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending the “legitimate aims” in Clause 8 (which can mean that provision does not count as indirectly discriminatory against goods).

BARONESS HAYTER OF KENTISH TOWN
BARONESS FINLAY OF LLANDAFF
LORD HAIN

15 Page 7, line 4, at end insert –

“(8A) Before making regulations under subsection (7) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

Clause 8 - continued

- (8B) But the Secretary of State may make regulations under subsection (7) without the consent required by subsection (8A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.
- (8C) If the Secretary of State makes regulations without the consent required by subsection (8A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

16 Page 7, line 4, at end insert –

- “() The Secretary of State must publish the results of the consultation and give reasons for any decision reached.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must publish the results of any consultation with the devolved administrations along with the reasons for reaching any decision on the consultation.

Clause 10

BARONESS ANDREWS
BARONESS MEACHER
LORD BEITH
LORD CARLILE OF BERRIEW

17 Page 7, line 23, leave out subsections (2) and (3)

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

18 Page 7, line 23, at end insert –

- “() Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must consult with the devolved administrations before amending schedule 1 to the Bill.

LORD CALLANAN

19 Page 7, line 25, at end insert –

- “(4) Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member's explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending Schedule 1 (which contains exceptions from the rules about market access for goods).

BARONESS HAYTER OF KENTISH TOWN
BARONESS FINLAY OF LLANDAFF
LORD HAIN

20 Page 7, line 25, at end insert –

- “(3A) Before making regulations under subsection (2) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.
- (3B) But the Secretary of State may make regulations under subsection (2) without the consent required by subsection (3A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.
- (3C) If the Secretary of State makes regulations without the consent required by subsection (3A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

LORD STEVENSON OF BALMACARA
LORD ANDERSON OF IPSWICH
LORD WIGLEY
BARONESS BOWLES OF BERKHAMSTED

21 Leave out Clause 10 and insert the following new Clause –

“Exclusions from market access principles: public interest derogations

- (1) The United Kingdom market access principles do not apply to, and sections 2(3) and 5(3) do not affect the operation of, any requirements which –
- (a) pursue a legitimate aim,
 - (b) are a proportionate means of achieving that aim, and
 - (c) are not a disguised restriction on trade.
- (2) A requirement is considered to pursue a legitimate aim if it makes a contribution to the achievement of –
- (a) environmental standards and protection,
 - (b) animal welfare,
 - (c) consumer standards, including digital and artificial intelligence privacy rights,
 - (d) employment rights and protections,
 - (e) health and life of humans, animals or plants,
 - (f) cultural expression,
 - (g) regional socio-cultural characteristics, or
 - (h) equality entitlements, rights and protections.
- (3) A requirement is considered disproportionate if the legitimate aim being pursued in the destination part of the United Kingdom is already achieved to the same or higher extent by requirements in the originating part of the United Kingdom.”

After Clause 10

LORD WIGLEY
LORD HAIN

22 Insert the following new Clause—

“Market access principles: protection of devolved competences

The United Kingdom market access principles do not affect the existing powers of Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly, with regard to—

- (a) their existing procurement practices and procedures, or
- (b) their existing competence to legislate to secure and apply procurement policies which underpin their economic and social strategies.”

Member’s explanatory statement

This amendment seeks to ensure that existing policies pursued by the devolved legislatures are not undermined by this Act and aims to prevent uncertainty regarding the legitimacy of procurement rules and regulations currently in force in the devolved territories.

BARONESS BOYCOTT
LORD WHITTY
LORD RANDALL OF UXBRIDGE

23 Insert the following new Clause—

“Environmental derogation for market access principles

The United Kingdom market access principles do not apply to, and sections 2(3) and 5(3) do not affect the operation of, any legislation or other requirement so far as—

- (a) its purpose is to protect the environment including tackling climate change, and
- (b) it is a proportionate means of achieving a legitimate aim.”

Member’s explanatory statement

The purpose of this new clause is to provide for exceptions and derogations that allow all four UK nations to put in place proportionate measures to protect the environment and improve environmental standards and includes measures which tackle climate change.

Clause 11

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE
LORD HAIN
BARONESS BENNETT OF MANOR CASTLE

24 Page 8, line 15, at end insert—

“(7A) Statutory provision is not a relevant requirement for the purposes of the non-discrimination principle for goods if that provision—

- (a) is enacted after this section comes into force, and

Clause 11 - continued

(b) is intended to comply with any obligations arising under Articles 4 and 5 of the EU withdrawal agreement and Article 13(3) of the Northern Ireland Protocol to implement in the law of Northern Ireland amendments to or replacement of any provisions of EU law that are relevant to the commitments in Article 2 of the Northern Ireland Protocol.

(7B) In this section, references to “Article 2” of the Northern Ireland Protocol include the provisions of EU law listed in Annex 1 to the Northern Ireland Protocol and any other provisions or rules of law, including provisions of the EU withdrawal agreement, that relate to Article 2 or Annex 1.”

Member’s explanatory statement

This amendment would ensure that any statutory provision introduced to implement in the law of Northern Ireland certain amendments to EU law after the transition period may not be challenged under the Clause 5 non-discrimination principle, where the statutory provision is necessary to ensure continued compliance with the principle of non-regression in Article 2 of the Northern Ireland Protocol.

LORD JUDGE

25 Page 8, leave out line 17 and insert “the European Union (Withdrawal) Act 2018”

Member’s explanatory statement

This amendment is consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.

Clause 12

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

26 Page 8, line 22, at end insert –

“() Before preparing guidance under subsection (1) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must consult with the devolved administrations before preparing guidance under Clause 12.

BARONESS HAYTER OF KENTISH TOWN
BARONESS FINLAY OF LLANDAFF
LORD HAIN

27 Page 8, line 31, at end insert –

“(4A) Before issuing, revising or withdrawing any guidance under subsection (4), the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

Clause 12 - continued

- (4B) But the Secretary of State may issue, revise or withdraw any guidance without the consent required by subsection (4A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.
- (4C) If the Secretary of State makes regulations without the consent required by subsection (4A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must consult with the devolved administrations before revising or withdrawing guidance under Clause 12.

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

28 Page 8, line 31, at end insert –

“() Before revising or withdrawing any guidance under subsection (1) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

After Clause 12

LORD CALLANAN

29 Insert the following new Clause –

“Duty to review the use of Part 1 amendment powers

- (1) In this section “the Part 1 amendment powers” are the powers conferred by sections 6(5), 8(7) and 10(2) (powers to amend certain provisions of Part 1).
- (2) The Secretary of State must, during the permitted period –
 - (a) carry out a review of any use that has been made of the Part 1 amendment powers,
 - (b) prepare a report of the review, and
 - (c) lay a copy of the report before Parliament.
- (3) In carrying out the review the Secretary of State must –
 - (a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland;
 - (b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4; and
 - (c) assess the impact and effectiveness of any changes made under the Part 1 amendment powers.
- (4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.
- (5) If any Part 1 amendment power has not been used by the time the review is carried out, this section has effect –
 - (a) as if the report required by subsection (2), so far as relating to that power, is a report containing –

After Clause 12 - continued

- (i) a statement to the effect that the power has not been used since it came into force, and
 - (ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and
- (b) as if the requirements of subsection (3) did not apply in relation to that power.”

Member’s explanatory statement

This new Clause would require the Secretary of State to carry out a review of, and to lay a report to Parliament about, the use made of the amendment powers in Part 1. The review cannot start within three years of Royal Assent, and the steps required would need to be completed within five years.

Clause 16

BARONESS NEVILLE-ROLFE

30 Leave out Clause 16

Member’s explanatory statement

This probing amendment is intended to clarify the extent to which the Government has considered how the provisions of the bill in respect of services will work in practice.

Clause 17

BARONESS ANDREWS
BARONESS MEACHER
LORD BEITH
LORD CARLILE OF BERRIEW

31 Page 12, line 35, leave out subsections (2) to (4)

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

32 Page 12, line 40, at end insert –

“() Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must consult with the devolved administrations before amending schedule 2 to the Bill.

33 Page 12, line 41, leave out subsection (3) and insert –

“(3) Regulations under subsection (2) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).”

Member's explanatory statement

This amendment ensures that regulations under Clause 17 will be subject to super-affirmative procedure. This amendment also introduces the supportive schedule in respect of super-affirmative resolution procedure.

BARONESS HAYTER OF KENTISH TOWN
BARONESS FINLAY OF LLANDAFF
LORD HAIN

34 Page 12, line 42, at end insert –

“(3A) Before making regulations under subsection (3) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(3B) But the Secretary of State may make regulations under subsection (3) without the consent required by subsection (3A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(3C) If the Secretary of State makes regulations without the consent required by subsection (3A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

LORD CALLANAN
BARONESS MCINTOSH OF PICKERING

35 Page 12, line 43, leave out subsection (4)

Member's explanatory statement

This amendment would remove the ability to make regulations amending Schedule 2 (which contains exceptions from the rules about market access for services) under the made affirmative procedure instead of the affirmative procedure for an initial three-month period.

LORD CALLANAN

36 Page 12, line 45, at end insert –

“(5) Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member's explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending Schedule 2 (which contains exceptions from the rules about market access for services).

Schedule 2

BARONESS BENNETT OF MANOR CASTLE
LORD GERMAN

37 Page 46, line 30, at end insert –

“Teaching services

provision of teaching services in schools or colleges”

Schedule 2 - continued***Member's explanatory statement***

This amendment would add the profession of teacher and teaching services to the scope of the exclusions from the Bill, in the same way that the legal professions and legal services are excluded.

After Clause 18

LORD HOPE OF CRAIGHEAD
BARONESS FINLAY OF LLANDAFF
LORD MACKAY OF CLASHFERN
LORD WIGLEY

38 Insert the following new Clause—

“Common frameworks process

- (1) The mutual recognition of authorisation requirements shall not apply to any regulatory requirement that gives effect to a decision to diverge from harmonised requirements that has been agreed through the common frameworks process.
- (2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress.”

Clause 19

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

39 Page 13, line 17, at end insert “but only to the extent that it directly discriminates against the service provider.”

Member's explanatory statement

This amendment clarifies the meaning of Clause 19(1) regarding the effect of a statutory requirement under Clause 16.

Clause 20

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

40 Page 13, line 35, at end insert “but only to the extent that it indirectly discriminates against the service provider.”

Member's explanatory statement

Please see the reason for the similar amendment to Clause 19 in the name of Baroness McIntosh of Pickering.

LORD STEVENSON OF BALMACARA
BARONESS JONES OF MOULSECOOMB
LORD ANDERSON OF IPSWICH

- 41 Page 14, line 37, at end insert –
- “(d) the protection of consumers;
 - (e) the protection of environmental standards;
 - (f) the promotion of social and labour standards;
 - (g) the protection of public health;
 - (h) the protection of animal health.”

BARONESS ANDREWS
BARONESS MEACHER
LORD BEITH
LORD CARLILE OF BERRIEW

- 42 Page 14, line 38, leave out subsections (8) and (9)

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

- 43 Page 14, line 39, at end insert –
- “() Before making regulations under subsection (8) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must consult with the devolved administrations before amending the definition of ‘legitimate aim’ in Clause 20(6).

- 44 Page 14, line 40, leave out subsection (9) and insert –
- “(9) Regulations under subsection (8) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).”

Member’s explanatory statement

This amendment ensures that regulations under Clause 20 will be subject to super-affirmative procedure. This amendment also introduces the supportive schedule in respect of super-affirmative resolution procedure.

LORD CALLANAN

- 45 Page 14, line 41, at end insert –
- “(9A) Before making regulations under subsection (8) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending the “legitimate aims” in Clause 20 (which can mean that provision does not count as indirectly discriminatory against service providers).

BARONESS HAYTER OF KENTISH TOWN
 BARONESS FINLAY OF LLANDAFF
 LORD HAIN

46 Page 14, line 41, at end insert –

- “(9A) Before making regulations under subsection (8) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.
- (9B) But the Secretary of State may make regulations under subsection (8) without the consent required by subsection (9A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.
- (9C) If the Secretary of State makes regulations without the consent required by subsection (9A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

After Clause 20

LORD CALLANAN

47 Insert the following new Clause –

“Duty to review the use of Part 2 amendment powers

- (1) In this section “the Part 2 amendment powers” are the powers conferred by sections 17(2) and 20(8) (powers to amend certain provisions of Part 2).
- (2) The Secretary of State must, during the permitted period –
 - (a) carry out a review of any use that has been made of the Part 2 amendment powers,
 - (b) prepare a report of the review, and
 - (c) lay a copy of the report before Parliament.
- (3) In carrying out the review the Secretary of State must –
 - (a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland;
 - (b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4; and
 - (c) assess the impact and effectiveness of any changes made under the Part 2 amendment powers.
- (4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.
- (5) If either of the Part 2 amendment powers has not been used by the time the review is carried out, this section has effect –
 - (a) as if the report required by subsection (2), so far as relating to that power, is a report containing –
 - (i) a statement to the effect that the power has not been used since it came into force, and
 - (ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and
 - (b) as if the requirements of subsection (3) did not apply to that power.”

Member's explanatory statement

This new Clause would require the Secretary of State to carry out a review of, and to lay a report to Parliament about, the use made of the amendment powers in Part 2. The review cannot start within three years of Royal Assent, and the steps required would need to be completed within five years.

LORD STEVENSON OF BALMACARA
LORD ANDERSON OF IPSWICH

48 Insert the following new Clause—

“Exclusions from market access principles: services

- (1) The United Kingdom market access principles do not apply to this Part in respect of, and sections 18(1), 19(1) and 20(1) do not affect the operation of, any requirements which—
 - (a) pursue a legitimate aim,
 - (b) are a proportionate means of achieving that aim, and
 - (c) are not a disguised restriction on trade.
- (2) A requirement is considered to pursue a legitimate aim if it makes a contribution to the achievement of—
 - (a) environmental standards and protection,
 - (b) animal welfare,
 - (c) consumer standards, including digital and artificial intelligence privacy rights,
 - (d) employment rights and protections,
 - (e) health and life of humans, animals or plants,
 - (e) cultural expression,
 - (f) regional socio-cultural characteristics, or
 - (g) equality entitlements, rights and protections.
- (3) A requirement is considered disproportionate if the legitimate aim being pursued in the destination part of the United Kingdom is already achieved to the same or a higher extent by requirements in the originating part of the United Kingdom.”

After Clause 24

LORD STEVENSON OF BALMACARA
LORD ANDERSON OF IPSWICH

49 Insert the following new Clause—

“Exception from section 22: public interest derogations

- (1) The United Kingdom market access principles do not apply to this Part in respect of, and section 22(2) does not apply to, any provisions which—
 - (a) pursue a legitimate aim,
 - (b) are a proportionate means of achieving that aim, and
 - (c) are not a disguised restriction on trade.
- (2) A provision is considered to pursue a legitimate aim if it makes a contribution to the achievement of—
 - (a) environmental standards and protection,

After Clause 24 - continued

- (b) animal welfare,
 - (c) consumer standards, including digital and artificial intelligence privacy rights,
 - (d) employment rights and protections,
 - (e) health and life of humans, animals or plants,
 - (e) cultural expression,
 - (f) regional socio-cultural characteristics, or
 - (g) equality entitlements, rights and protections.
- (3) A requirement is considered disproportionate if the legitimate aim being pursued in the destination part of the United Kingdom is already achieved to the same or a higher extent by requirements in the originating part of the United Kingdom.”

Clause 25

BARONESS BENNETT OF MANOR CASTLE
LORD GERMAN

50 Page 19, line 25, at end insert “, or the teaching profession.”

Member’s explanatory statement

This amendment would add the profession of teacher and teaching services to the scope of the exclusions from the Bill, in the same way that the legal professions and legal services are excluded.

LORD HOPE OF CRAIGHEAD
BARONESS FINLAY OF LLANDAFF
LORD WIGLEY

51 Page 19, line 25, at end insert –

“() Section 22(2) does not apply if the provision has been agreed through the common frameworks process.”

LORD CALLANAN

51A★ Page 19, line 38, at end insert –

“(7) Section 22(2) does not apply in relation to provision that limits the ability to practise the profession, or any profession, of school teaching.”

Member’s explanatory statement

This amendment adds school teaching to the professions the regulation of which is excluded from Clause 22.

Clause 29

LORD CALLANAN

52 Page 23, line 16, at end insert –

“(2A) That objective includes, in particular, supporting the operation of the internal market –

Clause 29 - continued

- (a) in the interests of all parts of the United Kingdom, and
 - (b) in the interests of consumers of goods and services as well as other classes of person with an interest in its operation.
- (2B) The CMA must also, in carrying out its functions under this Part, have regard to the need to act even-handedly as respects the relevant national authorities.”

Member’s explanatory statement

This amendment would set out in more detail the considerations that the CMA (including while acting through the Office for the Internal Market) must have regard to in exercising its functions under Part 4.

After Clause 30

LORD STEVENSON OF BALMACARA
 BARONESS NEVILLE-ROLFE
 LORD WIGLEY

53 Insert the following new Clause –

“Office for the Internal Market

- (1) Within the period of six months beginning on the day on which section 30 comes into force, the Secretary of State must by regulations establish the Office for the Internal Market (“the OIM”) as independent of the CMA.
- (2) Regulations under this section are subject to the affirmative resolution procedure.
- (3) The Secretary of State must consult and seek the consent of Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland on appointments to the OIM.
- (4) The OIM may –
 - (a) do anything required or authorised to be done by the CMA under Part 4,
 - (b) launch an investigation into distortive or harmful subsidies and subsidy races,
 - (c) rule that any distortive or harmful subsidies are illegal and should be repaid,
 - (d) recommend to the Secretary of State changes to the test for a harmful subsidy, the scope of exemptions, and time limits on approvals,
 - (e) impose a penalty, and
 - (f) do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its powers or functions.”

Schedule 3

LORD THOMAS OF CWMGIEDD
 BARONESS HAYTER OF KENTISH TOWN
 BARONESS FINLAY OF LLANDAFF
 LORD BRUCE OF BENNACHIE

54 Page 47, line 26, at end insert –

- “(2A) After sub-paragraph (1)(b) insert –
 “(c) one person appointed to membership of the CMA Board by each of –
 (i) the Scottish Ministers,
 (ii) the Welsh Ministers, and
 (iii) the Department for the Economy in Northern Ireland.””

Member’s explanatory statement

This amendment provides for each of the devolved administrations to appoint a member to the CMA Board.

LORD CALLANAN

55 Page 47, line 27, at end insert –

- “(2ZA) In making appointments under paragraphs (iv) and (v) of sub-paragraph (1)(b) the Secretary of State must have regard to the desirability of securing that –
 (a) a variety of skills, knowledge and experience is available among the members of the OIM panel, and
 (b) there is an appropriate balance among the members of that panel of persons who have skills, knowledge or experience relating to the operation of the United Kingdom internal market in different parts of the United Kingdom.”

Member’s explanatory statement

The amendment would require the Secretary of State to have regard to the desirability of having a variety of skills, knowledge and experience in the Office for the Internal Market panel and for a balance between members with specific skills, knowledge or experience in the internal market as operating in different parts of the United Kingdom.

56 Page 47, line 29, leave out “consult” and insert “seek the consent of”

Member’s explanatory statement

The amendment would require the Secretary of State to seek the consent of the devolved administrations to any proposed appointment to the OIM panel.

57 Page 47, line 32, at end insert –

- “(2B) Sub-paragraph (2C) applies if consent to an appointment is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority.
 (2C) In that event the Secretary of State –
 (a) may make the appointment without the consent of the authority or authorities concerned; and

Schedule 3 - continued

- (b) must, if the appointment is made, inform each authority which did not give consent of the reasons for the decision to proceed with the appointment.””

Member’s explanatory statement

The amendment relates to Lord Callanan’s proposed amendment at page 47, line 29 and would give the Secretary of State the option to proceed with an appointment to the OIM panel after an interval of at least one month, even if one or more of the devolved administrations have not given their consent.

LORD THOMAS OF CWMGIEDD
BARONESS HAYTER OF KENTISH TOWN
BARONESS FINLAY OF LLANDAFF

58 Page 47, line 32, at end insert –

- “(2B) But the Secretary of State may make an appointment without consent required by sub-paragraph (2A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.
- (2C) If the Secretary of State makes an appointment without consent required by sub-paragraph (2A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with the appointment.””

Member’s explanatory statement

This amendment enables the Secretary of State to make an appointment to the OIM panel without the consent of the devolved administrations if one month has passed since consent was requested. Reasons must be given for proceeding without consent.

LORD THOMAS OF CWMGIEDD
BARONESS HAYTER OF KENTISH TOWN
BARONESS FINLAY OF LLANDAFF
LORD WIGLEY

59 Page 48, line 28, at end insert –

- “(2A) After sub-paragraph (2) insert –
- “(2A) Sub-paragraph (2) applies to a member of the CMA Board appointed under paragraph 1(1)(c) as if the reference to the Secretary of State were a reference to whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland appointed the person.””

Member’s explanatory statement

This amendment means that, if a CMA Board member appointed by one of the devolved administrations wishes to resign from membership, they must do so by giving notice to the devolved administration in question.

After Schedule 3

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

60 Insert the following new Schedule—

“SUPER-AFFIRMATIVE RESOLUTION PROCEDURE

- 1 If the Secretary of State considers it appropriate to make regulations under this Act which are subject to the super-affirmative resolution procedure, the Secretary of State may lay before Parliament—
 - (a) draft regulations, and
 - (b) an explanatory document.
- 2 The explanatory document must introduce and give reasons for draft regulations.
- 3 Subject as follows, if after the expiry of the 40-day period the draft regulations laid under paragraph 1 are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- 4 The procedure in paragraphs 5 to 8 apply to the draft regulations instead of the procedure in paragraph 3 if—
 - (a) either House of Parliament so resolves within the 30-day period, or
 - (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.
- 5 The Secretary of State must consult the—
 - (a) Scottish Ministers,
 - (b) Welsh Ministers, and
 - (c) Northern Ireland Executiveand have regard to—
 - (a) their representations,
 - (b) any other representations received,
 - (c) any resolution of either House of Parliament, and
 - (d) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60-day period on the draft regulations.
- 6 If, after the expiry of the 60-day period, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- 7 If, after the expiry of the 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
 - (a) a revised draft of the regulations, and
 - (b) a statement giving a summary of the changes proposed, which may be approved by each House.

After Schedule 3 - continued

- 8 If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- 9 For the purposes of this Schedule regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- 10 In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.”

After Clause 37

LORD CALLANAN

61 Insert the following new Clause –

“Laying of annual documents before devolved legislatures

- (1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority) is amended as follows.
- (2) In paragraph 12(3)(annual plan to be laid before Parliament), for “Parliament” substitute “–
 - (a) Parliament,
 - (b) the Scottish Parliament,
 - (c) Senedd Cymru, and
 - (d) the Northern Ireland Assembly”.
- (3) In paragraph 13(2)(proposals for annual plan to be laid before Parliament), for “Parliament” substitute “–
 - (a) Parliament,
 - (b) the Scottish Parliament,
 - (c) Senedd Cymru, and
 - (d) the Northern Ireland Assembly”.
- (4) In paragraph 14(3)(a)(performance report to be laid before Parliament), for “Parliament” substitute “–
 - (i) Parliament,
 - (ii) the Scottish Parliament,
 - (iii) Senedd Cymru, and
 - (iv) the Northern Ireland Assembly”.

Member’s explanatory statement

This new Clause would require the CMA to lay its annual plan, proposals for its annual plan and its performance report before the devolved legislatures as well as Parliament.

Clause 39

LORD CALLANAN

62 Page 31, line 30, leave out “such” and insert “–

- (a) each relevant national authority, and

Clause 39 - continued

(b) such other”

Member’s explanatory statement

This amendment would provide that the domestic administrations must be among the bodies consulted by the CMA in relation to its policy on enforcing information-gathering notices.

Clause 40

BARONESS BOWLES OF BERKHAMSTED
BARONESS ALTMANN

62A Page 32, line 7, at end insert –

“() Penalties under section 39(1) or (2) may not be imposed on small companies, as defined in section 382 of the Companies Act 2006 (companies qualifying as small: general), or on partnerships or other businesses with similar criteria.”

LORD CALLANAN

63 Page 32, line 19, after “CMA,” insert –

“(aa) each other relevant national authority,”

Member’s explanatory statement

This amendment would provide that the other domestic administrations must be among the bodies consulted by the Secretary of State about regulations setting the level of penalties for contraventions of information-gathering notices issued by the CMA.

BARONESS BOWLES OF BERKHAMSTED

63A Leave out Clause 40

After Clause 40

BARONESS BOWLES OF BERKHAMSTED

63B Insert the following new Clause –

“Market investigation

- (1) Sections 38 to 40 only have effect when the OIM has issued a notice indicating that it is conducting a market investigation into adverse effects in the United Kingdom internal market.
- (2) Penalties under section 40 only have effect when there is suspicion of adverse effects to the United Kingdom internal market caused by the commercial actions of the person acting individually or collectively.
- (3) Penalties under section 40 do not apply where the investigation concerns regulatory provisions.”

Member’s explanatory statement

The powers given to the OIM in this amendment correspond to those of the CMA for market studies looking into harm. This amendment provides some broadly corresponding limitation.

Clause 42

LORD THOMAS OF CWMGIEDD
LORD PURVIS OF TWEED

64 Leave out Clause 42

Member's explanatory statement

This amendment is intended to remove the provision for a Minister of the Crown to provide financial assistance for economic development etc. anywhere in the United Kingdom.

After Clause 42

LORD STEVENSON OF BALMACARA

65 Insert the following new Clause –

“UK Shared Prosperity Fund Commissioner

- (1) Within the period of six months beginning with the day on which this Act is passed, the Secretary of State must by regulations appoint a person as the Commissioner of the UK Shared Prosperity Fund (“the Commissioner”), whose primary task is to make recommendations to the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland respectively for the disbursement of the Shared Prosperity Fund set up as specified in subsection (5)(a).
- (2) Regulations under this section are subject to the affirmative resolution procedure.
- (3) The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment.
- (4) The Secretary of State may pay in respect of the Commissioner any administrative expenses or allowances that the Secretary of State may determine.
- (5) The Secretary of State –
 - (a) must before the beginning of each financial year specify a maximum sum which is to be made available for the amelioration of relative need, through the Shared Prosperity Fund, as defined in subsection (11), and which may be spent that year by the bodies specified in subsection (9),
 - (b) may permit that to be exceeded for a specified purpose,
 - (c) must consult with and seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland on the amount to be available to the Shared Prosperity Fund, and
 - (d) subject to paragraphs (a) and (b), must defray the Commissioner’s expenditure for each financial year.
- (6) In this section, “financial year” means –
 - (a) the period beginning with the day on which the first Commissioner takes office and ending with the following 31 March, and
 - (b) each successive period of 12 months.
- (7) The Commissioner may appoint staff.

After Clause 42 - continued

- (8) The Secretary of State must consult and seek the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland on the appointment of the Commissioner.
- (9) The bodies who are eligible to distribute financial assistance under section 42 are local authorities, sectoral organisations, community groups, educational institutions and other appropriate bodies and persons in England, Scotland, Wales and Northern Ireland.
- (10) Prior to submitting recommendations for the disbursement of the Shared Prosperity Fund set up as specified in subsection (5)(a) the Commissioner must discuss these with the Secretary of State, the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.
- (11) In this section, relative need includes but is not limited to—
 - (a) the proportion of children living below the poverty line,
 - (b) low income,
 - (c) economic weakness,
 - (d) the age structure of the population,
 - (e) the impact of a pandemic, and
 - (f) the impact of climate change.
- (12) If a Minister of the Crown does not follow the recommendations made under subsection (1), a Minister of the Crown must make a statement to Parliament explaining why the recommendations were not followed.”

Clause 43

LORD CALLANAN

66 Page 35, line 8, at end insert—

- “(3) As soon as practicable after 31 March each year, a Minister of the Crown must prepare a report summarising how the power in section 42 has been exercised during the preceding period of 12 months ending with 31 March.
- (4) Subsection (3) does not apply if the power has not been exercised during that period.
- (5) Reports under subsection (3) must be laid before Parliament.”

Member’s explanatory statement

This amendment would require Ministers to prepare annual reports summarising how the financial assistance power has been exercised and lay them before Parliament.

LORD WIGLEY

67 Page 35, line 8, at end insert—

- “(3) Financial assistance for economic development provided under section 42 for Wales, Scotland and Northern Ireland is managed and administered by the Welsh Ministers, the Scottish Ministers and a Northern Ireland Department respectively.

Clause 43 - continued

- (4) The amounts made available for financial assistance under section 42 to Wales, Scotland and Northern Ireland are determined on a needs-based formula related to the Gross Domestic Product per capita in each of the three devolved nations in relation to the Gross Domestic Product per capita of the United Kingdom.
- (5) Regulations containing the needs-based formula to be used for the financial determinations in subsection (4) above must be made by a Minister of the Crown and are subject to the affirmative resolution procedure.
- (6) Before presenting the draft order specified in subsection (5) to Parliament, the Minister must consult the relevant Welsh and Scottish Ministers and a Northern Ireland Department and secure their agreement on the content of that order.
- (7) The financial assistance provided under section 42 must be presented in the form of a multi-annual rolling fund.”

Member’s explanatory statement

The purpose of this amendment is to ensure that the devolved governments retain control over the funding allocation for economic regeneration programmes; are involved in drawing up the formula on which such funding is based; and have a multi-annual assurance of the continuity of funding to facilitate coherent financial planning.

LORD PURVIS OF TWEED

68 Leave out Clause 43

Clause 44LORD THOMAS OF CWMGIEDD
LORD PURVIS OF TWEED
LORD STEVENSON OF BALMACARA

69 Leave out Clause 44

Member’s explanatory statement

This amendment is intended to remove provisions changing the legislative competence of the devolved legislatures to prevent devolved Acts making provision about the regulation of the provision of certain subsidies by public authorities.

Clause 46

LORD JUDGE

70 Page 37, line 2, leave out subsection (1) and insert –

“(1) Section 11 ceases to have effect when Articles 5 to 10 of the Northern Ireland Protocol cease to apply.”

Member’s explanatory statement

This amendment is consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.

- 71 Page 37, line 7, leave out “except the amendment made by subsection (3)”

Member’s explanatory statement

This amendment is consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.

- 72 Page 37, line 13, leave out subsection (3)

Member’s explanatory statement

This amendment is consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.

After Clause 46

LORD MACKAY OF CLASHFERN

- 73 Insert the following new Clause—

“Joint Ministerial Committee on European Negotiations: agreement of regulations

- (1) Regulations to be made under any provision of this Act must be brought before the Joint Ministerial Committee on European Negotiations for discussion and agreement before they may be laid before Parliament.
- (2) If the Joint Ministerial Committee on European Negotiations do not agree to the regulations, the Secretary of State must lay before Parliament the reasons for the disagreement, and table a motion in both Houses of Parliament to debate the regulations and disagreement before they are approved.”

Member’s explanatory statement

This new Clause seeks to ensure the Joint Ministerial Committee on European Negotiations, representing all four nations, have sight of the regulations made under this Bill.

After Clause 48

BARONESS MCINTOSH OF PICKERING
LORD FOULKES OF CUMNOCK

- 74 Insert the following new Clause—

“Scrutiny procedure in certain urgent cases

- (1) Subsection (2) applies to a statutory instrument containing regulations under this Act to which the super-affirmative resolution procedure applies.
- (2) The instrument may be made without scrutiny under the super-affirmative resolution procedure if it contains a declaration that the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being approved under that procedure.
- (3) After an instrument is made in accordance with subsection (2), it must be laid before each House of Parliament.
- (4) Regulations contained in an instrument made in accordance with subsection (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

After Clause 48 - continued

- (5) In calculating the period of 28 days, no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (6) If regulations cease to have effect as a result of subsection (4), that does not—
 - (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.”

Member’s explanatory statement

This amendment provides for a procedure to approve regulations in urgent cases.

Clause 50

LORD FOX
LORD PURVIS OF TWEED
BARONESS BENNETT OF MANOR CASTLE
LORD WIGLEY

75

Page 39, line 5, at end insert “, subject to subsection (3A).

- (3A) A statutory instrument containing regulations under subsection (3) may not appoint a day for the commencement of Part 1, 2, 3 or 4 until the following requirements are met—
 - (a) the requirement in subsection (3B), and
 - (b) the requirement in subsection (3C) or the requirement in subsection (3D).
- (3B) The requirement in this subsection is that the Prime Minister must convene a plenary session of the Joint Ministerial Council in order to seek agreement of the market access principles set out in section 1(2).
- (3C) If an agreement on the market access principles is reached at the conclusion of the Joint Ministerial Council session, the requirement in this subsection is that the Secretary of State must lay before Parliament a memorandum of understanding which sets out—
 - (a) details of the agreed principles; and
 - (b) proposals for the establishment of an agreed dispute resolution mechanism relating to the internal market in the United Kingdom for any disputes among the Secretary of State, the Welsh Ministers, the Scottish Ministers, and a Northern Ireland department.
- (3D) If unanimous agreement is not reached at the conclusion of the Joint Ministerial Council session, the requirement in this subsection is that the Secretary of State must lay before Parliament a report outlining—
 - (a) why unanimous agreement could not be reached; and
 - (b) proposals for the operation of the internal market in the United Kingdom in light of the fact that an agreement under subsection (3B) was not reached unanimously.”

Clause 50 - continued

LORD STEVENSON OF BALMACARA

76 Page 39, line 5, at end insert –

- “() A statutory instrument containing regulations under subsection (3) may not appoint a day for the commencement of provisions in Parts 1, 2 or 3 unless, for each matter covered by the common frameworks process to enable the functioning of the internal market in the United Kingdom, the Minister of the Crown is satisfied that –
- (a) the relevant common frameworks process is no longer in progress as no agreement has been reached to the satisfaction of all parties involved; and
 - (b) any relevant dispute resolution process has been invoked after the relevant common frameworks process did not end in an agreement and all concerned are satisfied with the result.”

LORD JUDGE

77 Page 39, line 6, leave out subsection (4)

Member’s explanatory statement

This amendment is consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.

United Kingdom Internal Market Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

18 November 2020
