

European Union (Withdrawal) Bill 2017-19 Amendments

NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 5 OR SCHEDULE 1, CLAUSE 5, SCHEDULE 1

Mr Dominic Grieve
Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Antoinette Sandbach
Stephen Hammond
Dr Sarah Wollaston
Jeremy Lefroy
Robert Neill
Tom Brake
Sir Vince Cable
Mr Alistair Carmichael
Ian Blackford

8

Clause 5, page 3, line 20, leave out subsections (4) and (5).

Member's explanatory statement

To allow the Charter of Fundamental rights to continue to apply domestically in the interpretation and application of retained EU law.

NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 7, CLAUSE 7

Mr Dominic Grieve
John Penrose
Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Stephen Hammond
Antoinette Sandbach
Robert Neill
Jeremy Lefroy
Vicky Ford
Dr Sarah Wollaston
Tom Tugendhat

1

Clause 7, page 5, line 8, leave out “(but are not limited to)” and insert “and are limited to”

Member's explanatory statement

To restrict the power of a Minister to make regulations to amend retained EU law to cases where the EU law is deficient in the way set out in the Bill.

Mr Dominic Grieve
Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Antoinette Sandbach
Stephen Hammond
Dr Sarah Wollaston
Jeremy Lefroy
Robert Neill

5

Clause 7, page 6, line 3, leave out “abolished”

Member's explanatory statement

To prevent the abolition by SI of a function currently carried out by an EU entity in the UK, as opposed to its replacement or modification.

Mr Dominic Grieve
John Penrose

Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Stephen Hammond
Antoinette Sandbach
Robert Neill
Jeremy Lefroy
Vicky Ford
Dr Sarah Wollaston
Tom Tugendhat

2

Clause 7, page 6, line 18, at end insert—

“(g) make any other provision, unless the Minister considers that the conditions in subsection (6A) where relevant are satisfied in relation to that provision.

(6A) those conditions are that—

- (a) the policy objective intended to be secured by the provision could not be secured by non-legislative means;
- (b) the effect of the provision is proportionate to the policy objective;
- (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (d) the provision does not remove any necessary protection;
- (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (f) the provision is not of constitutional significance”

Member’s explanatory statement

To narrow down the circumstances in which this power can be exercised.

***NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 9, CLAUSE 9, NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 16 OR SCHEDULE 7, CLAUSE 16, SCHEDULE 7, CLAUSE 17
NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 9, CLAUSE 9***

Mr Dominic Grieve
Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Antoinette Sandbach
Stephen Hammond
Dr Sarah Wollaston
Jeremy Lefroy
Robert Neill

7

Clause 9, page 6, line 45, at end insert “, subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the European Union.”

Member’s explanatory statement

To require the final deal with the EU to be approved by statute passed by Parliament.

Mr Dominic Grieve
Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Antoinette Sandbach
Stephen Hammond
Dr Sarah Wollaston
Jeremy Lefroy
Robert Neill

13

Clause 9, page 7, line 8, at end insert—

“(e) make any provision, unless the Minister considers that the conditions in subsection (3B) where relevant are satisfied in relation to that provision.

(3A) those conditions are that—

- (a) the policy objective intended to be secured by the provision could not be secured by non-legislative means;
- (b) the effect of the provision is proportionate to the policy objective;
- (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (d) the provision does not remove any necessary protection;
- (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (f) the provision is not of constitutional significance”

NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 16 OR SCHEDULE 7, CLAUSE 16, SCHEDULE 7, CLAUSE 17

Mr Dominic Grieve
 John Penrose
 Mr Kenneth Clarke
 Nicky Morgan
 Anna Soubry
 Stephen Hammond
 Antoinette Sandbach
 Robert Neill
 Jeremy Lefroy
 Vicky Ford
 Dr Sarah Wollaston
 Tom Tugendhat

3

Schedule 7, page 39, line 30, leave out from beginning to the end of line 19 on page 40 and insert—

“(3) A Minister of the Crown must not make an Order under (1) and (2) above or any other Order to which this Schedule applies, unless—

- (a) a draft Order and explanatory document has been laid before Parliament in accordance with paragraph 1A; and
- (b) in the case of any Order which can be made other than solely by a resolution of each House of Parliament, the Order is made as determined under paragraph 1B in accordance in accordance with—
 - (i) the negative resolution procedure (see paragraph 1C); or
 - (ii) the affirmative resolution procedure (see paragraph 1D); or
- (c) it is declared in the Order that it appears to the person making it that because of the urgency of the matter, it is necessary to make the Order without a draft being so approved (see paragraph 1E).

Draft Order and Explanatory document laid before Parliament

1A (1) If the minister considers it appropriate to proceed with the making of an Order under this Part, he must lay before Parliament—

- (a) a draft of the Order, together with
 - (b) an explanatory document.
- (2) The explanatory document must—
- (a) explain under which power or powers in this Part the provision contained in the Order is made;
 - (b) introduce and give reasons for the provision;
 - (c) explain why the minister considers that—
 - (i) in the case of an Order under section 7, include, so far as appropriate, an assessment of the extent to which the provision made by the Order would prevent, remedy or mitigate—
 - (a) any failure of retained EU law to operate effectively; or
 - (b) any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU,
 - (ii) in the case of an Order under section 8, include, so far as appropriate, an assessment of the extent to which the provision made by the Order would prevent or remedy any breach, arising from the withdrawal of the United Kingdom from the EU, of the international obligations of the United Kingdom,
 - (iii) in the case of an Order under section 9, include, so far as appropriate, an assessment of the extent to which implementation of the withdrawal agreement should be in force on or before exit day.
 - (d) identify and give reasons for—
 - (i) any functions of legislating conferred by the Order; and
 - (ii) the procedural requirements attaching to the exercise of those functions.

Determination of Parliamentary procedure

- 1B (1) The explanatory document laid with a draft Order under paragraph 1A must contain a recommendation by the minister as to which of the following should apply in relation to the making of an Order pursuant to the draft Order—
- (a) the negative resolution procedure (see paragraph 1C); or
 - (b) the affirmative resolution procedure (see paragraph 1D).
- (2) The explanatory document must give reasons for the minister’s recommendation.
- (3) Where the minister’s recommendation is that the negative resolution procedure should apply, that procedure shall apply unless, within the 20-day period either House of Parliament requires that the affirmative resolution procedure shall apply, in which case that procedure shall apply.
- (4) For the purposes of this paragraph a House of Parliament shall be taken to have required a procedure within the 20-day period if—
- (a) that House resolves within that period that that procedure shall apply; or
 - (b) in a case not falling within sub paragraph (4)(a), a committee of that House charged with reporting on the draft Order has recommended within that period that that procedure should apply and the House has not by resolution rejected that recommendation within that period.
- (5) In this section the “20-day period” means the period of 20 days beginning with the day on which the draft Order was laid before Parliament under paragraph 1A.

Negative resolution procedure

- 1C (1) For the purposes of this Part, the “negative resolution procedure” in relation to the making of an Order pursuant to a draft order laid under paragraph 1A is as follows.
- (2) The Minister may make an order in the terms of the draft Order subject to the following provisions of this paragraph.
- (3) The Minister may not make an order in the terms of the draft Order if either House of Parliament so resolves within the 40-day period.
- (4) For the purposes of this paragraph an Order is made in the terms of a draft Order if it contains no material changes to the provisions of the draft Order.
- (5) In this paragraph the “40-day period” means the period of 40 days beginning with the day on which the draft Order was laid before Parliament under paragraph 1A.

Affirmative resolution procedure

- 1D (1) For the purposes of this Part the “affirmative resolution procedure” in relation to the making of an Order pursuant to a draft Order laid under paragraph 1A is as follows.
- (2) The Minister must have regard to—
- (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft Order, made during the 40-day period with regard to the draft Order.
- (3) If, after the expiry of the 40-day period, the minister wishes to make an Order in the terms of the draft, he must lay before Parliament a statement—
- (a) stating whether any representations were made under sub paragraph (2)(a); and
 - (b) if any representations were so made, giving details of them.
- (4) The minister may after the laying of such a statement make an Order in the terms of the draft if it is approved by a resolution of each House of Parliament.
- (5) If, after the expiry of the 40-day period, the minister wishes to make an Order consisting of a version of the draft Order with material changes, he must lay before Parliament—
- (a) a revised draft Order; and
 - (b) a statement giving details of—
 - (i) any representations made under sub paragraph (2)(a); and
 - (ii) the revisions proposed.
- (6) The minister may after laying a revised draft Order and statement under sub paragraph (5) make an Order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.
- (7) For the purposes of sub paragraphs (4) an Order is made in the terms of a draft Order if it contains no material changes to the provisions of the draft Order.
- (8) In this paragraph the “40-day period” has the meaning given by paragraph 4(5)(a).

Procedure in urgent cases

- 1E (1) If an Order is made without being approved in draft, the person making it must lay it before Parliament, accompanied by the required information, after it is made.

(2) If, at the end of the period of one month beginning with the day on which the original Order was made, a resolution has not been passed by each House approving the original or replacement Order, the Order ceases to have effect.

(3) For the purposes of sub paragraph (1), “required information” means—

(a) a statement of the reasons for proceeding under paragraph 1E; and

(b) an explanatory document, as set out in paragraph 1A (2).”

Member’s explanatory statement

To set up a triage and scrutiny system under the control of Parliament for determining how Statutory Instruments under Clause 7 of the Bill will be dealt with.

Mr Dominic Grieve

John Penrose

Mr Kenneth Clarke

Nicky Morgan

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Tom Tugendhat

4

Schedule 7, page 40, line 32, leave out from “is” to end of line 34 and insert “subject to the rules set out in paragraphs 1 to 1E above.”

Member’s explanatory statement

Consequential amendment to Amendment 3.

NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 8, CLAUSE 8

Mr Dominic Grieve

Mr Kenneth Clarke

Nicky Morgan

Anna Soubry

Antoinette Sandbach

Stephen Hammond

Dr Sarah Wollaston

Jeremy Lefroy

Robert Neill

12

Clause 8, page 6, line 38, at end insert—

“(e) make any provision, unless the Minister considers that the conditions in subsection (3A) where relevant are satisfied in relation to that provision.

(3A) those conditions are that—

(a) the policy objective intended to be secured by the provision could not be secured by non-legislative means;

(b) the effect of the provision is proportionate to the policy objective;

(c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;

(d) the provision does not remove any necessary protection;

(e) the provision does not prevent any person from exercising any right or freedom which that person might reasonably expect to continue to exercise;

(f) the provision is not of constitutional significance”

NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 14 OR SCHEDULE 6, CLAUSE 14, SCHEDULE 6, REMAINING NEW CLAUSES, REMAINING NEW SCHEDULES, CLAUSE 15, SCHEDULES 8 AND 9, CLAUSES 18 AND 19, REMAINING PROCEEDINGS ON THE BILL

NEW CLAUSES AND NEW SCHEDULES RELATING TO CLAUSE 14 OR SCHEDULE 6, CLAUSE 14, SCHEDULE 6

Mr Dominic Grieve

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Nicky Morgan
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Antoinette Sandbach
Stephen Hammond
Dr Sarah Wollaston
Jeremy Lefroy
Robert Neill

6

Clause **14**, page **10**, line **26**, at end insert “but exit day must be the same day for the purposes of every provision of this Act.”

Member’s explanatory statement

To prevent the creation of different exit days for different parts of the Act by SI.

REMAINING NEW CLAUSES, REMAINING NEW SCHEDULES, CLAUSE 15, SCHEDULES 8 AND 9, CLAUSES 18 AND 19, REMAINING PROCEEDINGS ON THE BILL

Mr Kenneth Clarke
Nicky Morgan
Anna Soubry
Antoinette Sandbach
Stephen Hammond
Dr Sarah Wollaston
Jeremy Lefroy
Robert Neill

11

Schedule **8**, page **55**, line **17**, leave out “primary legislation and not”

Member’s explanatory statement

This amendment removes the proposal to allow secondary legislation to be treated as primary for the purposes of the Human Rights Act 1998.