

European Union (Withdrawal Agreement) Bill

[DRAFT]

WELSH GOVERNMENT PROPOSED AMENDMENTS

Clause 21

Page 25, line 14, at end insert –

“(6) But regulations under subsection (1) may not –

- (a) impose or increase taxation or fees,
- (b) make retrospective provision,
- (c) create a relevant criminal offence,
- (d) establish a public authority,
- (e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
- (f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).”

Explanatory statement

The new section 8C to be inserted into the European Union (Withdrawal) Act 2018 by clause 21 confers power on a Minister of the Crown to make regulations relating to the Ireland/Northern Ireland Protocol in the withdrawal agreement. The new subsection (6) proposed provides that the regulations may not make provision of the form mentioned in paragraphs (a) to (f), including amending the Scotland Act 1998, the Government of Wales Act 2006, and the Northern Ireland Act 1998 (except in limited circumstances). This is identical to equivalent restrictions on the Minister of the Crown’s power to make regulations under the new section 8B of the European Union (Withdrawal) Act 2018 (proposed to be inserted by clause 18).

Clause 22

Page 26, line 25, at end insert –

“(7) But regulations under this Part may not –

- (a) impose or increase taxation or fees,

- (b) make retrospective provision,
- (c) create a relevant criminal offence,
- (d) establish a public authority,
- (e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
- (f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment)."

Explanatory statement

The new paragraph 11M to be inserted into Schedule 2 to the European Union (Withdrawal) Act 2018 by clause 22 confers power on the devolved authorities to make regulations relating to the Ireland/Northern Ireland Protocol in the withdrawal agreement. The new sub-paragraph (7) proposed provides that the regulations may not make provision of the form mentioned in paragraphs (a) to (f), including amending the Scotland Act 1998, the Government of Wales Act 2006, and the Northern Ireland Act 1998 (except in limited circumstances). This is identical to equivalent restrictions on the devolved authorities' power to make regulations under new paragraph 11G of Schedule 2 to the European Union (Withdrawal) Act 2018 (proposed to be inserted by clause 19).

Clause 26

Page 31, line 11 leave out "and" and at end insert –

- "(f) the Scottish Ministers,
- (g) the Welsh Ministers, and
- (h) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland, and"

Explanatory statement

The new subsection (5A) proposed to be inserted into section 6 of the European Union (Withdrawal) Act 2018 by clause 26(1)(d) confers power on the Minister of the Crown to make regulations relating to how courts in the UK are to apply, and be bound by, retained EU case law. Proposed new subsection (5C) provides that before making the regulations, the Minister of the Crown must consult particular persons. The new paragraphs (f) to (h) to be inserted by this amendment provide for consultation with the Scottish Ministers, the Welsh Ministers, and the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.

After Clause 30

Insert the following new clauses –

"Approval of extension of implementation period

After section 13B of the European Union (Withdrawal) Act 2018 (certain dispute procedures under withdrawal agreement) (for which see section 30 above) insert –

“13C Extension of implementation period

- 5 (1) This section applies where no statement that political agreement has been reached has been made by 13 June 2020.
- (2) A Minister of the Crown must –
- 10 (a) before 17 June 2020, submit a request to the Joint Committee asking for an extension of two years to the implementation period, and
- (b) seek to achieve an extension of that duration or, if an extension of that duration is not agreed, an extension of the longest duration than can be agreed.
- (3) But subsection (2) does not apply if, at any time before 17 June 2020, conditions 1 to 4 are met.
- 15 (4) Condition 1 is that a Minister of the Crown has prepared a statement (a “no extension statement”) –
- (a) providing that despite no statement that political agreement has been reached having been made, an extension to the implementation period should not be sought, and
- 20 (b) setting out reasons why an extension to the implementation period should not be sought.
- (5) Condition 2 is that a Minister of the Crown has –
- 25 (a) laid the no extension statement before each House of Parliament,
- (b) sent the no extension statement to the First Minister for Scotland, who must, within three days –
- 30 (i) lay it before the Scottish Parliament, and
- (ii) table a motion for the Parliament to take note of it,
- (c) sent the no extension statement to the First Minister for Wales, who must, within three days –
- 35 (i) lay it before the National Assembly for Wales and
- (ii) table a motion for the National Assembly to take note of it,
- 40 (d) sent the no extension statement to the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may, within three days –
- (i) lay it before the Northern Ireland Assembly and

(ii) table a motion for the Assembly to take note of it.

(6) Condition 3 is that—

(a) the motion tabled by the First Minister for Scotland in accordance with subsection (5)(b)(ii)—

(i) has been debated by the Scottish Parliament, or

(ii) the Parliament 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 motion is tabled,

(b) the motion tabled by the First Minister for Wales in accordance with subsection (5)(c)(ii)—

(i) has been debated by the National Assembly for Wales, or

(ii) the National Assembly 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 motion is tabled, and

(c) if a motion has been tabled by the First Minister and deputy First Minister in Northern Ireland in accordance with subsection (5)(d)(ii), it—

(i) has been debated by the Northern Ireland Assembly, or

(ii) the Assembly 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 motion is tabled.

(7) Condition 4 is that after conditions 1 to 3 have been met—

(a) a motion for the House of Lords to take note of the no extension statement has been tabled in that House 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 Lords sitting days beginning with the first Lords sitting day after the day on which the motion is tabled, and

(b) the House of Commons has subsequently passed a motion in the form set out in subsection (8).

- (8) The form of motion mentioned in subsection (7)(b) is: “That this House, for the purposes of section 13C of the European Union (Withdrawal) Act 2018, agrees in accordance with the no extension statement laid before this House on [...] under section 13C(5) of that Act that no extension to the implementation period should be sought.”

Explanatory statement

This amendment proposes that a new section 13C be inserted into the European Union (Withdrawal) Act 2018 which provides that unless a Minister of the Crown has made a statement by 13 June 2020 that political agreement has been reached with the EU on a draft treaty on the future relationship of the UK with the EU, a Minister of the Crown must request a two year extension to the implementation period at the Joint Committee and must seek to achieve that extension.

This duty does not apply where conditions 1 to 4 in subsections (4) to (7) are met. The conditions require a Minister of the Crown to prepare a statement explaining why no extension should be sought. And both Houses of Parliament and the devolved administrations and legislatures must be given an opportunity to consider and debate the statement. The final condition is that the House of Commons must pass a motion agreeing that no extension should be sought to the implementation period.

Oversight of negotiations for future relationship

After section 13C of the European Union (Withdrawal) Act 2018 (approval of extension of implementation period) (for which see section 30A above) insert –

“13D Objectives for future relationship: statement

- (1) A Minister of the Crown must, before the end of the period of 30 Commons sitting days beginning with the day on which exit day falls, make a statement on objectives for the future relationship with the EU (an “objectives statement”).
- (2) Before making the initial objectives statement the Minister of the Crown must consult –
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.
- (3) A Minister of the Crown may, at any time after the initial objectives statement is made, make a revised objectives statement.
- (4) Before making a revised objectives statement the Minister of the Crown must consult –
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and

(c) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.

(5) An objectives statement made under this section must contain an assessment of the impact a future relationship treaty that is consistent with those objectives would have on the economic, social and environmental well-being of the people of England, of Scotland, of Wales and of Northern Ireland.

13E Negotiations for future relationship: preconditions

(1) A Minister of the Crown may not engage in negotiations on the future relationship with the EU unless conditions 1 to 4 are met.

(2) Condition 1 is that an objectives statement has been laid before each House of Parliament.

(3) Condition 2 is that a Minister of the Crown has –

(a) sent the objectives statement to the First Minister for Scotland, who must, within three days –

(i) lay it before the Scottish Parliament, and

(ii) table a motion for the Parliament to take note of it,

(b) sent the objectives statement to the First Minister for Wales, who must, within three days –

(i) lay it before the National Assembly for Wales and

(ii) table a motion for the National Assembly to take note of it,

(c) sent the objectives statement to the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may, within three days –

(i) lay it before the Northern Ireland Assembly and

(ii) table a motion for the Assembly to take note of it.

(4) Condition 3 is that –

(a) the motion tabled by the First Minister for Scotland in accordance with subsection (3)(a)(ii) –

(i) has been debated by the Parliament, or

(ii) the Parliament 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 motion is tabled,

- (b) the motion tabled by the First Minister for Wales in accordance with subsection (3)(b)(ii) –
- (i) has been debated by the National Assembly, or
 - (ii) the National Assembly 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 motion is tabled, and
- (c) if a motion has been tabled by the First Minister and deputy First Minister in Northern Ireland in accordance with subsection (3)(c)(ii), it –
- (i) has been debated by the Assembly, or
 - (ii) the Assembly 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 motion is tabled.

(5) Condition 4 is that after conditions 1 to 3 have been met –

- (a) a motion for the House of Lords to take note of the objectives statement has been tabled in that House 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 Lords sitting days beginning with the first Lords sitting day after the day on which the motion is tabled, and
- (b) the House of Commons has subsequently approved the objectives statement on a motion moved by a Minister of the Crown.

(6) In conducting negotiations on the future relationship with the EU, a Minister of the Crown must seek to achieve the objectives set out in the most recent objectives statement to have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown.

13F Negotiations for future relationship: reporting on progress

- (1) After the end of each reporting period, a Minister of the Crown must –
- (a) lay before each House of Parliament a report on the progress made, by the end of the period, in negotiations on the future relationship with the EU, including –

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- (i) the Minister's assessment of the extent to which the outcome of those negotiations is likely to reflect the most recent objectives statement to have been approved by the House of Commons, as mentioned in section 13E(5), and
- (ii) if the Minister's assessment is that the future relationship with the EU is, in any respect, not likely to reflect that statement, an explanation of why that is so,
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- (b) send the report to the First Minister for Scotland, who must lay it before the Scottish Parliament,
- (c) send the report to the First Minister for Wales, who must lay it before the National Assembly for Wales, and
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- (d) send the report to the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may lay it before the Northern Ireland Assembly.
- (2) Subsections (3) and (4) relate to any of the objectives set out in the objectives statement and apply if 8 months before the end of the implementation period –
- 20
- (a) a Minister of the Crown makes a statement that no agreement in principle can be reached with the EU on the objective, or
- (b) there is no agreement in principle on the objective.
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- (3) A Minister of the Crown must make a statement setting out how Her Majesty's Government proposes to proceed within the period of 14 days beginning with –
- (a) the day on which the statement mentioned in subsection (2) is made, or
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- (b) (if no statement is made) the day that is 8 months before the end of the implementation period.
- (4) The Minister of the Crown must –
- (a) lay the statement made under subsection (3) before each House of Parliament,
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- (b) send the statement to the First Minister for Scotland who must lay it before the Scottish Parliament and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the Parliament to take note of it,

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- (c) send the statement to the First Minister for Wales who must lay it before the National Assembly for Wales and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the National Assembly to take note of it,
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- (d) send the statement to the Executive Office in Northern Ireland, or the First Minister and deputy First Minister in Northern Ireland who may lay it before the Northern Ireland Assembly and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the Assembly to take note of it, and
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- (e) make arrangements for –
- (i) a motion, to the effect that the House of Commons has considered the statement, to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made, and
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- (ii) a motion for the House of Lords to take note of the statement to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made.

25 13G Ratification of future relationship

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- (1) This section applies if, in the opinion of a Minister of the Crown, an agreement in principle has been reached with the EU on a treaty the principal purpose of which is to deal with all or part of the future relationship with the EU.
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- (2) A Minister of the Crown must lay before each House of Parliament –
- (a) a statement that political agreement has been reached, and
- (b) a copy of the negotiated future relationship treaty.
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- (3) A Minister of the Crown must also send the documents mentioned in subsection (2) to –
- (a) the First Minister for Scotland, who must lay them before the Scottish Parliament and move a motion for the Parliament to take note of them,
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- (b) the First Minister for Wales, who must lay them before the National Assembly for Wales and move a motion for the National Assembly to take note of them, and

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- (c) the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may lay them before the Northern Ireland Assembly and move a motion for the Assembly to take note of them.
- (4) A treaty in the same form, or to substantially the same effect, as the negotiated future relationship treaty may be ratified only if conditions 1, 2 and 3 have been met.
- 10 (5) Condition 1 is that—
- (a) the motion mentioned in subsection (3)(a)—
- (i) has been debated by the Scottish Parliament, or
- (ii) the Parliament has not concluded a debate on the motion before the end of the period of 14 sitting days beginning with the first sitting day after the day on which the motion is tabled,
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- (b) the motion mentioned in subsection (3)(b)—
- (i) has been debated by the National Assembly for Wales, or
- (ii) the National Assembly has not concluded a debate on the motion before the end of the period of 14 sitting days beginning with the first sitting day after the day on which the motion is tabled, and
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- (c) if the motion mentioned in section (3)(c) has been tabled, it—
- (i) has been debated by the Northern Ireland Assembly, or
- (ii) the Assembly has not concluded a debate on the motion before the end of the period of 14 sitting days beginning with the first sitting day after the day on which the motion is tabled.
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- 30
- (6) Condition 2 is that—
- (a) the House of Lords has not resolved, within the period of 21 Lords sitting days beginning with the day on which the negotiated future relationship treaty is laid before that House, that any treaty resulting from it should not be ratified, or
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- (b) if the House of Lords has so resolved within that period, a Minister of the Crown has laid before each House of Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.
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- (7) Condition 3 is that the negotiated future relationship treaty has subsequently been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown.
- (8) Section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) does not apply in relation to a treaty if this section applies in relation to the ratification of that treaty.

13H Consent of devolved authorities normally to be obtained

- (1) This section applies in relation to the functions of a Minister of the Crown—
- (a) to make an objectives statement in accordance with section 13D(1),
 - (b) to make a revised objectives statement (where applicable) in accordance with section 13D(3), and
 - (c) to lay a statement that political agreement has been reached with the EU on a treaty for the future relationship with the EU and to lay a copy of the negotiated future relationship treaty in accordance with section 13G(2).
- (2) It is recognised that before exercising those functions, the Minister of the Crown is expected to obtain the consent of—
- (a) the Scottish Ministers in relation to their impact on Scotland;
 - (b) the Welsh Ministers in relation to their impact on Wales;
 - (c) the First Minister and deputy First Minister in Northern Ireland in relation to their impact on Northern Ireland.
- (3) Where consent has not been obtained, the Minister of the Crown must, before exercising the function, lay before each House of Parliament—
- (a) where the Minister has not sought the consent of a person referred to in subsection (2), a statement explaining why consent was not sought, and
 - (b) where the Minister has sought the consent of a person referred to in subsection (2) and that consent has not been given, a statement—
 - (i) noting that consent has not been given, and
 - (ii) recording any reason provided by that person as to why consent has not been given.

13I Interpretation

In sections 13C to 13H—

“devolved legislature” means –

- (a) the Scottish Parliament,
- (b) the National Assembly for Wales, or
- (c) the Northern Ireland Assembly;

5 “future relationship with the EU” means the main arrangements which are designed to govern the security and economic aspects of the long-term relationship between the United Kingdom and the EU after IP completion day and to replace or modify the arrangements which apply during the implementation period, but does not include the withdrawal agreement;

10 “negotiated future relationship treaty” means a draft of a treaty identified in a statement that political agreement has been reached;

15 “negotiations” means negotiations the opening of which, on behalf of the EU, has been authorised under Article 218 of the Treaty on the Functioning of the European Union;

“no extension statement” means a statement made in accordance with section 13C(4);

20 “objectives statement” means a statement on objectives for the future relationship with the EU” –

- (a) made in writing by a Minister of the Crown setting out proposed objectives of Her Majesty’s Government in negotiations on the future relationship with the EU, and
- (b) published in such manner as the Minister making it considers appropriate;

“reporting period” means –

- (a) the period of three months beginning with the first day on which an objectives statement is approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown, and
- (b) each subsequent period of three months;

“sitting day” means –

- (a) in relation to the House of Commons, a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
- (b) in relation to the House of Lords, 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);

(c) in relation to the Scottish Parliament, any working day falling within a week in which the Parliament sits in plenary;

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(d) in relation to the National Assembly for Wales, any working day falling within a week in which the National Assembly sits in plenary;

(e) in relation to the Northern Ireland Assembly, any working day falling within a week in which the Assembly sits in plenary;

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“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 with the EU on a treaty the principal purpose of which is to deal with all or part of the future relationship with the EU, and

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(b) identifies a draft of that treaty which, in the Minister’s opinion, reflects the agreement in principle;

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“treaty” has the same meaning as in Part 2 of the Constitutional Reform and Governance Act 2010 (see section 25(1) and (2) of that Act);

“working day” means any day unless it is –

(a) a Saturday or a Sunday,

(b) Christmas Eve, Christmas Day, Maundy Thursday or Good Friday,

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(c) a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971, or

(d) a day appointed for public thanksgiving or mourning.””

Explanatory statement

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This amendment proposes that new sections be inserted into the European Union (Withdrawal) Act 2018 relating to parliamentary oversight of the negotiations and ratification of the future relationship with the EU.

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Sections 13D and 13E require a Minister of the Crown to prepare a statement on objectives for the future relationship with the EU (referred to as an “objectives statement”). It must include an assessment of the impact a treaty complying with those objectives would have on the people of each of England, Scotland, Wales, and Northern Ireland. Both Houses of Parliament and the devolved administrations and legislatures must be given an opportunity to consider and debate the statement.

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Section 13F relates to reporting on progress made in negotiations with the EU. In particular it provides that if no agreement in principle has been reached with the EU 8 months before the end of the implementation period, a Minister of the Crown is required to make a statement setting out how the UK Government proposes to proceed. The statement must be shared with the devolved administrations and legislatures.

Section 13G provides a role for the UK Parliament and the devolved legislatures in the ratification of a future relationship treaty, once agreement in principle has been reached between the UK Government and the EU. Ultimately, the treaty may only be ratified if it is approved by a resolution of the House of Commons.

5 Section 13H provides that a Minister of the Crown is expected to seek the consent of the devolved administrations before making an objectives statement (or a revised statement), and before laying a draft future relationship treaty before the UK Parliament.

Clause 33

10 Leave out Clause 33.

Explanatory statement

15 *This amendment would omit clause 33 which proposes to insert a new section 15A into the European Union (Withdrawal) Act 2018 that prohibits a Minister of the Crown from agreeing to an extension of the implementation period in the Joint Committee .*

Clause 38

Page 37, line 39, at end insert—

20 “(4) But it is also recognised for the purposes of ratifying and implementing a negotiated future relationship treaty, that—

(a) in accordance with section 28(8) of the Scotland Act 1998, the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament;

25 (b) in accordance with section 107(6) of the Government of Wales Act 2006, the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the National Assembly for Wales.”

Explanatory statement

30 *This clause makes provision recognising that nothing in the Bill derogates from the sovereignty of the UK Parliament. This amendment provides that it is also recognised that in relation to ratifying and implementing a future relationship treaty with the EU (in accordance with the Scotland Act 1998 and the Government of Wales Act 2006), the UK*

35 *Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament and the National Assembly for Wales.*

Schedule 2

Page 59, line 31, at end insert—

40 “(4) Sub-paragraph (5) applies for the purpose of ensuring that the transferee has knowledge of conditions relating to the relevant matters in—

- (a) Scotland,
- (b) Wales, and
- (c) Northern Ireland.

5 (5) Regulations under sub-paragraph (1) must, so far as possible, make provision equivalent to paragraphs 4 and 5 in respect of the transferee."

Explanatory statement

10 *Schedule 2 to the Bill makes further provision about the constitution and functions of the Independent Monitoring Authority (IMA). Paragraph 4(2) provides that the Secretary of State must, so far as possible, ensure that the non-executive members of the IMA include members with knowledge about conditions in Scotland, Wales and Northern Ireland relating to the (defined) "relevant matters". Paragraph 5 gives each devolved authority a role in the appointment of the non-executive member.*

15 *Paragraph 39(1) allows the Secretary of State to make regulations to transfer the functions of the IMA to another relevant public authority (the "transferee"). This amendment provides that if the Secretary of State were to exercise the power under paragraph 39(1), the regulations made must, so far as possible, make provision equivalent to paragraphs 4 and 5 to ensure that the transferee has knowledge of conditions in all of*

20 *the devolved areas.*