

Northern Ireland Protocol Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Foreign, Commonwealth & Development Office, have been ordered to be published as HL Bill 52 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Ahmad of Wimbledon has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Northern Ireland Protocol Bill are compatible with the Convention rights.

Northern Ireland Protocol Bill

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Make provision about the effect in domestic law of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, about other domestic law in subject areas dealt with by the Protocol and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introduction

1 Overview of main provisions

This Act—

- (a) provides that certain specified provision of the Northern Ireland Protocol does not have effect in the United Kingdom; 5
- (b) gives Ministers of the Crown powers to provide that other provision of the Northern Ireland Protocol does not have effect in the United Kingdom;
- (c) provides that enactments, including the Union with Ireland Act 1800 and the Act of Union (Ireland) 1800, are not to be affected by provision of the Northern Ireland Protocol that does not have effect in the United Kingdom; 10
- (d) gives Ministers of the Crown powers to make new law in connection with the Northern Ireland Protocol (including where provision of the Protocol does not have effect in the United Kingdom). 15

Limitation of effect of Protocol etc

2 Limitation of general implementation of the Northern Ireland Protocol

- (1) Section 7A(2) of the European Union (Withdrawal) Act 2018 (effect of law relating to the EU withdrawal agreement) does not apply to—
 - (a) any rights, powers, liabilities, obligations or restrictions from time to time created or arising by or under excluded provision of— 20

- (i) the Northern Ireland Protocol, or
 - (ii) any other part of the EU withdrawal agreement, or
 - (b) any remedies or procedures from time to time provided for by or under excluded provision of –
 - (i) the Northern Ireland Protocol, or 5
 - (ii) any other part of the EU withdrawal agreement.
 - (2) Accordingly –
 - (a) the rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are not to be –
 - (i) recognised or available in domestic law, or 10
 - (ii) enforced, allowed or followed accordingly; and
 - (b) no enactment, whenever passed or made, is to be read or is to have effect subject to section 7A(2) of that Act so far as those rights, powers, liabilities, obligations, restrictions, remedies and procedures are concerned. 15
 - (3) In section 7A of the European Union (Withdrawal) Act 2018 –
 - (a) after subsection (3) insert –
 - “(3A) This section is subject to the Northern Ireland Protocol Act 2022 (limitation of effect of the Northern Ireland Protocol).”;
 - (b) in subsection (5) –
 - (i) omit the “and” at the end of paragraph (e);
 - (ii) at the end of paragraph (f) insert “, and
 - (g) regulations made under the Northern Ireland Protocol Act 2022 (regulations etc. relating to the subject-matter of the Protocol which take priority over this section so far as they are incompatible with it).” 25
- 3 Other limitations in interpretation of law**
- (1) Section 7C of the European Union (Withdrawal) Act 2018 (interpretation of relevant separation agreement law) does not apply so far as it would require any question as to the validity, meaning or effect of any relevant separation agreement law (including this Act and any regulations made under it) to be decided in a way which is incompatible with –
 - (a) any provision made by or under this Act, or
 - (b) any conduct under section 18(1). 35
 - (2) In section 7C of the European Union (Withdrawal) Act 2018 (interpretation of relevant separation agreement law), after subsection (2), insert –
 - “(2A) But also see the Northern Ireland Protocol Act 2022 (under which this section does not apply so far as it would require any question as to the validity, meaning or effect of any relevant separation agreement law to be decided in a way which is incompatible with that Act or regulations or conduct under it).” 40

*Goods: movement and customs***4 Movement of goods (including customs): excluded Protocol provision**

- (1) The first and second subparagraphs of Article 5(1), and Article 5(2), of the Northern Ireland Protocol (no customs duties on goods moved to Northern Ireland, unless they are at risk of subsequently being moved to the EU) are excluded provision. 5
- (2) The following provision of the Northern Ireland Protocol is excluded provision so far as it relates to qualifying movements of UK or non-EU destined goods –
- (a) Article 5(3) (customs legislation applicable to and in the United Kingdom in respect of Northern Ireland); 10
 - (b) Article 5(4) and Annex 2 (provisions of EU law that are applicable to and in the United Kingdom in respect of Northern Ireland).
- (3) A Minister of the Crown may, by regulations, make provision for subsection (2) to apply to prescribed descriptions of qualifying movements of UK or non-EU destined goods. 15
- (4) A prescribed description of qualifying movements of UK or non-EU destined goods may (in particular) relate to any of the following matters –
- (a) the purpose for which the goods are being moved (including whether the goods are being moved for commercial or non-commercial purposes); 20
 - (b) the manner in which the goods are being moved;
 - (c) the person or service being used to move the goods;
 - (d) whether or not the movement is a direct movement from one place to another;
 - (e) the place where the goods are being moved from or to; 25
 - (f) the place where the goods are destined to remain or move to after a qualifying movement;
 - (g) the nature of the goods.
- (5) A Minister of the Crown may, by regulations, make provision about the meaning of “UK or non-EU destined” in this Act; and any such regulations may, in particular – 30
- (a) provide that goods are UK or non-EU destined if prescribed conditions or other criteria are met, including where a trader or other person registered in accordance with a prescribed scheme states in accordance with the scheme that the goods are UK or non-EU destined; 35
 - (b) provide for goods to be treated as UK or non-EU destined;
 - (c) provide for the question of whether goods are UK or non-EU destined to be determined by reference to circumstances after a qualifying movement of the goods.
- (6) In this section – 40
- “qualifying movement” means –
- (a) movement to Northern Ireland from –
 - (i) Great Britain,
 - (ii) the Isle of Man,
 - (iii) any of the Channel Islands, 45
 - (iv) any other place that is outside the EU;

- (b) in the case of goods that originate from the sea, movement of the goods from the sea to a port or other place in Northern Ireland;
 - (c) movement from Northern Ireland to—
 - (i) Great Britain,
 - (ii) the Isle of Man, 5
 - (iii) any of the Channel Islands, or
 - (iv) any other place that is outside the EU; or
 - (d) movement within the United Kingdom;
- “sea” means—
- (a) the territorial sea, or exclusive economic zone, of the United Kingdom or any other country or territory, and 10
 - (b) the high seas.

5 Movement of goods: new law about matters other than customs

- (1) A Minister of the Crown may, by regulations, make any provision which the Minister considers appropriate in connection with any provision of the Northern Ireland Protocol to which section 4 relates. 15
- (2) But no provision about customs matters may be made under subsection (1) (see instead section 6).
- (3) Regulations under this section may, in particular—
 - (a) provide for checks, controls and administrative processes (whether applicable before or after a movement of goods), including powers of search, examination and entry; 20
 - (b) restrict or prohibit the movement of UK or non-EU destined goods into the EU;
 - (c) make provision about the treatment of goods which cease to be, or become, UK or non-EU destined goods. 25

6 Customs matters: new law

- (1) The Treasury or HMRC may, by regulations, make any provision about customs matters which they consider appropriate in connection with the Northern Ireland Protocol. 30
- (2) Regulations under this section may, in particular—
 - (a) impose or vary the incidence of any customs duty;
 - (b) provide for checks, controls and administrative processes (whether applicable before or after a movement of goods), including powers of search, examination and entry; 35
 - (c) restrict or prohibit the movement of UK or non-EU destined goods into the EU;
 - (d) make provision about the treatment of goods which cease to be, or become, UK or non-EU destined goods.

Regulation of goods

- 7 Regulation of goods: option to choose between dual routes**
- (1) This section allows for the option to choose compliance with a UK regulatory route or the EU regulatory route (or both) as respects regulated classes of goods (which include manufactured goods, medicines and agri-food). 5
- (2) As respects a regulated class of goods—
(a) a UK regulatory route,
(b) the EU regulatory route, or
(c) both of those regulatory routes,
must be complied with in relation to Northern Ireland; and it is for the person complying to choose which regulatory route or routes are to be complied with. 10
- (3) For the purposes of this section a class of goods is “regulated” if any provision of Annex 2 to the Northern Ireland Protocol (provisions of EU law that are applicable to and in the United Kingdom in respect of Northern Ireland) applies to regulation of goods of that class. 15
- (4) In this section, as respects a regulated class of goods—
(a) “UK regulatory route” means domestic law that applies to regulation of that class of goods;
(b) “EU regulatory route” means relevant separation agreement law that applies to regulation of that class of goods. 20
- 8 Regulation of goods: excluded Protocol provision**
- Article 5(4) of, and Annex 2 to, the Northern Ireland Protocol (provisions of EU law that are applicable to and in the United Kingdom in respect of Northern Ireland) is excluded provision so far as it prevents section 7 from having effect.
- 9 Regulation of goods: new law** 25
- (1) A Minister of the Crown may, by regulations, make any provision about regulation of goods which the Minister considers appropriate in connection with the Northern Ireland Protocol.
- (2) The regulations may, in particular—
(a) make any provision which the Minister of the Crown considers appropriate in connection with a UK regulatory route being available in accordance with section 7(2)(a) or (c) (including provision modifying that UK regulatory route or the EU regulatory route); 30
(b) amend section 7 or 8.
- 10 Meaning of “regulation of goods”** 35
- (1) References in this Act to regulation of goods are references to regulation of—
(a) making goods available on the market,
(b) putting goods into service,
(c) the production of goods (whether by manufacture or any other process), and
(d) use and import of goods; 40

and the references include any matter that is relevant to regulation of goods, which may include matters that occur before or after goods are made available on the market, put into service or produced.

- (2) Those matters may include –
- (a) placing on the market, supply, marketing and sale; 5
 - (b) advertising;
 - (c) dealing with or possession of goods (including after they have been placed on the market or put into service);
 - (d) provision of information;
 - (e) packaging; 10
 - (f) application of marks or markings (including to packaging);
 - (g) licensing (including licensing of persons);
 - (h) notifications;
 - (i) testing, trials, inspection and conformity assessment;
 - (j) transport or storage; 15
 - (k) market surveillance;
 - (l) compliance and enforcement.
- (3) In the case of making goods available on the market or putting goods into service, those matters may also include production of goods (whether by manufacture or any other process). 20
- (4) A Minister of the Crown may, by regulations, make provision about the meaning of references in this Act to regulation of goods (including provision that changes the effect of any other provision of this section, whether by amending it or otherwise).
- 11 Regulation of goods: supplementary provision 25**
- (1) A Minister of the Crown may, by regulations –
- (a) provide for section 7 to apply in relation to –
 - (i) regulated classes of goods that are prescribed;
 - (ii) regulatory routes that are prescribed;
 - (b) provide for exceptions from the application of section 7; 30
 - (c) modify the effect which section 7(2) has as respects a regulated class of goods to which it applies.
- (2) A modification in regulations under subsection (1)(c) may relate to –
- (a) all or some of a regulatory route;
 - (b) all or some of the regulated class of goods. 35
- (3) In this section “regulatory route” means –
- (a) a UK regulatory route (within the meaning of section 7), or
 - (b) the EU regulatory route (within the meaning of section 7).
- Other excluded Protocol provision*
- 12 Subsidy control 40**
- (1) Article 10 of, and Annexes 5 and 6 to, the Northern Ireland Protocol (state aid) are excluded provision.

- (2) The Subsidy Control Act 2022 is amended as follows –
- (a) in section 42(8) (meaning of minimal assistance etc), for paragraph (d) substitute –
- “(d) under any of the Regulations mentioned in paragraph (c) by virtue of the Northern Ireland Protocol after IP completion day and before the coming into force of section 12(2) of the Northern Ireland Protocol Act 2022, or”;
- (b) in section 48(3) (disapplication of subsidy controls), omit paragraph (a).
- (3) A Minister of the Crown may, by regulations, make any provision which the Minister considers appropriate in connection with any provision of the Northern Ireland Protocol to which this section relates.

13 Implementation, application, supervision and enforcement of the Protocol

- (1) Any provision of the Northern Ireland Protocol, or of any other part of the EU withdrawal agreement, is excluded provision so far as it confers jurisdiction on the European Court in relation to –
- (a) the Northern Ireland Protocol, or
- (b) related provision of the EU withdrawal agreement, (whether the jurisdiction relates to excluded provision or any other matter).
- (2) The following provision of Article 12 of the Northern Ireland Protocol is excluded provision –
- (a) paragraph 2 (presence and powers of EU representatives etc);
- (b) paragraph 3 (practical working arrangements relating to the exercise of rights of EU representatives).
- (3) Other provision relating to the implementation, application, supervision and enforcement of the Protocol is excluded under section 14.
- (4) A Minister of the Crown may, by regulations, make any provision which the Minister considers appropriate in connection with any provision of the Northern Ireland Protocol to which this section relates.
- (5) Regulations under subsection (4) may, in particular, make provision about arrangements with the EU relating to the operation of the Northern Ireland Protocol, including provision about –
- (a) supervision of its operation, or
- (b) information sharing,
- under such arrangements.

14 Provision of the Protocol etc applying to other exclusions

- (1) Any provision of –
- (a) the Northern Ireland Protocol, or
- (b) any other part of the EU withdrawal agreement,
- is excluded provision so far as it applies in relation to any other excluded provision (whether of the Northern Ireland Protocol or any other part of the EU withdrawal agreement).
- (2) The provision to which this section applies includes –

- (a) Article 12 of the Northern Ireland Protocol (implementation, application, supervision and enforcement), apart from paragraphs 2, 3 and 4;
 - (b) Article 13 of the Northern Ireland Protocol (common provisions);
 - (c) Article 4 of the EU withdrawal agreement (methods and principles relating to the effect, the implementation and the application of the agreement); 5
 - (d) Article 6 of the EU withdrawal agreement (references to EU law);
 - (e) Articles 170 to 181 of the EU withdrawal agreement (resolution of disputes by the arbitration panel); 10
 - (f) provision of any Article of the Northern Ireland Protocol so far as it applies in relation to provision of an Annex to the Protocol that is excluded provision.
- (3) Accordingly, the matters to which this section applies include –
- (a) the responsibility of the authorities of the United Kingdom for implementing and applying provisions of EU law; 15
 - (b) the requirement for provisions of the Northern Ireland Protocol and the other parts of the EU withdrawal agreement to be interpreted and applied in accordance with the methods and general principles of EU law and in conformity with the relevant case law of the European Court. 20
- (4) A Minister of the Crown may, by regulations, make any provision which the Minister considers appropriate in connection with any provision of the Northern Ireland Protocol and other parts of the EU withdrawal agreement to which this section relates. 25

Excluded Protocol provision: changes & exceptions

15 Changes to, and exceptions from, excluded provision

- (1) In this section “permitted purposes” means –
- (a) safeguarding social or economic stability in Northern Ireland;
 - (b) ensuring the effective flow of trade between – 30
 - (i) Northern Ireland and another part of the United Kingdom, or
 - (ii) a part of the United Kingdom and anywhere outside the United Kingdom;
 - (c) safeguarding the territorial or constitutional integrity of the United Kingdom; 35
 - (d) safeguarding the functioning of the Belfast Agreement;
 - (e) safeguarding animal, plant or human welfare or health;
 - (f) safeguarding biosecurity or the environment;
 - (g) safeguarding the integrity of the EU single market;
 - (h) lessening, eliminating or avoiding difference between tax or customs duties in Northern Ireland and Great Britain; 40
 - (i) securing compliance with, or giving effect to, any international obligation or agreement to which the United Kingdom is a party (whenever the United Kingdom becomes a party to it), except for –
 - (i) the Northern Ireland Protocol or any other part of the EU withdrawal agreement, or 45
 - (ii) any obligation under them.

- (2) A Minister of the Crown may, by regulations, provide for any provision of the Northern Ireland Protocol or any related provision of the EU withdrawal agreement –
- (a) to become excluded provision wholly or to any other extent,
 - (b) to be excluded provision to any greater extent, 5
 - (c) to be excluded provision to any lesser extent,
 - (d) to cease to be excluded provision,
- if the Minister considers that it is necessary to do so for, or in connection with, one or more of the permitted purposes.
- (3) But a Minister of the Crown may not exercise the power conferred by subsection (2) to provide for any of the following articles of the Northern Ireland Protocol to cease to have effect in the United Kingdom to any extent – 10
- (a) Article 2 (rights of individuals);
 - (b) Article 3 (common travel area);
 - (c) Article 11 (other areas of North-South co-operation). 15
- (4) A Minister of the Crown may, by regulations, provide for exceptions from any exclusion.

16 Additional excluded provision: new law

- (1) A Minister of the Crown may, by regulations, make any provision which the Minister considers appropriate in connection with additional excluded provision. 20
- (2) The provision that may be made under this section is not limited by any other power conferred by this Act on a Minister of the Crown to make provision in connection with provision of the Northern Ireland Protocol or the other parts of the EU withdrawal agreement. 25
- (3) In this section “additional excluded provision” means provision of the Northern Ireland Protocol or any other part of the EU withdrawal agreement which becomes excluded provision wholly or to any other extent by virtue of regulations under section 15(2)(a) (including where it is subsequently excluded provision to any greater or lesser extent by virtue of regulations under section 15(2)(b) or (c)). 30

VAT and excise duties

17 Value added tax, excise duties and other taxes: new law

- (1) The Treasury may, by regulations, make any provision about – 35
- (a) value added tax (including imposing or varying the incidence of the tax),
 - (b) any excise duty (including imposing or varying the incidence of any excise duty), or
 - (c) any other tax (including imposing or varying the incidence of any tax),
- which they consider appropriate in connection with the Northern Ireland Protocol. 40
- (2) The regulations may, in particular, make any provision which the Treasury considers appropriate to lessen, eliminate or avoid difference between –

- (a) value added tax in Northern Ireland and Great Britain (including difference in the incidence of the tax),
- (b) any excise duty in Northern Ireland and Great Britain (including difference in the incidence of the duty), or
- (c) any other tax in Northern Ireland and Great Britain (including difference in the incidence of the tax). 5

Other powers

18 Other Ministerial powers

- (1) A Minister of the Crown may engage in conduct in relation to any matter dealt with in the Northern Ireland Protocol (where that conduct is not otherwise authorised by this Act) if the Minister of the Crown considers it appropriate to do so in connection with one or more of the purposes of this Act. 10
- (2) Nothing in this Act affects any power of a Minister of the Crown arising otherwise than under this Act (including any power by virtue of Her Majesty's prerogative and any power to make subordinate legislation). 15

19 New agreements amending or replacing the Northern Ireland Protocol

- (1) A Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate—
 - (a) to implement any relevant agreement, or
 - (b) otherwise for the purposes of dealing with matters arising out of, or related to, any relevant agreement. 20
- (2) In this section “relevant agreement” means an agreement made between the United Kingdom and the EU that modifies, supplements or replaces the whole or any part of the Northern Ireland Protocol.

The European Court 25

20 Role of the European Court in court and tribunal proceedings

- (1) This section applies to proceedings so far as they relate to—
 - (a) the Northern Ireland Protocol,
 - (b) related provision of the EU withdrawal agreement, or
 - (c) domestic law relating to— 30
 - (i) the Northern Ireland Protocol, or
 - (ii) related provision of the EU withdrawal agreement.
- (2) In the proceedings, a court or tribunal—
 - (a) is not bound by any principles laid down, or any decisions made, on or after the day on which this section comes into force by the European Court; and
 - (b) cannot refer any matter to the European Court. 35
- (3) A Minister of the Crown may, by regulations, make any provision which the Minister considers appropriate in connection with subsection (2).

- (4) The regulations may, in particular, provide for a procedure under which a court or tribunal may refer a question of interpretation of EU law to the European Court where –
- (a) the question arises in proceedings before the court or tribunal, and
 - (b) the court or tribunal considers that it is necessary for the European Court to deal with that question before the court or tribunal can conclude the proceedings.

Final provisions

21 Preparatory expenditure

A Minister of the Crown, government department or devolved authority may incur expenditure, for the purpose of, or in connection with, preparing for anything about which regulations under this Act may make provision before any such provision is made. 10

22 Regulations

- (1) Regulations under this Act may make any provision that could be made by an Act of Parliament (including provision modifying this Act). 15
- (2) Regulations under this Act may, in particular –
- (a) make provision notwithstanding that it is not compatible with the Northern Ireland Protocol or any other part of the EU withdrawal agreement; 20
 - (b) suspend or repeal, or make alternative provision to, domestic law so far as it gives effect to the Northern Ireland Protocol or any other part of the EU withdrawal agreement;
 - (c) make provision for any EU law to form part of domestic law (with or without modifications), including provision corresponding to sections 3 to 6 of, and Schedule 1 to, the European Union (Withdrawal) Act 2018; 25
 - (d) make provision restating or modifying the effect which any EU law has by virtue of section 7A of the European Union (Withdrawal) Act 2018;
 - (e) make –
 - (i) different provision for different purposes or areas; 30
 - (ii) incidental, supplementary or consequential provision;
 - (iii) transitional or transitory provision or savings.
- (3) Regulations under this Act may not create or facilitate border arrangements between Northern Ireland and the Republic of Ireland which feature at the border – 35
- (a) physical infrastructure (including border posts), or
 - (b) checks and controls,
- which did not exist before exit day.
- (4) Any power under this Act for a Minister of the Crown to make, by regulations, provision which the Minister considers appropriate in connection with any provision of the Northern Ireland Protocol to which any section of this Act relates – 40
- (a) continues to be exercisable in connection with any provision of the Protocol to which that section relates by virtue of regulations under section 15(2)(b) or (c); 45

- (b) is also exercisable in connection with any provision of the Protocol to which that section ceases to relate by virtue of regulations under section 15(2)(d).
- (5) If an instrument, or a draft of an instrument, containing regulations under this Act would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument. 5
- (6) A Minister of the Crown may, by regulations –
- (a) provide for any other power to make regulations conferred by this Act to be exercisable to any extent by a devolved authority – 10
- (i) instead of by a Minister of the Crown, or
- (ii) concurrently or jointly with a Minister of the Crown or any other devolved authority;
- (b) provide for scrutiny of regulations that are to be made, or have been made, by a devolved authority. 15
- (7) Subsection (2)(e) does not apply to regulations under section 26(3) (but see section 26(4) and (5)).

23 Making regulations under this Act: general provisions

- (1) This section applies to regulations made under this Act.
- (2) But this section does not apply – 20
- (a) to tax or customs regulations (see section 24), or
- (b) to other regulations if the only provision under this Act which they contain is made under section 26.
- (3) The regulations are to be made by statutory instrument.
- (4) A statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament, unless the regulations make – 25
- (a) provision which amends an Act of Parliament, or
- (b) retrospective provision.
- (5) If the regulations make provision which amends an Act of Parliament or retrospective provision (whether alone or with other provision), the statutory instrument containing them is subject – 30
- (a) to draft affirmative procedure, or
- (b) if the instrument contains a declaration that the Minister of the Crown making the instrument is of the opinion that, by reason of urgency, it is necessary to make it without it being subject to draft affirmative procedure, to made affirmative procedure. 35
- (6) A statutory instrument that is subject to “draft affirmative procedure” may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40
- (7) A statutory instrument that is subject to “made affirmative procedure” –
- (a) must be laid before Parliament after being made;
- (b) ceases 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. 45

- (8) 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.
- (9) If regulations cease to have effect as a result of subsection (7)(b), that does not—
- (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.

24 Regulations relating to tax or customs matters

- (1) Only the Treasury may exercise a relevant power to make provision that relates to tax. 10
- (2) Only the Treasury or HMRC may exercise a relevant power to make provision that relates to customs matters.
- (3) Tax or customs regulations are to be made by statutory instrument.
- (4) A statutory instrument containing tax or customs regulations (whether alone or with provision made otherwise than under this Act) is subject to annulment in pursuance of a resolution of the House of Commons, unless—
- (a) any of the tax or customs provision—
 - (i) amends an Act of Parliament, or
 - (ii) is retrospective provision, (in which case see subsections (5) to (9)); or
 - (b) this section is disapplied by subsection (10). 20
- (5) If tax or customs regulations make tax or customs provision which amends an Act of Parliament or which is retrospective provision (whether alone, with other tax or customs provision, or with provision made otherwise than under this Act), the statutory instrument containing them is subject—
- (a) to House of Commons draft affirmative procedure, or
 - (b) if the instrument contains a declaration that the person making the instrument is of the opinion that, by reason of urgency, it is necessary to make it without it being subject to House of Commons draft affirmative procedure, to House of Commons made affirmative procedure. 25
- (6) A statutory instrument that is subject to “House of Commons draft affirmative procedure” may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons. 35
- (7) A statutory instrument that is subject to “House of Commons made affirmative procedure”—
- (a) must be laid before the House of Commons after being made;
 - (b) ceases 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 the House of Commons. 40
- (8) 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) the House of Commons is adjourned for more than four days. 45

- (9) If tax or customs regulations cease to have effect as a result of subsection (7)(b), that does not –
- (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations. 5
- (10) Subsection (4) to (9) do not apply if –
- (a) tax or customs regulations contain provision made otherwise than under this Act, and
 - (b) the statutory instrument containing the regulations, or a draft of it, has been approved by a resolution of – 10
 - (i) the House of Commons, or
 - (ii) each House of Parliament,
 in accordance with the procedure applicable to the making of regulations containing the provision made under the other Act.
- (11) In this section – 15
- “relevant power” means any power to make regulations conferred by this Act, except the powers conferred by –
- (a) section 6 or 17, or
 - (b) section 26(3);
- “tax or customs provision” means provision that – 20
- (a) is made under section 6 or 17,
 - (b) relates to tax and is made by the Treasury under a relevant power, or
 - (c) relates to customs matters and is made by the Treasury or HMRC under a relevant power; 25
- “tax or customs regulations” means regulations which –
- (a) contain tax or customs provision, but
 - (b) do not contain any other provision made under this Act, (whether or not they also contain provision made otherwise than under this Act). 30

25 Interpretation

- (1) In this Act –
- “Belfast Agreement” has the same meaning as in the Northern Ireland Act 1998 (see section 98(1) of that Act);
- “customs matters” includes any of the subject matter of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code; 35
- “devolved authority” means –
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, or 40
 - (c) a Northern Ireland department;
- “domestic law” means the law of England and Wales, Scotland or Northern Ireland;
- “excluded provision” means provision of –
- (a) the Northern Ireland Protocol, or 45
 - (b) any other part of the EU withdrawal agreement,

- so far as it is excluded provision by virtue of this Act (including any regulations made under this Act);
- “exclusion” means the effect which arises by virtue of provision of the Northern Ireland Protocol or of any other part of the EU withdrawal agreement being excluded provision; 5
- “goods” includes animals;
- “HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 and also includes HMRC; 10
- “Northern Ireland Protocol” means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
- “prescribed” means prescribed in regulations made by a Minister of the Crown;
- “regulation of goods” is to be read in accordance with section 10; 15
- “related provision of the EU withdrawal agreement” means any provision of the EU withdrawal agreement – other than provision of the Northern Ireland Protocol – so far as it applies in relation to the Northern Ireland Protocol;
- “relevant separation agreement law” has the same meaning as in the European Union (Withdrawal) Act 2018 (see section 7C of that Act); 20
- “retrospective provision”, in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made;
- “tax” means – 25
- (a) value added tax,
 - (b) excise duties, or
 - (c) any other tax;
- “UK or non-EU destined” is to be read in accordance with section 4(6).
- (2) A reference in this Act – 30
- (a) to provision of the Northern Ireland Protocol that does not have effect in the United Kingdom is a reference to provision of the Protocol –
 - (i) becoming excluded provision wholly or to any other extent, or
 - (ii) being excluded provision to any greater extent;
 - (b) to an enactment being affected by provision of the Northern Ireland Protocol is a reference to the enactment being required (by section 7A(3) of the European Union (Withdrawal) Act 2018) to be read and to have effect subject to section 7A(2) of that Act as respects that provision of the Protocol. 35
- 26 Extent, commencement and short title** 40
- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
 - (2) This section and sections 21 to 25 come into force on the day on which this Act is passed.
 - (3) The other provisions of this Act come into force on such day or days as a Minister of the Crown may, by regulations, appoint. 45
 - (4) A Minister of the Crown may, by regulations, make –
 - (a) incidental, supplementary or consequential provision, or

- (b) transitional or transitory provision or savings,
in connection with the coming into force of any provision of this Act.
- (5) Regulations under this section –
 - (a) are to be made by statutory instrument;
 - (b) may make different provision for different purposes or areas. 5
- (6) This Act may be cited as the Northern Ireland Protocol Act 2022.

Northern Ireland Protocol Bill

A

B I L L

To make provision about the effect in domestic law of the Protocol on Ireland/
Northern Ireland in the EU withdrawal agreement, about other domestic law in
subject areas dealt with by the Protocol and for connected purposes.

Brought from the Commons on 21st July 2022

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