

Northern Ireland Protocol Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

BARONESS CHAPMAN OF DARLINGTON

Page 1, line 15, at end insert—

“(e) gives Ministers of the Crown power to commence its substantive provisions by regulations, subject to the condition in section 26(3A).”

Member’s explanatory statement

This amendment makes clear that the ministerial power to commence Clauses 1-20 is subject to conditions outlined in a later amendment to Clause 26.

LORD PURVIS OF TWEED
BARONESS LUDFORD

Page 1, line 15, at end insert—

“(e) requires Ministers of the Crown to report regularly to Parliament on the progress of negotiations with the European Union regarding the Northern Ireland Protocol.”

Member’s explanatory statement

This amendment is linked to Lord Purvis’s amendment after Clause 20 (Report on negotiations).

BARONESS LUDFORD
LORD PURVIS OF TWEED

Page 1, line 15, at end insert—

“(e) requires Ministers of the Crown to set out their legal advice on altering the effect of the Northern Ireland Protocol in domestic law.”

Member’s explanatory statement

This is linked to Baroness Ludford’s amendment after Clause 25 (Publication of legal advice).

BARONESS MCINTOSH OF PICKERING
LORD PURVIS OF TWEED

The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.

Clause 2

BARONESS MCINTOSH OF PICKERING
LORD PURVIS OF TWEED

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

After Clause 2

BARONESS CHAPMAN OF DARLINGTON

Insert the following new Clause –

“Conditions to be met prior to limitation of the Northern Ireland Protocol

- (1) No provision of –
 - (a) the Northern Ireland Protocol, or
 - (b) any other part of the EU withdrawal agreement,
 may be considered excluded provision unless one of the conditions set out in subsections (2) and (3) is met.
- (2) The condition in this subsection (“the agreement condition”) is that the United Kingdom and the EU have agreed following negotiations that the provision is excluded provision.
- (3) The condition in this subsection (“the Article 16 condition”) is that, in the event of the United Kingdom unilaterally implementing appropriate safeguard measures in accordance with Article 16 of the Northern Ireland Protocol –
 - (a) the United Kingdom has followed the procedure set out in Annex 7 to the Protocol (which governs the taking of safeguard measures), and
 - (b) the safeguard measures taken necessarily require that the provision is excluded provision.
- (4) In the event that a condition which was once met is no longer satisfied, the relevant provision ceases to be excluded provision and any regulations made under this Act which relate to it no longer have legal effect.
- (5) For the avoidance of doubt, the provisions of this Act remain subject to section 7A(2) of the European Union (Withdrawal) Act 2018, save where a provision of –
 - (a) the Northern Ireland Protocol, or
 - (b) any other part of the EU withdrawal agreement,
 is excluded provision which has satisfied the requirements set out in this section.”

Member's explanatory statement

This amendment introduces two conditions, one of which must be satisfied for a provision of the Northern Ireland Protocol to be classified as "excluded provision". It also makes clear that if an excluded provision were no longer to meet the condition, any regulations made under the powers in this Bill which pertain to that provision would no longer have legal effect.

Clause 3

BARONESS MCINTOSH OF PICKERING
LORD PURVIS OF TWEED

The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.

Member's explanatory statement

This is consequential upon the notice to oppose the Question that Clause 2 stand part of the Bill.

Clause 4

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 4 stand part of the Bill.

Clause 5

BARONESS CHAPMAN OF DARLINGTON

Page 4, line 14, leave out "the Minister considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits a Minister's ability to use a delegated power when they consider it "appropriate" to cases where it is "necessary".

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 5 stand part of the Bill.

Clause 6

BARONESS CHAPMAN OF DARLINGTON

Page 4, line 29, leave out "they consider appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits the Treasury's or HMRC's ability to use a delegated power when they consider it "appropriate" to cases where it is "necessary".

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 6 stand part of the Bill.

Clause 7

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 7 stand part of the Bill.

Clause 8

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 8 stand part of the Bill.

Clause 9

BARONESS CHAPMAN OF DARLINGTON

Page 5, line 26, at beginning insert “Subject to the conditions in subsections (3) and (4),”

Member’s explanatory statement

This amendment makes clear that the power in Clause 9(1) is subject to conditions contained in a later amendment to that Clause.

Page 5, line 27, leave out “the Minister considers appropriate” and insert “is necessary”

Member’s explanatory statement

This amendment limits a Minister’s ability to use a delegated power when they consider it “appropriate” to cases where it is “necessary”.

Page 5, line 30, leave out “the Minister of the Crown considers appropriate” and insert “is necessary”

Member’s explanatory statement

This amendment limits a Minister’s ability to use a delegated power when they consider it “appropriate” to cases where it is “necessary”.

Page 5, line 34, at end insert –

- “(3) The condition in this subsection is that a Minister of the Crown has –
- (a) published a draft of a statutory instrument containing regulations under this section, and
 - (b) laid before both Houses of Parliament the report of a relevant consultation with business organisations operating in, or with an interest in, Northern Ireland.
- (4) The condition in this subsection is that a Minister of the Crown has –
- (a) carried out, and
 - (b) laid before both Houses of Parliament,
- an economic impact assessment of the proposed regulations.”

Member's explanatory statement

This amendment prevents the delegated powers in Clause 9 from being used unless a draft of the instrument, a report of a relevant consultation exercise, and an appropriate economic impact assessment have been laid before Parliament.

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 9 stand part of the Bill.

Clause 10

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 10 stand part of the Bill.

Clause 11

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 11 stand part of the Bill.

Clause 12

LORD LEIGH OF HURLEY

Page 7, line 10, leave out from “may” to “in” in line 11 and insert “make regulations”

Member's explanatory statement

These amendments are designed to provide a minimum framework for the Minister's regulatory power in the context of the variety of situations which could arise following alterations in national law to provisions that are within the scope of EU State aid at the international level; and to set the boundary between the exercise of the regulatory power by the Minister and the requirement for primary legislation.

BARONESS CHAPMAN OF DARLINGTON

Page 7, line 10, leave out “the Minister considers appropriate” and insert “is necessary”

Member's explanatory statement

This amendment limits a Minister's ability to use a delegated power when they consider it “appropriate” to cases where it is “necessary”.

LORD LEIGH OF HURLEY

Page 7, line 12, at end insert—

- “(4) Regulations under this section—
- (a) may make different provision for different cases;
 - (b) may (in addition to other provision) include incidental, consequential, supplementary, transitional and transitory provision and savings;
 - (c) may not make retrospective provision.

Clause 12 - continued

- (5) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

Member’s explanatory statement

These amendments are designed to provide a minimum framework for the Minister’s regulatory power in the context of the variety of situations which could arise following alterations in national law to provisions that are within the scope of EU State aid at the international level; and to set the boundary between the exercise of the regulatory power by the Minister and the requirement for primary legislation.

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 12 stand part of the Bill.

Clause 13**BARONESS CHAPMAN OF DARLINGTON**

Page 7, line 27, leave out “the Minister considers appropriate” and insert “is necessary”

Member’s explanatory statement

This amendment limits a Minister’s ability to use a delegated power when they consider it “appropriate” to cases where it is “necessary”.

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 13 stand part of the Bill.

Clause 14**BARONESS CHAPMAN OF DARLINGTON**

Page 8, line 22, leave out “the Minister considers appropriate” and insert “is necessary”

Member’s explanatory statement

This amendment limits a Minister’s ability to use a delegated power when they consider it “appropriate” to cases where it is “necessary”.

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 14 stand part of the Bill.

Clause 15**LORD PURVIS OF TWEED**

Page 9, line 1, leave out subsection (2)

Member's explanatory statement

This amendment would remove the Minister's power to treat as excluded provision for a permitted purpose any provision of the Northern Ireland Protocol or any related provision of the EU Withdrawal Agreement.

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 15 stand part of the Bill.

Clause 16

BARONESS CHAPMAN OF DARLINGTON

Page 9, line 19, leave out "the Minister considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits a Minister's ability to use a delegated power when they consider it "appropriate" to cases where it is "necessary".

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 16 stand part of the Bill.

Clause 17

BARONESS CHAPMAN OF DARLINGTON

Page 9, line 40, leave out "they consider appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits the Treasury's ability to use a delegated power when it considers it "appropriate" to cases where it is "necessary".

Page 9, line 42, leave out "the Treasury considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits the Treasury's ability to use a delegated power when it considers it "appropriate" to cases where it is "necessary".

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 17 stand part of the Bill.

Clause 18

LORD PURVIS OF TWEED

Page 10, line 9, leave out subsection (1)

Member's explanatory statement

This amendment would remove the Minister's power to engage in any conduct in relation to any matter dealt with in the Northern Ireland Protocol, not otherwise authorised by this Act, if the Minister considers it appropriate to do so.

BARONESS CHAPMAN OF DARLINGTON

Page 10, line 11, leave out "the Minister of the Crown considers it appropriate" and insert "it is necessary"

Member's explanatory statement

This amendment limits a Minister's ability to use a delegated power when they consider it "appropriate" to cases where it is "necessary".

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 18 stand part of the Bill.

Clause 19

BARONESS CHAPMAN OF DARLINGTON

Page 10, line 17, leave out "the Minister considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits a Minister's ability to use a delegated power when they consider it "appropriate" to cases where it is "necessary".

LORD PURVIS OF TWEED

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 19 stand part of the Bill.

Clause 20

LORD PURVIS OF TWEED

Page 10, line 37, leave out paragraph (b)

Member's explanatory statement

This amendment would remove the prohibition on a court or tribunal referring any matter to the European Court, where the matter relates to the Northern Ireland Protocol or any related provision of the EU Withdrawal Agreement, or domestic law relating to the Northern Ireland Protocol or any related provision of the EU Withdrawal Agreement.

Lord Purvis of Tweed gives notice of his intention to oppose the Question that Clause 20 stand part of the Bill.

After Clause 20

BARONESS RITCHIE OF DOWNPATRICK
BARONESS LUDFORD

Insert the following new Clause –

“UK-EU Joint Committee: report to Parliament

- (1) When the UK-EU Joint Committee has discussed regulation of goods in connection with the Northern Ireland Protocol, a Minister of the Crown must lay a report before each House of Parliament detailing those discussions within 21 days of the meeting of the UK-EU Joint Committee at which those matters were discussed.
- (2) Each such report must include information on how UK representatives adhered to and sought agreement with representatives of the European Union on relevant proposals –
 - (a) agreed by the Northern Ireland Executive or endorsed by the Northern Ireland Assembly, or both, and promoted by the First Minister and deputy First Minister acting jointly, or
 - (b) agreed by the North-South Ministerial Council or North-South Implementation bodies and made to the Specialised Committee, pursuant to Article 14(b) of the Northern Ireland Protocol.”

Member’s explanatory statement

This new Clause would require a Minister of the Crown to report to each House of Parliament on meetings between the UK and EU in the Joint Committee within 21 days of each meeting and to include information on the regard afforded to any submissions from the Strand One and Strand Two institutions of the Belfast/Good Friday Agreement by UK and EU respectively.

LORD PURVIS OF TWEED
BARONESS LUDFORD

Insert the following new Clause –

“Report on negotiations

Within one month of the day on which this Act is passed, and every two months thereafter, a Minister of the Crown must lay before Parliament a report on the progress of negotiations with the European Union regarding the Northern Ireland Protocol until such negotiations have concluded.”

Member’s explanatory statement

This amendment requires the Government to report regularly to Parliament on the progress of negotiations with the EU on the Northern Ireland Protocol.

Clause 22

BARONESS CHAPMAN OF DARLINGTON

Page 11, line 15, leave out subsection (1)

Member’s explanatory statement

This amendment removes the ability for regulations under the Bill to make changes that could normally only be made by an Act of Parliament (including modifying this Bill).

Page 11, line 18, leave out paragraphs (a) and (b)

Member's explanatory statement

This amendment removes the reference in Clause 22 to using regulations to make changes that are not compatible with, or which suspend, repeal or overwrite, domestic law giving effect to the Northern Ireland Protocol.

After Clause 22

BARONESS CHAPMAN OF DARLINGTON

Insert the following new Clause—

“Duty to seek an agreement on outstanding issues with the Northern Ireland Protocol

- (1) Before a Minister of the Crown may exercise any of the powers in sections 1 to 20, His Majesty's Government must—
 - (a) seek an agreement with the European Union regarding outstanding issues with the Northern Ireland Protocol, or
 - (b) pursue and exhaust all legal options under the EU withdrawal agreement.
- (2) Within the period of three months beginning with the day on which this Act is passed, and every month thereafter until—
 - (a) an agreement is reached, or
 - (b) a Minister of the Crown is of the opinion that an agreement cannot be reached,

a Minister of the Crown must lay before each House of Parliament a statement outlining what progress has been made in negotiations.”

Member's explanatory statement

This amendment would make it a statutory requirement for the Government to seek a negotiated outcome with the EU, and to exhaust legal routes under the EU withdrawal agreement before availing itself of the powers in this Bill. The amendment would also require Ministers to provide regular updates to Parliament regarding the ongoing UK-EU negotiations.

Insert the following new Clause—

“Parliamentary approval of the outcome of negotiations with the EU

- (1) A Minister of the Crown may make regulations under section 19 only if—
 - (a) a Minister of the Crown has laid before each House of Parliament—
 - (i) a statement that a relevant agreement as defined in that section has been reached, and
 - (ii) a copy of the agreement,
 - (b) the agreement has been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown, and
 - (c) a motion for the House of Lords to take note of the agreement has been tabled in the House of Lords by a Minister of the Crown.
- (2) A Minister of the Crown may make regulations under sections 4 to 17 only if—
 - (a) they have laid before each House of Parliament a statement that—

After Clause 22 - continued

- (i) His Majesty's Government have been unable to reach an agreement with the European Union regarding outstanding issues with the Northern Ireland Protocol, and
- (ii) they are of the opinion that His Majesty's Government have exhausted all legal options under the EU withdrawal agreement,
- (b) they have laid before each House of Parliament an assessment of the likely impacts of the regulations, and
- (c) they have consulted Northern Ireland business organisations on the contents of the proposed regulations and laid a report regarding that consultation before each House of Parliament."

Member's explanatory statement

In the event of a negotiated settlement being achieved with the EU, this amendment would require both Houses to debate that agreement, with the Commons having to approve it. In the event that no agreement is achieved, Ministers would have to follow various steps before being able to make regulations under parts of the Bill.

Clause 23

BARONESS CHAPMAN OF DARLINGTON

Page 12, line 25, leave out from "regulations" to end of line 29 and insert "may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Member's explanatory statement

This amendment makes most regulations under the Bill subject to the affirmative procedure.

Page 12, line 30, leave out subsections (5) to (9)

Member's explanatory statement

This amendment is consequential on another amendment to Clause 23 which makes most regulations under the Bill subject to the affirmative procedure.

After Clause 25

BARONESS LUDFORD
LORD PURVIS OF TWEED

Insert the following new Clause –

“Publication of legal advice

- (1) Before sections 1 to 20 come into force, the Prime Minister must lay before each House of Parliament a copy of the legal advice considered by the Government in respect of this Act which it received before the day of the First Reading in the House of Commons of the Bill for this Act.
- (2) The Attorney General must lay before each House of Parliament the assessment made by the Government of the doctrine of necessity in relation to the operation of the Northern Ireland Protocol prior to the First Reading in the House of Commons of the Bill for this Act.

After Clause 25 - continued

- (3) The Lord Chancellor must lay before each House of Parliament a report on to what extent the Bill for this Act was in accordance with the Lord Chancellor's constitutional role in relation to the constitutional principle of the rule of law."

Member's explanatory statement

This new Clause requires the publication of the legal justification for this Act.

Clause 26

BARONESS CHAPMAN OF DARLINGTON

Page 15, line 45, at end insert –

- “(3A) A Minister of the Crown may not make regulations under this section so as to bring sections 1 to 20 into force (in whole or in part) unless they have laid before each House of Parliament a statement that His Majesty's Government –
- (a) have been unable to reach a negotiated settlement with the European Union regarding outstanding issues with the Northern Ireland Protocol, and
 - (b) are of the opinion they have exhausted legal routes under the EU withdrawal agreement.”

Member's explanatory statement

This amendment means that before giving effect to Clauses 1 to 20 (the substantive provisions of the Bill), a Minister of the Crown would have to lay before both Houses of Parliament a statement confirming the Government has been unable to achieve a negotiated settlement with the EU, and that it has exhausted all legal options under the UK-EU withdrawal agreement to which the NI Protocol is attached.

BARONESS MCINTOSH OF PICKERING

Page 15, line 45, at end insert –

- “(3A) Regulations under subsection (3) may not bring any such provision into force before 31 December 2026.”

Member's explanatory statement

This amendment delays the coming into effect of most of the legislation until 31 December 2026.

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20 October 2022
