

Northern Ireland Protocol Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 12

LORD PURVIS OF TWEED
LORD JUDGE

16 Page 7, line 10, leave out subsection (3)

Member's explanatory statement

This is part of a series of amendments based on recommendations from the Delegated Powers and Regulatory Reform Committee which states that a number of subsections in the Bill "contain inappropriate delegations of power and should be removed from the Bill."

LORD LEIGH OF HURLEY

17 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

18 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

19 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.
- (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
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 12 stand part of the Bill.

Clause 13

BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
BARONESS LUDFORD
BARONESS GOUDIE

19A Page 7, line 19, at end insert –

- “(1A) But subsection (1) does not apply to Article 174 of the EU withdrawal agreement (disputes raising questions of Union law), or related provisions, insofar as they affect the jurisdiction of the European Court in interpreting Article 2 of the Northern Ireland Protocol or EU law relevant to that Article.”

Member’s explanatory statement

This amendment is to ensure compliance with Article 2 of the Northern Ireland Protocol.

LORD PURVIS OF TWEED
LORD JUDGE

20 Page 7, line 27, leave out subsection (4)

Member’s explanatory statement

This is part of a series of amendments based on recommendations from the Delegated Powers and Regulatory Reform Committee which states that a number of subsections in the Bill “contain inappropriate delegations of power and should be removed from the Bill.”

BARONESS CHAPMAN OF DARLINGTON

- 21** 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”.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS KENNEDY OF THE SHAWS

- 21A** Page 7, line 35, at end insert –

- “(6) In exercising any of the powers under this section, a Minister of the Crown –
- (a) must act in a way that is compatible with the terms of Article 2 of the Northern Ireland Protocol,
 - (b) must not suspend or seek to diminish any of the other provisions of the EU withdrawal agreement or the Northern Ireland Protocol so far as they relate to Article 2 of the Protocol, and
 - (c) must not suspend or repeal, or make alternative provision to, domestic law so far as it gives effect to Article 2 of the Northern Ireland Protocol or any other part of the EU withdrawal agreement to the extent that it relates to Article 2 of the Northern Ireland Protocol.”

Member’s explanatory statement

This amendment seeks to protect the operation of Article 2 of the Ireland-Northern Ireland Protocol.

LORD HAIN
BARONESS RITCHIE OF DOWNPATRICK
BARONESS GOUDIE

- 21B** Page 7, line 35, at end insert –

- “(6) The provision to which this section applies excludes Article 9 of the Northern Ireland Protocol.”

Member’s explanatory statement

This amendment is to prevent unintentional and indirect negative consequences of excluding the jurisdiction of the European Court of Justice on the functioning of the Single Electricity Market.

- 21C** Page 7, line 35, at end insert –

- “(6) A Minister of the Crown may not exercise any power to make regulations conferred by this section until an impact assessment has been completed with regard to their effect on non-excluded provisions of the Protocol and laid in a full report before each House of Parliament and in copy to the Speaker of the Northern Ireland Assembly.”

Member's explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this section to make regulations unless and until a full impact assessment of said regulations has been obtained and published in order for the full consequences of the regulations to be considered.

LORD PURVIS OF TWEED
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 13 stand part of the Bill.

Clause 14

LORD PURVIS OF TWEED
LORD JUDGE

22 Page 8, line 22, leave out subsection (4)

Member's explanatory statement

This is part of a series of amendments based on recommendations from the Delegated Powers and Regulatory Reform Committee which states that a number of subsections in the Bill "contain inappropriate delegations of power and should be removed from the Bill."

BARONESS CHAPMAN OF DARLINGTON

23 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".

BARONESS RITCHIE OF DOWNPATRICK
BARONESS KENNEDY OF THE SHAWS

23A Page 8, line 25, at end insert –

- “(5) In exercising any of the powers under this section, a Minister of the Crown –
- (a) must act in a way that is compatible with the terms of Article 2 of the Northern Ireland Protocol,
 - (b) must not suspend or seek to diminish any of the other provisions of the EU withdrawal agreement or the Northern Ireland Protocol so far as they relate to Article 2 of the Protocol, and
 - (c) must not suspend or repeal, or make alternative provision to, domestic law so far as it gives effect to Article 2 of the Northern Ireland Protocol or any other part of the EU withdrawal agreement to the extent that it relates to Article 2 of the Northern Ireland Protocol.”

Member's explanatory statement

This amendment seeks to protect the operation of Article 2 of the Ireland-Northern Ireland Protocol.

LORD HAIN
BARONESS RITCHIE OF DOWNPATRICK
BARONESS GOUDIE

23B Page 8, line 25, at end insert –

“(5) A Minister of the Crown may not exercise any power to make regulations conferred by this section until an impact assessment has been completed with regard to their effect on non-excluded provisions of the Protocol and laid in a full report before each House of Parliament and in copy to the Speaker of the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this section to make regulations unless and until a full impact assessment of said regulations has been obtained and published in order for the full consequences of the regulations to be considered.

23C Page 8, line 25, at end insert –

“(5) The provision to which this section applies excludes Article 9 of the Northern Ireland Protocol.”

Member’s explanatory statement

This amendment is to prevent unintentional and indirect negative consequences of excluding the jurisdiction of the European Court of Justice on the functioning of the Single Electricity Market.

LORD PURVIS OF TWEED
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 14 stand part of the Bill.

Clause 15

LORD PURVIS OF TWEED
LORD JUDGE

24 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.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE

25 Page 9, line 15, at end insert –

“(d) Article 18 (democratic consent in Northern Ireland)”

Member's explanatory statement

This amendment adds Article 18 (Democratic Consent in Northern Ireland) of the Northern Ireland Protocol to the list of articles that a Minister of the Crown cannot exercise powers conferred by subsection (2) to provide cease to have effect in the United Kingdom to any extent.

BARONESS LUDFORD
LORD PURVIS OF TWEED

26 Page 9, line 15, at end insert –

“(3A) A Minister of the Crown may not exercise the power conferred by subsection (2) before full consultations have been conducted on any proposed changes with –

- (a) the Northern Ireland Human Rights Commission,
- (b) the Equality Commission for Northern Ireland, and
- (c) the Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission,

and the Minister has published the outcome of such consultations.”

Member's explanatory statement

This amendment requires a Minister to consult with a number of human rights and equalities bodies before using the powers in subsection (2) of Clause 15 in relation to excluded provision.

LORD PURVIS OF TWEED
BARONESS LUDFORD

27 Page 9, line 15, at end insert –

“(3A) A Minister of the Crown may not exercise the power conferred by subsection (2) before full consultations have been conducted on any proposed changes with –

- (a) the Northern Ireland Chamber of Commerce and Industry,
- (b) the Confederation of British Industry Northern Ireland,
- (c) the Federation of Small Businesses Northern Ireland,
- (d) Trade NI, and
- (e) any other persons whom the Minister considers appropriate as representatives of business, trade and economic interests in Northern Ireland,

and the Minister has published the outcome of such consultations.”

Member's explanatory statement

This amendment requires a Minister to consult with a number of trade and industry bodies in Northern Ireland before using the powers in subsection (2) of Clause 15 in relation to excluded provision.

28 Page 9, line 15, at end insert –

“(3A) A Minister of the Crown may not exercise the power conferred by subsection (2) before full consultations have been conducted on any proposed changes with –

- (a) the Ulster Farmers Union,
- (b) Food NI Ltd,

Clause 15 - continued

- (c) Northern Ireland Food and Drink Association, and
 - (d) any other persons the Minister considers appropriate as representatives of the food and agricultural sector in Northern Ireland,
- and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment requires a Minister to consult with representatives of the food and agricultural sector in Northern Ireland before using the powers in subsection (2) of Clause 15 in relation to excluded provision.

29 Page 9, line 15, at end insert –

“(3A) A Minister of the Crown may not exercise the power conferred by subsection (2) before full consultations have been conducted on any proposed changes with the relevant Northern Ireland departments, including the Department for the Economy, and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment requires a Minister to consult with relevant Departments in the Northern Ireland Executive before using the powers in subsection (2) of Clause 15 in relation to excluded provision.

30 Page 9, line 15, at end insert –

“(3A) A Minister of the Crown may not exercise the power conferred by subsection (2) unless they have asked for and received a report from the relevant departments in Northern Ireland on how such changes will impact on the economic competitiveness of Northern Ireland.”

Member’s explanatory statement

This amendment requires a Minister to ask relevant Departments in the Northern Ireland Executive for a report on the effect of any changes to the excluded provisions on the economic competitiveness of Northern Ireland before using the powers in subsection (2) of Clause 15.

31 Page 9, line 15, at end insert –

“(3A) A Minister of the Crown may not exercise the power conferred by subsection (2) before full consultations have been conducted on any proposed changes with –

- (a) the Trade and Agriculture Commission, and
- (b) the Competition and Markets Authority,

and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment requires a Minister to consult with the Trade and Agriculture Commission and the Competition and Markets Authority before using the powers in subsection (2) of Clause 15 in relation to excluded provision.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS KENNEDY OF THE SHAWS

31A Page 9, line 17, at end insert—

- “(5) In exercising any of the powers under this section, a Minister of the Crown—
- (a) must act in a way that is compatible with the terms of Article 2 of the Northern Ireland Protocol,
 - (b) must not suspend or seek to diminish any of the other provisions of the EU withdrawal agreement or the Northern Ireland Protocol so far as they relate to Article 2 of the Protocol, and
 - (c) must not suspend or repeal, or make alternative provision to, domestic law so far as it gives effect to Article 2 of the Northern Ireland Protocol or any other part of the EU withdrawal agreement to the extent that it relates to Article 2 of the Northern Ireland Protocol.”

Member’s explanatory statement

This amendment seeks to protect the operation of Article 2 of the Ireland-Northern Ireland Protocol.

LORD PURVIS OF TWEED
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

Clause 16

BARONESS CHAPMAN OF DARLINGTON

32 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
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 16 stand part of the Bill.

Clause 17

LORD PURVIS OF TWEED
LORD JUDGE

33 Page 9, line 34, leave out subsection (1)

Member’s explanatory statement

This is part of a series of amendments based on recommendations from the Delegated Powers and Regulatory Reform Committee which states that a number of subsections in the Bill “contain inappropriate delegations of power and should be removed from the Bill.”

BARONESS CHAPMAN OF DARLINGTON

- 34 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”.

- 35 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

BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 17 stand part of the Bill.

After Clause 17

LORD DODDS OF DUNCAIRN

- 35A★ Insert the following new Clause—

“VAT and excise

Article 8 of, and Annex 3 to, the Northern Ireland Protocol (VAT and excise) are excluded provision.”

Member’s explanatory statement

This has the same effect on Article 8 (VAT) of the Protocol as the current Clause 12 of the bill has on Article 10 of the Protocol (state aid).

Clause 18

LORD PURVIS OF TWEED

LORD JUDGE

- 36 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

- 37 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”.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE

- 38 Page 10, line 12, at end insert “and a motion approving the conduct has been passed by the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would subject the exercise of the Minister’s power to engage in conduct in relation to any matter dealt with in the Northern Ireland Protocol that is not otherwise authorised by the Act to a motion approving the conduct in the Northern Ireland Assembly.

LORD PURVIS OF TWEED
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 18 stand part of the Bill.

Clause 19

BARONESS CHAPMAN OF DARLINGTON

- 39 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
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 19 stand part of the Bill.

Clause 20

BARONESS SUTTIE
BARONESS RITCHIE OF DOWNPATRICK

- 40 Page 10, line 32, at end insert –
“but this section does not have effect unless it has previously been approved by a resolution of the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would prevent the Bill’s proposed departure from the terms of the Northern Ireland Protocol, or from any related provision of the EU withdrawal agreement, in respect of the previously agreed role of the European Court (CJEU) unless Clause 20 had first been approved by the Northern Ireland Assembly.

LORD PURVIS OF TWEED

- 41 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.

BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
BARONESS LUDFORD
BARONESS GOUDIE

41ZA Page 10, line 37, at end insert –

“(2A) But subsection (2)(a) does not apply to the requirement under Article 13 of the Northern Ireland Protocol to interpret the obligations on a court or tribunal under Article 2 of the Northern Ireland Protocol in conformity with the relevant case law of the European Court.”

Member's explanatory statement

This amendment is to prevent a breach of Article 2 of the Northern Ireland Protocol.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS KENNEDY OF THE SHAWES

41A Page 11, line 7, at end insert –

- “(5) In exercising any of the powers under this section, a Minister of the Crown –
- (a) must act in a way that is compatible with the terms of Article 2 of the Northern Ireland Protocol,
 - (b) must not suspend or seek to diminish any of the other provisions of the EU withdrawal agreement or the Northern Ireland Protocol so far as they relate to Article 2 of the Protocol, and
 - (c) must not suspend or repeal, or make alternative provision to, domestic law so far as it gives effect to Article 2 of the Northern Ireland Protocol or any other part of the EU withdrawal agreement to the extent that it relates to Article 2 of the Northern Ireland Protocol.”

Member's explanatory statement

This amendment seeks to protect the operation of Article 2 of the Ireland-Northern Ireland Protocol.

LORD PURVIS OF TWEED
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 20 stand part of the Bill.

After Clause 20

BARONESS RITCHIE OF DOWNPATRICK
BARONESS LUDFORD

42 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

43 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.

BARONESS RITCHIE OF DOWNPATRICK

43A Insert the following new Clause—

“UK-EU Joint Committee: duty to give primary regard to North-South proposals

A Minister of the Crown must respect, reflect and support, in meetings of the UK-EU Joint Committee, proposals relating to the regulation of goods made by the North/South Ministerial Council and other North-South implementation bodies to the Specialised Committee on the implementation of the Protocol on Ireland and Northern Ireland pursuant to Article 14(b) of the Northern Ireland Protocol.”

Member’s explanatory statement

This new Clause seeks to require a Minister of the Crown representing the United Kingdom in UK-EU Joint Committee meetings to respect, reflect and support proposals made by the Strand Two Belfast/Good Friday Agreement bodies.

BARONESS DOOCEY

43B Insert the following new Clause—

“UK-EU Veterinary Agreement: report to Parliament

Within three months of the day on which this Act is passed a Minister of the Crown must lay before each House of Parliament a report on the progress of negotiations with the European Union regarding the Northern Ireland Protocol which may result in a UK-EU Veterinary Agreement.”

Member’s explanatory statement

This amendment requires a Minister of the Crown to report to Parliament on the progress of any negotiations with the European Union that may result in a UK-EU Veterinary Agreement.

Clause 22

BARONESS CHAPMAN OF DARLINGTON

44 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).

BARONESS HOEY

45 Page 11, line 16, at end insert “, but may not amend, repeal, or create an incompatibility with, the Act of Union (Ireland) 1800 or the Union with Ireland Act 1800.”

Member’s explanatory statement

This amendment prevents a Minister of the Crown making provision by regulation which has the effect of repealing, subordinating or otherwise interfering with the United Kingdom’s foundational constitutional statutory framework.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE

46 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless a legislative consent motion approving a draft of the regulations has been passed by the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless and until the consent of the Northern Ireland Assembly to said regulations has been obtained.

BARONESS LUDFORD
LORD PURVIS OF TWEED

47 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless they have first consulted with –

- (a) the Northern Ireland Human Rights Commission,
- (b) the Equality Commission for Northern Ireland, and
- (c) the Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission,

and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless they have first consulted with a number of human rights and equalities bodies.

LORD PURVIS OF TWEED
BARONESS LUDFORD

48 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless they have first consulted with –

- (a) the Northern Ireland Chamber of Commerce and Industry,
- (b) the Confederation of British Industry Northern Ireland,
- (c) the Federation of Small Businesses Northern Ireland,
- (d) Trade NI, and
- (e) any other persons whom the Minister considers appropriate as representatives of business, trade and economic interests in Northern Ireland,

and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless they have first consulted with a number of trade and industry bodies in Northern Ireland.

49 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless they have first consulted with –

- (a) the Ulster Farmers Union,
- (b) Food NI Ltd,
- (c) Northern Ireland Food and Drink Association, and
- (d) any other persons the Minister considers appropriate as representatives of the food and agricultural sector in Northern Ireland,

and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless they have first consulted with representatives of the food and agricultural sector in Northern Ireland.

50 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless they have first consulted with the relevant Northern Ireland departments, including the Department for the Economy, and the Minister has published the outcome of such consultations.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless they have first consulted with relevant Departments in the Northern Ireland Executive.

51 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless they have asked for and received a report from the relevant departments in Northern Ireland on how any proposed changes will impact on the economic competitiveness of Northern Ireland.”

Member’s explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations until they have asked relevant Departments in the Northern Ireland Executive for a report on the effect that any proposed changes will have on the economic competitiveness of Northern Ireland.

52 Page 11, line 16, at end insert –

“(1A) A Minister of the Crown may not exercise any power to make regulations conferred by this Act unless they have first consulted with –

- (a) the Trade and Agriculture Commission, and
- (b) the Competition and Markets Authority,

and the Minister has published the outcome of such consultations.”

Member's explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by this Act to make regulations unless they have first consulted with the Trade and Agriculture Commission and the Competition and Markets Authority.

BARONESS CHAPMAN OF DARLINGTON

53 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.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE

54 Page 12, line 15, at end insert –

“(6A) A Minister may not exercise the power to make regulations under subsection (6) with respect to a devolved authority in Northern Ireland unless the exercise of that power is first approved by the First Minister and deputy First Minister acting jointly –

- (a) on behalf of the Northern Ireland Executive,
- (b) following a resolution by the Northern Ireland Assembly,

or both.”

Member's explanatory statement

This amendment would prevent a Minister of the Crown seeking to use powers conferred by subsection (6) without the agreement of the First Minister and deputy First Minister of Northern Ireland acting jointly. The First Minister and deputy First Minister may be acting on behalf of the Northern Ireland Executive and/or following a resolution of the Northern Ireland Assembly.

BARONESS RITCHIE OF DOWNPATRICK
BARONESS KENNEDY OF THE SHAWS

54A Page 12, line 17, at end insert –

“(8) In exercising any of the powers under this section, a Minister of the Crown –

- (a) must act in a way that is compatible with the terms of Article 2 of the Northern Ireland Protocol,
- (b) must not suspend or seek to diminish any of the other provisions of the EU withdrawal agreement or the Northern Ireland Protocol so far as they relate to Article 2 of the Protocol, and
- (c) must not suspend or repeal, or make alternative provision to, domestic law so far as it gives effect to Article 2 of the Northern Ireland Protocol or any other part of the EU withdrawal agreement to the extent that it relates to Article 2 of the Northern Ireland Protocol.”

Member's explanatory statement

This amendment seeks to protect the operation of Article 2 of the Ireland-Northern Ireland Protocol.

LORD JUDGE
LORD PURVIS OF TWEED
BARONESS CHAPMAN OF DARLINGTON

The above-named Lords give notice of their intention to oppose the Question that Clause 22 stand part of the Bill.

After Clause 22

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE

55 Insert the following new Clause—

“Consent of the Northern Ireland Assembly

- (1) A Minister of the Crown may not exercise the powers to make regulations conferred by this Act before a legislative consent motion approving a draft of the regulations has been passed by the Northern Ireland Assembly.
- (2) A Minister of the Crown must, at the end of the relevant period, seek a legislative consent motion of the Northern Ireland Assembly approving the continued application of regulations made under the powers conferred by this Act.
- (3) For the purposes of subsection (2), the “relevant period” is—
 - (a) the period ending four years after the powers are exercised, or
 - (b) the period ending eight years after the powers are exercised, where the original legislative consent motion was approved by the Assembly with—
 - (i) the support of a majority of members, a majority of designated Nationalists and a majority of Unionists,
 - (ii) the support of 60 per cent of members, 40 per cent of designated Nationalists and 40 per cent of designated Unionists, or
 - (iii) the support of two-thirds of members.”

Member’s explanatory statement

This new Clause would require a Minister of the Crown to obtain the consent of the Northern Ireland Assembly to exercise the power to make regulations conferred by this Act. It would also require a Minister of the Crown to obtain the consent of the Northern Ireland Assembly for the continued application of the regulations beyond the relevant period.

BARONESS CHAPMAN OF DARLINGTON

56 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—

After Clause 22 - continued

- (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.

57

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—
 - (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.

58 Insert the following new Clause –

“Impact assessment: agriculture and fisheries

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the agriculture and fisheries sectors in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must –
 - (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sectors,
 - (b) consult such persons as the Secretary of State considers appropriate representatives of the sectors.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the agriculture and fisheries sectors, prior to using the powers under the Bill to make regulations affecting that sector.

59 Insert the following new Clause –

“Impact assessment: construction

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the construction sector in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must –
 - (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,
 - (b) consult such persons as the Secretary of State considers appropriate representatives of the sector.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the construction sector, prior to using the powers under the Bill to make regulations affecting that sector.

60 Insert the following new Clause –

“Impact assessment: dairy

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the dairy sector in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must –

After Clause 22 - continued

- (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,
- (b) consult such persons as the Secretary of State considers appropriate representatives of the sector.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the dairy sector, prior to using the powers under the Bill to make regulations affecting that sector.

61 Insert the following new Clause –

“Impact assessment: electronics

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the electronics sector in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must –
 - (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,
 - (b) consult such persons as the Secretary of State considers appropriate representatives of the sector.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the electronics sector, prior to using the powers under the Bill to make regulations affecting that sector.

62 Insert the following new Clause –

“Impact assessment: energy

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the energy sector in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must –
 - (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,
 - (b) consult such persons as the Secretary of State considers appropriate representatives of the sector.”

Member's explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the energy sector, prior to using the powers under the Bill to make regulations affecting that sector.

63 Insert the following new Clause—

“Impact assessment: food and drink

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the food and drink sector in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must—
 - (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,
 - (b) consult such persons as the Secretary of State considers appropriate representatives of the sector.”

Member's explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the food and drink sector, prior to using the powers under the Bill to make regulations affecting that sector.

64 Insert the following new Clause—

“Impact assessment: manufacturing

- (1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the manufacturing sector in Northern Ireland.
- (2) In preparing the impact assessment under subsection (1), the Secretary of State must—
 - (a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,
 - (b) consult such persons as the Secretary of State considers appropriate representatives of the sector.”

Member's explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the manufacturing sector, prior to using the powers under the Bill to make regulations affecting that sector.

Clause 23

BARONESS CHAPMAN OF DARLINGTON

- 65 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.

- 66 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

- 67 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.
- (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 SUTTIE
BARONESS RITCHIE OF DOWNPATRICK

- 68 Page 15, line 44, at beginning insert “Provided that the Northern Ireland Assembly has first passed a resolution indicating support for this Act,”

Member’s explanatory statement

This amendment, together with Baroness Suttie’s second amendment to Clause 26, will make all operational aspects of the Bill dependent upon the approval of the Northern Ireland Assembly.

69 Page 15, line 45, at end insert –

“(3A) A motion for a resolution of the Northern Ireland Assembly referred to in subsection (3) must be tabled by either –
(a) the First Minister and Deputy First Minister jointly, or
(b) any member of the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment, together with Baroness Suttie’s first amendment to Clause 26, will make all operational aspects of the Bill dependent upon the approval of the Northern Ireland Assembly.

BARONESS CHAPMAN OF DARLINGTON

70 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

71 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.

LORD PURVIS OF TWEED

72 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 until both Houses of Parliament have approved a mandate for negotiations between the United Kingdom and the European Union regarding the Northern Ireland Protocol.”

Member’s explanatory statement

This amendment provides that core provisions of the Bill cannot come into force until Parliament has approved a mandate for negotiations between the UK and the EU regarding the Northern Ireland Protocol.

73 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 until a Minister of the Crown has laid before Parliament drafts of any regulations they intend to make under this Act.”

Member’s explanatory statement

This amendment provides that core provisions of the Bill cannot come into force until drafts of any regulations to be made under the Bill have been laid before Parliament.

74 Page 15, line 45, at end insert –

“(3A) A Minister of the Crown may not make regulations under this section to bring sections 1 to 20 into force unless they have conducted and published an economic impact assessment of the impact of the implementation of this Act on the economy of Northern Ireland and laid the report before each House of Parliament.”

Member’s explanatory statement

This amendment prevents any regulations being made to bring sections 1 to 20 into force unless an economic impact assessment has been conducted.

75 Page 15, line 45, at end insert –

“(3A) A Minister of the Crown may not make regulations under this section to bring sections 1 to 20 into force unless they have asked the Department for the Economy in Northern Ireland for an economic impact assessment of the impact of the implementation of this Act on the economy of Northern Ireland and the Minister has laid any response before each House of Parliament.”

Member’s explanatory statement

This amendment prevents any regulations being made to bring sections 1 to 20 into force unless a Minister has asked the Department for the Economy in Northern Ireland for an economic impact assessment.

Northern Ireland Protocol Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

31 October 2022
