

Biodiversity Beyond National Jurisdiction (BBNJ) Bill

Supplementary Memorandum from the Foreign, Commonwealth and Development Office to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Biodiversity Beyond National Jurisdiction Bill (“the Bill”).
2. The memorandum describes the delegated powers which would be added to the Bill by the Government amendments tabled at Lords Committee and Report Stage of the Bill. It explains their purpose and why these matters are left to delegated legislation rather than included in the Bill and specifies what parliamentary procedure is provided for the power.
3. The full list of clauses containing delegated powers is below followed by detailed explanation – this document is intended to be read alongside the Bill as amended at Report (HL 160):
 - i. **New Clause 10** contains a power for Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to make provision within devolved legislative competence corresponding to the provision that the Secretary of State can make under clause 9.
 - ii. **New Clause 16** contains a power for Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to make provision within devolved legislative competence corresponding to the provision that the Secretary of State can make under clause 14(2).
 - iii. **Amended Clause 25**
 - iv. **Clause 32 is amended** so that clause 25 comes into force on such a day as the Secretary of State appoints by regulations, rather than upon Royal Assent.

i. New clause 10

Power conferred on: Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland

Power exercised by: Regulations

Parliamentary Procedure: Affirmative in some cases (eg when regulations are made in reliance on section 9(2)(b) and negative in others.

Context and Purpose

This new clause provides for the appropriate national authority of Scotland or Northern Ireland to make regulations corresponding to the provision that the Secretary of State can make under clause 9(2) which may be necessary for implementing the UK’s obligations under Part II of the BBNJ Agreement relating to Marine Genetic Resources, where devolved matters are engaged.

Justification for taking the power

This clause gives Scotland and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland equivalent powers to those conferred on the Secretary of State by clause 9(2) in respect of devolved and transferred matters. This will ensure they have a meaningful role in the implementation of international obligations where devolved or transferred competence is engaged.

Clause 9 provides for the Secretary of State to make regulations in future which may be necessary for implementing the UK's obligations under Part 2 of the BBNJ Agreement relating to Marine Genetic Resources.

Justification for the procedure

The Parliamentary procedures for regulations made using this power mirror those in clause 9 for regulations made by the Secretary of State. This ensures consistency in approach to these regulations.

ii. New clause 16

Power conferred on: Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland

Power exercised by: Regulations

Parliamentary Procedure: Affirmative in some cases eg when regulations are made in reliance on section 17 (1) or (5), made affirmative eg when regulations are made in reliance on section 17 (3) and negative in others.

Context and Purpose

This new clause gives Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland a concurrent power to make provision within devolved legislative competence corresponding to the power delegated to the Secretary of State under clause 14(2).

Clause 14 (2) contains a power for the Secretary of State to make regulations for the purpose of giving effect to an obligation of the UK under Article 25(1) of the BBNJ Agreement (implementing duty of States with respect to activities under their jurisdiction or control) that arises as a result of a decision by the Conference of the Parties under Article 22(1)(a) or (b) or Article 24(1) of that Agreement (relating to area-based management tools and emergency measures).

Justification for taking the power

This new clause gives Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland equivalent powers to make provision, within their devolved legislative competence, which they consider appropriate to give effect to an obligation of the UK under Article 25(1) of the BBNJ Agreement. This, along with the consultation provisions in new clause 18, will ensure

they have a meaningful role in the implementation of international obligations where devolved competence is engaged, whilst also preserving flexibility for the UK in the implementation of emergency decisions.

Justification for the procedure

The Parliamentary procedures for regulations made using this power mirror those in clause 15 for regulations made by the Secretary of State under clause 14. This ensures consistency in approach to these regulations.

iii. Amended clause 25

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: affirmative procedure where amending an Act of Parliament or an Act of Scottish Parliament, otherwise the negative procedure.

Context and Purpose

The delegated power in clause 25 has been amended as a result of the introduction of new clause 24 which amends the Marine Works (Environmental Impact Assessments) (Scotland) Regulations 2017 ("2017 Regulations") to align the screening and procedural provisions of those regulations with the applicable requirements of Part IV of the BBNJ Agreement. As a result, the delegated power in clause 25 subsection (1) has been narrowed to a power for Scottish Ministers to make provision, within their devolved legislative competence to implement standards and guidelines that may be adopted by the CoP as mentioned in Article 38 of the BBNJ Agreement.

This power will enable the Scottish Ministers to amend Part 4 of the Marine (Scotland) Act 2010 (marine licensing).

The policy objective of this power is to ensure that the UK can continue to meet its obligations under the BBNJ Agreement by enabling Scottish Ministers to implement CoP standards or guidelines as they apply to licensable marine activities regulated under the Scottish marine licensing regime, including amending existing legislation as may be necessary.

The power in clause 25 is needed to ensure that the Scottish marine licensing legislation can keep pace with future standards and guidelines as adopted by the CoP. At present, it is not possible to make amendments to the 2017 Regulations for the purposes of implementing CoP standards and guidelines because those regulations were made under section 2(2) of the European Communities Act 1972.

Justification for taking the power

A delegated power is needed because the exact nature of the standards and or guidelines that the CoP may adopt is unknown. It is therefore not possible to make the legislative changes needed to comply with any such future CoP

decisions at this time. The UK needs to have appropriate measures in place to comply with BBNJ obligations before we can ratify the Agreement, including powers to implement future CoP decisions. It is therefore necessary to take a power to enable the UK to ratify and ensure we have the legislative means to implement CoP decisions on EIAs once the Agreement is in force.

Justification for the procedure

The procedure has been tailored to ensure appropriate and proportionate parliamentary scrutiny depending on whether the power is used to amend primary or secondary legislation. Regulations that contain provision amending primary legislation are subject to the affirmative procedure. Any other regulations are subject to the negative procedure.

iv. Amended clause 32

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: None

Context and Purpose

Clause 32 is amended, so that clause 25 comes into force on such a day as the Secretary of State appoints by regulations, rather than upon Royal Assent.

Justification for taking the power

This change ensures a consistent approach across the Bill with regards to the Environmental Impact Assessment regulations that are being amended.

Justification for the procedure

Consistent with common practice, commencement regulations under this clause are not subject to any Parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.