

Meeting 2: Devolution and the Withdrawal Bill

DISCUSSION PAPER*

30 October 2017

Chair: The Rt Hon Dominic Grieve QC MP

Summary

This paper has been prepared to assist the second meeting of the Expert Working Group which focuses on rule of law problems in the EU (Withdrawal) Bill in relation to **devolved authorities**.

Without revisiting issues associated with Clauses 1-6, this paper considers the following matters:

- Legislative competency: Clauses 10, 11 and Schedule 2
- Repatriation of powers: Clause 11 and Schedule 3
- Scrutiny by devolved nations: Schedule 7

Though the paper focuses on legal issues, the Bill gives rise to a number of practical problems, including how to:

- ensure that powers are not repatriated in such a way that they create barriers to living and doing business (e.g. sea or land borders);
- safeguard existing devolution settlements while still accommodating as-yet-unknown changes to law and policy resulting from Brexit; and
- safeguard the Belfast/Good Friday Agreement and the important role it plays in balancing and maintaining the political situation in Northern Ireland.

In addition to this paper, a list of [resources](#) on various aspects of the Bill has been distributed to Group members. It includes a section on devolution containing a number of significant recent publications.

Introduction – Brexit, Devolution and the Rule of Law

At the outset, it is important to emphasise that the focus of the Working Group is the Rule of Law issues raised by the EU (Withdrawal) Bill. Brexit raises many important and difficult issues

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for the UK's territorial constitution.¹ Some, but by no means all, of these raise Rule of Law questions. Other issues concerning the implications of Brexit for the UK's devolution settlement are of a more political nature. The Bingham Centre for the Rule of Law works with Lord Bingham's definition of the concept in his book, *The Rule of Law*. This is a broad, or "thick", conception of the Rule of Law which includes within it, for example, equality before the law, adequate protection for human rights and respect for international obligations. It is not, however, infinitely flexible. The best detailed elaboration of Lord Bingham's account of the Rule of Law is to be found in the Venice Commission's Rule of Law Checklist, which was endorsed by the Parliamentary Assembly of the Council of Europe this month.² The Bingham Centre uses the Venice Commission Rule of Law Checklist, which it helped to draft, as an internationally agreed guide to what constitutes a Rule of Law issue. This Discussion Paper therefore focuses on those issues raised by the devolution clauses of the EU Withdrawal Bill which are recognisably Rule of Law issues according to the Venice Commission definition.

Many of the problems surrounding general legal certainty issues in Clauses 1-6, which were discussed at length at the first meeting of the Expert Working Group, will be magnified in the devolved sphere. For example, because the devolved legislatures are unable to modify retained EU law under Clause 11, the meaning and content of "retained EU law" takes on an additional importance. However, there are a number of Rule of Law issues unique to the impact of the Bill on devolution arrangements that will serve as the focus of this paper.

The current devolution arrangements reserve relations with the EU to Westminster, but make provision for the devolved administrations to transpose and implement EU obligations that fall within devolved policy areas. This includes several important areas, such as justice and home affairs, agriculture, fisheries and the environment. Thus, it is vital that the provisions in the Bill on delineation of legislative competence and repatriation of powers are certain and accessible, a fundamental component of the rule of law.

The Joint Ministerial Committee (EU Negotiations) has agreed three principles to underpin its effort to identify common frameworks.³ The Communiqué published following the meeting states that "a framework will set out a common UK, or GB, approach and how it will be operated and governed."⁴ The principles apply to areas where EU law currently intersects with devolved competence. Principle 1 addresses situations where common frameworks are likely to be necessary, such as to safeguard the security of the UK or to ensure compliance with international obligations. Principle 2 requires the frameworks to respect the devolution settlements and democratic accountability of the devolved legislatures, and includes three sub-principles, including that any adjustment of devolved competence will "not normally" occur without consent from the devolved institutions. Principle 3 recognises the unique situation of Northern Ireland

¹ See, e.g., Professor Richard Rawlings, 'Brexit and the Territorial Constitution: Devolution, Reregulation and Inter-governmental Relations' (The Constitution Society, 2017), available at: <https://consoc.org.uk/wp-content/uploads/2017/10/Brexit-and-devolution-final.pdf>.

² Council of Europe, European Commission on Democracy through Law, 'The Rule of Law Checklist' (March 2016), available at:

http://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf. The Checklist was officially adopted by the Parliamentary Assembly of the Council of Europe in Resolution 2187 (2017) on 11 October 2017 and is available at: <http://bit.ly/2z68orN> (shortened link).

³ Joint Ministerial Committee (EU Negotiations) ('JMC(EN)') Communiqué, 16 October 2017, available at: <https://www.gov.uk/government/publications/joint-ministerial-committee-communication-16-october-2017>.

⁴ *ibid*, p. 2.

and its post-Brexit land frontier with the EU, and requires the Committee to adhere to the Belfast Agreement.

Clauses 10 and 11 amend the Scotland Act 1998, the Government of Wales Act 2006 and the Northern Ireland Act 1998 by strictly regulating the exercise of devolved powers after exit day. These provisions must be read in light of clauses 2-6 (on converting EU law into domestic law) and clauses 7-9, which provide delegated powers, including for example to give effect to the withdrawal agreement. Schedule 7 makes provision for the scrutiny of these delegated powers, including where they are made by devolved authorities. This part of the Bill will be considered at the meeting of the Group which will focus on the Rule of Law issues raised by the delegated powers in the Bill.

This discussion paper will therefore focus on the following three Rule of Law issues:

- Legislative competency: Clauses 10, 11 and Schedule 2
- Repatriation of powers: Clause 11 and Schedule 3
- The UK's compliance with the international treaty underpinning the Good Friday Agreement

1. Legislative competency: Clauses 10, 11 and Schedule 2

Clause 10 gives effect to **Schedule 2**, which provides devolved authorities with powers to make regulations corresponding to Clauses 7-9. This means that devolved authorities have powers to deal with deficiencies arising from withdrawal (Part 1); to comply with international obligations (Part 2), and to implement the withdrawal agreement (Part 3). These powers can be used by devolved authorities alone, or jointly with ministers of the Crown (paragraphs 1, 13, 21).

However, these powers are circumscribed in that the devolved authorities have no power to make provisions outside of devolved competence (paragraphs 2, 14, 22), and no power to modify retained direct EU law or anything retained by virtue of Clause 4 (paragraphs 3, 15, 23). This means that the devolved authorities can only amend EU-derived domestic legislation (as defined by Clause 2). The powers are further limited by requirements for consent in certain circumstances, and each is limited by a sunset clause which corresponds to the sunset clauses imposed on the powers of Ministers of the Crown (paragraphs 1(3), 13(6), 21(6)). Additional substantive limitations apply to the power to bring forth regulations to comply with international obligations (paragraph 13(4)) and to implement the withdrawal agreement (paragraph 21(4)).

Clause 11 addresses the competence of the devolved authorities to legislate on EU law matters after exit day. Currently, the devolved legislatures cannot legislate incompatibly with EU law. Clause 11 essentially converts this restriction into a new prohibition on modifying retained EU law unless the modification would have been wholly within the devolved legislature's competence immediately before exit day. As the House of Commons Library has pointed out, "the Bill creates fewer rights for devolved legislatures and executives to modify retained EU law than apply to their UK counterparts."⁵ Perhaps more importantly, the scope of Clause 11 is dependent upon the meaning of 'retained EU law', which, as was discussed at length at the [first](#)

⁵ House of Commons Library Briefing Paper No. 8079, 'European Union (Withdrawal) Bill' (1 September 2017), p. 100.

[meeting of the Group](#), is very unclear. Indeed, Stephen Tierney has pointed out that there is significant potential for legal disputes between the devolved authorities and Westminster over what constitutes retained EU law.⁶ Though currently the list of reserved matters in devolution enactments is fairly clear, this is not so with retained EU law, which is a moving target.⁷ Though the Bill defines 'retained EU law' across Clauses 2-4, there remains significant uncertainty about what exactly is going to be kept. The Scottish Government has described the confusing nature of the situation as such:

“as amendments are made to retained EU law by domestic UK law, and as the EU amends EU law, the content of “retained EU law” will diverge from EU law as it was on exit day and from EU law as it exists from time to time. Instead of a requirement to assess legislative competence by reference to EU law as it exists at the point when the issue arises, it will have to be assessed by reference to EU law as it used to be on exit day and as subsequently amended under the Bill.”⁸

Thus, the Scottish Government suggests that Clause 11 be removed in its entirety and that tests currently applied to determine the legislative competence of devolved legislatures should continue to apply.⁹

The uncertainty regarding retained EU Law therefore contributes to the lack of clarity surrounding the definition of 'devolved competence' in **Schedule 2, paragraphs 9-12**. The Rule of Law requires clarity in the law so that individuals and businesses are able to ascertain their rights and obligations.¹⁰

The lack of clarity regarding the scope of the devolved legislatures' competence notwithstanding, **Schedule 2** provides the devolved authorities with legislative powers to deal with deficiencies arising from withdrawal, to implement international obligations and to implement the withdrawal agreement. These powers exist and operate alongside the powers granted to Ministers in Whitehall under Clauses 7-9. This gives rise to the potential for conflict. The National Assembly for Wales Chief Legal Advisor has said that this means that “London could step in and make law for Wales on devolved matters” because there is nothing in the Bill requiring such action to be subject to the agreement of the devolved authorities.¹¹ Though the Government has stated in the Explanatory Notes accompanying the Bill that it would not normally take such action without consent, the Bill lacks such a safeguard.¹² The Bill does, however, include several provisions requiring the consent of Westminster in relation to devolved

⁶ Stephen Tierney, 'The European Union (Withdrawal) Bill: legal implications for devolution', The Constitution Unit (7 September 2017), available at: <https://constitution-unit.com/2017/09/07/the-european-union-withdrawal-bill-legal-implications-for-devolution/>.

⁷ House of Lords Delegated Powers and Regulatory Reform Committee, 3rd Report of Session 2017-19, 'European Union (Withdrawal) Bill', HL Paper 22 (28 September 2017), para 56.

⁸ Scottish Government, 'Legislative Consent Memorandum: European Union (Withdrawal) Bill', LCM-S5-10, Session 5 (2017), lodged 12 September 2017, para 23, available at: <http://www.parliament.scot/S5ChamberOffice/SPLCM-S05-10-2017.pdf>.

⁹ *ibid*, para 24.

¹⁰ Council of Europe, above (n 2), Section B (p. 25 et seq).

¹¹ National Assembly for Wales, 'What does the EU (Withdrawal) Bill mean for Wales and devolution?', In Brief (17 July 2017), available at: <https://seneddresearch.blog/2017/07/17/what-does-the-eu-withdrawal-bill-mean-for-wales-and-devolution/>.

¹² European Union (Withdrawal) Bill Explanatory Notes (Bill 5-EN), para 68.

authorities dealing with deficiencies (Sch 2, paras 5-6), complying with international law obligations (Sch 2, para 16) and implementing the withdrawal agreement (Sch 2, para 25).

Many **amendments**¹³ have been tabled in relation to these issues, several of which are included in an [Annex to this Paper](#). Many of them relate to removing the restrictions on the legislative competence of the devolved legislatures in relation to retained EU law to and ensuring that devolved ministers can correct all areas of transferred EU law falling within devolved legislative competence.

Suggested Questions for Discussion

- Q1.1 Is the restriction on devolved authorities' legislative powers to EU-derived domestic legislation necessary and proportionate?
- Q1.2 Are the various provisions requiring consent by the Crown before the devolved authorities can make regulation necessary? Could they perhaps be replaced by a requirement to consult with a Minister of the Crown?

2. Repatriation of powers: Clause 11 and Schedule 3

Because the Bill does not permit modification by devolved authorities of retained EU law, this means that upon exit EU powers in devolved areas will return to the UK, but will not be devolved unless and until there is an agreement on transfer of powers. The fact that powers are repatriated wholly to the UK Government upon exit is contrary to the trend of moving to a reserved model in devolution settlements and has been called "a development of great constitutional import as the first significant rolling back of devolution since the process started twenty years ago."¹⁴ The Government has justified this approach by stating that new frameworks will need developing in areas that until exit day were previously coordinated at EU level, such as environmental regulation, agricultural policy and state aid, and which will require a common UK approach.¹⁵ The Scottish Government has published a list of 111 powers returning that will intersect with devolved areas.¹⁶ The list published by the Welsh Government contains 64 points of intersection.¹⁷

At this stage, the extent to which new UK-wide frameworks will be required is unclear and very dependent upon the withdrawal agreement. The Bill is silent on this issue, but the Explanatory Notes state that Westminster will work closely with the devolved nations to identify where no pan-UK approach is necessary. In such cases, **Clause 11** of the Bill provides that an Order in

¹³ Amendments have been included that were tabled up until Friday the 20th of October, as published on 23 October 2017.

¹⁴ Michael Keating, 'To devolve or not to devolve? The European Union (Withdrawal) Bill and devolution', The Constitution Unit (25 July 2017), available at: <https://constitution-unit.com/2017/07/25/to-devolve-or-not-to-devolve-the-european-union-withdrawal-bill-and-devolution/>.

¹⁵ European Union (Withdrawal) Bill Explanatory Notes (Bill 5-EN), para 36.

¹⁶ The list is available at: <https://beta.gov.scot/publications/eu-withdrawal-bill-letter-to-finance-and-constitution-committee/>. It has been provided to members of the Expert Working Group alongside this Paper.

¹⁷ A statement to this effect was made by First Secretary of State Damian Green, as report by the [BBC](#) and the [Institute for Government](#). A 'leaked' list formed the basis of the IfG article, and is on file with the Bingham Centre. It has been provided to members of the Expert Working Group alongside this Paper.

Council by the UK Government may release matters back to devolved authorities. The Scottish and Welsh Governments have announced that will not recommend that legislative consent is given to the Bill as currently drafted because of the arrangements under Clause 11.¹⁸

Orders in Council, are one method by which new powers are transferred to the devolved legislatures, but the use of such a procedure to repatriate powers has attracted criticism.¹⁹ For example, the House of Lords Delegated Powers and Regulatory Reform Committee has said it is “unacceptable” that this procedure apply to “an issue as important as this”.²⁰ They recommend that a closely scrutinised Bill is required for revisions to constitutional settlements.²¹ This is a Rule of Law issue because the process for enacting law must be transparent, inclusive and democratic in order to promote accountability and access to rights.²² Moreover, the Bill does not provide a mechanism for determining whether a common framework is required, nor does it supply any clarity regarding how repatriation will occur, and whether there will be sufficient notice of repatriation to the devolved authorities. For example, it may be that a significant number of powers will be repatriated once the withdrawal agreement is finalised, which could put a great strain on devolved legislatures to correct law.²³ However, as discussed in the introduction to this Discussion Paper, the Joint Ministerial Committee (EU Negotiations) has published a set of principles by which to identify common areas. The Communiqué states that “The aim of all parties” is “to agree where there is a need for common frameworks and the content of them.”²⁴

Under **Clause 11 and Schedule 3, paragraphs 1-3**, the Orders in Council must be approved by both Houses of Parliament and by the devolved legislatures. However, the fact that a UK authority is tasked with making the determination of which powers should be repatriated has been criticised. For example, Professor Richard Rawlings has referred to this as a “formal recentralisation of power and exercise of constitutional hierarchy in spades.”²⁵ Moreover, the release process in Clause 11 can be read as a conferred powers model, because competence is released only by way of exception, where a common framework has been identified.²⁶ Thus, because the pre-exit arrangements have moved toward a reserved model, there risks a situation whereby we have a complex and confusing mixed model of conferred and reserved powers

¹⁸ Professor Rawlings writes that the devolution clauses in the Bill are such that “the devolved institutions cannot be expected to give legislative consent.” See Professor Richard Rawlings, ‘Brexit and the Territorial Constitution: Devolution, Reregulation and Inter-governmental Relations’ (The Constitution Society, 2017), available at: <https://consoc.org.uk/wp-content/uploads/2017/10/Brexit-and-devolution-final.pdf>.

¹⁹ Iain McIver and Francesca McGrath, The Scottish Parliament, SPICe Briefing, ‘The European Union (Withdrawal) Bill: Implications for Scotland’ SB17-54 (24 August 2017), p. 7.

²⁰ House of Lords, above (n 7), para 59.

²¹ *ibid*, para 58.

²² Council of Europe, above (n 2), part II.A.5.

²³ Tierney, above (n 6).

²⁴ JMC(EN), above (n 3), p. 1.

²⁵ ‘Brexit and the Territorial Constitution: Devolution, Reregulation and Inter-governmental Relations’ (The Constitution Society, 2017), p. 26, available at: <https://consoc.org.uk/wp-content/uploads/2017/10/Brexit-and-devolution-final.pdf>. See also Mark Elliot, ‘A “blatant power grab”? The Scottish Government on the EU (Withdrawal) Bill’, Public Law for Everyone (10 August 2017), available at: <https://publiclawforeveryone.com/2017/08/10/a-blatant-power-grab-the-scottish-government-on-the-eu-withdrawal-bill/>.

²⁶ Rawlings, above (n 18), pp. 26-27.

upon exit.²⁷ The lack of clarity surrounding this issue has been picked up by the Scottish Government in its Legislative Consent Memorandum.²⁸

Another commentator has pointed out that, though a substantive competence may not be transferred back to the devolved administrations, it is likely that executive responsibility will remain with the devolved authorities because they have “machinery in place” to deal with the substantive regulation in various areas.²⁹

Finally, the Explanatory Notes indicate that the arrangements under Clause 11 are intended to be “transitional...while decisions are taken on where common policy approaches are or are not needed.”³⁰ Nothing in the Bill supports this, an omission which has been cited as problematic by the Delegated Powers and Regulatory Reform Committee³¹ and by many commentators.

Amendments have been tabled in relation to Clause 11, but they have not touched on the specific issues of repatriation as discussed in this section of the Discussion Paper. However, the following amendment pertains to the issue of consent of the devolved authorities:

- **Amendment 79:** to make the repeal of the European Communities Act 1972 on exit day conditional on the Prime Minister gaining consent from the devolved legislatures.

Suggested Questions for Discussion

- Q2.1 Should Clause 11 be deleted?
Assuming the Clause 11 remains:
- Q2.2 Should the Bill be amended so as to require the repatriation of powers to devolved authorities by way of a separate legislative procedure, rather than through Orders in Council? If so, by what procedure? Should, for example, minimum notice requirements apply?
- Q2.3 Does the 'release procedure' via Order in Council in Clause 11 represent a conferred powers approach to devolution? What does this mean in terms of clarity and consistency of law in view of the pre-existing reserved powers arrangements?
- Q2.4 Should the Bill include a provision making it explicit that the arrangements in Clause 11 are transitional, for example, through a sunset clause?

3. The UK's compliance with the international treaty underpinning the Good Friday Agreement

The Rule of Law requires states to comply with their international law obligations.³² A recent legal opinion by Caoilfhionn Gallagher QC and Katie O'Byrne of Doughty Street Chambers ('the Legal Opinion'), expressed a concern that withdrawal from the EU may be incompatible

²⁷ *ibid*, pp. 26-27.

²⁸ Scottish Government, above (n 8), para 25.

²⁹ Keating, above (n 14).

³⁰ European Union (Withdrawal) Bill Explanatory Notes (Bill 5-EN), para 34.

³¹ House of Lords, above (n 7), p. 103; National Assembly for Wales, above (n 11).

³² Tom Bingham, *The Rule of Law*, Penguin Books, 2011 (first published 2010), p. 110 et seq.

with the UK's obligations under the Good Friday Agreement (GFA).³³ The GFA is the result of the peace process in Northern Ireland. It is an annex to a bilateral treaty between the British Government and the Government of the Republic of Ireland, which means it is an agreement registered with the United Nations.³⁴ It is also fundamental to the Northern Ireland Act 1998, which, among other things, makes constitutional arrangements for Northern Ireland. While it does not require the UK to be an EU Member State, the GFA was drafted on the premise of such membership and therefore many of its provisions relate to EU institutions, law and policy.

In addition, the protection of human rights is central to the GFA and receives its own section in the Agreement. Thus, the Bill's non-retention of the EU Charter of Fundamental Rights, and its treatment of general principles and case law from the Court of Justice of the EU raises additional concerns. These issues were explored generally in our first [Discussion Paper](#), and are also discussed in the Legal Opinion.³⁵

Both the EU and the UK Government have affirmed their commitment to the GFA during the withdrawal process.³⁶ However, there is uncertainty regarding whether or not withdrawal (and hence the Bill) give rise to a breach of international obligations under the GFA. The Legal Opinion concludes that "the UK's exit from the EU is not congruous with the text or intention of the GFA in all its parts." This conclusion is largely based on a realisation that much of the text of the GFA will require amendment after Brexit to reflect the any new arrangements. For example, the European Parliament has stated that "Brexit must surely require deletion and / or revision of the references to the EU within the Good Friday Agreement."³⁷ There is no explicit recognition or protection in the Bill of the GFA, nor do the Bill's Explanatory Notes address this issue. However, Clause 7(6), dealing with Ministerial powers to correct deficiencies arising from withdrawal, prohibits those powers from being used to amend or repeal parts of the Northern Ireland Act 1998. The Delegated Powers Memorandum explains that this restriction is because the Northern Ireland Act "is the main statutory manifestation of the Belfast Agreement and it would not, therefore, generally be appropriate for a power with this breadth of scope to be capable of amending the Act."³⁸ Clause 7(6) leaves room to amend the Northern Ireland Act 1998 through regulations made under Schedule 7, paragraph 13(b) of the Withdrawal Act, which deals with general powers to make supplementary, incidental, consequential, transitional, transitory or saving provision. It also permits regulations to be made under Schedule 3, paragraph 38 of the Northern Ireland Act, which deals with obligations arising from EU membership in relation to certain products. Presumably, the powers under Schedule 7

³³ 'Report on how designated special status for Northern Ireland within the EU can be delivered' (16 October 2017), available at: http://www.doughtystreet.co.uk/documents/uploaded-documents/NI_Special_status_report_161017_FINAL.pdf.

³⁴ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (1998) 2114 UNTS 473 (as cited by Gallagher and O'Byrne, *ibid*, p. 13).

³⁵ Gallagher and O'Byrne, *ibid*, pp. 17-24.

³⁶ European Commission, 'Guiding principles transmitted to EU27 for the Dialogue on Ireland/Northern Ireland', TF50 (2017) 15 (6 September 2017), p. 3, available at: https://ec.europa.eu/commission/sites/betapolitical/files/guiding-principles-dialogue-ei-ni_en.pdf; HM Government, 'Northern Ireland and Ireland Position Paper' (16 August 2017), p. 3, available at: <https://www.gov.uk/government/publications/northern-ireland-and-ireland-a-position-paper>.

³⁷ Gallagher and O'Byrne, *above* (n 33), pp. 17-24, p. 35 (citing European Parliament, Constitutional Affairs Briefing, 'The Impact and Consequences of Brexit for Northern Ireland' (2017), p. 6).

³⁸ Department for Exiting the European Union, 'Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee' (13 July 2017), para 40.

would be used to make the deletions or revisions with respect to references to EU law obligations, as cited above. However, as the Northern Ireland Act was passed to implement the GFA, but does not include the GFA, it is unclear whether the GFA will be similarly protected by the limitations in Clause 7(6) of the Bill.

Though none of the tabled **amendments** have thus far squarely address this issue, the following are relevant:

- **New Clause 39:** to require the Minister to commit to maintaining the provisions of the Good Friday Agreement and subsequent Agreements between the UK and Ireland since 1998 before making any regulations under Clause 9.
- **Amendment 144:** to ensure that the EU Withdrawal Bill does not affect any legislation derived from the Good Friday Agreement or the intention of the Good Friday Agreement.
- **Amendment 147:** to maintain the provisions of the Good Friday Agreement after withdrawal by inserting new sub-section (bc) into Clause 9(3). See also **Amendments 145-146, 157.**

Suggested Questions for Discussion

- Q3.1 Should the Bill be amended so as to formally safeguard the Good Friday Agreement? If so, how?
- Q3.2 In view of the Bill's non-retention of the Charter, should the Bill be amended so as to formally safeguard those rights in light of their centrality to the Good Friday Agreement?

ANNEX

List of Selected Amendments in relation to Section 1 of this Discussion Paper³⁹

- **Amendment 42:** to remove the Bill's proposed restrictions on the ability of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly to legislate on devolved matters. See also **Amendments 132, 90, 133, 91, 134, 92** on specifics for individual devolved nations.
- **Amendment 72:** to insert into Clause 11 a new subsection 3A preventing Clause 11 from coming into force until the devolved legislatures pass a resolution approving the provisions in subsections (1) through (3). See also **Amendment 84**.
- **Amendment 79:** to make the repeal of the European Communities Act 1972 on exit day conditional on the Prime Minister gaining consent from the devolved legislatures.
- **Amendment 87:** This amendment would alter the definition of EU retained law so as only to include reserved areas of legislation. This will allow the National Assembly for Wales and the other devolved administrations to legislate on areas of EU derived law which fall under devolved competency for themselves.
- **Amendment 135:** to leave out paragraph 10 of Schedule 2, page 20, line 18 so as to remove the proposed restriction in the Bill on devolved authorities modifying retained direct EU legislation etc.
- **Amendment 136:** to remove the proposed restriction in the Bill on devolved authorities modifying retained direct EU legislation etc.
- **Amendment 164:** to replace the Bill's changes to the legislative competence of the Scottish Parliament and the National Assembly for Wales in consequence of EU withdrawal, by removing the restriction on legislative competence relating to EU law and ensuring that no further restriction relating to retained EU law is imposed. See also **Amendments 165, 182-190, 1920195**.
- **Amendment 167:** to provide that the power of the Scottish Ministers and the Welsh Ministers to make regulations under Part 1 of Schedule 2 extends to amending directly applicable EU law incorporated into UK law, in line with a Minister of the Crown's power in Clause 7.
- **Amendment 168:** to provide that the power of the Scottish Ministers and the Welsh Ministers to make regulations under Part 1 of Schedule 2 includes the power to confer functions which correspond to functions to make EU tertiary legislation, in line with a Minister of the Crown's power in Clause 7.
- **Amendment 169:** to replace the requirement for consent from a Minister of the Crown for regulations made by Scottish Ministers or Welsh Ministers in fixing problems in retained EU law that arise from withdrawal if they come into force before exit day or remove reciprocal arrangements with a requirement for Scottish Ministers and Welsh Ministers to consult with a Minister of the Crown before making the regulations.

³⁹ See also the list of amendments proposed by Scottish and Welsh Governments, provided to members of the Expert Working Group alongside this Discussion Paper, and available at:

[https://beta.gov.scot/publications/eu-withdrawal-bill-letter-to-finance-and-constitution-committee/Proposed%20amendments%20to%20EU%20\(Withdrawal\)%20Bill.pdf?inline=true](https://beta.gov.scot/publications/eu-withdrawal-bill-letter-to-finance-and-constitution-committee/Proposed%20amendments%20to%20EU%20(Withdrawal)%20Bill.pdf?inline=true).

- **Amendment 170:** to provide that the power of Scottish Ministers and Welsh Ministers to make regulations under Part 2 of Schedule 2 includes the power to confer a power to legislate, aligning those Ministers' powers to the power of a Minister of the Crown under Clause 8.
- **Amendment 171:** to provide that the power of the Scottish Ministers and the Welsh Ministers to make regulations under Part 2 of Schedule 2 extends to amending directly applicable EU law incorporated into UK law. This brings the power into line with the Minister of the Crown power in Clause 8.
- **Amendment 172:** to replace the requirement for a Minister of the Crown to consent to regulations made by the Scottish Ministers or the Welsh Ministers to ensure compliance with international obligations if they come into force before exit day or relate to the WTO or quota arrangements, with a requirement for the Scottish Ministers and Welsh Ministers to consult with a Minister of the Crown before making the relevant regulations. See also **Amendments 174, 176.**
- **Amendment 173:** to confer a power to legislate among the powers of the Scottish Ministers and Welsh Ministers to make regulations under Part 3 of Schedule 2, in line with a Minister of the Crown's powers under Clause 9. See also **Amendments 174, 175.**
- **Amendment 211:** to leave out paragraph (3) of Schedule 2, which prohibits devolved authorities from modifying retained direct EU law. See also **Amendment 167 regarding Scottish and Welsh Ministers.**
- **Amendment 287:** to ensure that the restriction in this paragraph could not be undermined by the use of legislation which does not amend the text of the Human Rights Act but modifies its effect. See also **Amendments 288, 289, 290.**
- **Amendment 307:** to limit the power available to a devolved authority to deal with deficiencies in retained EU law arising from withdrawal in such a way that it could only make provision that is essential to that end. See also **Amendments 308; 309-310** on international obligations; and **311-312** on implementing the withdrawal agreement.