



European Union (Withdrawal Agreement) Bill HL Bill 16 of 2019–20

On 13 January 2020, the second reading of the [European Union \(Withdrawal Agreement\) Bill](#) is scheduled to take place in the House of Lords. Committee stage is due to take place on 14, 15 and 16 January 2020, with report and third reading scheduled for 20 and 21 January 2020.

Summary

The UK and the EU reached agreement on a revised withdrawal agreement on 17 October 2019. Unless both sides ratify it before 31 January 2020, the default legal position is that the UK will leave the EU on that date with no withdrawal agreement. On the UK side, ratifying the withdrawal agreement involves passing legislation to implement it in domestic law.

The Government introduced a European Union (Withdrawal Agreement) Bill in October 2019. The Commons voted by a majority of 30 to give it second reading but voted against the programme motion, meaning it could make no further progress. The Conservative Party manifesto for the December 2019 general election promised to “get Brexit done” in January 2020. Having won the election, the Government introduced a new European Union (Withdrawal Agreement) Bill. It would implement the withdrawal agreement in domestic law and provide for a transition, or implementation, period until 31 December 2020. Its provisions would amend the European Union (Withdrawal) Act 2018 and create new regulation-making powers.

The new bill passed its second reading in the Commons on 20 December 2019 by 358 votes to 234. A programme motion was agreed by 353 votes to 243.

The bill was considered by a committee of the whole House on 7 and 8 January 2020. No amendments were made. Ten amendments were defeated on division. These included amendments on citizens’ rights; restrictions on the Government’s regulation-making powers; family reunion rights for child refugees; Parliament’s role in the future relationship negotiations with the EU; assessing the impacts on businesses and consumers of the Ireland/Northern Ireland protocol; continued alignment with the EU on workers’ rights, consumer rights and environmental standards; and continued participation in EU agencies and programmes. Some of these amendments sought to address areas where the Government had included provisions in the previous version of the bill but not in the new version. The new bill prevents any extension to the implementation period beyond December 2020, which Labour highlighted as a “serious problem”.

An SNP amendment declining to give the bill its third reading was defeated. The bill passed its third reading in the Commons by 330 votes to 231.

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I. Introduction

I.1 Ratifying the Withdrawal Agreement

The UK and the EU reached agreement on a revised withdrawal agreement and framework for the future relationship (also known as the political declaration) on 17 October 2019. Both parties must comply with their own requirements for ratifying the withdrawal agreement before it can come into force. Unless both sides ratify the withdrawal agreement before 31 January 2020, the default legal position is that the UK will leave the EU on that date with no withdrawal agreement in place.

On the UK side, ratifying the withdrawal agreement involves passing legislation, because:

- The UK is a dualist state. This means that international treaties do not automatically become part of domestic law. UK courts have no power to enforce treaty rights and obligations unless legislation is passed to implement the relevant treaty provisions into domestic law. Foreign and Commonwealth Office (FCO) guidance on treaties says that if domestic legislation is needed to enable the UK to give effect to its obligations under a treaty, the legislation should be in place before the treaty comes into force, so that the two can come into operation at the same time.¹ The FCO therefore usually insists that any necessary UK legislation is in place before a treaty is ratified or acceded to.
- In the case of a withdrawal agreement with the EU, the Government is under a specific statutory obligation to pass the domestic implementing legislation before the UK can ratify the agreement. This is one of several requirements set out in section 13 of the European Union (Withdrawal) Act 2018 (EUWA 2018) about what must happen before ratification can take place.²

I.2 Two Versions of the Bill

The Government introduced a European Union (Withdrawal Agreement) Bill in the parliamentary session that ran from October–November 2019. The House of Commons voted by 329 to 299, a majority of 30, to give that

¹ Foreign and Commonwealth Office, [Treaties and Memoranda of Understanding: Guidance on Practice and Procedures](#), March 2014, p 6.

² For a more detailed explanation of the requirements of section 13 of the European Union (Withdrawal) Act 2018, see: House of Lords Library, [Brexit: Further Recent Developments](#), 21 March 2019. The Government intends to use the bill to repeal section 13 of the EUWA 2018.

bill its second reading on 22 October 2019.³ However, the Commons then defeated the Government's programme motion for the bill by 322 votes to 308, a majority of 14.⁴ The bill made no further progress and was lost when Parliament was dissolved for the December 2019 general election.

The Conservative Party manifesto for the election said that Boris Johnson guaranteed to get his Brexit deal through Parliament and "get Brexit done" in January 2020.⁵ Having won the election, the Government introduced a new [European Union \(Withdrawal Agreement\) Bill](#) on 19 December 2019, the day of the Queen's Speech.

The bill implements the withdrawal agreement in domestic law and provides for there to be a transition, or implementation, period until 31 December 2020. To do so, many of its provisions amend the EUWA 2018 and create new regulation-making powers.

The present bill is not identical to the one introduced in the previous session. Key differences include:⁶

- **Extending the implementation period:** The new bill prevents ministers agreeing to an extension of the implementation (transition) period beyond 31 December 2020. The withdrawal agreement itself allows for the implementation period to be extended for one or two years, if a decision to extend is taken before 1 July 2020. Under the previous bill, ministers could have agreed to extend the implementation period if the House of Commons approved this.
- **Parliamentary oversight:** The previous bill contained provisions about parliamentary oversight of the negotiations for the future relationship. These provisions do not appear in the new bill.
- **Workers' rights:** The previous bill contained provisions on the protection of workers' rights. These provisions do not appear in the new bill.
- **Retained EU case law:** The new bill would allow ministers to make regulations setting out when courts and tribunals could depart from 'retained EU case law'. This provision did not appear in the previous bill.

³ [HC Hansard, 22 October 2019, cols 917–20.](#)

⁴ [ibid, cols 923–6.](#)

⁵ Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, unnumbered 'My Guarantee' page at front of manifesto and p 5.

⁶ This list is not exhaustive. For further analysis of differences between the old and new versions of the bill, see: House of Commons Library, ['The New EU \(Withdrawal Agreement\) Bill: What's Changed?'](#), 19 December 2019; and [The New EU Withdrawal Agreement Bill](#), 6 January 2020.

- **Family reunion rights:** Under the EUWA 2018, the Government must seek to negotiate an agreement with the EU under which unaccompanied asylum-seeking children in the EU would be able to join relatives lawfully resident in the UK and vice versa. Under the new bill, the Government would no longer be obliged to try to negotiate such an arrangement.

Sections 2 to 6 of this briefing briefly describe the provisions of the bill and point to resources for further information, such as relevant provisions of the withdrawal agreement itself, House of Commons Library briefings and committee reports. Section 7 of this briefing summarises proceedings on the bill in the House of Commons. The bill was not amended in the Commons.

The Government has published [explanatory notes](#), a [delegated powers memorandum](#), a [human rights memorandum](#), and a series of [factsheets](#) on the bill. The Government published an [impact assessment](#) on the pre-election version of the bill. The Regulatory Policy Committee (RPC) issued an opinion identifying a number of areas where it said the impact assessment could benefit from improved evidence.⁷ It issued a further statement on 7 January 2020, noting the Government had not revised the impact assessment to reflect the RPC’s earlier comments or the changes to the new version of the bill. It found the quality of evidence in the impact assessment was “not at the level we would expect to see” in a final stage impact assessment.⁸

Three House of Lords committees have published reports relating to the bill:

- House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019
This report was on the version of the bill introduced in the 2019 session.
- House of Lords Delegated Powers and Regulatory Reform Committee, [European Union \(Withdrawal Agreement\) Bill](#), 9 January 2020, HL Paper 3 of session 2019–20
- House of Lords European Union Committee, [Brexit: The Revised Withdrawal Agreement and Political Declaration](#), 10 January 2020, HL Paper 4 of session 2019–20
The primary focus of this report is the withdrawal agreement itself, but it does refer to the bill in various places.

⁷ Regulatory Policy Committee, [RPC Opinion: European Union \(Withdrawal Agreement\) Bill](#), 21 October 2019. The committee is an independent body, sponsored by the Department for Business, Energy and Industrial Strategy.

⁸ Regulatory Policy Committee, [European Union \(Withdrawal Agreement\) Bill: Impact Assessment—Statement from the Regulatory Policy Committee](#), 7 January 2020.

2. Part 1: Implementation Period

Part four of the withdrawal agreement contains transition provisions. Article 126 of the withdrawal agreement states that there shall be a “transition or implementation period” which shall start when the agreement enters into force and end on 31 December 2020. The Government prefers to use the term “implementation period” or IP for short, while the EU uses the term “transition period” to denote the same thing. Article 127(1) of the withdrawal agreement sets out the scope of the transition: “Unless otherwise provided in this agreement, [European] Union law shall be applicable to and in the United Kingdom during the transition period”. Article 127(3) specifies that during the transition period, EU law (with specified exceptions) shall produce “in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its member states”.

Currently, the European Communities Act 1972 (ECA) is the “conduit pipe” through which EU law flows into UK domestic law. Through this mechanism some EU law measures can have direct effect or direct applicability in UK domestic law, other EU law measures can be given effect in domestic law through secondary legislation without an additional parent Act, and EU law has supremacy over domestic law.

Section 1 of the European Union (Withdrawal) Act 2018 (EUWA 2018) is set to repeal the ECA on exit day, 31 January 2020. A mechanism will be required to ensure that the EU treaties and other EU law continue to apply in the UK during the implementation period. To achieve this, clause 1 of the bill inserts a new section 1A into EUWA 2018. This would allow the ECA to continue to have effect in domestic law despite being repealed, subject to certain conditions, including:

- Part four of the withdrawal agreement (except those provisions that relate to the common foreign and security policy) is added into the definition of EU law and the EU treaties that are given effect in domestic law by the ECA.
- Section 2(3) of the ECA would not continue to apply. This is the section of the ECA that authorised payments from the UK to the EU under the EU treaties. The financial settlement that will apply after the UK has left the EU is dealt with separately in clause 20 of the bill.

Subsection 1A(5) ensures that the saving of the ECA would last only until the end of the implementation period. The operative provisions of section 1A would be repealed on “IP completion day”. Clause 39 of the bill defines IP completion day as 11pm on 31 December 2020.

Clause 2 of the bill would insert a new section 1B into EUWA 2018 to save EU-derived domestic legislation for the duration of the implementation period. The new section contains a number of provisions and explanations, or ‘glosses’ intended to ensure that EU-related references operate properly during the implementation period, for example using a modified definition of which countries are EU member states once the UK is no longer a member.

Clause 3 would give ministers a regulation-making power to make further technical changes to ensure the statute book continues to function during the implementation period. The power could be used to create new glosses, to disapply the glosses created in new section 1B or to make other provision, for example for particular EU-related terms.⁹ This power could not be used to modify primary legislation made after IP completion day, or subordinate legislation made under that primary legislation. This regulation-making power would end two years after IP completion day. Clause 4 would create a corresponding power for the devolved authorities.

Withdrawal Agreement

Part four of the withdrawal agreement provides for the transition, or implementation, period.

Further Information

- House of Commons Library, [‘Withdrawal Agreement Bill: Implementing the Transition Period’](#), 22 October 2019
This briefing relates to the version of the bill introduced before the general election, but clauses 1 to 4 have not substantially changed. The briefing refers to clause 30 giving the Commons a veto over extending the transition period; this clause has been removed from the current version of the bill.
- House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, pp 7–10
This report relates to the version of the bill introduced before the general election, but clauses 1 to 4 have not substantially changed.
- House of Commons Library, [The October 2019 EU-UK Withdrawal Agreement](#), 18 October 2019, pp 24–7
- House of Commons Library, [The UK’s EU Withdrawal Agreement](#), 11 April 2019, pp 51–64
- Department for Exiting the European Union, [Implementation Period](#), 19 December 2019

⁹ [Explanatory Notes](#), para 96.

3. Part 2: Remaining Implementation of the Withdrawal Agreement

Part one of the withdrawal agreement sets out common provisions. Within this, article 4 provides that the provisions of the withdrawal agreement and the provisions of EU law made applicable by the withdrawal agreement “shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the [European] Union and its member states”. Article 4 also states that legal and natural persons shall be able to rely directly on provisions contained or referred to in the withdrawal agreement which meet the conditions for direct effect under EU law. Article 4(2) creates an obligation for the UK to ensure compliance with this. Article 4 also requires:

- The disapplication of provisions of domestic law which are incompatible with the withdrawal agreement; and
- Provisions of the withdrawal agreement referring to EU law and its concepts to be interpreted and applied in the UK using the methods and general principles of EU law.¹⁰

Clause 5 of the bill gives effect to article 4 of the withdrawal agreement. It would insert a new section 7A into the EUWA 2018. This would provide that the rights, powers, liabilities, obligations, restrictions created or arising under the withdrawal agreement and the remedies and procedures provided for by the withdrawal agreement apply directly in domestic law.

This does not apply in relation to part four of the withdrawal agreement, so far as section 2(1) of the ECA applies in relation to that part. As explained above, part four of the withdrawal agreement establishes a transition, or implementation period. EU law would be applied in the UK for the duration of the implementation period by saving the “conduit pipe” of the ECA during the implementation period. Article 4 of the withdrawal agreement and clause 5 of the bill cover provisions of the withdrawal agreement that continue to apply after the end of the implementation period, for example provisions on citizens’ rights.

Clause 6 applies a similar approach to implementing two other separation agreements negotiated as a result of the UK’s departure from the EU:

- the EEA EFTA Separation Agreement between the UK and Norway, Iceland and Liechtenstein; and
- the Swiss Citizens’ Rights Agreement between the UK and Switzerland.

¹⁰ [Explanatory Notes](#), para 111.

It would insert a new section 7B into the EUWA 2018 to give these two agreements direct legal effect in domestic law.

Withdrawal Agreement

Article 4 provides for the methods and principles relating to the effect, implementation and application of the withdrawal agreement.

Further Information

- House of Commons Library, [‘Withdrawal Agreement Bill: Sovereignty, Special Status and the Withdrawal Agreement’](#), 22 October 2019
This briefing relates to the version of the bill introduced before the general election. Since then, clause 5 has been reworded to clarify that the new section 7A to be inserted into the EUWA 2018 will not apply to part four of the withdrawal agreement, as far as section 2(1) of the ECA still applies. References to 2019 have been updated to 2020 in clauses 5 and 6. Clause 36 mentioned in this briefing has now been renumbered to clause 38, but the wording has not changed.
- House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, pp 7–10
This report relates to the version of the bill introduced before the general election. Since then, clause 5 has been reworded to clarify that the new section 7A to be inserted into the EUWA 2018 will not apply to part four of the withdrawal agreement, as far as section 2(1) of the ECA still applies. References to 2019 have been updated to 2020 in clauses 5 and 6.
- House of Commons Library, [The UK’s EU Withdrawal Agreement](#), 11 April 2019, pp 16–17

4. Part 3: Citizens’ Rights

Part 3 (and schedules 1 and 2) of the bill relate to the implementation of the citizens’ rights provisions of the withdrawal agreement in UK domestic law. Part 3 would also make provisions for implementing the corresponding EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement.¹¹

The bill contains provisions in the following areas:

- Rights in relation to entry and residence (clauses 7–11)

¹¹ [Explanatory Notes](#), para 37.

- Recognition of professional qualifications (clause 12)
- Coordination of social security systems (clause 13)
- Non-discrimination, equal treatment and rights of workers etc (clause 14)
- Establishment of an independent monitoring authority (IMA) for the citizens' rights agreements (clause 15)¹²

Clauses 7 to 9 and 11 to 14 grant the Government delegated powers to implement provisions on citizens' rights, constrained by the terms of the withdrawal agreement.¹³ Provisions in part 3 of the bill remain substantively the same as the version of the bill introduced in the 2019 session. Some changes were made to schedule 2, which contains provisions on the establishment of the IMA. These changes included allowing for the IMA's functions to be transferred to another public authority and for the IMA to be abolished.¹⁴

Withdrawal Agreement

Provisions on citizens' rights are contained in part two, articles 9–39, of the withdrawal agreement. They are the same in the current withdrawal agreement, negotiated under Boris Johnson, as the previous agreement negotiated under Theresa May.

Further Information

- House of Commons Library, [Citizens' Rights Provisions in the European Union \(Withdrawal Agreement\) Bill 2019–20](#), 3 January 2020
- House of Commons Library, [The Progress of the EU Settlement Scheme So Far](#), 18 October 2019
- House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, pp 12–14. The committee's report was on the bill as introduced in the 2019 session. Whilst the provisions of the clauses in part 3 remained substantively the same (excepting schedule 2), changes were made to other parts of the bill when it was introduced in the 2019–20 session.

¹² The remaining clauses in part 3 (clauses 16 and 17) relate to supplemental information on the regulation-making powers in previous clauses and to interpretation.

¹³ House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, para 43. The committee's report was on the bill as introduced in the 2019 session. Whilst the provisions of the clauses in part 3 remained substantively the same (excepting schedule 2), changes were made to other parts of the bill when it was introduced in the 2019–20 session.

¹⁴ For further details see: House of Commons Library, [Citizens' Rights Provisions in the European Union \(Withdrawal Agreement\) Bill 2019–20](#), 3 January 2020, section 2.7.

- Department for Exiting the European Union, [Citizens' Rights](#), 19 December 2019
- Department for Exiting the European Union, [Independent Monitoring Authority for the Citizens' Rights Agreements](#), 19 December 2019
- Department for Exiting the European Union, [EEA EFTA Separation Agreement](#), 19 December 2019
- Department for Exiting the European Union, [Swiss Citizens' Rights Agreement](#), 19 December 2019

5. Part 4: Other Subject Areas

5.1 Other Separation Issues

Clause 18 would insert a new section 8B in the EUWA 2018. This would create a regulation-making power for ministers to implement part three of the withdrawal agreement and part 3 of the EEA EFTA Separation Agreement (subject to certain restrictions). Part three of the withdrawal agreement covers separation issues, such as those relating to the continuing circulation of goods on the market. The House of Lords Constitution Committee has explained that this is part of part three's aim to ensure an orderly transition across 13 such areas:

It aims to provide a technical basis for winding down ongoing processes and arrangements for cooperation in areas such as customs procedures, VAT and excise duty matters, intellectual property, police and judicial cooperation etc.¹⁵

Clause 19 of the bill would insert a new part 1B into schedule 2 of the EUWA 2018 to give a corresponding power to devolved authorities to implement part three of the withdrawal agreement when acting within their devolved competence.

Withdrawal Agreement

Clauses 18 and 19 provide regulation-making powers to UK ministers and to the devolved authorities to implement part three of the withdrawal agreement. Part three consists of articles 40 to 125.

¹⁵ House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, para 57.

Further Information

- House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, pp 15–16
- House of Commons Library, [The UK's EU Withdrawal Agreement](#), 11 April 2019, pp 25–50
This briefing was published on the previous withdrawal agreement as negotiated by Theresa May, however, part 3 remains the same as the current withdrawal agreement as negotiated by Boris Johnson.
- Department for Exiting the European Union, [Other Separation Issues](#), 19 December 2019

5.2 Financial Provision

Clause 20 of the bill provides for payments to be made to the EU by the UK for the purposes of complying with any withdrawal agreement obligations.¹⁶ The explanatory notes to the bill explain that clause 20(1) provides that the authority to make payments is in the form of a standing service provision from the consolidated fund (or from the national loans fund). However, under clause 20(2) this authority will cease on 31 March 2021 (with the exception of sums relating to the traditional own resources of the EU).¹⁷ The bill as introduced in the 2019 session contained a provision for this date to be amended by regulations. This provision was not included in the version introduced in the 2019–20 session.

Withdrawal Agreement

The provisions on the financial settlement are found in part five of the withdrawal agreement, which consists of articles 133 to 157.

Further Information

- House of Commons Library, [Withdrawal Agreement Bill: The Financial Settlement](#), 6 January 2020
- House of Commons Library, [Brexit: The Financial Settlement](#), 19 December 2019
- Department for Exiting the European Union, [Finance Authority](#), 19 December 2019

¹⁶ [Explanatory Notes](#), para 236.

¹⁷ *ibid*, para 238. Under clause 21(7) “traditional own resources of the EU” means the EU’s traditional own resources referred to in article 2(1)(a) of the Council Decision of 26 May 2014 on the system of own resources of the European Union (2014/335/ EU, Euratom).

5.3 Ireland/Northern Ireland Protocol

The protocol on Ireland/Northern Ireland in the current withdrawal agreement is fundamentally different to that negotiated by Theresa May's government. The protocol no longer contains provisions for a 'backstop' insurance policy at the end of the implementation period. In summary, these would have provided that Northern Ireland and the rest of the UK would have remained in a customs union with the EU on all goods (excluding fish). The EU's rules on state aid and competition law would also have applied to the UK (so-called 'level playing field provisions'). Northern Ireland would have had to follow certain EU regulations on VAT, agriculture, the environment and the EU's customs code. The backstop would have continued until a future relationship that could prevent a hard border was agreed to replace it.¹⁸

The new protocol removes the provisions on the backstop and replaces them with new provisions in the following areas:

- **Customs:** The revised protocol no longer contains provisions for the whole of the UK to remain in a customs union with the EU. It does contain provisions requiring Northern Ireland to apply the EU's customs code to all goods entering the country.¹⁹ Under article 4, Northern Ireland would remain part of the customs territory of the UK and therefore able to benefit from future free trade agreements (FTAs) that the UK may enter into.²⁰ The European Commission has explained that the application of the customs code in Northern Ireland would avoid "any customs checks and controls on the island of Ireland".²¹
- **Single market provisions:** Northern Ireland would remain aligned to a subset of the EU's single market rules to prevent the need for a hard border, including legislation on goods; sanitary and phytosanitary rules; rules on agricultural production/marketing; VAT and excise in respect of goods; and state aid rules.²²
- **VAT:** Northern Ireland would continue to apply the EU's VAT rules for goods. VAT exemptions and reduced rates that are applied in Ireland could also be applied in Northern Ireland.
- **Protecting the UK's internal market:** Article 6 of the revised protocol contains provisions on the protection of the

¹⁸ For a more detailed explanation of the backstop, see: House of Commons Library, [The UK's EU Withdrawal Agreement](#), 11 April 2019; and [The Backstop Explained](#), 12 December 2018.

¹⁹ European Commission, [Brexit: What Did You Agree With the UK Today?](#), 17 October 2019.

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

UK's internal market. These include that nothing in the protocol could prevent the UK from ensuring unfettered access for goods moving from Northern Ireland to other parts of the UK.

- **Consent mechanism:** The application of the protocol would be subject to a consent mechanism provided for in article 18. This would be engaged four years after the end of the transition period (the transition period plus four years is referred to as the 'initial period'). Two months prior to the end of the initial period the UK must seek the democratic consent of Northern Ireland for the continuation of articles 5 to 10 of the protocol. Article 18(2) of the protocol states that this must be "strictly in accordance" with the unilateral declaration made by the UK Government concerning the operation of the consent mechanism.²³

Clauses 21 to 24 (and schedule 3) of the bill contain provisions related to the implementation of the Ireland/Northern Ireland protocol of the withdrawal agreement in UK domestic law in the following areas:

- Clause 21 would insert a new section 8C into the EUWA 2018 to create a regulation-making power to implement the protocol in UK law (the clause is referred to under the bill as the "main power in connection with Ireland/Northern Ireland protocol").²⁴ The regulation-making powers in new section 8C(1) would be able to make any provision that could be made by an act of parliament (including modifying the Act itself).²⁵ New section 8C(3) states that these regulations may (among other things) make provision to facilitate access to the market within Great Britain of qualifying Northern Ireland goods. In the version of the bill introduced in the 2019 session, new section 8C(6) stated that a minister would have to define 'qualifying Northern Ireland goods' in regulations. It now states that they may define them in regulations. Wording in clause 21(7) was changed from "relating to the protocol" to "applying the protocol".²⁶ Clause 21(7) defines the protocol for the purposes of clause 21.
- Clause 22 would create a corresponding power to allow devolved authorities to make regulations implementing the protocol in areas of devolved competence.²⁷ Clause 22 would insert a new part 1C into schedule 2 of the EUWA 2018.

²³ Department for Exiting the European Union, [Declaration by Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland Concerning the Operation of the 'Democratic Consent in Northern Ireland' Provision of the Protocol on Ireland/Northern Ireland](#), 17 October 2019.

²⁴ [Explanatory Notes](#), para 245.

²⁵ New section 8C(2).

²⁶ A similar change was made to the wording in provisions inserting a new paragraph 11M(8) into schedule 2 of the EUWA 2018 by clause 22.

²⁷ [Explanatory Notes](#), para 252.

- Clause 23 references schedule 3, which would make provisions to comply with article 2 of the protocol. This requires that the UK shall ensure that the UK’s withdrawal from the EU does not result in a diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Belfast/Good Friday Agreement entitled ‘rights, safeguards and equality of opportunity’. This includes in the area of protection against discrimination as found in the provisions of EU law listed in annex I to the protocol.
- Article 11(1) of the protocol states that the protocol should be implemented and applied to maintain continued North-South cooperation in a range of areas. Article 11(2) instructs the joint committee to keep under review the extent to which the protocol does this.²⁸ The committee may make appropriate recommendations to the EU and to the UK in this regard. Clause 24 would amend section 10 of the EUWA 2018 to clarify that a minister of the crown may not agree to the making of a recommendation by the joint committee under article 11(2) of the protocol in relation to recommendations as to North-South cooperation which would have the effect of:²⁹
 - a) altering the arrangements of North-South cooperation as provided for by the Belfast (Good Friday) Agreement 1998;
 - b) establishing new implementation bodies; or
 - c) altering the functions of an existing implementation body.

Writing following the introduction of the new version of the bill, the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) described new section 8C(2) as a “potent form” of Henry VIII clause.³⁰ The committee argued that even if the House accepted there was a good reason for this power, it should be limited. The committee recommended that the bill should spell out the purposes for the power “rather than leaving the matter at large”.³¹ The committee also drew attention to the fact that new section 8C lacked a restriction found in other similar provisions.³² This restriction would prevent the power from being used to:

- impose or increase taxation or fees;
- make retrospective provision;

²⁸ Under article 164 of the withdrawal agreement, a joint committee would be established and co-chaired by the EU and the UK. It would be responsible for the implementation and application of the agreement.

²⁹ [Explanatory Notes](#), para 265.

³⁰ House of Lords Delegated Powers and Regulatory Reform Committee, [European Union \(Withdrawal Agreement\) Bill](#), 9 January 2020, HL Paper 3 of session 2019–20, para 18.

³¹ *ibid*, para 21.

³² Such as section 8(7) of the EUWA 2018 and in new section 8B(5) which would be inserted into the EUWA 2018 by clause 18 of the bill.

- create a relevant criminal offence (ie with a penalty exceeding two years imprisonment);
- establish a public authority;
- amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it; or
- amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998.

The committee questioned why new section 8C lacked these restrictions and said that “the House may wish therefore to seek a justification from the minister for this difference in approach”.³³ At the bill’s committee stage, the SNP introduced amendment 10 which would have added these restrictions to new section 8C. Amendment 10 was defeated on division by 340 votes to 262.³⁴ For further details see section 7.2 of this briefing.

Withdrawal Agreement

The Ireland/Northern Ireland protocol in the withdrawal agreement consists of 19 articles and 7 annexes.

Further Information

- House of Commons Library, [Withdrawal Agreement Bill: The Protocol on Ireland/Northern Ireland](#), 23 October 2019
- House of Commons Library, [The October 2019 EU UK Withdrawal Agreement](#), 18 October 2019, pp 28–56
- House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, pp 18–21
The committee’s report was on the bill as introduced in the 2019 session. Whilst the provisions of the clauses 21 to 24 remained substantively the same (excepting changes to new section 8C(6)), changes were made to other parts of the bill when it was introduced in the 2019–20 session.
- Department for Exiting the European Union, [Northern Ireland](#), 20 December 2019

³³ House of Lords Delegated Powers and Regulatory Reform Committee, [European Union \(Withdrawal Agreement\) Bill](#), 9 January 2020, HL Paper 3 of session 2019–20, para 23.

³⁴ *ibid*, cols 441–5.

5.4 Relationship to the European Union (Withdrawal) Act 2018

Retention of Retained EU Law at End of Implementation Period

Sections 2 to 4 of the EUWA 2018 ensure that EU-derived domestic legislation, direct EU legislation and certain other EU rights and obligations will be preserved in domestic law on exit day, with certain exceptions. This would create a new category in domestic law, of 'retained EU law'. Clause 25 would amend these provisions of the EUWA 2018 so that the incorporation of EU law into domestic law takes place on 'IP [implementation period] completion day' (31 December 2020) rather than 'exit day' (31 January 2020).

Clause 25 would also amend the EUWA 2018 to clarify that there is a legal distinction between provisions of direct EU legislation, provisions of the EEA agreement and remaining EU rights and obligations that are:

- preserved in domestic law by sections 2 to 4 of the EUWA 2018; and
- given domestic legal effect through new sections 7A and 7B of the EUWA 2018.

New section 7A would be added to the EUWA 2018 by clause 5 of the bill. It would make the rights and obligations in the withdrawal agreement directly available in domestic law. New section 7B would perform a similar function for the rights and obligations contained in the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement. These provisions would enable the Government to implement the UK's obligations under these international agreements. In contrast, the Government has chosen to adopt the approach of retaining EU law under sections 2 to 4 of the EUWA 2018 to ensure that there are not gaps in the domestic statute book at the end of the implementation period.

Further Information

- House of Commons Library, [The Status of "Retained EU Law"](#), 30 July 2019

Interpretation of Retained EU Law and Relevant Separation Agreement Law

Clause 26 amends the EUWA 2018 so that its provisions on how retained EU law should be interpreted would come into force on IP completion day (31 December 2020) rather than on exit day (31 January 2020).

Clause 26 would also allow ministers to make regulations setting out when courts and tribunals could depart from ‘retained EU case law’. Retained EU case law refers to principles laid down by and decisions made by the Court of Justice of the European Union. Such regulations could only be made after consultation with specified senior members of the judiciary. The Government has said this would “restore power to UK courts”.³⁵ This provision did not appear in the previous version of the bill. Under the EUWA 2018 as it stands, only the Supreme Court and, in some cases, the Scottish High Court of Justiciary could depart from retained EU case law after Brexit.³⁶ This regulation-making power would cease at the end of the implementation period.

Clause 26 would also amend the EUWA 2018 to provide that any question concerning the validity, meaning or effect of any relevant separation law is to be decided in accordance with the withdrawal agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement. In deciding such questions, the courts should regard the desirability of interpreting corresponding provisions consistently across all the agreements.

Dealing with Deficiencies in Retained EU Law

Section 8 of the EUWA 2018 gives ministers the power to make regulations to prevent, remedy or mitigate ‘deficiencies’ in retained EU law arising from the UK’s withdrawal from the EU. During the passage of the EUWA 2018, this was sometimes referred to as the “correcting power”. Clause 27 of the bill would amend the EUWA 2018 to extend the scope of this power. Ministers would also be able to use it to correct ‘deficiencies’ arising from the end of the implementation period or any other effect of the withdrawal agreement. The duration of the power would also be extended, so it would be available for two years after the end of the implementation period. Currently, the power to make new regulations under section 8 of the EUWA 2018 expires two years after exit day.

In its interim report on the previous version of the bill, the House of Lords Constitution Committee found that clause 27 would insert “vague and potentially important new categories of deficiencies” that would trigger the “broad ministerial powers”. The committee recalled that the power in section 8 had been “at the heart of the concerns” it expressed during the passage of the EUWA 2018. It found the Government had not sufficiently justified why these powers should now be expanded.³⁷

³⁵ Prime Minister’s Office, ‘[PM: “Brexit Vote Wrapped Up for Christmas”](#)’, 20 December 2019.

³⁶ European Union (Withdrawal) Act 2018, section 6(4).

³⁷ House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, p 22.

Ancillary Fee-charging Powers

Schedule 4 of the EUWA 2018 gives the Government and devolved authorities a power to make secondary legislation to enable public authorities to charge fees and other charges where the public authority has a new function arising from the use of the “correcting power” in section 8 or the devolved authorities’ equivalent power. Clause 28 would extend this to allow public authorities to charge fees if they had been given new functions:

- to implement the other separation provisions of the withdrawal agreement (under new section 8B of the EUWA 2018 or the equivalent powers for the devolved authorities); or
- to implement the Ireland/Northern Ireland protocol (under new section 8C of the EUWA 2018 or the equivalent powers for the devolved authorities).

5.5 Parliamentary Oversight

Review of EU Legislation during Implementation Period

Clause 29 sets out arrangements relating to the scrutiny of new EU legislation that is made or may be made during the implementation period. Although the UK would not formally be a member of the EU during the implementation period, new EU legislation made during the implementation period could affect the UK. Article 127 of the withdrawal agreement provides that: “unless otherwise provided in this agreement, Union law shall be applicable to and in the United Kingdom during the transition period”. Under clause 25 of the bill, direct EU legislation that was operative in the UK immediately before the end of the implementation period would form part of domestic law thereafter.

Clause 29 would insert a new section 13A into the EUWA 2018 that would allow the House of Commons European Scrutiny Committee (ESC) to trigger a debate in the Commons and the House of Lords European Union Committee to trigger a debate in the Lords, if:

- The relevant committee published a report stating the committee’s opinion that EU legislation made or to be made during the implementation period “raises a matter of vital national interest to the United Kingdom”;
- The committee had taken evidence as to the effect of the EU legislation, and, in the case of the ESC, had consulted relevant departmental select committees;
- The committee report sets out the wording of a motion for debate.

Clause 29 would oblige the Government to make arrangements for the motion to be debated in the relevant House within 14 sitting days.

The previous version of the bill introduced in the short 2019 session did not include any provision for the European Union Committee to trigger a debate in the Lords. Both the European Union Committee itself and the Lords Constitution Committee highlighted this omission.³⁸ Both these committees also pointed out that prescribing committee procedure in statute, rather than in standing orders or resolutions of each House, was unusual. The European Union Committee thought that some might find this innovation “concerning”.

Further Information

- House of Commons European Scrutiny Committee, [Post-Brexit Scrutiny of EU Law and Policy](#), 5 November 2019, HC 17 of session 2019; and associated [inquiry page](#)

Certain Dispute Procedures under Withdrawal Agreement

Title III of part six of the withdrawal agreement contains articles on dispute settlement. Article 169 states that any dispute relating to the interpretation and application of the agreement should be resolved in consultation between the EU and the UK in the joint committee. Should either the EU or the UK wish to start this consultation process they must do so by providing written notice to the joint committee. If no resolution has been reached after three months then, under article 170, the EU or the UK may request that an arbitration panel be established.

Clause 30 of the bill would insert a new section 13B into the EUWA 2018. New section 13B(2) would provide that should a request be made under article 170 to establish an arbitration panel, then a minister of the crown has 14 sitting days³⁹ to make a written statement to both Houses providing details of the issue. Under article 174(1), where a dispute submitted to arbitration raises a question of interpretation of a concept of Union law, a question of interpretation of a provision of Union law referred to in the agreement or a question of whether the United Kingdom has complied with its obligations under article 89(2), the arbitration panel shall not decide on it.⁴⁰ Instead the arbitration panel must request the Court of Justice of the

³⁸ House of Lords European Union Committee, ‘[Letter from Lord Kinnoull to Baroness Evans of Bowes Park ref the European Union \(Withdrawal Agreement\) Bill](#)’, 4 November 2019; and House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, p 23.

³⁹ The 14-day period begins with the day on which the request was made.

⁴⁰ Article 89(1) states that: “judgments and orders of the Court of Justice of the European Union handed down before the end of the transition period, as well as such judgments and orders handed down after the end of the transition period in proceedings referred to in

European Union (CJEU) to give its ruling on the question. The CJEU has the jurisdiction to make such a ruling be binding on the arbitration panel. In a case where the CJEU has made a ruling under article 174(1), under new section 13B(4), a minister of the crown has 14 sitting days⁴¹ to make a written statement to each House that such a ruling has been made and setting out the details. Section 13B would also create a yearly reporting requirement starting with the day on which IP completion day falls. These reports must set out the number of times within the reporting period that a written request was made under article 169(1).

Withdrawal Agreement

Provisions on the dispute settlement process are contained in articles 167 to 181 of the withdrawal agreement.

Further Information

- House of Commons Library, [The UK's EU Withdrawal Agreement](#), 8 July 2019, pp 81–5
This briefing discusses the provisions of title III of part six of the withdrawal agreement in further detail. It was published on the previous withdrawal agreement as negotiated by Theresa May, however title III of part six remains the same as the current withdrawal agreement as negotiated by Boris Johnson.

Repeal of Section 13 of EUWA 2018

Section 13 of the EUWA 2018 sets out requirements for parliamentary approval of the outcome of negotiations with the EU held under article 50. One of these requirements is that the Government cannot ratify a withdrawal agreement with the EU unless both the agreement and the framework for the future relationship have been approved by the House of Commons. This requirement is set out in section 13(1)(b). This is what is commonly referred to as the ‘meaningful vote’.⁴² Clause 31 of the bill would repeal section 13, therefore removing any requirement to comply with its provisions before the Government can ratify the withdrawal agreement.

articles 86 and 87, shall have binding force in their entirety on and in the United Kingdom”. Article 89(2) states that: “if, in a judgment referred to in paragraph 1, the Court of Justice of the European Union finds that the United Kingdom has failed to fulfil an obligation under the Treaties or this Agreement, the United Kingdom shall take the necessary measures to comply with that judgment”.

⁴¹ The 14-day period begins with the publication of the ruling in the Official Journal of the European Union.

⁴² For a more detailed explanation of the requirements of section 13 of the European Union (Withdrawal) Act 2018, see: House of Lords Library, [Brexit: Further Recent Developments](#), 21 March 2019.

Requirements in Part 2 of Constitutional Reform and Governance Act 2010

The Constitutional Reform and Governance Act 2010 (CRAG) contains requirements about Parliament's role in scrutinising treaties before they can be ratified.⁴³ Under section 20, the Government must lay a copy of a new treaty before Parliament and a period of 21 sitting days must elapse without either House resolving against ratifying the treaty. Under further provisions of CRAG this can be repeated indefinitely in theory if the Commons keeps resolving against the treaty. Under exceptional circumstances, the Government can ratify a treaty without waiting for 21 sitting days, but not if either House has already resolved against ratifying the treaty. Clause 32 of the bill would provide that section 20 of CRAG does not apply in relation to the ratification of the withdrawal agreement. However, section 20 of CRAG could apply to modifications of the agreement in the future.

5.6 Other Matters

Prohibition on Extending Implementation Period

Article 126 of the withdrawal agreement states that the “transition or implementation period” shall end on 31 December 2020. The Government prefers to use the term “implementation period”, while the EU uses the term “transition period”. Article 132 of the withdrawal agreement provides that the joint committee may, before 1 July 2020, adopt a single decision extending the transition period for up to one or two years.

Clause 33 of the bill would insert a new section 15A in the EUWA 2018 preventing ministers agreeing in the joint committee to an extension of the implementation period. The Conservative Party stated in its general election manifesto that it would not extend the implementation period beyond December 2020.⁴⁴

Under the previous version of the bill introduced in the short 2019 session, ministers could have agreed to extend the implementation period if the House of Commons approved it. The House of Lords European Committee called for Parliament to have a larger role in the decision about extending the implementation period than it was given by the previous version of the bill:

[...] it is unclear why Parliament's role is restricted to approving a decision to seek an extension, when a decision by the Government not

⁴³ For a more detailed explanation of the requirements of the Constitutional Reform and Governance Act 2010, see: House of Lords Library, [Brexit: Further Recent Developments](#), 21 March 2019.

⁴⁴ Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 5.

to seek an extension could have equally profound implications for the United Kingdom. We therefore welcome the statement by the Lord Chancellor, Rt Hon Robert Buckland MP, in responding to the second reading debate [of the previous version of the bill] on 22 October, that the Government will bring forward an amendment “that would allow Parliament to have its say on the merits of an extension of the implementation period”, and that the Government “will abide by” the result. Parliament should have a role in approving the Government’s decision whether or not to seek an extension to the transition period, and we look forward to seeing the Government’s proposals to give effect to the commitments made by the Lord Chancellor on 22 October.⁴⁵

By prohibiting ministers from agreeing to an extension of the implementation period, the new bill removes any role for Parliament in making this decision.

If there is no trade agreement in place by the end of the implementation period, then UK-EU trade would take place on World Trade Organisation terms from January 2021.

Further Information

- House of Commons Library, [The UK’s EU Withdrawal Agreement](#), 11 April 2019, pp 60–2 (on duration and extension of the transition period)
- House of Commons Library, [The October 2019 EU-UK Withdrawal Agreement](#), 18 October 2019, pp 24–5

Ministerial Co-chairs of the Joint Committee

Clause 34 would insert a new section 15B into the EUWA 2018. This would provide that the function of the UK’s co-chair of the joint committee under annex VIII of the withdrawal agreement could only be exercised personally by a minister of the crown. Only ministers of the crown could be designated as replacements.

No Use of Written Procedure in the Joint Committee

Clause 35 would insert a new section 15C into the EUWA 2018. This would provide that the UK’s co-chair of the joint committee could not consent to the joint committee using the written procedure as provided for under

⁴⁵ House of Lords European Union Committee, ‘[Letter from Lord Kinnoull to Baroness Evans of Bowes Park ref the European Union \(Withdrawal Agreement\) Bill](#)’, 4 November 2019.

rule 9(1) of annex VIII of the withdrawal agreement. This would mean that joint committee recommendations and decisions could only be agreed by the minister in person.⁴⁶

Repeal of Unnecessary or Spent Enactments

Clause 36 would repeal a number of enactments that were passed in the previous parliament that the Government now describes as “spent or unnecessary”.⁴⁷ This would include for example:

- Section 9 of the EUWA 2018. Section 9 provides ministers of the crown powers to make secondary legislation in order to implement the withdrawal agreement. This provision is no longer required because the bill is being used to implement the withdrawal agreement in UK domestic law.⁴⁸
- Section 19 of the EUWA 2018. Section 19 provides that nothing in the EUWA 2018 shall prevent the UK from replicating in its domestic law any EU law made on or after exit day, or prevent it from continuing to participate in, or have a formal relationship with, the agencies of the EU after exit day. The explanatory notes to the bill state that the provisions have “no legal effects in practice” and so are being repealed.⁴⁹
- The European Union (Withdrawal) Act 2019, also referred to as the Cooper-Letwin Act.
- The European Union (Withdrawal) (No. 2) Act 2019, also referred to as the Benn Act.

Arrangements with EU about Unaccompanied Children Seeking Asylum

Under section 17 of the EUWA 2018, the Government must seek to negotiate an agreement with the EU under which unaccompanied asylum-seeking children in the EU would be able to join relatives lawfully resident in the UK and vice versa. This provision was added to the EUWA 2018 as a result of a Lords amendment originally moved by Lord Dubs (Labour), although the final text of the EUWA 2018 reflects further amendments made by the Commons before the Act received royal assent.⁵⁰

Under clause 37 of the present bill, the Government would no longer be obliged to try to negotiate such an arrangement. Instead, it would have to lay

⁴⁶ [Explanatory Notes](#), para 62.

⁴⁷ *ibid*, para 327.

⁴⁸ *ibid*, para 328.

⁴⁹ *ibid*, para 330.

⁵⁰ For further details, see: House of Lords Library, [European Union \(Withdrawal\) Bill: Lords Report Stage](#), 14 May 2018, pp 59–62; and [European Union \(Withdrawal\) Bill: Commons Consideration of Lords Amendments](#), 15 June 2018, pp 12–15.

before Parliament a statement of policy in relation to future arrangements between the UK and the EU about unaccompanied asylum-seeking children. It would have to do this within two months of the bill receiving royal assent. This provision was not in the previous version of the bill introduced in the short 2019 session.

Further Information

- House of Commons Library, '[Family Reunion Rights and the EU \(Withdrawal Agreement\) Bill](#)', 23 December 2019
- House of Lords European Union Committee, '[Brexit: Refugee Protection and Asylum Policy](#)', 11 October 2019, HL Paper 428 of session 2017–19

6. Part 5: General and Final Provision

6.1 Parliamentary Sovereignty

Clause 38 states that: “it is recognised that the Parliament of the United Kingdom is sovereign”. Subsection 2 specifies that this is the case notwithstanding those provisions of the bill that provide for the direct application of the withdrawal agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement. Clause 38(3) states that: “nothing in this Act derogates from the sovereignty of the Parliament of the United Kingdom”. The Government has stated that this clause “acknowledges the pre-existing legal position as regards parliamentary sovereignty”.⁵¹

In its interim report on the previous version of the bill introduced in the short 2019 session, the House of Lords Constitution Committee said it intended to consider the effects and implications of this clause in more detail in a subsequent report.⁵²

Further Information

- House of Commons Library, '[Withdrawal Agreement Bill: Sovereignty, Special Status and the Withdrawal Agreement](#)', 22 October 2019 (see paragraphs on clause 36—this is now clause 38 in the current bill, but the wording of the clause has not changed)

⁵¹ [Explanatory Notes](#), para 341.

⁵² House of Lords Constitution Committee, '[European Union \(Withdrawal Agreement\) Bill: Interim Report](#)', 5 November 2019, HL Paper 21 of session 2019, p 25. The clause was numbered as clause 36 in the previous version of the bill, but the wording has not changed.

6.2 Interpretation

Clause 39 sets out the definitions for certain terms used in the bill.

Clause 39 defines “IP completion day”, ie the end-point of the implementation period, as 11pm on 31 December 2020. It contains provisions for ministers to modify this only if changes to the EU’s summer time arrangements mean that the implementation period will end under the withdrawal agreement at a different day or time. The previous version of the bill introduced before the general election would have allowed the date of IP completion day to be changed if the joint committee decided to extend the implementation period. Clause 33 in the current bill would prevent ministers from agreeing to an extension.

6.3 Supplementary and Final Provisions

Clause 40 introduces schedule 4. Schedule 4 contains provisions about the parliamentary procedure to be used for regulations under the various powers in the bill, and general provisions about the scope and nature of those powers. In its interim report on the previous version of the bill introduced before the general election, the Constitution Committee noted that:⁵³

- the standard test for the use of the powers across the bill was “appropriateness” rather than “necessity”;
- the default scrutiny procedure for instruments not amending primary legislation or retained EU law is the negative procedure;
- there is no sifting procedure adopted in respect of the instruments that would be made exclusively under the provisions of the bill; and
- in some cases, “it is not clear” that the sifting procedure established under the EUWA 2018 would apply to instruments made under powers inserted by the bill into the EUWA 2018.

Since the committee report, the number of the schedule in the new bill, and the numbering of some of the clauses cross-referenced within it, has changed, but the provisions of the schedule have not substantively changed.⁵⁴

Writing following the introduction of the new version of the bill, the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC)

⁵³ House of Lords Constitution Committee, [European Union \(Withdrawal Agreement\) Bill: Interim Report](#), 5 November 2019, HL Paper 21 of session 2019, pp 25–6.

⁵⁴ The schedule has been redrafted to reflect the fact ministers could only use the power to change the definition of IP completion day if it changes because of changes to the EU’s summer time arrangements.

recommended that a sifting mechanism, along the lines of the one established under the EUWA 2018, should apply to instruments laid under the bill that do not otherwise qualify for the affirmative procedure.⁵⁵ The committee said this would allow a sifting committee to recommend an upgrade to the affirmative procedure for regulations that are significant but do not happen to modify primary legislation or retained direct principal EU legislation.

Clause 41 provides for consequential and transitional provisions. The power to make consequential provision could not be used to modify primary legislation passed or made after IP completion day. Clause 41 also gives effect to schedule 5, which contains a range of consequential, transitional, transitory and saving provisions.

The DPRRC recommended that where regulations under clause 41(1) modify primary legislation or retained direct principal EU legislation, the affirmative procedure should apply.⁵⁶

Clause 42 sets out the territorial extent of the bill. The bill extends to the whole of the UK. In addition, repeals and amendments made by the bill have the same territorial extent as the legislation they are repealing or amending. For example, the saving of the European Communities Act 1972 in clause 1 will extend to Gibraltar, the Channel Islands and the Isle of Man.⁵⁷ Clause 42 also sets out which provisions of the bill would come into force on the day it receives royal assent. The remainder would be brought into force later by commencement regulations.

7. Proceedings in the House of Commons

7.1 Second Reading

The European Union (Withdrawal Agreement) Bill passed its second reading in the House of Commons on 20 December 2019 by 358 votes to 234.⁵⁸ A programme motion for the bill was agreed by 353 votes to 243.⁵⁹

⁵⁵ House of Lords Delegated Powers and Regulatory Reform Committee, [European Union \(Withdrawal Agreement\) Bill](#), 9 January 2020, HL Paper 3 of session 2019–20, p 5. For a description of the sifting mechanism under the EUWA 2018, see: House of Commons Library, [The European Union \(Withdrawal\) Act 2018: Scrutiny of Secondary Legislation \(Schedule 7\)](#), 9 July 2018.

⁵⁶ House of Lords Delegated Powers and Regulatory Reform Committee, [European Union \(Withdrawal Agreement\) Bill](#), 9 January 2020, HL Paper 3 of session 2019–20, p 4.

⁵⁷ [Explanatory Notes](#), para 70.

⁵⁸ [HC Hansard, 20 December 2019, cols 217–21](#).

⁵⁹ *ibid*, cols 223–6.

At the bill's second reading, the Prime Minister stated that the bill would reject "any further delay" in the UK withdrawing from the EU.⁶⁰ He said that it would prevent an extension of the implementation period and pave the way for a future relationship with the EU based on an "ambitious free trade agreement".⁶¹ The Prime Minister said that there would be no alignment with EU rules but argued that the UK would have control of its own laws "and close and friendly relations [with the EU]".⁶²

Responding for Labour, Jeremy Corbyn, said that his party recognised the outcome of the general election and that it understood what he described as the public's "determination to end the never-ending cycle of the Brexit debate".⁶³ He argued that the decision of the 2016 referendum should be respected. Mr Corbyn said that whilst accepting this, Labour believed that the new withdrawal agreement was "still a terrible deal" for the UK and that it would not be supporting the bill. Mr Corbyn expressed concern that the bill's provisions preventing the UK Government from agreeing to an extension of the implementation period would "hard-wire" the risk of a no-deal scenario in 2020. He also criticised the removal of provisions on workers' rights from the bill.⁶⁴ Mr Corbyn argued that if the Prime Minister wanted to assure people on the issue of workers' rights the Government should put a commitment within the bill.⁶⁵ He also described the amendment of section 17 of the EUWA 2018 concerning unaccompanied asylum-seeking children, through clause 37 of the bill, as "appalling".⁶⁶ On the bill's provisions implementing the withdrawal agreement's Ireland/Northern Ireland protocol, Mr Corbyn argued that it would lead to an "abundance of checks and customs declarations in the Irish Sea".⁶⁷

The Scottish National Party's (SNP) Leader in the House of Commons, Ian Blackford, argued that including a prohibition on the Government agreeing to extending the transition period was a "matter of politics".⁶⁸ He asserted that "if the Government can legislate for that today, they can equally legislate to remove that burden before the end of 2020". He described the bill as "flawed and deeply damaging" and said that the SNP would not be supporting it.

⁶⁰ [HC Hansard, 20 December 2019, col 147.](#)

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ *ibid.*, col 151.

⁶⁴ As compared with the version of the bill passed by the Commons at second reading in the 2019 session on 22 October 2019.

⁶⁵ [HC Hansard, 20 December 2019, col 151.](#)

⁶⁶ *ibid.*, col 152. Under the EUWA 2018, the Government must seek to negotiate an agreement with the EU under which unaccompanied asylum-seeking children in the EU would be able to join relatives lawfully resident in the UK and vice versa. Under the new bill, the Government would no longer be obliged to try to negotiate such an arrangement.

⁶⁷ [HC Hansard, 20 December 2019, col 153.](#)

⁶⁸ *ibid.*, col 155.

7.2 Committee Stage

The bill was considered by a committee of the whole House on 7 and 8 January 2020. No amendments were made.

Details of the amendments that were put to a division are given below. This section does not cover all those amendments that were debated at committee stage but not voted on.

New Clause 5: Citizens' Rights

New clause 5 was defeated on division by 342 votes to 252.⁶⁹ New clause 5 was an opposition amendment, supported by Liberal Democrat MPs and the Green Party.

Article 18 of the withdrawal agreement relates to the issuance of residence documents. The withdrawal agreement allows for states to implement either one of two types of scheme for persons to access their rights under title II of the agreement. Article 18(1) allows host states to require qualifying persons to apply for a new residence status in order to access their rights under title II of the agreement. Where states have chosen not to do this, under 18(4) those eligible for residence rights under title II shall have the right to receive “a residence document, which may be in a digital form, that includes a statement that it has been issued in accordance with this agreement”.⁷⁰ The UK Government’s EU settlement scheme is a system that requires people to register for a new residence status.

Amongst the new clause’s provisions, new clause 5(3)(a) would have required the secretary of state to implement article 18(4) by regulations and to ensure that the residence document was provided in a physical format.⁷¹ New clause 5(4) would have provided that EU, Icelandic, Norwegian, Liechtenstein or Swiss nationals⁷² resident in the UK immediately prior to the end of the implementation period could not be required to apply for a new residence status under Article 18(1) of the withdrawal agreement. It would have also prohibited the Government from introducing a deadline for applications under residence scheme immigration rules or relevant entry clearance rules.

⁶⁹ [HC Hansard, 7 January 2020, cols 339–43.](#)

⁷⁰ Withdrawal Agreement, article 18(4).

⁷¹ New clause 5(3)(b) and (c) would have made similar provision regarding the EEA EFTA separation agreement and the Swiss citizens’ rights agreement.

⁷² Or their family members.

The member's explanatory statement explained the effect of new clause 5 as follows:

This new clause provides for all EU citizens who are resident in the UK before exit day to have the right of permanent residence, whether or not they have been exercising treaty rights, and makes sure that every person who is entitled to settled status has the same rights.⁷³

Speaking to the amendment, Paul Blomfield, Shadow Minister for Exiting the European Union, said that getting the issue of citizens' rights wrong would have a significant impact on EU citizens in the UK and Britons in Europe.⁷⁴ He argued that because people had to apply for a change of status to access their rights under the withdrawal agreement, by June 2021, this risked people not doing so and losing rights. Mr Blomfield said that whilst he believed that many people would apply before the deadline not everybody would. He argued that certain groups were at a higher risk of not registering, including older people, children in care, those with lower language skills and non-EEA citizens who are dependent on a family member who is an EU citizen.⁷⁵ He argued that "if only 3% of the estimated 3.5 million EU nationals living in Britain fail to apply [...] it will leave 100,000 people facing a hostile environment and facing possible deportation".⁷⁶ Mr Blomfield explained that new clause 5 would provide for a declaratory settlement scheme under which those who meet the eligibility criteria would automatically have the right to continue to live and work in the UK. To prove their status they would only have to register and would not lose rights by failing to do so before the current scheme's deadline of June 2021.⁷⁷ Mr Blomfield said he believed that this would avoid a repeat of Windrush. People would be incentivised to register because without proof of their rights they would not be able to access them.⁷⁸ He argued that a declaratory scheme would also encourage EU member states to improve their own schemes for UK citizens.⁷⁹

Stuart C McDonald, SNP Spokesperson on Immigration, Asylum and Border Control, said the SNP would be supporting new clause 5 as it would make the same provisions as SNP amendments 5 and 6. Mr McDonald also supported the provision of a physical document as proof of residence. The withdrawal agreement allows for proof to be granted in a digital form. Mr McDonald argued it was a "bad choice" to go with singular digital form of proof. He questioned relying exclusively on "a piece of government digital code in an online system" as the only way of people evidencing their

⁷³ House of Commons, [Committee of the Whole House: European Union \(Withdrawal Agreement\) Bill](#), 7 January 2020, p 9.

⁷⁴ [HC Hansard, 7 January 2020, col 325](#).

⁷⁵ *ibid*, col 328.

⁷⁶ *ibid*, cols 325–6.

⁷⁷ *ibid*, col 326.

⁷⁸ *ibid*.

⁷⁹ *ibid*.

residency rights.⁸⁰

Responding for the Government, Brandon Lewis, Minister of State for the Home Office, argued that a digital status had advantages over a physical document. He said a digital status was “there for ever”, it can be accessed by employers and landlords, and it was not reliant on an individual keeping a physical document that could be stolen.⁸¹ Mr Lewis also said the Government’s plans for a new border and immigration system would be digital by default for all migrants and would, over time, replace all physical and paper-based documents.⁸² He also asserted that a declaratory scheme could lead to another Windrush:

This scheme means that people have evidence of their rights, which means that they cannot be contestable in future, avoiding that problem in the first place.⁸³

New Clause 18: British Citizenship Fees

New clause 18 was defeated on division by 341 to 255.⁸⁴ New clause 18 was an amendment tabled by the SNP.

New clause 18 related to the fee payable when registering as a British citizen. Its provisions would have applied to people covered by regulations made under clause 7 of the bill, the ‘protected cohort’.⁸⁵ Amongst its provisions, new clause 18 would have provided that:

- No person could be charged a fee higher than the cost to the secretary of state of exercising the function of registration;
- No child of a person to whom new clause 18 applied could be charged a fee if that child was receiving the assistance of a local authority; and
- No child of a person to whom new clause 18 applied could be charged a fee if the child’s parent or guardian, or carer was unable to afford the fee.

Amongst its provisions new clause 18 would have also required the secretary of state to raise awareness of people’s rights⁸⁶ under the British Nationality Act 1981 to register as British citizens.

⁸⁰ [HC Hansard, 7 January 2020, col 315](#).

⁸¹ *ibid*, col 321.

⁸² *ibid*.

⁸³ *ibid*.

⁸⁴ *ibid*, cols 344–8.

⁸⁵ The protected cohort are all those within scope of the agreements, or within scope of the UK’s domestic implementation of the agreements ([Explanatory Notes](#), para 40).

⁸⁶ Those people covered by the new clause’s provisions.

Speaking to the new clause 18, Stuart C McDonald, SNP Spokesperson on Immigration, Asylum and Border Control, argued it would help EU nationals who were eligible for British citizenship to apply for it “regardless of their ability to pay exorbitant Home Office fees”.⁸⁷ He asserted that many EU citizens would have a right to citizenship but were not able to afford the fees associated with applying.⁸⁸ Instead he argued they would have to apply for residency under the EU settlement scheme. He also said he had become aware of cases where parents had to choose which child to register as a British citizen because they could not afford to pay for all their children.⁸⁹ Mr McDonald said the provisions of new clause 18 were limited to EU citizens because of the scope of the bill.

Responding for the Government, Brandon Lewis, Minister of State for the Home Office, argued new clause 18 would lead to discrimination based on nationality by giving EU citizens preferential fees for citizenship.⁹⁰ He also argued it would “undermine” the existing legislative structure that provides for fee exceptions.⁹¹ Mr McDonald responded saying this was why new clause 18(5) would allow the Government to extend reduced rates and the waiver to other groups.⁹² Mr Lewis said that the bill was not the place to set fees as this was covered in separate legislation.⁹³

New Clause 34: Citizens’ Rights, Right of Appeal

New clause 34 was defeated on division by 343 to 251.⁹⁴ New clause 34 was a Liberal Democrat amendment supported by the Green Party.

New clause 34 would have established a right to appeal a settled status decision to the first-tier tribunal.

Christine Jardine, Liberal Democrat Spokesperson on Home Affairs, argued that the UK’s economy and demographic position demanded that the UK encouraged people to come to the UK to work and to “fill the skills gap that we see in the NHS”.⁹⁵ She explained this was why the party had tabled new clause 34. On the issue of appeals, Stuart C McDonald, SNP Spokesperson on Immigration, Asylum and Border Control, argued there should be a right of appeal on the face of the bill. Speaking for Labour on the issue of appeals, Paul Blomfield argued that the bill did not confirm the right of appeal for all applicants and he asked the minister if the rights of appeal created under the

⁸⁷ [HC Hansard, 7 January 2020, col 314.](#)

⁸⁸ *ibid*, col 317.

⁸⁹ *ibid*.

⁹⁰ *ibid*, col 324.

⁹¹ *ibid*.

⁹² *ibid*.

⁹³ *ibid*.

⁹⁴ *ibid*, cols 349–52.

⁹⁵ *ibid*, col 332.

bill would cover those who arrived under the Zambrano and Surinder Singh⁹⁶ routes.⁹⁷ Brandon Lewis, Minister of State for the Home Office, responded saying appeal rights would apply to all cases under the new settlement scheme,⁹⁸ including under Zambrano and Surinder Singh routes.⁹⁹

Mr Lewis argued new clause 34 was unnecessary. He said the regulation making powers under clause 11 of the bill would mean that EU citizens appealing a decision on residence would be able to do so under the EU settlement scheme.¹⁰⁰ He said individuals who believed that they had incorrectly been granted pre-settled rather than settled status could also appeal. He also argued that amendments to put a right of appeal on the face of the bill could do damage:

The situations requiring the right of appeal under the agreements are numerous, and the applications of existing rules relating to appeal rights are complex. Putting a right of appeal on the face of the bill would mean that none of that detail can be properly reflected.¹⁰¹

Amendment 10: Powers under Clause 21

Amendment 10 was defeated on division by 340 votes to 262.¹⁰² Amendment 10 was an SNP amendment, also supported by the Green Party.

Clause 21 would insert a new section 8C into the EUWA 2018 to create a regulation-making power to implement the protocol in UK law (the clause is referred to under the bill as the “main power in connection with Ireland/Northern Ireland protocol”).¹⁰³ The regulation-making powers in new section 8C(1) would be able to make any provision that could be made by an act of parliament (including modifying the act itself).¹⁰⁴ New section 8C(1) states that these regulations may make such provision as a minister of the crown considers appropriate:

- a) To implement the protocol on Ireland/Northern Ireland in the

⁹⁶ The UK Government website explains that: “you might be able to apply for an EEA family permit if you’ve lived in another EEA country with an eligible family member who’s a British citizen. This is known as making a ‘Surinder Singh’ application” (UK Government website, ‘[Apply for a Permit to Join Your EU or EEA Family Member in the UK](#)’, accessed 9 January 2020). A Zambrano carer is someone who is the primary carer of a British, EU, EEA or Swiss citizen (for further information see: House of Commons Library, [EU Settlement Scheme](#), 19 September 2019).

⁹⁷ [HC Hansard, 7 January 2020, col 327](#).

⁹⁸ *ibid*, col 336.

⁹⁹ *ibid*, col 337.

¹⁰⁰ *ibid*, col 323.

¹⁰¹ *ibid*.

¹⁰² *ibid*, cols 441–5.

¹⁰³ [Explanatory Notes](#), para 245.

¹⁰⁴ New section 8C(2)

- withdrawal agreement,
- b) To supplement the effect of section 7A [as inserted into EUWA 2018 by clause 5 of the bill] in relation to the protocol, or
 - c) Otherwise for the purposes of dealing with matters arising out of, or related to, the protocol (including matters arising by virtue of section 7A and the protocol).

Amongst its other provisions, new section 8C(3) states that these regulations may (among other things) make provision to facilitate access to the market within Great Britain of qualifying Northern Ireland goods.

Amendment 10 would have inserted a section 8C(8) at the end of the new section to add a range of restrictions on the regulation making power. These were that regulations made under the section could not:

- a) impose or increase taxation or fees,
- b) make retrospective provision,
- c) create a relevant criminal offence,
- d) establish a public authority,
- e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
- f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998.¹⁰⁵

The member's explanatory statement explained the effect of amendment 10 as follows:

This amendment would apply the usual restrictions on Ministers' delegated power to make regulations under the Government's proposed new section 8C of the European Union (Withdrawal) Act 2018.¹⁰⁶

Speaking to the amendment, Joanna Cherry, SNP Justice and Home Affairs Spokesperson, questioned why very similar restrictions found in clause 18,¹⁰⁷ were not also found in clause 21.¹⁰⁸ She argued that this meant the powers under clause 21 were not similarly restricted, and so could be used to "impinge" on the devolved settlements of Scotland and Wales. In the absence of these restrictions, Dr Philippa Whitford, Shadow SNP Westminster Group Leader (Health), asked what changes the Government felt would be needed in the Scotland Act in order to meet aspects of the

¹⁰⁵ House of Commons, [Committee of the Whole House: European Union \(Withdrawal Agreement\) Bill](#), 8 January 2020, p 6.

¹⁰⁶ *ibid*, p 7.

¹⁰⁷ Which would insert a new section 8A into the EUWA 2018 to provide the main power for making regulations in regard to other separation issues.

¹⁰⁸ [HC Hansard, 8 January 2020, col 412.](#)

Ireland/Northern Ireland protocol.¹⁰⁹

Responding to amendment 10, Robin Walker, Parliamentary Under Secretary of State at the Northern Ireland Office, argued the amendment would inhibit the Government’s ability to implement part three of the withdrawal agreement and the protocol.¹¹⁰ In particular, he said that it would inhibit legislating for the consent mechanism and the provision of unfettered access. He stated that any amendments to primary legislation made through clauses 18 to 21 of the bill would have to be actively approved by Parliament. Mr Walker also said that the Government had no plans to change the devolution settlements.

Amendment 4: Arrangements with EU about Unaccompanied Children Seeking Asylum

Labour’s amendment 4 was defeated by 348 votes to 252.¹¹¹ It would have retained the existing obligation in the EUWA 2018 for the Government to seek to negotiate an arrangement with the EU under which such children in the EU would be able to join relatives lawfully resident in the UK and vice versa. The amendment would also have required the Government to report regularly to the House of Commons on the progress of the negotiations if no agreement was concluded within three months of the bill being passed.

Thangam Debbonaire, Shadow Minister for Exiting the European Union, described clause 37—the clause that would remove the existing obligation from the EUWA 2018—as “an astonishing breach of faith with some of the most vulnerable children in the world”.¹¹² She argued that the Government had “no mandate for this change”. Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford), chair of the Commons Home Affairs Committee in the last Parliament, said it was “troubling” and “inexplicable” that the Government was removing obligations from the EUWA 2018 that “everyone had accepted” during the passage of that Act.¹¹³

Robin Walker, Parliamentary Under Secretary of State for Northern Ireland, said the Government’s policy had not changed.¹¹⁴ He said the Government was “fully committed both to the principle of family reunion and to supporting the most vulnerable children”. He confirmed the Home Secretary had written to the European Commission on 22 October 2019 to start negotiations with the EU on future arrangements in this area. He said the UK would continue to reunite children with their families under the Dublin

¹⁰⁹ [HC Hansard, 8 January 2020, col 433.](#)

¹¹⁰ *ibid*, col 432.

¹¹¹ *ibid*, cols 446–9.

¹¹² *ibid*, col 421.

¹¹³ *ibid*, col 410.

¹¹⁴ *ibid*, col 436.

Regulation during the implementation period.¹¹⁵

New Clause 6: Parliamentary Approval of the Future Relationship

New clause 6, moved by Caroline Lucas (Green Party MP for Brighton Pavilion) was defeated by 347 votes to 251.¹¹⁶ It concerned parliamentary approval of the future relationship with the EU. It was debated alongside a similar Labour amendment that was not put to a division.

The version of the bill introduced before the general election contained a clause on parliamentary oversight of negotiations for the future relationship.¹¹⁷ It would have required the Government to:

- Obtain approval from the Commons of its negotiating objectives before negotiations with the EU could begin.
- Report to Parliament every three months on the progress of negotiations.
- Obtain approval from the Commons for the future relationship agreement before the agreement could be ratified.

These provisions do not appear in the new bill. Labour's new clause 1 and Caroline Lucas's new clause 6 would have replicated the main elements of the parliamentary oversight clause from the old version of the bill, with the following changes:

- Omitting a requirement for the negotiating objectives to be compatible with the political declaration on the future relationship agreed by the UK and the EU;
- Specifying that the motion to be moved in the Commons for approval of the negotiating objectives must be an amendable motion;
- Requiring the Government to consult with the devolved administrations on the negotiating mandate and on the text of a proposed agreement; and
- Requiring the Government to publish the negotiating texts.

¹¹⁵ For an explanation of family reunion and the Dublin III Regulation, see: House of Commons Library, '[What is the Dublin III Regulation? Will it Be Affected by Brexit?](#)', 4 November 2019.

¹¹⁶ [HC Hansard, 8 January 2020, cols 452–6.](#)

¹¹⁷ For further details, see: House of Commons Library, '[Withdrawal Agreement Bill: Parliament's Role in the Future UK-EU Relationship](#)', 22 October 2019.

In addition, Caroline Lucas’s new clause would have required the Government to:

- Publish an independent sustainability impact assessment of its draft negotiating mandate; and
- Publish a response to any select committee report that contained recommendations on ratifying a future relationship agreement before seeking the Commons’ approval for ratification.

Thangam Debbonaire described the removal of the clause on parliamentary oversight from the new version of the bill as an “extraordinary turn of affairs”.¹¹⁸ She argued that MPs should have a guaranteed right to scrutinise the negotiation process, rather than “having to wait for a possible ministerial statement or being forced to beg for information via an urgent question”.¹¹⁹

In response, Robin Walker, Parliamentary Under Secretary of State for Northern Ireland, said the new clauses would impose “unnecessary requirements that risk impeding and delaying negotiations”.¹²⁰ In particular, he believed the requirements in new clause 6 for consultation and impact assessments were “onerous” and would make it “very challenging indeed” to conclude the negotiations by the end of 2020. Caroline Lucas argued that the same requirements already applied to the EU.¹²¹

Hilary Benn (Labour MP for Leeds Central), chair of the House of Commons Exiting the European Union Committee in the previous Parliament, questioned why parliamentary scrutiny of the negotiations had become “completely unnecessary and terribly onerous” for the Government since the previous version of the bill.¹²² Robin Walker said that since then, the general election had provided the Government “a clear mandate” to deliver the withdrawal agreement and to get into the negotiating phase.¹²³ Mr Walker also argued that provisions requiring the Government to consult the devolved administrations were unnecessary as it was already “engaging extensively” with them and would continue to do so.¹²⁴

New Clause 55: Assessment of the Ireland/Northern Ireland Protocol

New clause 55 was defeated on division by 337 votes to 262.¹²⁵ New clause 55 was a cross-party amendment supported by the Democratic Unionist

¹¹⁸ [HC Hansard, 8 January 2020, col 423.](#)

¹¹⁹ *ibid*, cols 424–5.

¹²⁰ *ibid*, col 433.

¹²¹ *ibid*.

¹²² *ibid*, col 434.

¹²³ *ibid*.

¹²⁴ *ibid*, cols 434–5.

¹²⁵ *ibid*, cols 457–60.

Party (DUP), Social Democratic and Labour Party (SDLP) and the Alliance Party.

Article 6(2) of the withdrawal agreement's Ireland/Northern Ireland protocol states that the EU and the UK shall use their best endeavours to facilitate trade between Northern Ireland and other parts of the UK. New clause 55 would have provided that as part of these best endeavours the UK Government would have had to:

- a) publish an assessment at least every 12 months of any negative impacts on businesses and consumers arising from the protocol on trade between Great Britain and Northern Ireland and vice versa; and
- b) develop mitigations to safeguard the place of Northern Ireland businesses and consumers in the UK internal market.¹²⁶

The assessment would have had to include an assessment of the impact of any actual or proposed regulatory or trade policy divergence on Northern Ireland's position in the UK's internal market. In complying with the new clause, the Government would not have been able to recoup any administrative costs from the private sector.

Speaking to the amendment Sammy Wilson, DUP Parliamentary Spokesman on Education, Treasury and the Department of Work and Pensions, argued that new clause 55 would provide a "moving picture" of the impact of the protocol on the Northern Ireland economy.¹²⁷ He said the DUP's amendment had cross-party support in Northern Ireland "such is the degree of concern about the impact on the Northern Ireland economy".¹²⁸ Mr Wilson argued that a regular assessment was the only way to know whether the protocol was having an impact on Northern Ireland. Speaking for the SDLP, Claire Hanna said that if the Government meant "anything they say" about protecting Northern Ireland and assuring unfettered access and non-tariff barriers it should accept new clause 55.¹²⁹ Thangam Debbonaire, Shadow Minister for Exiting the European Union, said that Labour supported new clause 55.¹³⁰

Responding to new clause 55,¹³¹ Robin Walker, Parliamentary Under Secretary of State at the Northern Ireland Office, argued that nothing in the withdrawal agreement would prevent the Government from ensuring access

¹²⁶ House of Commons, [Committee of the Whole House: European Union \(Withdrawal Agreement\) Bill](#), 8 January 2020, p 32.

¹²⁷ [HC Hansard, 8 January 2020, col 439](#).

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ *ibid*, col 421.

¹³¹ As well as amendments 12, 19, 50, 51 and new clauses 44 and 52.

to the Great Britain market for Northern Ireland goods.¹³² He referenced comments by the Prime Minister and said that he had said that “beyond our obligations under international law, there will be no new checks and processes on the movement of such goods”.¹³³ He said that Government recognised the “strong voice” of Northern Ireland’s businesses regarding the importance of unfettered access to the UK’s internal market.¹³⁴ He also said the Government recognised the cross-party and cross-community support for this. Mr Walker argued that this could be delivered through clause 21 of the bill and “through the opportunity to follow up through the joint committee”.¹³⁵ He said that the Government would continue to engage with businesses and stakeholders.

New Clause 2: Protecting Workers’ Rights

New clause 2, a Labour amendment on protecting workers’ rights, was defeated by 344 votes to 254.¹³⁶

The version of the bill introduced before the general election contained a clause on the protection of workers’ rights.¹³⁷ It would have required the Government to:

- Consult with businesses and unions about the impact of new bills on workers’ rights;
- Make a statement of ‘non-regression’ on workers’ retained EU rights when introducing new primary legislation; and
- Make regular statements about whether the EU had published any new workers’ rights, whether domestic law conferred similar rights, and, if not, whether the Government intended to take steps to implement the new EU rights.

These provisions do not appear in the new bill. However, the Government has said a separate employment bill will, among other things, “protect and enhance workers’ rights as the UK leaves the EU”.¹³⁸

Labour tabled a new clause that would have given the Government an objective to secure an agreement with the EU on protecting workers’ rights.

¹³² [HC Hansard, 8 January 2020, col 430.](#)

¹³³ [ibid.](#)

¹³⁴ [ibid.](#)

¹³⁵ [ibid.](#)

¹³⁶ [ibid](#), cols 533–7.

¹³⁷ See: House of Commons Library, ‘[Withdrawal Agreement Bill: Protection for Workers’ Rights](#)’, 22 October 2019 and ‘[Removal of Workers’ Rights in the New EU \(Withdrawal Agreement\) Bill](#)’, 20 December 2019.

¹³⁸ Prime Minister’s Office, [Queen’s Speech December 2019: Background Briefing Notes](#), 19 December 2019, p 43.

The new clause required the agreement to seek to:

- Prevent measures being introduced in the UK after the implementation period that would reduce existing workers' rights; and
- Ensure any new workers' rights brought into force in the EU after the end of the implementation period produced the same result and legal consequences in the UK.

Nick Thomas-Symonds, Shadow Solicitor General, said the Government's position on workers' rights in the previous version of the bill was "weak", and was "even weaker" in the new bill.¹³⁹ Recalling previous comments made by the Home Secretary and the Prime Minister on the "burden" of EU employment and social legislation, he argued the Government's record on protecting workers' rights "bears no reasonable scrutiny". In his view, therefore, Labour's new clause was "needed [...] to safeguard the millions of workers in this country who deserve our continuous protections of their rights". The SNP Justice and Home Affairs Spokesperson, Joanna Cherry, spoke of her concern there could be a "chaotic free-for-all" if the Government used the powers in clause 26 to allow the lower courts to ignore previous rulings from the European Court of Justice that UK workers and trade unions had benefited from.¹⁴⁰

James Duddridge, Parliamentary Under Secretary of State for Exiting the European Union, said there was "no suggestion" the Government would propose, or Parliament would allow, a regression in workers' rights.¹⁴¹ He reiterated the Government's plan to introduce an employment bill that would "protect and continue to improve" workers' rights, although he was unable to say when it would be published.¹⁴²

New Clause 10: Erasmus+

The Liberal Democrats' new clause 10 was defeated by 344 votes to 254.¹⁴³ It would have required the Government to seek to negotiate continuing full membership of the EU's Erasmus+ education and youth programme. James Duddridge observed that the political declaration on the future UK-EU relationship envisaged the possibility of UK participation in EU programmes.¹⁴⁴ This would be for further negotiation during the implementation period.

¹³⁹ [HC Hansard, 8 January 2020, col 507.](#)

¹⁴⁰ *ibid*, col 510.

¹⁴¹ *ibid*, col 526.

¹⁴² *ibid*, col 527.

¹⁴³ *ibid*, cols 538–42.

¹⁴⁴ *ibid*, cols 529–30.

New Clause 29: Level Playing Field

The Liberal Democrats' new clause 29 was defeated by 345 votes to 250.¹⁴⁵ It would have given the Government an objective in the future relationship negotiations to seek:

- Close alignment with the EU single market;
- Dynamic alignment with the EU on rights and protections for workers, consumers and the environment (ie keeping pace with future changes in EU law in these areas);
- Participation in EU agencies and funding programmes.

Layla Moran, the Liberal Democrats' education spokesperson, said that removing the "level playing field" with the EU by deregulating "opens the door to lower standards".¹⁴⁶ She argued that existing regulations were a "minimum standard" the UK should keep, rather than "looking for trade deals with other countries who would much prefer it if we lowered our standards".

James Duddridge argued that dynamic alignment was not in the UK's best interests and would prevent it from controlling its own laws.¹⁴⁷ He said the Government had made clear in the revised political declaration and through commitments to introduce legislation that it would continue to uphold high standards for workers, consumers and the environment.¹⁴⁸

7.3 Remaining Stages

As the bill was not amended in committee of the whole House, there was no report stage.

At the bill's third reading on 9 January 2020, Paul Blomfield, Shadow Minister for Exiting the European Union, said Labour had pressed five main issues during the bill's committee stage that he argued reflected serious problems with both the bill and the withdrawal agreement. These issues were:

- I. That the bill's provisions would prevent the UK Government from agreeing to an extension of the implementation period, "even if the Government are days away from securing an agreement with the EU";¹⁴⁹

¹⁴⁵ [HC Hansard, 8 January 2020, cols 543–6.](#)

¹⁴⁶ *ibid*, col 517.

¹⁴⁷ *ibid*, col 528.

¹⁴⁸ *ibid*, col 529.

¹⁴⁹ [HC Hansard, 9 January 2020, col 654.](#)

2. That a declaratory scheme was “essential” to deliver Government commitments to EU citizens made during the referendum, and to avoid another Windrush;¹⁵⁰
3. That clause 37 of the bill would remove provisions on unaccompanied child refugees from the EUWA 2018, which Mr Blomfield described as the “most immediate and outrageous consequence of the bill”;¹⁵¹
4. That there was insufficient transparency about the impact of the Ireland/Northern Ireland protocol on Northern Ireland;¹⁵² and
5. That the Labour Party had argued for a close economic partnership with the EU and alignment on workers’ rights and environmental standards.¹⁵³

An SNP amendment to the motion at third reading was defeated by 62 votes to 329.¹⁵⁴ The SNP amendment declined to give third reading because the Scottish Parliament had not consented to the bill.¹⁵⁵ The amendment also argued that it encroached on devolved competencies; that it was not fit for purpose; and that it did not reflect the result of the 2016 referendum in Scotland.¹⁵⁶

Responding for the Government, Steve Barclay, Secretary of State for Exiting the European Union, said the bill would ensure that the UK withdrew from the EU with a deal on 31 January 2020. He argued that once the bill had received royal assent, the Government would “proceed swiftly to the completion of a free trade deal with the EU by the end of December 2020, as laid out in our manifesto”.¹⁵⁷

The bill passed its third reading in the House of Commons by 330 votes to 231.¹⁵⁸

¹⁵⁰ [HC Hansard, 9 January 2020, col 655–6.](#)

¹⁵¹ *ibid*, col 657.

¹⁵² *ibid*.

¹⁵³ *ibid*, cols 657–8.

¹⁵⁴ *ibid*, cols 713–15.

¹⁵⁵ Scottish Parliament, [Official Report](#), 8 January 2020, motion S5M-20318. The withholding of legislative consent does not prevent a bill passed by the UK parliament from receiving royal assent (for more information see: House of Commons Library, [‘Legislative Consent: What, Why and How?’](#), 13 April 2018).

¹⁵⁶ House of Commons, [Order Paper: No. 4, Part 1](#), 9 January 2020, p 6.

¹⁵⁷ [HC Hansard, 9 January 2020, col 711.](#)

¹⁵⁸ *ibid*, cols 716–9.