

LEGISLATIVE CONSENT MEMORANDUM

EUROPEAN UNION (WITHDRAWAL) BILL

Introduction

1. The Scottish Government remains of the view that the best option for the UK as a whole, and for Scotland, would be the one Scotland voted for – to remain in the EU. However, whilst still opposing exit, the Scottish Government accepts that preparations should be made for withdrawal from the EU, including preserving a functioning legal system.

2. The European Union (Withdrawal) Bill was introduced in the House of Commons on 13 July 2017. As the Bill is a relevant Bill under Rule 9B.1 of the Parliament's Standing Orders¹, this memorandum has been lodged by Rt Hon Nicola Sturgeon MSP, First Minister of Scotland, in accordance with Rule 9B.3.1(a). The Bill and supporting documents can be found at:

<http://services.parliament.uk/bills/2017-19/europeanunionwithdrawal/documents.html>

This memorandum relates to the Bill as introduced.

3. The Scottish Government does not currently intend to lodge a legislative consent motion in relation to the Bill. In line with Rule 9B.3.3(d) of the Standing Orders, the Scottish Government's reasons are set out in paragraphs 12 - 32. The Scottish Government is proposing amendments which would allow it to recommend to the Parliament that it should consent to the Bill. The Scottish Government may lodge a further supplementary legislative consent memorandum, potentially with a draft legislative consent motion, on this Bill in due course, depending on progress with amendments and other negotiations with the UK Government.

Content of the Bill

4. The Explanatory Notes to the Bill² set out the UK Government's view of its purpose and main functions. It describes the principal purpose of the Bill as:

to provide a functioning statute book on the day the UK leaves the EU. As a general rule, the same rules and laws will apply on the day after exit as on the day before. It will then be for Parliament and, where appropriate, the devolved legislatures to make any future changes. (Paragraph 10)

The Explanatory Notes describe four main functions of the Bill (at Paragraph 11):

- repeals the European Communities Act 1972;
- converts EU law as it stands at the moment of withdrawal into domestic law before the UK leaves the EU;
- creates powers to make secondary legislation, including temporary powers for corrections to be made to the laws that would otherwise no longer operate

¹ <http://www.parliament.scot/parliamentarybusiness/26512.aspx>.

² <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/en/18005en.pdf>

appropriately once the UK has left the EU, and to implement a withdrawal agreement;

- claims it “maintains the current scope of devolved decision making powers in areas currently governed by EU law” but seeks to restrict the competence in devolved areas currently subject to EU law when EU law no longer applies.

5. Detail of the structure and provisions of the Bill is at **Annex A**. Of particular relevance to devolved matters are:

- Clauses 2 – 6 (which preserve and retain EU law in domestic law, including in areas within devolved competence);
- Clauses 7 – 9 (which provide powers for UK Ministers to correct retained EU law and implement international obligations and the withdrawal agreement with the EU, including in devolved areas);
- Clause 10 and Schedule 2 (which provide powers for Scottish Ministers to correct retained EU law and implement international obligations and the withdrawal agreement with the EU);
- Clause 11 and Schedule 3 (which constrain the competence of the Scottish Parliament and Scottish Ministers); and
- Schedule 7 (which sets out legislative procedures to be followed for various secondary legislation provisions in the Bill, including powers of Scottish Ministers and UK Ministers acting in devolved areas).

Background

6. The Prime Minister first announced a “Great Repeal Bill” in her speech to the Conservative Party conference on 2 October 2016³. She envisaged a Bill to repeal the European Communities Act 1972 and end the direct applicability of EU law to the United Kingdom, while converting the body of existing EU law into domestic law.

7. The UK Government developed its proposals further in its white papers on *The United Kingdom’s exit from, and new partnership with, the European Union*⁴ (February 2017) and, particularly, *Legislating for the United Kingdom’s withdrawal from the European Union*⁵ (May 2017). The latter contained a chapter on “Interaction with the devolution settlements”, which said “the [UK] Government intends to replicate the current frameworks provided by EU rules through UK legislation”, followed by “intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future” (paragraph 4.4). It also said that “It is the expectation of the [UK] Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration”.

8. The European Union (Withdrawal) Bill was introduced in the House of Commons on 13 July 2017. The accompanying Explanatory Notes made clear the

³ <http://press.conservatives.com/post/151239411635/prime-minister-britain-after-brexit-a-vision-of>

⁴ <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union--2>

⁵ <https://www.gov.uk/government/publications/the-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union>

legislative consent of the Scottish Parliament (and other devolved legislatures) would be required to the Bill under the Sewel Convention⁶. On the day the Bill was introduced the First Ministers of Scotland and Wales made a joint statement indicating that they could not recommend their respective legislatures give consent to the Bill in its current form⁷.

Requirement for legislative consent

9. The Bill is a relevant Bill within Rule 9B.1.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament, and alters that legislative competence and the executive competence of the Scottish Ministers.

10. The clauses for which legislative consent are required are set out in the table at **Annex B**. Note that Annex A of the UK Government's Explanatory Notes to the Bill does not accord precisely to this table: notably the UK Government table does not include clauses dealing with: the exceptions to saved and incorporated retained EU law, such as repealing the Charter on Fundamental Rights (Clause 5); the interpretation of retained EU law (Clause 6); and giving UK Ministers powers to make provision in areas of devolved competence (Clauses 7 and 9). The Scottish Government considers that there is a clear need for legislative consent to these, and the other additional provisions. The Scottish Government notes that the Welsh Government takes a similar view of the provisions requiring legislative consent from the Assembly under the Welsh equivalent of the Sewel Convention.

11. The main provisions for which consent is required are:

i. Purposes within the devolved competence of the Parliament

The stated principal purpose of the European Union (Withdrawal) Bill is to ensure a functioning statute book on withdrawal from the EU by converting existing EU law into domestic law. This would be within the legislative competence of the Parliament in devolved areas. The Bill also gives powers to Scottish and UK Ministers to alter law in devolved areas by secondary legislation, which would also be in the competence of the Parliament, as would certain other matters set out in Annex B (such as the treatment of EU law by the Scottish Courts following withdrawal).

ii. Provisions altering the legislative competence of the Parliament and the executive competence of the Scottish Ministers

Repealing the European Communities Act 1972 alters the competence of the Parliament by removing the requirement for the Parliament to legislate compatibly with EU law⁸. The Bill also alters the competence of the Parliament by introducing a new legislative constraint defined with reference to EU law retained in domestic law by the provisions of the Bill (Clause 11). Schedule 3

⁶ See paragraphs 68 – 70 and Annex A.

⁷ <https://news.gov.scot/news/eu-withdrawal-bill>

⁸ Section 29(2)(d), Scotland Act 1998 <http://www.legislation.gov.uk/ukpga/1998/46/section/29>

imposes an analogous new constraint on the executive powers of the Scottish Ministers.

Recommendation to withhold legislative consent

12. It remains a matter of regret to the Scottish Government that the UK plans to withdraw from the EU. The Government nevertheless accepts that preparations should be made for withdrawal from the EU, including preserving a functioning legal system. In the event of withdrawal, the Government agrees the need for provisions which convert EU law into domestic law, and provisions which create powers to make secondary legislation, including temporary powers to enable corrections to be made to laws that would otherwise no longer operate appropriately. The Scottish Government has always been prepared to accept that there could be advantages in such legislation being made by the Westminster Parliament for the UK as a whole, for practical and pragmatic reasons, given the time available to pass the necessary primary and secondary legislation⁹. A similar pragmatic approach is currently taken to implementing EU obligations in devolved areas through secondary legislation. The Scottish Government has also been clear that governments across the UK need to work closely together to ensure effective withdrawal arrangements reflecting the interests of all.

13. However, along with the Welsh Government¹⁰, the Scottish Government cannot recommend to the Parliament that it gives consent to the Bill as currently drafted. The Scottish Government's key objections to the Bill as introduced relate to the provisions on the competence of the Scottish Parliament and Government (Clause 11 and Schedule 3) and those on powers for UK and Scottish Ministers to alter domestic law (Clauses 7-9, Clause 10 and Schedule 2). The Scottish Government also has objections to and observations on other aspects of the Bill, particularly on the repeal of the Charter of Fundamental Rights (Clause 5).

14. The Government also shares concerns about the scope of the powers for Ministers to change primary legislation by secondary legislation, including potentially to alter the Scotland Act or to affect the rights of EU nationals resident in the UK¹¹. Further details are set out in Annex A.

New constraints on the legislative competence of the Parliament

15. **Clause 11** introduces a new provision that would mean it would be outside the Parliament's competence to modify retained EU law in a way which would not have been compatible with EU law immediately before withdrawal. In effect, this provision gives the Westminster Parliament and UK Government the unilateral power to make decisions in devolved areas previously affected by EU law. The clause also repeals the current provision in section 29(2)(d) of the Scotland Act 1998, which requires the Parliament to legislate compatibly with EU law. Analogous provisions are made in Schedule 3 to constrain the powers of the Scottish Government.

⁹ See paragraph 181 of *Scotland's Place in Europe* (December 2016): <http://www.gov.scot/Publications/2016/12/9234>

¹⁰ See the position of the Welsh Government set out here: <http://gov.wales/about/cabinet/cabinetstatements/2017/europeanunionwithdrawalbill/?lang=en>

¹¹ See page 10 of the Explanatory Notes to the Bill

16. It is common ground that, in the absence of a provision such as that in the Bill, on withdrawal from the EU the devolved legislatures would be able to exercise their current devolved legislative competence without the current requirement to act compatibly with EU law¹². The Bill proposes a new legal constraint on the competences of the devolved institutions. This new legislative constraint cuts across the well-established and understood scheme of legislative competence, based on reserved areas, set out in the Scotland Act. It would give the UK Parliament and the UK Government power to legislate in relation to policy areas which are the responsibility of the Scottish Parliament and the Scottish Government. It is a constraint which is no longer based (as the current limit by reference to EU law is based) on the need to respect international obligations or the status of the UK as a member of the EU and is therefore entirely a matter of internal domestic law.

17. The Scottish Government rejects in principle the proposition that devolved competence should be constrained in this way on withdrawal from the EU. Policy responsibility and expertise for matters within devolved competence lie with the Scottish Government, accountable to the Scottish Parliament. The Scottish Government believes that on withdrawal the Scottish Parliament should be in exactly the same position as the Westminster Parliament: able to act within its area of competence in the way it sees fit. The Scottish Government does not accept that the Scottish Parliament and Government, and the other devolved legislatures and executives, should, for an indeterminate period following withdrawal, have their competence defined as if it were the day before the UK withdrew from the EU.

18. The Scottish Government is also clear that the result of withdrawal from the EU should not be centralisation of power in Whitehall and Westminster. However, that is what the Bill proposes. The Scottish Government believes that the result of withdrawal should, instead, be that decision making is decentralised, and power diffused appropriately across the UK. The Scottish Government has published detailed proposals for the governance of the UK following withdrawal¹³.

19. The Scottish Government has made clear, repeatedly, its willingness to negotiate UK frameworks in certain areas previously covered by EU law¹⁴. This could be, for example, to support the functioning of UK markets, or to facilitate the management of common environmental resources. However, the process of identifying where frameworks are required and what they should contain, must be by agreement, not imposition and, insofar as legislation is required, be legislated for or consented to by the Scottish Parliament.

20. These objections to the basic approach of the Bill, and the view of the future governance of the UK after withdrawal which the Bill reflects, are so fundamental that the Scottish Government cannot recommend that the Scottish Parliament gives consent, even conditionally, to the Bill in its current form.

¹² See, for example, paragraph 130 of the judgment of the UK Supreme Court in the case of *Miller* <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>

¹³ See Chapter 4 of *Scotland's Place in Europe*

¹⁴ See paragraph 179 of *Scotland's Place in Europe*

21. The Scottish Government also considers that the approach taken to legislative competence in Clause 11 will be artificial and impractical. The proposed legislative constraint, in effect a further reservation to Westminster, would cut across devolved matters, contrary to the structure of the Scotland Act in identifying specific reserved areas.

22. The definition of the legislative constraint, which refers to “retained EU law”, covers not only EU law converted into domestic law on the date of withdrawal, but also changes to that law made after that date under the powers in the Bill, principally by UK Ministers, or by the Westminster Parliament. The Scottish Parliament is therefore faced with a constraint on its legislative competence that is defined with reference to the content of retained EU law as saved and incorporated into our domestic legal system, and then as subsequently amended. The Scottish Government believes that this is an artificial constraint, which is and will become increasingly unsuitable for determining legislative competence.

23. The clause allows the Scottish Parliament to legislate in the areas of retained EU law if it is acting in a way compatible with EU law at the point of withdrawal (hence the claim that the Bill “maintains the current scope of devolved decision making powers in areas currently governed by EU law”). However, as amendments are made to retained EU law by domestic UK law, and as the EU amends EU law, the content of “retained EU law” will diverge from EU law as it was on exit day and from EU law as it exists from time to time. Instead of a requirement to assess legislative competence by reference to EU law as it exists at the point when the issue arises, it will have to be assessed by reference to EU law as it used to be on exit day and as subsequently amended under the Bill.

24. The Scottish Government considers that the legislative competence of a Parliament should be clear, robust and as certain as possible to avoid legal risk and minimise the possibility of litigation and should reflect the policy responsibilities allocated to the Parliament under the devolution settlement. The approach taken in the Bill does not provide a test of legislative competence that meets this objective. A better approach would be to remove Clause 11 in its entirety and retain the current test of the legislative competence of the Parliament.

25. The UK Government has suggested that the restriction imposed by Clause 11 is transitional in nature, intended to allow discussion and consultation with devolved authorities on the need for successors to EU frameworks. However, in contrast to the time limits included in the Ministerial powers (see paragraph 26 below), there are no time limits on the validity of Clause 11. The provisions do contain an Order in Council procedure for matters to be removed from “retained EU law” and therefore released to existing devolved competence, following agreement by both Houses at Westminster and the Scottish Parliament. However, this approach creates further complexity in the devolution settlement by effectively grafting a “conferred powers” model, solely in the area of “retained EU law”, onto, and across, the Scotland Act’s reserved powers model. The UK Government has not yet indicated any areas in which it would propose to use this procedure, how it would specify such areas, nor how the procedure would be used in practice.

Powers for UK and Scottish Ministers to alter the law in devolved areas

26. By giving effect to Schedule 2, **Clause 10** provides Scottish Ministers with powers corresponding to those provided to UK Ministers in **Clause 7** (to deal with deficiencies arising from withdrawal; the power lapses two years after withdrawal), **Clause 8** (to enable continued compliance with the UK's international obligations where there is a risk of a breach as a consequence of withdrawal; again the power lapses two years after withdrawal), and **Clause 9** (to implement the withdrawal agreement; the power lapses on withdrawal). Clauses 7 – 9 give UK Ministers extensive powers to act in all areas of retained EU law, including devolved areas.

27. By contrast, the corresponding powers for devolved Ministers provided in clause 10 and Schedule 2 extend only to correcting EU law that has been given effect by domestic legislative procedures (and saved under Clause 2 of the Bill). Directly effective EU legislation (such as EU Regulations; incorporated under Clause 3 of the Bill) and other EU law derived rights (saved under Clause 4 of the Bill) can be amended only by a UK Minister even if the subject matter falls clearly within devolved competence. There is no provision for Scottish Ministers or the Scottish Parliament to have any role in relation to such legislation. The powers of devolved Ministers are also qualified in other ways, for example they cannot “act inconsistently” with UK Ministers’ regulations on direct EU legislation, and need to seek consent from UK Ministers in certain circumstances (set out in paragraphs 3 – 6 of Schedule 2).

28. The powers provided for UK Ministers again cut across the devolution settlement. Policy responsibility and expertise in devolved areas rests with the Scottish Government, accountable to the Scottish Parliament. Exercise of Ministerial powers under the Bill will require policy choices to be made on how retained EU law is to be corrected, or the withdrawal agreement is to be implemented. In devolved areas those choices are a matter for Scottish Ministers, with accountability to the Scottish Parliament. Under the Bill, UK Ministers would have the power to make changes to law in devolved areas without any formal mechanism for accountability to the Scottish Parliament or consent from the Scottish Ministers. In relation to directly effective EU legislation, as set out above, UK Ministers would have the sole power to make necessary corrections to law in devolved areas. The Scottish Government does not believe that is an acceptable proposal. Scottish Ministers should have the power to make corrections in all areas of devolved law, whatever the original nature of the relevant retained EU law.

29. In practical terms, the powers for devolved Ministers are again complex, introducing uncertainty and risk. By contrast, UK and Scottish Ministers currently share a simple and flexible power to implement EU obligations by secondary legislation¹⁵. There is pragmatic agreement between the governments on the approach to be taken to different obligations, recognising the advantages of UK wide orders in some circumstances, for example when there is a mixture of reserved and devolved functions involved in a measure. Scottish Ministers are accountable to the Scottish Parliament for their decisions on how these powers are exercised, and the Parliament is informed under administrative arrangements.

¹⁵ Section 57(1), Scotland Act 1998

30. The Scottish Government believes that the powers provided to UK and Scottish Ministers under the Bill should be similarly flexible and robust, minimising the legal risk in any exercise of the powers. Given the time available and the likely volume of relevant secondary legislation, these considerations are particularly important. The constraints on the powers of devolved Ministers, and the other qualifications on the powers (for example, requirements for consultation), should be removed from the Bill.

31. Again the Scottish Government has been clear that in practice governments across the UK will need to work together to ensure proper functioning of the statute book on withdrawal from the EU. This may involve the powers in the Bill being used by UK Ministers to make orders for the whole UK, including in devolved areas as now, provided these orders have been properly discussed and agreed by the governments affected. The Scottish Government therefore accepts that powers for UK Ministers should be exercisable in devolved areas.

32. Given the scope of the powers in the Bill the Scottish Government believes that there should be a formal legislative requirement for Scottish Ministers' consent before UK Ministers may exercise the powers in devolved areas. Scottish Ministers would be accountable to the Scottish Parliament for the exercise of their power of consent. The Scottish Government believes this approach provides the best balance of proper devolved involvement and oversight; and practical recognition of the likely volume of workload that faces governments and legislatures during withdrawal. However, the Government recognises there could be other models for the appropriate level of involvement by the Parliament in these circumstances. The Government proposes to discuss further with the Parliament and other interested parties the proper level of scrutiny and oversight of the exercise of all the powers in the Bill by both UK and Scottish Ministers, including the scope of the powers set out in the primary legislation.

Draft amendments

33. The Government is working with the Welsh Government to propose amendments to the Bill which will address the concerns of the governments. These are being made public to inform debate on the Bill both in the Parliament, at Westminster and more widely. The Government is also considering how Scottish legislation in the Parliament could provide the necessary continuity of law in Scotland, as an alternative to the UK Bill.

Draft Legislative Consent Motion

34. Under Rule 9B.3.3(d) of the Parliament's Standing Orders¹⁶, if a member of the Scottish Government does not propose to include a draft motion they must explain why not. Paragraphs 12 – 32 above set out the Government's reasons for not including a draft motion in this memorandum for the purposes of that rule.

¹⁶ <http://www.parliament.scot/parliamentarybusiness/26512.aspx>

35. The Scottish Government may lodge a supplementary legislative consent memorandum on this Bill, potentially with a draft legislative consent motion, in due course, depending on progress with its proposed amendments and other negotiations with the UK Government.

Conclusion

36. It remains a matter of regret to the Scottish Government that the UK plans to withdraw from the EU. The Scottish Government considers this will have widespread detrimental effects on the UK and Scotland. However, the Scottish Government accepts that proper, responsible preparations should be made for withdrawal, including preserving a functioning legal system. The Scottish Government therefore accepts the main purpose of the European Union (Withdrawal) Bill's provisions to retain EU law in domestic law after withdrawal, and to provide powers to ensure these laws function effectively.

37. The Scottish Government cannot, however, accept the approach of the Bill to devolution, nor the constitutional arrangements the Bill envisages and presages for the UK after withdrawal. The Scottish Government rejects the overall approach of the Bill, which is to centralise control and decision making in the UK Government and the Westminster Parliament. The Scottish Parliament and Government cannot be expected to continue as if the UK had not left the EU, while the Westminster Parliament is no longer bound by its EU obligations. On withdrawal, the governance of the UK must respect the devolution settlements, and recognise the powers and responsibilities of the devolved legislatures and administrations.

38. Given this fundamental difference of view on the future of the UK on withdrawal from the EU, the Scottish Government cannot recommend the Parliament consents to the Bill in its current form.

39. The Scottish Government also considers that the approach to devolved competence, and the powers for Scottish Ministers, in the Bill raise difficult practical issues, and would lead, potentially for many years, to complex questions and uncertainty about the Parliament's legislative competence, and to risk and uncertainty in the exercise of Scottish Ministers' powers.

40. The Scottish Government is proposing, with the Welsh Government, amendments to the Bill that would make it acceptable. Depending on progress with these amendments, and other negotiations, the Scottish Government may lodge a further legislative consent memorandum in due course. In the meantime, it is also considering other ways of providing the necessary continuity and certainty for Scotland on withdrawal from the EU.

ANNEX A

EUROPEAN UNION (WITHDRAWAL) BILL – STRUCTURE AND PROVISIONS

The Scottish Government has additional comments on various provisions of the Bill which are included below.

Repeal of the ECA

Clause 1 Repeal of the European Communities Act 1972

The clause would repeal the 1972 Act on “exit day”, a date to be appointed by UK Ministers under powers in the Bill. In effect the date for the UK to withdraw from the EU is left to Ministerial decision.

Retention of existing EU law

Clause 2 Saving for EU-derived domestic legislation
Clause 3 Incorporation of direct EU legislation
Clause 4 Saving for rights etc. under section 2(1) of the ECA
Clause 5 Exceptions to savings and incorporation
Clause 6 Interpretation of retained EU law

Clause 5 sets out exceptions to the general approach of preserving and saving EU law into domestic law, including abolishing supremacy of EU law and repealing the Charter of Fundamental Rights (although not rights having another legal foundation).

The Scottish Government does not support the repeal of the Charter of Fundamental Rights and believes that it should be retained on withdrawal from the EU.

Clause 6 outlines the approach of the Bill to interpretation of retained EU law, including the role of the High Court of Justiciary. It provides for decisions of the European Court to have effect until withdrawal, and says that the courts may have regard to its decisions following withdrawal.

Schedule 1 also provides that various causes of action under EU law will not exist in domestic law following withdrawal, including actions for breach of general principles of EU law, and claims for damages from a member state for failure to observe EU law (“Francovich” damages). The Scottish Government believes these proposals should be examined in more detail to ensure that individuals are not substantially disadvantaged by losing rights they would currently enjoy under EU law.

Main powers in connection with withdrawal

Clause 7 Dealing with deficiencies arising from withdrawal
Clause 8 Complying with international obligations
Clause 9 Implementing the withdrawal agreement

The Scottish Government has concerns about the scope of the powers in Bill to alter primary and other legislation by Ministerial order. The Bill establishes a number of

preconditions on the use of the powers, and restrictions on their scope, as well as setting out when affirmative procedures must be used for secondary legislation. The Government recognises that there is a need for a balance between proper Parliamentary scrutiny and a practical approach to the likely volume of secondary legislation required in a limited timescale. However, the Government also recognises the serious criticisms made of the Bill as drafted and proposes further discussion with the Parliament and other stakeholders on the appropriate level of Parliamentary scrutiny and oversight, both at Westminster and by the Scottish Parliament.

Devolution

- Clause 10 Corresponding powers involving devolved authorities
- Clause 11 Retaining EU restrictions in devolution legislation etc.

Financial and other matters

- Clause 12 Financial provision
- Clause 13 Publication and rules of evidence

General and final provision

- Clause 14 Interpretation
- Clause 15 Index of defined expressions
- Clause 16 Regulations
- Clause 17 Consequential and transitional provision
- Clause 18 Extent
- Clause 19 Commencement and short title

Schedules.

- Schedule 1 Further provision about exceptions to savings and incorporation
- Schedule 2 Corresponding powers involving devolved authorities
 - Part 1 - Dealing with deficiencies arising from withdrawal
 - Part 2 - Complying with international obligations
 - Part 3 - Implementing the withdrawal agreement
- Schedule 3 Further amendments of devolution legislation
 - Part 1 - Corresponding provision in relation to executive competence
 - Part 2 - Other amendments of devolution legislation
- Schedule 4 Powers in connection with fees and charges
 - Part 1 - Charging in connection with certain new functions
 - Part 2 - Modifying pre-exit fees or charges
- Schedule 5 Publication and rules of evidence
 - Part 1 - Publication of retained direct EU legislation etc.
 - Part 2 - Rules of evidence
- Schedule 6 Instruments which are exempt EU instruments

Schedule 7 Regulations

Part 1 - Scrutiny of powers to deal with deficiencies

Part 2 - Scrutiny of other powers under Act

Part 3 - General provision about powers under Act

Schedule 8 Consequential, transitional, transitory and saving provision

Part 1 - General consequential provision

Part 2 - Specific consequential provision

Part 3 - General transitional, transitory or saving provision

Part 4 - Specific transitional, transitory and saving provision

Schedule 9 Additional repeals

ANNEX B

CLAUSES FOR WHICH LEGISLATIVE CONSENT IS REQUIRED

Clause/ Schedule	Effect
1	Repeals the European Communities Act 1972 on “exit day”
2	Provides that existing domestic legislation which implements EU law obligations remains on the domestic statute book after the UK leaves the EU
3	Converts ‘direct EU legislation’ into domestic legislation at the point of exit from the EU, so that where appropriate, EU legislation continues to have effect post-exit
4	Ensures that any remaining EU rights and obligations which do not fall within Clauses 2 and 3 continue to be recognised and available in domestic law after exit
5	Sets out certain exceptions to the saving and incorporation of EU law provided for by Clauses 2-4, including that the Charter of Fundamental Rights will not form part of domestic law on or after exit day
6	Sets out how retained EU law will be read and interpreted on and after exit day
7	Gives Ministers of the Crown the power to make by regulations provision to ‘correct’ retained EU law so that it continues to operate effectively after exit
8	Gives Ministers of the Crown the power to make by regulations provision to enable continued compliance with the UK’s international obligations
9	Gives Ministers of the Crown powers make by regulations provision to implement the withdrawal agreement
10 & Schedule 2	Provides powers to the devolved administrations (including Scottish Ministers) corresponding to those given to UK Ministers but with limitations that do not apply to UK Ministers, as set out in Schedule 2
11 & Schedule 3	Replaces the existing requirement that the Parliament may only legislate in a way which is compatible with EU law, with a new provision that will mean it will be outside the Parliament’s competence to modify retained EU law in a way which would not have been compatible with EU law immediately before exit. Exceptions to this test may be prescribed by Order in Council, which must be approved by both Houses and by the Parliament
12 & Schedule 4	Gives effect to Schedule 4 which provides powers in connection with fees and charges, and provides that devolved authorities may incur expenditure in preparation for the making of statutory instruments under the Bill
13 & Schedule 5	Makes provision for the publication of retained EU legislation by the Queen’s Printer and rules of evidence in relation to EU instruments
16 & Schedule 7	Gives effect to Schedule 7 on how the powers to make regulations in the Bill are exercisable
17	Power to make consequential provision

This Legislative Consent Memorandum relates to the European Union (Withdrawal) Bill (UK legislation) and was lodged with the Scottish Parliament on 12 September 2017

EUROPEAN UNION (WITHDRAWAL) BILL – LEGISLATIVE CONSENT MEMORANDUM

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents