

UK Withdrawal from the European Union (Continuity)
(Scotland) Bill
(Finance and Constitution Committee)

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 8
Long Title

Sections 42 to 47

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Angela Constance

6 Before section 1, insert—

<Purpose of Part 1

- (1) The purpose of Part 1 of this Act is to ensure that, in so far as is reasonably practicable, the law of Scotland corresponds to provision in EU law after the United Kingdom's withdrawal from the EU, in order to maintain and advance standards in relation to the following matters—
 - (a) environmental protection,
 - (b) animal health and welfare,
 - (c) plant health,
 - (d) equality, non-discrimination and human rights,
 - (e) social protection,
 - (f) judicial cooperation.
- (2) The Scottish Ministers must exercise their functions under Part 1 so as to achieve the purpose referred to in subsection (1).
- (3) Nothing in this section prevents the introduction of legislation, or other standards, that are higher than or improve on EU provisions.>

Section 1

Alex Rowley

7 In section 1, page 2, line 36, leave out subsection (4)

Michael Russell

- 12 In section 1, page 3, line 11, leave out <under subsection (1)> and insert <by virtue of this subsection>

After section 1

Dean Lockhart

- 28 After section 1, insert—

<Requirement before exercise of section 1(1) power

Before laying before the Scottish Parliament a Scottish statutory instrument containing regulations, or a draft of such an instrument, in exercise of the power under section 1(1) for the first time, the Scottish Ministers must—

- (a) prepare and publish, and
- (b) lay before the Parliament,

a statement of the criteria they will apply in determining whether to exercise the power in section 1(1).>

Section 2

Murdo Fraser

- 29 In section 2, page 3, line 16, at end insert—

<() make provision on any reserved matter for the time being listed in schedule 5 of the Scotland Act 1998,>

Mike Rumbles

- 4 In section 2, page 3, leave out line 19

Dean Lockhart

- 30 In section 2, page 3, line 20, at end insert—

<() implement significant new policy proposals that have no equivalent in retained EU law,>

Dean Lockhart

- 31 In section 2, page 3, line 20, at end insert—

<() make provision that requires a significant change to Scots law or Scottish Government policy,>

Murdo Fraser

- 32 In section 2, page 3, line 27, at end insert—

<() modify, directly or indirectly, the fiscal framework,>

Michael Russell

- 13 In section 2, page 3, line 31, leave out <or> and insert <, or
(j) modify>

Mike Rumbles

- 1 In section 2, page 3, line 31, at end insert—
- <() abolish a function of an EU entity or a public authority in a member State without providing for an equivalent function to be exercisable by any person,
 - () provide for a function mentioned in section 1(3) or (4) to be exercisable by a Scottish public authority, or by a different Scottish public authority (as the case may be), or by any person whom the Scottish public authority authorises to carry out functions on its behalf,
 - () create, or wide the scope of, a criminal offence,
 - () create or amend a power to legislate.>

Dean Lockhart

- 33 In section 2, page 3, line 31, at end insert—
- <() make provision that the Parliament has determined by resolution under section (*Pre-laying scrutiny of regulations under section 1(1)(2)(c)*) should not be made by regulations.>

Michael Russell

- 14 In section 2, page 3, line 32, leave out <(i)> and insert <(j)>

Murdo Fraser

- 34 In section 2, page 3, line 35, at end insert—
- <“fiscal framework” means the arrangement of the Scottish Consolidated Fund, tax raising powers set out in the Scotland Act 1998 and borrowing limits agreed with HM Treasury at the time of Royal Assent that collectively govern the financial powers of the Scottish Ministers and the Scottish Parliament,>

Mike Rumbles

- 5 In section 2, page 4, leave out lines 1 to 4

Section 3

Murdo Fraser

- 35 In section 3, page 4, line 9, leave out <10> and insert <3>

Michael Russell

- 15 In section 3, page 4, line 9, leave out <10> and insert <6>

Michael Russell

- 16 In section 3, page 4, line 12, leave out from <by> to end of line 14 and insert—
- <() That power may be exercised more than once.
 - () But the period mentioned in subsection (1) may not be extended by regulations under subsection (2) beyond the end of the period of 10 years beginning with the day on which section 1(1) comes into force.>

Murdo Fraser

- 36 In section 3, page 4, line 12, leave out <5 years> and insert <1 year>

Murdo Fraser

- 37 In section 3, page 4, line 13, leave out <this subsection by a further period of up to 5 years> and insert <paragraph (a) by one further period of up to 1 year>

After section 3

Dean Lockhart

- 38 After section 3, insert—
- <Pre-laying scrutiny of regulations under section 1(1)>**
- (1) Before laying before the Scottish Parliament a Scottish statutory instrument containing regulations under section 1(1), or a draft of such an instrument, the Scottish Ministers must lay before the Parliament—
 - (a) a draft of the proposed regulations,
 - (b) a statement specifying—
 - (i) that it is the Scottish Ministers' opinion that the provision should be made by regulations,
 - (ii) the procedure that the Scottish Ministers consider the regulations should be subject to,
 - (iii) the reasons for those opinions.
 - (2) The Parliament may agree by resolution within 28 days of the proposed regulations and statement being laid under subsection (1) that—
 - (a) regulations the Scottish Ministers consider should be subject to the negative procedure should be subject to the affirmative procedure,
 - (b) the regulations should be subject to the additional requirements in section (*Regulations: additional requirements*),
 - (c) the provision should not be made by regulations.
 - (3) If the Parliament agrees a resolution under (2), the Scottish Ministers must act in accordance with that resolution when the instrument or draft is laid.
 - (4) In calculating the period of 28 days for the purpose of subsection (2), no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.>

Dean Lockhart

39 After section 3, insert—

<Regulations: additional requirements

- (1) Where the Parliament makes a resolution under section (*Pre-laying scrutiny of regulations under section 1(1)*)(2)(b), before a draft of a Scottish statutory instrument containing the regulations is laid before the Parliament, the Scottish Ministers must—
 - (a) lay before the Scottish Parliament—
 - (i) a document setting out their proposals,
 - (ii) impact assessments on the likely regulatory, financial and environmental impact of the instrument,
 - (b) consult—
 - (i) such persons or organisations as appear to them to be representative of interests substantially affected by the proposals,
 - (ii) where the proposals relate to the functions of one or more persons, bodies or office-holders, those persons, bodies or office-holders, or persons appearing to them to be representative of those persons, bodies or office-holders,
 - (iii) such other persons as they consider appropriate,
 - (c) have regard to any representations made within 40 days of the documents being laid before the Parliament under paragraph (a).
- (2) In calculating the period of 40 days for the purposes of subsection (1)(c), no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.>

Section 4

Alex Rowley

8 In section 4, page 4, line 21, after <to> insert <—

- (a) subsection (1A), and
- (b)>

Alex Rowley

9 In section 4, page 4, line 21, at end insert—

- <(1A) Where this subsection applies, the Scottish Ministers must not lay before the Scottish Parliament draft regulations for approval unless they have—
- (a) consulted in accordance with subsection (1B),
 - (b) had regard to any representations that are made to them within 60 days of the date on which the copy of the proposals is laid before the Parliament under subsection (1B)(a),
 - (c) laid before the Parliament an explanatory statement setting out—
 - (i) details of the consultation undertaken,

- (ii) a summary of any representations received as a result of the consultation,
- (iii) the changes (if any) made to the proposals as a result of those representations.

(1B) The Scottish Ministers must—

- (a) lay before the Parliament a document setting out their proposals,
- (b) make such a document publicly available in such manner as they consider appropriate,
- (c) consult—
 - (i) such persons or organisations as appear to them to be representative of interests substantially affected by the proposals,
 - (ii) where the proposals relate to the functions of one or more persons, bodies or office-holders, those persons, bodies or office-holders, or persons appearing to them to be representative of those persons, bodies or office-holders,
 - (iii) such other persons as they consider appropriate.

(1C) In calculating any period of 60 days for the purposes of subsection (1A)(b), no account is to be taken of any time during which the Parliament is—

- (a) dissolved, or
- (b) in recess for more than 4 days.>

Mike Rumbles

2 In section 4, page 4, leave out lines 23 to 28

Mike Rumbles

3 In section 4, page 4, leave out lines 33 and 34

Dean Lockhart

40 In section 4, page 4, line 34, at end insert—

<() the Parliament has determined by resolution under section (*Pre-laying scrutiny of regulations under section 1(1)*)(2)(a) should be made by regulations subject to the affirmative procedure.>

After section 4

Tom Arthur

41 After section 4, insert—

<Policy statement on the section 1(1) power

- (1) The Scottish Ministers must publish, in such manner as they consider appropriate, a statement of their policy on the factors to be taken into account when considering whether to use the power under section 1(1).
- (2) The Scottish Ministers may from time to time revise the policy statement and publish the revised policy statement.

- (3) It is not necessary for a policy statement to have been published under this section before the power under section 1(1) may be used.>

Section 6

Michael Russell

- 17 In section 6, page 5, line 21, at end insert—
- <() A statement explaining the effect (if any) of the instrument or draft on—
- (a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998, and
 - (b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.>

Dean Lockhart

- 42 In section 6, page 5, line 21, at end insert—
- <() Where section (*Regulations: additional requirements*) applies, a statement setting out—
- (a) details of the consultation undertaken,
 - (b) a summary of any representations received as a result of the consultation,
 - (c) the changes (if any) made to the proposals as a result of those representations.>

Michael Russell

- 18 In section 6, page 5, line 24, leave out <equalities> and insert <equality>

Michael Russell

- 19 In section 6, page 5, line 27, leave out <equalities> and insert <equality>

Michael Russell

- 20 In section 6, page 5, line 34, at end insert—
- <() A statement—
- (a) as to whether, in relation to the instrument or draft, the Scottish Ministers have consulted—
 - (i) such persons appearing to them to be representative of the interests of local authorities,
 - (ii) any other person, and
 - (b) if they have, setting out details of the consultation that they carried out.>

Murdo Fraser

- 43 In section 6, page 5, line 34, at end insert—
- <() Except where the regulations are subject to the negative procedure, a statement setting out the likely financial implications of the provision contained in the draft.>

Michael Russell

- 21 In section 6, page 5, line 35, leave out <equalities> and insert <equality>

After section 6

Liam McArthur

- 11 After section 6, insert—

<Duty to prepare and publish strategy on exercise of power in section 1

- (1) The Scottish Ministers must prepare and publish a strategy that sets out—
 - (a) the approach they intend to take,
 - (b) the factors they will take into account, and
 - (c) the process they will follow,in deciding whether to make provision by regulations under section 1(1).
- (2) The strategy must also set out in respect of which of the matters set out in section 1(1)(a) (with specific reference to EU provision where practicable)—
 - (a) the Scottish Ministers intend to—
 - (i) make regulations during the reporting period,
 - (ii) lay draft regulations before the Scottish Parliament during the reporting period,
 - (b) the Scottish Ministers do not intend to—
 - (i) make regulations during the reporting period,
 - (ii) lay draft regulations before the Scottish Parliament during the reporting period,
 - (c) their reasons for reaching the decision described in paragraphs (a) and (b).
- (3) The strategy must be prepared as soon as practicable after section 1(1) comes into force.
- (4) The Scottish Ministers may not adopt the strategy (or as the case may be, revised strategy) until a draft of it has been approved by resolution of the Scottish Parliament.
- (5) The Scottish Ministers must—
 - (a) lay before the Scottish Parliament a copy of the draft strategy (or as the case may be, revised strategy),
 - (b) have regard to any representations about the draft strategy (or as the case may be, revised strategy) that are made to them within no more than 120 days of the date on which the copy is laid before the Scottish Parliament under paragraph (a).
- (6) In calculating any period of no more than 120 days for the purposes of subsection (5)(b), no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.
- (7) If, as a result of any consultation required by subsection (5), it appears to the Scottish Ministers that it is appropriate to change the whole or any part of their proposals, they must undertake such further consultation with respect to the changes as they consider appropriate.

- (8) As soon as practicable after the strategy (or as the case may be, revised strategy) has been adopted, the Scottish Ministers are to publish it.
- (9) The strategy must be revised as soon as practicable after the expiry of one year beginning with the date the previous strategy (or, as the case may be, revised strategy) was published.
- (10) In this section, “reporting period” has the meaning given in section 7(2).>

Section 7

Michael Russell

- 22 In section 7, page 5, line 39, after <explaining> insert <—
(a)>

Michael Russell

- 23 In section 7, page 5, line 40, at end insert <, and
(b) how they intend to use the power under section 1(1) in the period (of such length as they may determine) following the reporting period.>

Patrick Harvie

- 44 In section 7, page 5, line 40, at end insert—
<() the Scottish Ministers’ intended use of the power under section 1(1) in the next reporting period, and
() any use of the power under section 1(1) that has been considered, or is being considered, by the Scottish Ministers during the reporting period.>

Angela Constance

- 10 In section 7, page 5, line 40, at end insert—
<() Each report must set out how the Scottish Ministers’ use of the power under section 1(1), or lack thereof, has contributed to the achievement of the purpose of Part 1 (within the meaning of section (*Purpose of Part 1*)).>

Patrick Harvie

- 45 In section 7, page 5, line 40, at end insert—
<() As soon as practicable, and no later than 2 months, after section 1(1) comes into force the Scottish Ministers must prepare and lay before the Scottish Parliament a report setting out—
(a) how the Scottish Ministers intend to use the section 1(1) power during the first reporting period,
(b) any use of the power under section 1(1) that has been considered, or is being considered, by the Scottish Ministers during the reporting period.>

Dean Lockhart

46 In section 7, page 5, line 40, at end insert—

<() Each report must include—

(a) details of the EU regulations, EU tertiary legislation, EU decisions or EU directives which the Scottish Ministers have considered during the reporting period but in relation to which they have decided not to make provision by regulations under section 1(1), and

(b) the Scottish Ministers' reasons for each such decision.>

Michael Russell

24 In section 7, page 6, line 2, leave out <of one year>

Patrick Harvie

47 In section 7, page 6, line 2, leave out, <one year> and insert <6 months>

Michael Russell

25 In section 7, page 6, line 3, at end insert <ending with 31 August 2021,>

Patrick Harvie

48 In section 7, page 6, line 4, leave out, <one year> and insert <6 months>

Michael Russell

26 In section 7, page 6, line 5, at end insert <, and

(c) the period (the “final reporting period”) beginning with the day after the end of the last period of one year determined under paragraph (b) and ending with the day on which the power to make regulations under section 1(1) expires in accordance with section 3.

() Subsection (1)(b) does not apply to the report for the final reporting period.>

Michael Russell

27 In section 7, page 6, line 6, leave out subsection (3) and insert—

<(4) The Scottish Ministers may by regulations amend the reporting periods specified in subsection (2).

(5) Regulations under subsection (4) are subject to the negative procedure.

(6) It is not necessary for a report explaining a particular intended use of the power under section 1(1) to have been prepared under this section before the power may be put to that use.>

Patrick Harvie

49 In section 7, page 6, line 6, after <practicable> insert <, and no later than 2 months,>

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