

## **ANNEX: THE PROPOSED AMENDMENTS**

### **A. UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION OF THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006**

The established methods for modifying the 1998 and 2006 Acts which provide for the devolution settlements for Scotland and Wales are by new Parliamentary legislation, for which the devolved legislatures' consent is required in accordance with the Sewel Convention, or by orders under those Acts, which again require the consent of the relevant legislature. But as currently drafted, UK Ministers' powers to make statutory instruments in clauses 7 to 9 of the Bill can be used to make amendments to the statutes containing the principles of the devolution settlements for Scotland and Wales, without any requirement for consent.

**Proposed amendments 1 and 2** would prevent the power to correct deficiencies in retained EU law and the power to ensure compliance with international obligations being used to amend the Scotland Act 1998 and the Government of Wales Act 2006. Where however amendments to these Acts becomes necessary (perhaps urgently) in order to implement the withdrawal agreement, **proposed amendment 3** would continue to allow such amendments to the 1998 and 2006 Acts to be made, but with consent from the relevant devolved administration.

### **B. UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN DEVOLVED COMPETENCE**

As currently drafted, UK Ministers' powers to make statutory instruments under clauses 7 to 9 of the Bill could be used to make provision in policy areas which are the responsibility of Scottish or Welsh Ministers. The Scottish Government and Welsh Government acknowledge that there may be circumstances justifying amendments to laws in devolved areas being made on a UK-wide basis, but they consider that this should only be possible with the consent of the devolved administrations

**Proposed amendments 4 to 6** would mean that UK Ministers would be required to secure the consent of the Welsh Ministers or the Scottish Ministers, before making provision which would be within those Ministers' devolved competence. Devolved Ministers would then be accountable to their legislatures for any decision to consent to the UK Ministers legislating on such a basis.

### **C. LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF "RETAINED EU LAW" RESTRICTION / UK FRAMEWORKS PROVISION**

As currently drafted, clause 11 of the Bill amends both devolution acts by inserting a new restriction on the competence of the devolved legislatures which would prevent the Scottish Parliament and the National Assembly for Wales from passing

legislation which modifies retained EU law, even in areas of devolved responsibility. And provision in Part 1 of Schedule 3 to the Bill has the effect that Scottish or Welsh Ministers would have no powers to make, confirm or approve any subordinate legislation so far as it modifies retained EU law.

The Welsh Government and Scottish Government consider that these provisions fundamentally cut across the principles of the devolution settlements, and they are strongly opposed to them.

**Proposed amendments 7 and 8** would remove these new restrictions in clause 11 and Schedule 3.

#### **D. SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL OF RESTRICTIONS AND CONSENT REQUIREMENT**

As currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers in the Bill which are not placed on UK Ministers. We are aware that there are significant concerns in Parliament about the very broad scope of the Henry VIII powers proposed in the Bill, and would be supportive of amendments which sought to define these more narrowly. However, we also believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

**Proposed amendments 9, 13 and 16** remove the restrictions preventing the powers being used to confer a power to legislate, bringing the powers into line with those being given to UK Ministers.

**Proposed amendments 10, 11, 14, 17 and 18** remove the restrictions placed on the Scottish and Welsh Ministers' ability to amend directly applicable EU law incorporated into UK law, again bringing the powers into line with those being given to UK Ministers.

**Proposed amendments 12, 15 and 19** replace requirements imposed on Scottish and Welsh Ministers to seek UK Ministers' consent in certain circumstances with a requirement to consult UK Ministers before making certain types of provision.

#### **CONSEQUENTIAL AMENDMENTS**

**Proposed amendments 20 to 38** are consequential on the principal amendments described above.