



# EU (Withdrawal) Bill

Department  
for Exiting the  
European Union

## Factsheet 5: Devolution

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### Devolution

On 2 May, the House of Lords accepted the amendments put forward by the Government to amend clause 11 and other aspects of devolution policy in the Bill. The amendments set out below are complemented by an intergovernmental agreement - available [here](#). The Welsh Government has supported these amendments and legislative consent has been granted to this Bill by the National Assembly for Wales.

The Government is committed to ensuring that our withdrawal from the EU is a successful and smooth process for the whole of the UK. Our priority is therefore to have a functioning statute book in all parts of the UK, which provides certainty for people and businesses on which laws and rules apply.

Currently, we have overarching rules from the EU that apply common policy approaches across the UK. These rules mean that there are no barriers to people living and doing business across the UK. Businesses from each part of the UK know they can trade with each other free from internal barriers, the UK can meet its international obligations and, as a country, we jointly protect our common resources such as our air, rivers and seas.

Once we leave the EU, we know that there will be some areas where we will continue to need common frameworks and approaches across the UK. We have an opportunity to develop these afresh so they work for all parts of the UK and, in doing so, strengthen the devolution settlements. At the Joint Ministerial Committee for European Negotiations in October 2017, the UK, Scottish and Welsh Governments agreed a set of principles to underpin this work. The UK Government has since been engaged in intensive discussions with the devolved administrations on which areas will or will not need common approaches and what these might look like. These discussions are ongoing.

Under the Bill, most decision-making powers returning from the EU that intersect with devolved competence will now transfer directly to the devolved institutions on exit day. In a small number of areas, we will maintain existing frameworks that apply across the UK while we are designing and implementing new arrangements.

The intergovernmental agreement to which the UK Government and Welsh Government are party sets out the 24 areas where we think it is likely we may need to “freeze” current policy through secondary legislation, and examples of other areas still under discussion where this approach may also apply. The policy areas likely to be included are those where we may need to retain common legislative approaches, for instance to protect our internal market, our common resources, and our reputation as a credible international trading partner. UK Ministers must also send draft regulations to the devolved

administrations, before obtaining the approval of the UK Parliament, in order to seek the consent of the devolved legislatures.

The “freeze” can only last for a maximum of five years.

This means that after we leave the EU, there will be a significant increase in the decision-making powers of the devolved institutions and power will sit closer to the people of Scotland, Wales, and Northern Ireland than ever before.

## Key facts

- The Bill will incorporate existing EU law into domestic law. But converting and preserving EU law is not enough to provide the UK with a functioning set of laws on exit day. The Bill provides powers for the devolved administrations to make secondary legislation that corrects deficiencies in their domestic retained EU law. It also provides powers for the devolved administrations to implement the withdrawal agreement and make provision relating to fees and charges.
- By converting and preserving EU law, we also bring the existing frameworks that are in place into domestic law. The Bill removes the requirement that the devolved institutions can only legislate in ways that are compatible with EU law, so that decision-making powers held at an EU level in otherwise devolved areas will pass directly to them on exit day.
- However, in order to provide certainty while we discuss where we may need to retain common approaches and how we might do that in future, the Bill provides that the devolved institutions cannot generally modify the retained EU law, in areas specified by UK ministers in secondary legislation. This will maintain existing frameworks in certain areas by freezing them. The powers to create a specific policy “freeze” will expire after two years, and the freeze itself will expire after five years.
- In order to exercise the powers, UK ministers must first have sought a decision on consent from the relevant devolved legislature by sending the draft regulations to the relevant devolved administration. If consent is not forthcoming, the UK minister must, if they decide to proceed, make a statement explaining why they have decided to do so, and must provide Parliament with any statement from the relevant devolved administrations that explains why consent has been withheld. In all cases, the Minister must make a statement explaining the effect of the regulations.
- In order for the legislation to be made under the powers it must be approved by both Houses of Parliament. In cases where devolved consent is not given, the UK Parliament, taking into account the interests of each part of the UK and the UK as a whole, will make the final decision on whether to proceed.
- In areas where the limit on competence has been applied, the scope of the devolved administrations’ current decision making powers will be preserved. This means that any decisions that the devolved administrations can take before exit,

they will be able to continue to take after exit, even in those areas where they cannot otherwise modify retained EU law.

## Frequently Asked Questions

### Isn't this a Westminster power grab?

- No. Any decision that the devolved administrations can make now, they will be able to make after exit from the EU. And with powers coming back from the EU, our frameworks analysis demonstrates agreement that there will be no need for legislative frameworks in most areas. As a result, the Government expects there will be a significant increase in the decision-making powers of the devolved administrations.
- We are only considering the need to retain frameworks where there is EU law that relates to an otherwise devolved area. The agreement with the Welsh Government sets out where we think those areas are.
- Under the Bill, as agreed by the House of Lords, the UK Government will have to send the regulations in draft to the devolved administrations for a decision on consent. The UK Government cannot proceed to lay the draft regulations before the UK Parliament unless a decision about whether to grant consent has been made by the devolved legislature or, alternatively, a 40 day period has elapsed without such a decision. Moreover, these regulations can last only for five years after they have come into force.
- Maintaining temporary frameworks is not about taking powers away - it's about taking a responsible approach to EU exit. It's vital that we ensure that the UK internal market continues to function and that, among other things, we protect our reputation as a credible international trading partner. And this means the UK Government, with the approval of the UK Parliament, can act if necessary but only after seeking consent.

### What has changed as a result of the devolution amendments?

- The changes to the Bill build on the proposals the Government made at Lords Committee Stage, and incorporate the views that Peers expressed in the debate on those proposals.
- Powers returning from Brussels will now flow directly to the devolved institutions unless an existing framework is temporarily maintained in recognition that UK-wide arrangements may be needed to protect our vital internal market, manage our common resources, or underpin new trade agreements.
- In order to specify areas where existing common arrangements will temporarily be retained, UK Ministers must send draft regulations maintaining existing frameworks for consideration by the relevant legislature before laying them before the UK Parliament.

- The proposals also make it explicit, on the face of the Bill, that these are strictly temporary arrangements. The powers to restrict competence will expire two years after exit day (if not already repealed), and the restrictions will expire five years after they come into effect (if not already revoked).

#### **What has been agreed with the Welsh Government?**

- The UK Government agreed to table amendments to the Bill at Lords Report Stage to put in place new devolution arrangements that had been agreed with the Welsh Government. These were tabled on Wednesday 25 April and were approved by the House of Lords following debate on 2 May.
- The UK and Welsh governments have also agreed to abide by the commitments set out in two documents: an Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks and a Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks. These were published on gov.uk on Wednesday 25 April.
- Together, these documents set out how the UK and Welsh governments will work together to consider where we may need to temporarily maintain existing frameworks that apply across the UK. This includes how we will establish the small number of areas that will be subject to temporary ‘freezing’ arrangements in relation to the powers returning from Brussels because they may require legislative frameworks to safeguard the vital internal market of the United Kingdom.

#### **Why has the Scottish Government not agreed to this if Wales has?**

- We have worked intensively and constructively with the Scottish and Welsh governments over many months to accommodate the issues they have raised in relation to the original drafting of clause 11.
- While the Scottish Government has publicly recognised the considerable movement that has been shown by the UK Government - and the compromise made on all sides - it has at this stage declined to join the agreement that has been reached.

#### **How does this agreement relate to Northern Ireland?**

- Our priority is to see the Executive in Northern Ireland restored. The agreement that has been reached on clause 11 is without prejudice to the re-establishment of a Northern Ireland Executive and the intergovernmental agreement remains open to incoming Ministers in a future Northern Ireland Executive.
- The Northern Ireland Civil Service has been kept fully informed of the progress of discussions, but it would be for an incoming Northern Ireland Executive to engage with this agreement. The Chancellor of the Duchy of Lancaster wrote to Northern Ireland parties on Wednesday 25 April to update them on the latest position in relation to the EU (Withdrawal) Bill.
- We would welcome both the Scottish Government and an incoming Northern Ireland Executive joining the intergovernmental agreement that has been reached with the Welsh Government.

### **How can you seek the consent of the NI Assembly when there is no Executive?**

- Our priority is to see the Northern Ireland Executive restored.
- The Bill, as agreed by the House of Lords, and the draft agreement have been drafted in a neutral way so that they could work for the Northern Ireland Executive once it is restored. The intergovernmental agreement remains open to incoming Ministers in a future Northern Ireland Executive.

### **The Scottish Government says seven years is too long for the competence restrictions to apply. Why do you need this much time??**

- This period is the result of the joint analysis that the UK Government and the devolved administrations have been undertaking into frameworks. On the basis of our analysis we believe, and the Welsh Government have agreed, that five years is the right period to ensure that we have sufficient time to establish our future UK frameworks, in those areas where they are needed.
- This is only the upper limit and the temporary restrictions can be removed sooner. Where we have implemented our future frameworks before the regulations have expired they can be revoked at that earlier date. UK ministers will be under a duty to consider every three months whether the powers, and regulations made under those powers, should be repealed, and to report on the progress made during that period towards repealing the powers and regulations.

### **What is the process for agreeing where you will exercise the power to limit devolved competence?**

- The Intergovernmental Agreement sets out that the UK Government will work with the devolved administrations in preparation of regulations that would maintain existing frameworks. Once those regulations are ready, UK ministers will be under a legal duty to send the draft regulations to the relevant devolved administration and notify the relevant Presiding Officer that they have done so. It is for the devolved administrations to lay the regulations before their legislatures to enable a vote.
- The devolved legislature has a 40-day period to consider the regulations from the point at which they are sent by the UK Government to the devolved administration. In calculating the 40 days, no account is taken of periods when the devolved legislature is dissolved or in recess for four days or more. The UK Government may proceed to lay regulations in the UK Parliament if no opinion has been given by the devolved legislature after the 40 day period or earlier if a view is given within the 40 day period.
- Where devolved consent is not given, the UK Government may proceed to lay the regulations before the UK Parliament for approval but must also make a statement to explain why the draft regulations are being laid without devolved consent, and must provide any statement made by the relevant devolved administration that sets out why consent was not given.

### **Does this mean you will just proceed regardless if devolved consent is withheld?**

- We have worked together with the devolved administrations to design a process that clarifies in legislation how the UK Government will seek to act by agreement. The approach we have now in the Bill, with the agreement of the Welsh Government, delivers this.
- Paragraph 6 of the Intergovernmental Agreement between the UK Government and the Welsh Government includes a commitment that the UK Government will not normally ask the UK Parliament to approve regulations without the consent of the relevant devolved administration. The Welsh Government, under the Agreement, commits that it will not unreasonably withhold consent.
- By exception, the UK Parliament can approve regulations without the consent of the devolved legislatures - this is right and respects our constitutional arrangements. It means where there may be a UK-wide impact, the UK Government, with the approval of the UK Parliament can act. It is right that as the only legislature that acts for the whole of the UK, it can protect the UK internal market, ensure our international obligations are met or manage our common resources.

**Are you now proceeding with this Bill without the Scottish Parliament's consent?**

- We are disappointed the Scottish Government do not feel able to recommend consent on the basis of the amendments adopted by the House of Lords at Report Stage and that the Scottish Parliament has not granted its consent to the Bill.
- We have made considerable changes to the Bill to reflect issues raised in the debates in the UK Parliament, the Devolved Legislatures and the Devolved Administrations. The door remains open for the Scottish Government to join this agreement, in the interests of providing maximum legal certainty to our communities and businesses as we leave the EU