European Partnership Bill

Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee

A. Introduction

1. This memorandum has been prepared by the Cabinet Office to assist the Delegated Powers and Regulatory Reform Committee ("DPRRC") in its consideration of the delegated powers contained in the European Partnership Bill ("the Bill").

2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

3. The government welcomes the views of the Committee and will consider its recommendations carefully to ensure that the delegated powers taken by this Bill are no more than is appropriate for the purposes for which they are sought.

B. Purpose and effect of the Bill

Background

Current UK-EU arrangements under the Trade and Cooperation Agreement :

4. Following EU Exit, the trading arrangements between the UK and the EU were set out in the Trade and Cooperation Agreement ("TCA"), provided for domestically through the European Union (Future Relationship) Act 2020 ("EUFRA"). These arrangements continue to apply.

5. There is no requirement in the TCA for the UK to apply EU law or interpret it in a manner consistent with EU Member States. Therefore, successive governments have taken steps to amend, revoke and repeal EU laws, as well as to change the way that EU law should be interpreted.

6. Leaving the EU meant that the UK left the EU Emissions Trading Scheme. This led the UK to establish its own, separate, UK Emissions Trading Scheme. Much of

the law underpinning the UK scheme is assimilated EU law, and therefore operates in a similar way to the EU's scheme.

7. Another consequence of leaving the EU was the removal of the requirement to apply EU import requirements for sanitary and phytosanitary goods, meaning that UK and EU standards and requirements for trading sanitary and phytosanitary goods have diverged in some areas.

The UK-EU Reset and Partnership Treaties:

8. This government has committed to resetting its trade and investment relationship with the EU.

9. On 20 November 2026, the government held its second UK-EU Summit and published a Joint Statement confirming the conclusion of negotiations on: :

   - Arrangements for trade in agrifood, or 'sanitary and phytosanitary' goods ("an SPS agreement"), and;

   - Linking of the UK emissions trading scheme and the EU's emissions trading system ("an ETS agreement").

The draft SPS and ETS agreements are referred to in the Bill as "partnership treaties".

Dynamic alignment and EU rules:

10. In the draft SPS and ETS agreements, the UK has committed to "dynamic alignment" with the EU on areas that are in scope. This will mean aligning domestic law with EU rules in agreed policy areas, on an ongoing basis. It will also mean that our courts need to interpret these EU rules in the same way as Member States. Having a consistent set of rules provides the basis for controls to be lifted and UK goods to be able to flow into the EU market. For example, it will no longer be a requirement to produce Export Health Certificates when moving animal products from Great Britain to the EU or from the EU to Great Britain.

11. Some types of EU rules are designed to apply as written in all countries that apply EU laws, like EU Regulations and EU Decisions. Where these are in scope of the agreements, they will be given effect in the UK as written. Some types of EU rules

must be implemented domestically, and provide discretion in how to best give effect to their requirements, like EU Directives. Where these rules are in scope of the agreements, they will be given effect in the UK as required, and as fits the UK system.

Domestic Implementation of Partnership Treaties:

12. The draft SPS and ETS agreements, referred to in the Bill as "partnership treaties", will list the EU rules which are in scope of the UK's dynamic alignment commitments in an Annex. Dynamic alignment also applies to EU rules made under powers provided for in the EU rules listed in the Annex (a "tertiary act", such as a delegated or implementing act), but these will not be listed. The UK will need to make the necessary changes domestically to be compliant with EU rules before the agreement comes into force.The Government has deposited the initialled treaty texts for the draft SPS and ETS agreements into the House Library.

13. Elements of the partnership treaties which will create an obligation, such as an EU Regulation to which the UK has agreed to align, are referred to in the Bill as "partnership treaty instruments". The UK will have a role in shaping these rules whilst they are in development, similar to the role of Member States, but without the right to vote. A consultation process led by the UK government will take place once we are notified of an EU regulation in development, providing opportunities for relevant stakeholders to present their views.

14. The draft SPS and ETS agreements will require the UK to interpret rules within scope of our dynamic alignment obligation in the same way as EU Member States. This is the principle of 'Uniform Interpretation'. In practice, UK courts will need to follow case law originating from the Court of Justice of the European Union ("CJEU") when interpreting the domestic law giving effect to the partnership treaties. However, overall decisions will remain with UK courts.

<u>The Bill</u>

Purpose and rationale

15. The primary purpose of this Bill is to establish a domestic legal framework capable of implementing the SPS and ETS agreements, or "partnership treaties", and the

dynamic alignment commitments within them. The Bill also contains a power capable of extending this domestic legal framework to future UK-EU treaties, as well as treaties with third countries where they reflect or relate to a UK-EU partnership treaty.

16. We view that the delegated powers in the Bill are required as there are no suitable powers existing on the statute book that would enable the government to adopt and implement EU laws to meet our treaty obligations and fully benefit from rights and powers added.

17. The implementation power in section 31 of the European Union (Future Relationship) Act 2020 ("EUFRA") cannot be used as the partnership treaties on SPS and ETS will not be supplementing agreements to the TCA. However, use of section 31 of EUFRA may be possible for future UK-EU treaties that are supplementing agreements to the TCA. Moreover, section 31 cannot be used to implement UK-EU agreements that also involve the European Free Trade Association ("EFTA") and any other third countries which we may wish to make in the future.

18. Elsewhere, many of the powers in the European Union (Withdrawal) Act 2018 ("EUWA") have expired under their statutory sunset clauses, and surviving powers are designed to address EU-Exit related issues rather than implementing new international agreements. They are therefore not capable of allowing Ministers to implement the partnership treaties: for example, they lack a mechanism for aligning with EU legislation in a dynamic way, as amended from time to time (see paragraph 10).

Design of Bill Powers

19. The UK commitment to dynamic alignment in the partnership treaties will require implementing legislation on an ongoing basis, in line with changes to relevant EU rules. The UK must give effect to new or amended rules by the date they take effect in the EU, or two months from the date the EU formally adopts them - whichever is later. This is an ongoing commitment to align, therefore the required statutory changes cannot be specified on the face of the Bill, since this will not be fixed at the time of ratification of the treaties. Instead, the delegated powers taken

in this Bill, including Henry VIII powers, are required for the UK to fulfil its dynamic alignment obligations, which may require the amendment of both existing and future primary legislation.

20. Conferring delegated powers to an appropriate authority, such as a Minister of the Crown or devolved authority, means that the UK can meet the deadlines provided for in the partnership treaties. Requiring primary legislation for each change would mean the UK would be unable to fulfil our dynamic alignment obligations and risk breaching the partnership treaties. This could expose the UK to potential remedial measures, and may mean that the benefits of the partnership treaties will not be realised.

21. The Bill establishes two main powers: to make 'adoption' and 'implementation' regulations. These give effect to partnership treaty instruments. The adoption power is used to give domestic effect to partnership treaty instruments which are designed to apply as written in all countries that apply EU laws (like EU Regulations and EU Decisions). The implementation power firstly allows for provision to be made that implements or gives effect to a partnership treaty instrument, and will be used where there is discretion in how to best give effect to partnership treaty requirements (like EU Directives). Second, the implementation power can be used to make provision that supports or supplements the implementation of a partnership treaty instrument. Third, the power can be used to make provision for consistency purposes, and finally to achieve goals such as the reduction of financial cost and administrative inconvenience. This will ensure that partnership treaty instruments work properly in our domestic system, and that where possible different rules can be streamlined, helping to reduce red tape and costs.

22. The Bill also provides a mechanism in clause 11 for the designation of further partnership treaties not listed in clause 1. Clause 11(2) sets out that a treaty cannot be designated if it requires the application of the EU principle of free movement of persons, the UK to apply the four freedoms of the European Single Market or UK participation in the EU customs union. A Minister of the Crown may, after following the procedure and conditions in clause 11(4)-11(5), recommend to His Majesty that he designate a treaty as a partnership treaty by Order in Council

(see more detail below). This process can be followed if: (clause 11(6)(a)) the treaty relates to economic, trade or security cooperation, or is otherwise about partnership, between the UK and the EU; or (11(6)(a)) the treaty relates to economic, trade or security cooperation, or is otherwise about partnership, between the UK and one or more countries, territories or EFTA and reflects or relates to a partnership treaty between the UK and the EU or any treaty within clause 11(6)(a).

23. This is necessary for the government to be able to bring in new, relevant international treaties under the framework described above without the need for primary legislation each time. For example, the UK is currently negotiating arrangements for electricity with the EU. This power will be required to extend the effect of the Bill to a future agreement on electricity.

Parliamentary scrutiny

24. The government recognises the importance of facilitating parliamentary scrutiny by illustrating how the Bill powers will be used to implement the draft SPS and ETS agreements. The existing laws that the UK will be required to dynamically align with will be listed in the Annexes of the draft SPS and ETS treaties announced at the UK-EU Summit. These laws will be given domestic effect via an initial tranche of Statutory Instruments ("SIs"). To support parliamentary scrutiny as above, the government will publish the initial tranche of SIs in draft, and provide them to the DPRRC during passage of the Bill. This transparency will also support industry in preparing for and applying the new rules.

25. For secondary legislation, the Parliamentary procedure followed will vary depending on the power being used and the content of the SI. The procedure for each power is listed in the detailed clause explanations below (see section D), but include standard triggers for the affirmative procedure and have been developed in line with precedent.

26. The Government has deposited the initialled treaty texts for the draft SPS and ETS agreements into the House Library. This will be the first opportunity for Parliament to review the substance of the agreements. Once the agreements are formally signed by the UK-EU, the government will provide further opportunities

for scrutiny of the agreements through the procedure in the Constitutional Reform and Governance Act 2010 (CRAG). This ensures that Parliament has sufficient scrutiny of any new partnership treaties before ratification. Whilst the requirements in CRAG were set aside by the previous governments for the Withdrawal Agreement (through the EU (Withdrawal Agreement) Act 2020) and the TCA (through the EUFRA), the government welcomes the opportunity for Parliament to scrutinise these treaties. In addition, the government is also proposing parliamentary scrutiny of the draft SI containing the Order in Council. This will be discussed further in paragraph 94.

27. The government is keen to balance the need to implement in an agile way, in order that the economic benefits may be realised as quickly as possible, with ensuring Parliament has meaningful scrutiny of the implementation of partnership treaties.

Instructions for courts

28. The Bill also provides rules for UK courts regarding the reconciliation and interpretation of EU law: this reflects the commitment to uniform interpretation (see paragraph 14). The Bill provides powers to adjust or disapply these interpretative rules where appropriate for future treaties.

Devolution in the Bill

29. Where implementing provisions of a partnership treaty fall within areas of devolved competence, and the relevant treaty commitment allows for discretion as to how it shall be implemented, the delegated powers allow for devolved authorities to act as an appropriate authority and take steps for implementation. It will also remain possible for a Minister of the Crown to be an 'appropriate authority' in these areas, however, in line with the Sewel Convention the government will not normally legislate in these areas without devolved authority consent. This is similar to the approach taken when the UK was a Member State of the EU and subsequent Brexit Acts.

30. The draft SPS agreement will apply to the Crown Dependencies.

Conclusion

31. The government welcomes the views of the Committee and will consider its recommendations carefully to ensure that the delegated powers taken by this Bill are no more than is appropriate for the purposes for which they are sought.

C. Table of the Delegated Powers

The following table summarises the delegated powers in the Bill.

Power	Enabling Clause / Schedule	Delegated to	Purpose	Parliamentary Procedure
Implementation regulations	Clause 2 and Schedule 1	Appropriate authority (Minister of the Crown, devolved authority, or specified Public Authority)	To implement or give effect to "partnership treaty instruments".	Draft affirmative or made negative procedure, with made affirmative procedure for urgency.
Adoption regulations	Clause 3, clause 4	Minister of the Crown	To designate and give domestic effect to "qualifying partnership treaty instruments" (primarily EU Regulations/Decisions required by a partnership treaty to have effect).	Made negative procedure, except where consequential provisions made under clause 14(6) in relation to adoption regulations amend or repeal primary legislation, in which case the procedure is the draft affirmative procedure.
Power to disapply or modify the effect of provisions in sections 5 to 8	Clause 9(2)	Minister of the Crown	To disapply or modify the effect of the reconciliation and interpretation provisions in clauses 5 to 8 in respect of particular partnership treaties, partnership treaty instruments or provisions thereof.	Made negative procedure
Disputes, remediation and suspension	Clause 10	Appropriate authority (Minister of the Crown, devolved authority, or specified Public Authority), with exception of [clause 10(4)] which is delegated only to	To enable provision to be made for the purposes of, or in connection with, suspensions, other remedial measures and dispute resolution in relation to partnership treaties.	Draft affirmative or made negative procedure, with made affirmative procedure for urgency.

		Minister of the Crown		
Designation of further treaties	Clause 11	His Majesty by Order in Council (on recommendation of Minister of the Crown)	To designate additional treaties as "partnership treaties" for the purposes of the Act.	Draft affirmative procedure
Consequential provision	Clause 13(2)	Minister of the Crown	To make such provision as the Minister considers appropriate in consequence of this Act.	Made negative procedure or draft affirmative procedure where amending or repealing primary legislation
Commencement regulations	Clause 18(2)	Minister of the Crown	To appoint the day on which clauses 5-8 (relating to reconciliation and interpretation) come into force.	No Parliamentary procedure
Transitional, transitory or saving provision	Clause 18(3)	Minister of the Crown	To make necessary transitional, transitory or saving provision in connection with the commencement of any provision of the Act.	No Parliamentary procedure
Public authority designation regulations	Schedule 1, para 2(2)	Minister of the Crown	To designate a public authority as an “appropriate authority” and set out the procedural rules for its implementation regulations.	Made negative procedure

D. Detailed Explanation of Delegated Powers by Clause

Clause 2: Implementation regulations

Power conferred on: *Minister of the Crown, the devolved authority, or a Minister of the Crown acting jointly with one or more devolved authorities*

Power exercised by: *Regulations made by SI*[1]

Henry VIII clause: *Yes*

Parliamentary Procedure: *Draft affirmative procedure where a SI amends, revokes or repeals primary legislation, imposes new fees or charges or creates or widens a criminal offence (apart from some biosecurity offences). There is a discretion regarding the use of negative or draft affirmative procedure for other regulations. The urgency procedure (made affirmative) is available for these regulations where an appropriate authority considers it justified by reason of urgency and the regulations include a declaration to that effect.*

32. **Power conferred on:** Clause 2(1) confers a power on an "appropriate authority" to make regulations to implement or give effect to partnership treaty instruments (i.e. EU laws or treaty provisions). An "appropriate authority" includes a Minister of the Crown acting alone or jointly with a devolved authority, a devolved authority acting alone, or a public authority specified by a Minister of the Crown (Schedule 1, para 2).

33. This power is a concurrent power, allowing a Minister of the Crown to make regulations in areas of devolved competence. This will enable continued legislative coordination where this is collectively considered helpful.

34. The government intends to honour the Sewel Convention by committing that we will not normally exercise this power in devolved areas without the agreement of the relevant devolved authority.

[1] Instruments will be made as Scottish SIs where made by Scottish Ministers, as Statutory Rules where made by a Northern Ireland Department and as Welsh SIs where made by Welsh Ministers in line with the devolved administrations normal arrangements for making secondary legislation.

35. **Power exercised by:** Regulations made by SI, other than where exercised by a Northern Ireland department, Scottish Minister or Welsh Minister acting alone (see clause 14(1) - (4)).

36. **Context and Purpose:** Clause 2 of the Bill creates a delegated power enabling an appropriate authority to implement or give effect to partnership treaty instruments. The power is capable of doing anything an Act of Parliament can do (see paragraph 3(1) of Schedule 1), subject to specific limitations, explained in paragraph 44). The treaties we identify on the face of the Bill each have tightly-defined scope covering a range of EU laws listed in the agreement annexes. However, the need for continuous legal alignment and technical implementation means that anything set out on the face of the Bill would soon be outdated. Implementation regulations in most cases will be required where the UK needs to take proactive steps to implement a partnership treaty instrument.

37. Clause 2(1) will be used to implement EU Directives, like the Fruit Juices Directive (Council Directive 2001/112/EC, as updated by Directive (EU) 2024/1438), which is a partnership treaty instrument in the SPS Agreement. This Directive establishes compositional and labelling standards for fruit juices and similar products. Following recent updates, the Directive introduces three new product categories : reduced-sugar fruit juice, reduced-sugar fruit juice from concentrate, and concentrated reduced-sugar fruit juice. This allowed products made using novel sugar-reduction technologies to be legally marketed under those names. Domestic implementation is needed to give effect to the partnership treaty instrument, as this is required for EU Directives. Clause 2(1) is expected to be used to implement the updated Directive, including updating the legal definitions and labelling standards in Great Britain to reflect the new categories of reduced sugar fruit juice.

38. Clause 2(1) will also be used to implement EU Regulations, where they require the UK to take action to give them full effect. For example, the Animal Health Regulation (Regulation (EU) 2016/429) is a partnership treaty instrument in the SPS Agreement. Article 18 of the Animal Health Regulation requires Member States to ensure that operators and other relevant persons notify competent authorities where certain listed animal diseases are suspected or detected. It also

requires unexplained abnormal mortality and other signs of serious disease to be reported to a veterinarian for investigation. Provision is needed at a domestic level to give effect to this obligation. The power in clause 2(1) will be used to set out the relevant requirements on notification to give effect to Article 18, including the penalties for failing to comply with these requirements. Clause 2(2) clarifies certain matters that the power can be used for, including:

a. Provision implementing EU laws before the partnership treaty strictly requires it (clause 2(2)(a)). For example:

    i. The Directive on the monitoring of zoonoses and zoonotic agents (Directive 2003/99/EC) is a partnership treaty instrument in the SPS agreement. The issue of antimicrobial resistance in zoonotic and commensal bacteria is currently governed by the Implementing Decision on the monitoring and reporting of antimicrobial resistance in zoonotic and commensal bacteria (Commission Implementing Decision (EU) 2020/1729). This Implementing Decision covers the period from 2021 to 2027. The UK will need to implement the successor to this Implementing Decision, which will govern 2028-2034. The successor is expected to introduce a requirement for an antimicrobial resistance aquatic survey starting in January 2028. This survey is therefore scheduled to begin before the SPS Agreement's formal date of application, meaning that the UK would not yet be under a treaty obligation to participate from the outset. However, if the UK doesn't participate from the outset, data from our significant aquaculture sector won't be captured in the dataset. Therefore, clause 2(2)(a) would be utilised to implement the successor to Implementing Decision 202/1729 sooner than required by the agreement.

    ii. The Plant Health Regulation (Regulation (EU) 2016/2031) is a partnership treaty instrument in the SPS agreement. Under the Regulation, regulated plants and plant products cannot be moved without a valid plant passport, and professional operators

must be formally authorised by a Competent Authority before they are permitted to issue them. It affects all regulated plants including new plant products that GB will need to regulate under the SPS Agreement. UK Plant Passports (and associated authorisations) will be replaced with EU Plant Passports (and associated authorisations). The EU plant passport will enable plants to move within GB and into the EU (and Northern Ireland), removing the need for any border checks. Provision is needed at a domestic level ahead of the SPS Agreement taking effect so that businesses can be authorised in advance. The power in clause 2(2)(a) will be used to implement procedural provisions from Regulation (EU) 2016/2031 sooner than required by the agreement. These national provisions will cover the procedure for a business applying for authorisation and the subsequent process the Competent Authority must follow to assess and determine that application before issuing an authorisation.

b. The Pesticides Regulation (Regulation (EC) No 1107/2009) is a partnership treaty instrument in the SPS agreement. Under the Regulation, pesticides cannot be placed on the market unless an application has been submitted, examined, and authorised. Clause 2(2)(a) will be used to implement procedural provisions sooner than required by the SPS agreement, so that the competent authority can assess pesticide applications in advance using the EU requirements as they will apply in Great Britain after entry into force. Applications could thereby be processed early, and decisions would be taken after entry into force.Provision that applies to partnership treaty instruments generally, and provision that may anticipate future treaties (clause 2(2)(b)).

c. Any provision that an appropriate authority considers is expedient to support or supplement the implementation of any provision of a partnership treaty instrument (clause 2(2)(c)).

i. The Biocidal Products Regulation (Regulation (EU) No 528/2012) is a partnership treaty instrument under the SPS Agreement that sets rules for disinfectants, pest control products, and industrial preservatives. Clause 2(2)(c) will be used to introduce supplementary domestic measures which are necessary to support implementation, but which aren't implementing specific provisions of partnership treaty instruments. For example, the Health and Safety Executive (HSE) will use the power to amend domestic legislation so that they can charge fees for activities which need to be carried out under the Regulation.

ii. Through the draft SPS agreement, we have secured an exception for precision bred products. This means that precision bred products can continue to be placed on the market in Great Britain until October 2029, at which point EU's rules on new genomic techniques (Regulation (EU) 2026/1388) will be applied. A condition of this exception is that the UK must inform the European Commission that the UK has put in place an effective control system to ensure that these goods do not move into the EU. The power in clause 2(2)(c) will be used to implement this system. This could include temporary labelling requirements, records keeping, statutory ban on exporting to the EU - requirements are subject to discussion with the EU.

iii. The EU ETS Directive (Directive 2003/87/EC) and the Monitoring and Reporting Regulation (Commission Implementing Regulation (EU) 2018/2066) are partnership treaty instruments in the ETS agreement. This means that the UK is committed to establish monitoring and reporting systems, in line with these partnership treaty instruments. Clause 2(2)(c) could be used to make supplementary administrative or enforcement provisions to ensure that these monitoring and reporting systems work for both operators and regulators. For example, supplementary legislation would allow regulators to recover

costs associated with ensuring operators meet monitoring requirements.

39. Situations where a partnership treaty instrument may be implemented at the discretion of the State (clause 2(2)(d)). For example:

    a. The Food Information to Consumers Regulation (Regulation (EU) No 1169/2011) is a partnership treaty instrument in the SPS Agreement. While the Regulation establishes a harmonised framework for rules on food information and labelling, it leaves discretion for national measures in some areas. For example, Article 44 explicitly leaves discretion for national measures in specific areas, including rules governing non-prepacked food and food prepacked for direct sale (PPDS). Clause 2(2)(d) will allow us to introduce the full range of national measures permitted under Regulation (EU) No 1169/2011, including in respect of non-prepacked food, where emerging risks arise and further regulation may be needed.

    b. The Plant Health Regulation (Regulation (EU) 2016/2031) is a partnership treaty instrument under the SPS Agreement. Article 108 requires national governments to put in place penalties for infringements of the Regulation but leaves discretion to national governments to lay down their own rules on how to achieve this. Clause 2(2)(d) will be used to retain the UK's existing penalty framework, amending where required to meet the requirements of the Regulation regarding penalties. This ensures the continuation of a penalty framework which is effective, proportionate, dissuasive, and appropriate for the UK system.

    c. The ETS Directive (Directive 2003/87/EC) is a partnership treaty instrument in the ETS Linking Agreement. Article 16(1) requires Member States to establish rules on penalties for infringements of ETS obligations and provides that those penalties must be effective, proportionate and dissuasive. Clause 2(2)(d) could be used to establish or amend the domestic penalties framework necessary to give effect to that obligation.

40. The implementation power may be used to achieve coherence and consistency of the law (clause 2(3) - (5)). This could be used to account for UK-specific circumstances in implementation or to ensure businesses face the same processes UK-wide.

    a. For example, partnership treaty instruments may apply through a partnership treaty in Great Britain, but the same law will apply in Northern Ireland through the Windsor Framework. The Organics Regulation (Regulation (EU) 2018/848) is a partnership treaty instrument in the draft SPS agreement and applies in Northern Ireland through the Windsor Framework. This power will be used to ensure a consistent regime for organics across the UK, under the Environment Secretary as the relevant Competent Authority. This will place Northern Ireland on the same regulatory footing as the rest of the UK by removing regulatory divergence and eliminating checks and controls associated with the movement of organic goods between Great Britain and Northern Ireland. In particular, businesses moving organic goods from Great Britain to Northern Ireland will no longer be required to obtain Certificates of Inspection (COIs), as is currently required for goods moving via the red lane. COIs are estimated to cost around £35 per certificate for each shipment, reducing costs and administrative burdens for affected businesses.

    b. Another example can be found in the Regulation on Plant Variety Rights (Council Regulation (EC) No 2100/94) which is a partnership treaty instrument in the draft SPS agreement. It will be applied in tandem with domestic rules on plant variety rights, provided for in the Plant Varieties Act 1997. Scientific names for plant varieties are updated periodically via the International Union for the Protection of New Varieties of Plants (UPOV) Convention, to which the UK and EU are signatories. Several scientific names now need to be updated in domestic regulations. The EU has not yet updated their Regulation 2100/94 but have updated regulations concerning the marketing of plant reproductive material with which the UK will align with. Therefore, this power will be used to update the UK's Plant Breeders' Rights

(Farm Saved Seed) (Specification of Species and Groups) Order 1998 with the new scientific names to create domestic alignment. This will allow the UK government to align with the EU's plant reproductive material marketing regulations and create harmonisation across domestic legislation on plant scientific names.

41. The power can also be used to extend the implementation or effect of a partnership treaty instrument to cases to which it would not otherwise apply (clause 2(6) - (7)). Clause 2(6) can only be used for consistency purposes, or to remove or reduce financial costs, administrative inconvenience, or obstacles to efficiency, productivity or profitability.

42. For example, some relevant provisions (Section 1 of Chapter I of Title II of Part II and Articles 189, 190 and 230(1)(c)) of the Common Market Organisation Regulation (Regulation (EU) 1308/2013) are partnership treaty instruments in the SPS agreement. This will mean the UK will apply EU marketing standards (Regulation (EU) 1308/2013) to agricultural products. However, the UK has secured an exception for wine, across the SPS agreement. Therefore, under the terms of the proposed agreement, these standards will not apply to wine marketed in GB. However, here, it might be beneficial for the UK to adopt targeted technical standards without having to bring an entire excluded sector into scope of the treaty. The EU has recently legislated to introduce terms for wine with reduced alcohol content, for example ‘’0.0%" and "alcohol-free." The UK does not regulate in this area, though the previous government consulted on it in 2023. Wine marketed in GB must have a minimum abv of 8.5% or 4.5% for wines with a Geographical Indication. The power in clause 2(6) could be used to extend the relevant provisions of Regulation (EU) 1308/2013 for wines marketed in GB so as to regulate no/low alcohol wine, provided that doing so satisfied the purpose requirements of clause 2(7) as regards consistency or the removal of relevant costs, inconveniences or obstacles.

43. **Constraints on the Power:** The government recognises that the implementation power is flexible and requires specified limitations. These constraints have precedent in Acts relating to UK-EU relations: they were included in EUWA (section 8(7)) and EUFRA (section 31(4)), and (a)-(d) were included in the

European Communities Act (ECA) 1972 (Schedule 2). The constraints are set out in Schedule 1 (Part 1, paragraphs 3(2) - (8)) and restrict the implementation power from being used to:

a. Make retrospective provision (paragraph 3(2)(a) Schedule 1). The constraint on making retrospective provision is an important constitutional safeguard.

b. Impose or increase taxation (paragraph 3(2)(b) Schedule 1). The constraint on imposing or increasing taxation prevents the circumvention of powers historically vested in Parliament. This exclusion does not prevent imposing or increasing fees or charges in respect of the provision of a service (even if that fee or charge is higher than the cost of the service) (paragraph 3(3) Schedule 1). The implementation power can also be used to set civil monetary penalties and allow fixed penalty notices to be issued for offences as these are not caught by the taxation restriction. This provision enables departments, for example, to recover the full costs associated with their regulatory and disease control activities. In practice, certain regimes require funding for system-level functions - such as monitoring, surveillance, and response activities - rather than solely for discrete transactional services. If charges were limited to direct cost recovery for individual services, this could create funding shortfalls. For example, the Health and Safety Executive (HSE) may use the power to amend domestic legislation so that they can charge appropriate fees for activities which need to be carried out under the Biocidal Products Regulation (Regulation (EU) No 528/2012)

c. Create a new criminal offence punishable with a prison sentence over two years (paragraph 3(2)(c) and 3(6)-(7) Schedule 1).The creation of any criminal offence is a serious matter and the appropriate authorities should be subject to constraints. If the authority wants to impose more serious penalties it should return to Parliament. However, an alternative constraint is included where an offence involves conduct that either constitutes, or is of a similar nature to, an offence provided for in

sections 4, 5, 6(1) or (2), 7 or 8 of the Animal Welfare Act 2006 (“AWA”) or sections 19 or 23 of the Animal Health and Welfare (Scotland) Act 2006. In those circumstances, the limit would be five years, consistent with changes made via the Animal Welfare (Sentencing) Act 2021 following the UK’s exit from the EU. For example, the Welfare and Traceability of Cats and Dogs Regulation (Regulation (EU) 2026/1818) is a partnership treaty instrument in the draft SPS agreement. Article 15 of the Proposal seeks to prohibit mutilation, which includes ear cropping and tail docking, which is a matter dealt with in section 5 of the AWA. Therefore, if a 2 year limit were to apply to these types of offences, then any new sanctions for breaching the requirements in EU animal welfare legislation (for example engaging in mutilation or docking of tails) applied via the draft SPS agreement and implemented via the Bill’s powers would be significantly lower than those set out in the AWA.

d. Confer any new power to make legislation, other than rules of procedure for any court or tribunal (paragraph 3(2)(d) Schedule 1). Modification of an existing power amounts to conferring a ‘new’ power if it is being broadened beyond its original scope (paragraph 3(5)(b) Schedule 1). Matters of administration are not to be considered as legislative in nature and therefore do not amount to excluded provision (paragraph 3(5)(a) Schedule 1). The government considers it appropriate to limit the ability to create further powers to delegate: in any situation where it is considered necessary, the government should revert to Parliament. For example:

    i. The Secretary of State for Environment, Food and Rural Affairs currently delegates responsibility for executing checks under assimilated Regulation (EU) 2017/625 (the “Official Controls Regulation”) to the Animal and Plant Health Agency. It is expected that this will continue to be the case for the adopted version of the Official Controls Regulation.

ii. The ETS Authority (UK, Scottish and Welsh Governments and Department for Agriculture, Environment and Rural Affairs) issues reporting templates, application forms or technical guidance which would be delegated without requiring legislative amendment each time such documents are updated. This has been standard operating practice since the UK set up its own ETS and enables reporting templates, application forms and technical guidance to be updated quickly to reflect operational experience, technological developments or agreed changes to the scheme.

e. Amend, repeal or revoke the Human Rights Act 1998 (paragraph 3(2)(e) Schedule 1). Human rights is a constitutional matter inappropriate for delegated powers in this context;

f. Amend or repeal the Devolution Acts (paragraph 3(2)(f) Schedule 1). Devolution is a constitutional matter inappropriate for delegated powers in this context.

44. **Justification for taking the power:** The implementation power is flexible, and is a Henry VIII power (paragraph 3(1) Schedule 1), meaning that it can be used to amend primary legislation. For example, the New Genomic Techniques (NGT) Regulation (Regulation (EU) 2015/2283) is a partnership treaty instrument in the SPS agreement. However, the UK has secured an exception in the SPS agreement which means that precision bred products can continue to be placed on the market in Great Britain until October 2029. To facilitate this, changes may be necessary to the Genetic Technology (Precision Breeding) Act 2023. This power could facilitate this. This would ensure that the domestic legislative framework remained consistent with the UK's obligations under the SPS Agreement and avoid legal inconsistencies between treaty implementation measures and existing primary legislation.

45. In the partnership treaties the UK has committed to dynamic alignment of domestic law within their agreed scope. The dynamic nature of these obligations means that they will be updated as relevant EU laws are added to the treaty, amended or repealed, and therefore the required statutory changes cannot be

specified on the face of the Bill. This is why Henry VIII powers are necessary - the UK's future dynamic alignment obligations under partnership treaties may require the amendment of both existing and future primary legislation. Without the power to make changes to primary legislation where required, the UK would face significant risk of non-compliance with partnership treaties, and therefore of a breach of its international obligations, since the two month implementation window is too narrow to implement changes through primary legislation. Conferring Henry VIII powers is also proportionate: Parliament will have agreed to the scope of partnership treaty commitments in accordance with arrangements under the CRAG, and any changes to primary legislation will be made to effectively fulfil these commitments. In addition, all exercises of Henry VIII powers are subject to the affirmative procedure, meaning Parliament has the appropriate level of scrutiny of SIs amending primary legislation.

46. It is important to note that this power is limited by the constraints set out in Schedule 1 (Part 1, paragraphs 3(2) - (8)). More broadly, any exercise of the power must ultimately stem from provisions of an international agreement that has been concluded and approved by Parliament in the usual way.

47. It is also important to note that partnership treaty instruments in the draft SPS and ETS agreements will require us to update arrangements for enforcement, offences and penalties using this power. Given the partnership treaties are dynamic, full details of those changes cannot be included on the face of the Bill. Relying on primary legislation for the implementation and adjustment of criminal offences would also not be possible because of the two-month implementation window referred to in paragraph 19. Delegated powers to create or widen the scope of a criminal offence will therefore be necessary, as will delegated powers to set penalties. These powers will be used to implement the partnership treaties, such as setting up a penalty system and introducing enforcement mechanisms including the power to seize products. For example, the EU Animal Health Regulation (Regulation (EU) 2016/429) is a partnership treaty instrument in the SPS agreement. Powers may be used to enable the introduction of new civil sanctions if needed to enforce the Animal Health Regulation and safeguard animal health. This would provide authorities with additional tools such as stop notices to halt harmful activity or binding commitments to require a business to

take specified action. The limits to the power to create criminal offences are specified in Schedule 1, setting the maximum sentence for general criminal offences at 2 years, and the maximum sentence for qualifying animal welfare offences at 5 years. This is consistent with precedent for sentence limits for offences created under secondary legislation: the same limit was set in the (now repealed) ECA, and in the EUWA. Parliamentary procedure is set appropriately, with regulations which create a new criminal offence or widen the scope of an existing offence subject to the affirmative procedure.

48. **Justification for Parliamentary Procedure:** Implementation regulations are subject to the draft affirmative procedure if they amend, repeal or revoke primary legislation, impose new fees or charges (but not provision that increases the amount of a fee or charge payable under existing provision), or create or widen the scope of a criminal offence (other than for a qualifying pest or disease control purpose) (paragraph 9(1) Schedule 1).

49. Where an offence is created or widened specifically for a "qualifying pest or disease control purpose" to implement an EU tertiary instrument protecting human, animal, or plant health, the negative procedure may be used. This would be used to ensure appropriate criminal offences were put in place for new biosecurity requirements. For example the EU published an estimated 17 emergency tertiary instruments responding to disease and pest outbreaks in 2025. The use of the negative procedure is justified given these are technical changes, based on precedent in the area of pest and disease control, where legislation which introduces or widens the scope of a criminal offence is subject to the negative or no procedure. For example, through the Animal Health Act 1981, successive governments have made regulations which introduce criminal offences such as the Avian Influenza (H5N1 in Wild Birds) (England) (Amendment) Order 2021 and the Specified Diseases (Notification) (Amendment) (England) Order 2015.

50. For implementation regulations that do not contain anything noted in paragraph 9(1), the choice between the draft affirmative and negative procedures is at the discretion of the appropriate authority responsible for making those regulations (paragraph 9(2)-(3) Schedule 1).

51. For urgent regulations made by an appropriate authority acting alone that would normally be subject to the draft affirmative procedure, the made affirmative procedure applies (Schedule 1, para 14). The appropriate authority must make a declaration setting out their opinion why the use of the made affirmative procedure is justified by reason of urgency. For example, the Plant Health Regulation, (Regulation 2016/2031) is a partnership treaty instrument in the SPS Agreement. Among other things, it allows us to introduce additional national biosecurity measures to address an emerging threat before EU-wide action is taken; or where the UK considers existing EU measures to be insufficient. This power provides us with the ability, where urgent, for the instrument to take effect immediately via the made affirmative procedure with Parliament debating and approving it later. This procedure would enable us to make implementation regulations, acting immediately, against urgent biosecurity threats, introducing targeted national measures where needed to complement EU-wide protections. For example, the UK has previously introduced additional measures against Xylella to reduce the risk of this damaging plant disease becoming established, helping safeguard growers, nurseries and the wider natural environment. The ability to act quickly provides a vital safeguard against emerging threats.

52. The limited power to select the appropriate parliamentary scrutiny procedure is proportionate given the wide range of legislative changes required by the UK's dynamic alignment commitments. It ensures that a high level of Parliamentary scrutiny can be given to more significant changes made by implementation regulations while allowing technical updates to follow the negative procedure. This approach is similar to that taken in other EU exit legislation, such as the EUFRA, and is strictly limited by triggers which exclude ministerial discretion. The affirmative procedure is mandatory whenever regulations amend, repeal, or revoke primary legislation under Henry VIII powers, impose new fees or charges, or create or widen the scope of a criminal offence (save for a qualifying pest or disease control offence). This is in line with the view expressed by the Committee in its report on EUFRA[2], which stated that Bill "should have required the affirmative procedure where regulations… create or widen the scope of a criminal

[2] Delegated Powers and Regulatory Reform Committee: Thirty Second Report, European Union (Future Relationship) Act 2020

offence.” We are keen to work with the Committee and with Parliament as a whole to balance meeting treaty requirements and ensuring appropriate scrutiny procedures.

53. Clause 15(8) provides that if a regulation brought forward under the powers in the Bill would otherwise be treated as a hybrid instrument under the standing orders of either House of Parliament, it must proceed in that House as if it were not a hybrid instrument. In practice, we expect very few regulations would be otherwise treated as hybrid instruments, and therefore clause 15(8) is unlikely to have practical effect. However, this is necessary because regulations subject to the hybrid procedure would likely be subject to delays that lead to missing the two-month implementation window, thereby putting the UK at significant risk of breaching its international obligations. Private interests that would otherwise be considered under the hybrid instruments procedure will be adequately protected. Under the agreements, the UK will be consulted on all draft EU rules in development, where they fall within the agreed policy scope in the ETS and SPS treaties. This will enable the UK government to engage stakeholders on planned changes where it is appropriate, ahead of an act being adopted in the EU and becoming an internationally binding obligation. Use of this provision in Acts concerning UK-EU relations is well precedented; it appears in the EUWA and REULA. The government is satisfied that use of this provision is proportionate, given its function ensuring the UK can fulfil its international obligations.

Clauses 3 and 4: Adoption regulations

Power conferred on: *Minister of the Crown*

Power exercised by: *Regulations made by SI*

Henry VIII clause: *Yes*

Parliamentary Procedure: *Negative procedure, unless amending or repealing primary legislation where the affirmative procedure will be followed.*

54. **Power conferred on:** Clause 3(1) confers a power on a Minister of the Crown to make adoption regulations to designate a "qualifying partnership treaty instrument" (e.g. provisions of treaties, EU Regulations, and EU Decisions that the partnership treaty requires has effect) and make further provision about it.

55. **Context and Purpose:** As discussed in the introduction in Section A above, the UK has committed to ensuring the dynamic alignment of its laws with those of the EU in areas within the agreed scope of the draft SPS and ETS agreements. This power will provide the main mechanism for the UK government to do so.

56. For example, the Plant Health Regulation (Regulation (EU) 2016/2031) is a partnership treaty instrument in the SPS Agreement. Among other things, it facilitates the import and internal movement of plants, plant products and other objects (such as soil and used agricultural machinery). It also sets prohibitions on imports of certain goods from third countries including seed potatoes. It will need to be adopted through clause 3(1).

57. Where a Minister exercises the adoption power to designate a qualifying partnership treaty instrument, that instrument has effect in the UK, but only to the extent determined by the overarching treaty (clause 3(2) and 3(3)). For example, where the treaty sets out technical adaptations (referred to as “modifications” in the Bill) to the application of a qualifying partnership treaty instrument (for example it stipulates that the UK is not obliged to adopt certain articles of an EU Regulation), then the designation will take effect accordingly according to the modifications agreed at treaty level (clause 3(3)(a)). The SI does not need to stipulate said exceptions or limitations. For example:

a. The Monitoring and Reporting Regulation (Commission Implementing Regulation (EU) 2018/2066) is a qualifying partnership treaty instrument in the ETS agreement which requires information or reports to be provided to EU institutions or authorities for reporting emissions. Through the agreement, the UK has secured adaptations so that information is, where appropriate, instead provided to the relevant UK authority. Clause 3(3)(a) ensures that the adopted regulation takes effect in the UK with those agreed modifications, rather than applying the original EU text unchanged. This ensures that UK ETS operators are subject to monitoring and reporting requirements equivalent to those applying in the EU ETS but that relevant information is, where appropriate, provided to the UK ETS Authority, instead of the Commission. It provides legal certainty about which authority receives information ensuring the smooth operation of a linked but distinct UK scheme, and provides that where relevant UK operators and regulators deal with UK institutions rather than the Commission.

b. The Biocidal Products Regulation (Regulation (EU) No 528/2012) is a qualifying partnership treaty instrument under the SPS Agreement governing the approval of disinfectants, pest control chemicals, and preservatives. The UK has secured adaptations to ensure that we can transition smoothly, with existing domestic approvals and authorisations remaining valid while businesses prepare necessary data dossiers under the updated regime. Clause 3(3)(a) will ensure that when Regulation 528/2012 is adopted into domestic law, it takes effect as modified by the treaty, meaning that the transitional adaptations are secured, without requiring separate domestic amendments.

c. The New Genomic Techniques (NGT) Regulation (Regulation (EU) 2015/2283) is a qualifying partnership treaty instrument in the SPS agreement that will be adopted using clause 3(1). However, the UK has secured an exception in the SPS agreement which means that precision bred products can continue to be placed on the market in

Great Britain until October 2029. Therefore, 3(3)(a) will ensure that the NGT regulation, as modified by the SPS Agreement, will apply subject to modifications set out in the SPS agreement, which bring in the exception and related assurance measures.

58. In addition, adopted instruments will only have effect as far as required by the relevant partnership treaty. Where a treaty has a different territorial scope (e.g. GB-only) adopted instruments will take effect accordingly (clause 3(3)(b)). For example, the SPS Agreement applies to GB only, and therefore any qualifying partnership treaty instruments that are adopted using clause 3(1) will only apply in GB - and not NI - by virtue of clause 3(3)(b). The benefits will be extended to movements from GB to Northern Ireland by the same rules applying across the UK. This will ensure that the regulatory framework is consistent across the UK. It will deal with divergence between Great Britain and Northern Ireland, and remove the vast majority of checks and controls at points of entry, whilst allowing Northern Ireland to retain its unique dual market access into both the UK Internal and EU Single Markets.

59. Provision about the effect of a designated instrument can be made using the power in clauses 3(4) and (5). The Minister of the Crown must make provision about when the designation has effect (clause 3(4)(a)) and may make further provision about the effect of the designation provided that doing so is not inconsistent with the relevant partnership treaty (clause 3(4)(b) and 3(5)(a)). The purpose of clause 3(4) and (5) is to allow the Minister to ensure the adopted instrument (designed to function in EU Member States) has appropriate effect in our domestic legal system, as a non-Member State. For example, it could be used to cross-refer to provisions of domestic law that apply instead of cross-references to out-of-scope EU instruments within adopted instruments, where appropriate. Clause 3(4) and (5) are not to be used to make substantive choices about implementation, for which the implementation power should be used. Adoption regulations may also include provision enabling an adopted instrument or provision of an adopted instrument to have effect earlier than required by the relevant partnership treaty (clause 3(5)(b)). The possibility of early adoption is

necessary to enable businesses to have time to adapt to changes in the law. For example:

a. The Plant Protection Products Regulation (Regulation (EC) No 1107/2009) is a partnership treaty instrument in the SPS Agreement. It governs the authorisation of plant protection products and the approval of active substances, requiring all pesticides placed on the market or used in Great Britain to comply with EU rules as they apply under the agreement. Moving from the current domestic regime to full alignment requires a significant regulatory transition so that existing authorisations are brought into compliance. Clause 3(5)(b) could be used to help ensure a smooth transition for business when the SPS Agreement is implemented and to enable the regulator to meet the UK's transitional obligations. This would entail introducing aspects of the new arrangements before the Agreement comes into force. This could allow affected products and uses to be reviewed, amended or withdrawn in a managed and phased way, and for applications for new EU-compliant products to begin as soon as businesses are ready.

b. The organic production and labelling Regulation (Regulation (EU) 2018/848) is a partnership treaty instrument in the SPS agreement. It includes requirements relating to the labelling of organic products, which businesses in the UK will need to comply with when they enter into force. Clause 3(5)(b) could be used to allow businesses to begin using labels that meet new SPS Agreement requirements before the Agreement enters into force, while continuing to permit labels that comply with existing rules during a transitional period.

60. A single designation is sufficient for a qualifying partnership treaty instrument, even if it is relevant to multiple partnership treaties. Once designated, it applies to all relevant treaties, removing the need for repeated designation (clause 4(1)). This is relevant if, for example, the UK in due course decides to enter into a separate agreement with the European Economic Area ("EEA") countries that covers the same subject-matter as the equivalent UK-EU agreement. Therefore if a partnership treaty instrument has already been designated for an UK-EU

agreement, it is also considered to be designated, if required, for any other partnership treaties.

61. The adoption power is only exercisable by a UK government Minister, and is not conferred on a devolved authority. When the UK was a Member State of the EU, the approach to devolution meant that Devolved governments could legislate to implement EU law on devolved matters themselves and had some discretion as to how to do so. However they would not be able to legislate in relation to the manner in which directly applicable EU acts took effect in the UK (as the relevant parts of the ECA were given a protected status within the devolution settlements) and they were prevented generally from acting or legislating in a way that was incompatible with EU law. This Bill intends to take a broadly analogous approach to this past precedent.

62. In order to ensure that the UK's domestic framework for dynamic alignment is agile and responsive, the following provisions have been designed to ensure efficiency:

    a. Clause 3(3)(c) enables amendments to adopted instruments to take effect automatically in the domestic legal system without the need to make additional regulations. As the UK will already have agreed to the applicability of these changes (see paragraph 26) these ambulatory references mean that the amendments can flow through quickly and seamlessly, allowing the UK to dynamically align with all relevant changes as they occur. For example:

        i. The EU Plant Health Regulation (Regulation (EU) 2016/2031) is a qualifying partnership treaty instrument in the draft SPS treaty. Amendments to this Regulation will take effect in the UK automatically. In 2024 an amending act (Regulation (EU) 2024/3115) amended the EU Plant Health Regulation. These amendments included the addition of a new paragraph which created a carve out for a notification requirement. Prior to the amendment, the Regulation required authorities to issue a formal notification for all consignments refused on plant health

grounds. The amendment created a carve-out, exempting non-commercial goods seized from personal luggage or the post - notification was no longer required for these goods. In cases like these, the changes made to the partnership treaty instrument will automatically take effect in GB, subject to any agreed modifications. Many such changes would correspond to changes normally made at the administrative level in the corresponding post-exit UK regime. This swift flow-through of amendments offers the greatest possible certainty for UK traders, who will benefit from domestic law requirements that mirror the changes agreed at the treaty level.

ii. The Regulation on the monitoring, reporting and verification (MRV) of greenhouse gas emissions from maritime transport (Regulation (EU) 2015/757) is a qualifying partnership treaty instrument in the ETS Linking Agreement. As part of the EU ETS Review, the EU has proposed changes to the Regulation, including expanding the scope of the MRV, bringing in oil tankers, chemical tankers, gas carriers, liquefied natural gas carriers, roll-on roll-off passenger ships and passenger ships between 400 and 5000 gross tonnage. Clause 3(3)(c) ensures that the MRV Regulation is read as amended, meaning that changes like these will have effect in the UK without need for further legislation.

iii. The additives for use in animal nutrition Regulation (Regulation (EC) No 1831/2003) is a qualifying partnership treaty instrument in the SPS agreement. This regulation establishes the overarching EU framework for feed additives, but individual authorisations are granted through separate tertiary legislation, made under the Commission Regulation for permitted intended uses of feed for particular nutritional purposes (PARNUTs) (Commission Regulation (EU) 2020/354). PARNUTs are feeds designed to meet particular nutritional needs in animals and may only be marketed for a particular nutritional purpose where that

intended use is included in the list. The Regulation is amended when needed by the Commission, reflecting technical updates to the permitted nutritional purposes and the conditions applying to them. Clause 3(3)(c) can be used to ensure that amendments to Regulation (EU) 2020/354 apply in GB automatically, without needing a further SI to be laid.

iv. The Food Additives Regulation (Regulation (EC) No 1333/2008) is a qualifying partnership treaty instrument in the SPS Agreement, setting out the list of authorised food additives and their conditions of use in Annex II. Many such amendments are comparable to updates that would ordinarily be made administratively under the UK's domestic regime. This list has been amended more than 120 times since 2010 through routine technical updates. For example, in October 2026, the EU authorised 'curdlan' as a food additive for use in a range of foods and also added the corresponding technical specification for this new food additive to Regulation (EU) 231/2012. Curdlan is a polysaccharide produced through microbial fermentation that can be used to improve texture and structure in a range of foods. This makes it potentially useful in products where manufacturers are seeking to reproduce the texture of conventional foods, including plant-based meat alternatives, as well as other reformulated products. Clause 3(3)(c) would allow subsequent updates to Regulation (EC) No 1333/2008 to apply in GB automatically without needing a further SI to be laid.

b. Clause 4(2) provides that 'tertiary instruments' (defined in clause 16(1)) made in relation to qualifying partnership treaty instruments (that are qualifying partnership treaty instruments themselves) are to be treated as if they had been designated (subject to clause 4(3)).

c. Clause 4(2) also captures tertiary instruments that were made under a now-repealed EU instrument but continue to be in force for the purposes of a partnership treaty instrument. For example, the Animal

Breeding Regulation (Regulation (EU) 2016/1012) is a partnership treaty instrument in the SPS agreement. Article 1 of Commission Decision 2002/8/EC, which is a tertiary instrument specifying modes of genetic identification of pure-bred cattle, will apply for the purposes of the Animal Breeding Regulation. This is the case even though the EU parent law it was made under (Article 3 of Directive 87/328/EEC) has been repealed. Clause 4(2) also captures tertiary instruments that will be made in the future. Tertiary instruments such as EU Implementing and Delegated acts generally contain technical and operational updates, like technical specifications or approved lists. These instruments will generally be treated as 'designated' where an EU instrument the UK aligns with has been designated and given effect in the UK, meaning that they will apply automatically when the parent instrument is adopted, without passing additional legislation. This prevents the UK from falling behind on minor updates, which would otherwise disrupt trade and cause unnecessary issues at the border. There is precedent for this arrangement in the UK: the UK already handles highly technical, routine updates administratively. For example, through the Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025, authorisations come into effect following Ministerial decision, and are then published in an official register or list. Given that there can be many hundreds of tertiary instruments passed each year, this approach in the Bill ensures that UK law can reflect the latest changes and comply with the timelines in our international obligations. For example:

i. The EU pesticides regime is underpinned by a body of tertiary legislation which sets out implementing measures. This is frequently updated. For example, the Regulation on the maximum residue levels of pesticides (Regulation (EC) No 396/2005) is a qualifying partnership treaty instrument in the SPS agreement. Decisions on setting of maximum residue levels (MRL) of pesticides on food are given effect through EU tertiary regulations. There are typically around 25 regulations

per year. Since leaving the EU, the national arrangements for giving effect to active substance decisions, setting of MRLs and setting the annual MRL monitoring programme have been managed administratively without need for regulations. There are also frequent updates to the underpinning framework of implementing regulations, for example, to keep up with scientific developments in areas such as data requirements for applications.

ii. The Feed Additives Regulation (Regulation (EC) No 1831/2003) is a qualifying partnership treaty instrument in the SPS Agreement. While Regulation (EC) No 1831/2003 establishes the overarching framework for authorising additives for use in animal nutrition, individual authorisations and conditions of use are granted through highly technical EU tertiary legislation. For example, in 2025 the EU authorised a preparation of four bacteriophages for use as a feed additive for poultry through Commission Implementing Regulation (EU) 2025/1390. This is done regularly and in 2026 alone, the EU has put into effect 93 new regulations under EUR 1831/2003. Clause 4(2) would allow relevant tertiary legislation made under an adopted instrument to apply directly in GB. If Regulation 1831/2003 were adopted, subsequent implementing Regulations authorising individual feed additives could therefore apply without each new authorisation having to be separately designated. If this tertiary (and the amendments made by it) did not flow through, all of these instruments would require designation in adoption SIs.

iii. The Plant Health Regulation (Regulation (EU) 2016/2031) is a qualifying partnership treaty instrument in the SPS Agreement. It is underpinned by an extensive body of EU tertiary legislation, and makes frequent amendments to that tertiary legislation. For example, amendments are frequently made to the Phytosanitary Conditions Implementing Regulation 2019/2072 which imposes restrictions on EU MS/non-EU countries in response to pest or

disease developments. Such regulations are made frequently throughout the year. For example, in 2025, six such regulations were made covering pests such as asian longhorn beetle and potato brown rot. Clause 4(2) providing automatic designation of these EU tertiary instruments will mean the biosecurity measures imposed on EU member states and non-EU countries are immediately applicable in GB

iv. The Biocidal Products Regulation (Regulation (EU) No 528/2012) is a qualifying partnership treaty instrument in the SPS Agreement. To operate the biocides regime in practice, the European Commission has adopted approximately 660 technical and procedural delegated and implementing acts under powers in Regulation (EU) No 528/2012. Once EU BPR has been designated, 4(2) means that these tertiary instruments are treated as designated automatically.

v. The Regulation on monitoring, reporting and verification of maritime emissions (MRV) (Regulation (EU) 2015/757) is a qualifying partnership treaty instrument in the ETS Linking Agreement. Through this provision, updates to the templates monitoring plans, reports or documents of compliance would have effect in the UK. The templates are set out in Implementing Reg 2023/2449, made under Regulation (EU) 2015/757. This clause 4(2) therefore means that tertiary legislation made under the MRV regulation applied automatically once the regulation is adopted.

d. Clause 4(5) provides that where a partnership treaty instrument designated in adoption regulations corresponds to an instrument of assimilated direct legislation[3], the assimilated direct legislation is revoked on that designation. For example, the Free Allocation Regulation (2019/331) is a qualifying partnership treaty instrument in

[3] Refers to a category of UK law comprising direct EU legislation (such as EU regulations and EU decisions) that were preserved in the UK by EUWA when the UK left the EU. (This was previously known as retained direct EU legislation or RDEUL before the REUL Act renamed this body of law).

the ETS agreement. This sets out the rules under which certain industrial businesses receive carbon allowances free of charge under the Emissions Trading Scheme. The UK currently has assimilated EU legislation setting out how certain industrial operators receive these carbon allowances under the ETS. This assimilated legislation corresponds to the EU Free Allocation Regulation as it existed at the point the UK left the EU. On adoption of the Free Allocation Regulation, clause 4(5) will avoid having two versions of these corresponding rules on the statute book, which would cause uncertainty for operators.

e. Two instruments are taken to correspond despite any amendments made at EU level to the partnership treaty instrument, or domestically to the assimilated direct legislation, that were made on or after Implementation Period completion day[4] (clause 4(7)). These provisions will ensure that there will be no risk of two corresponding instruments remaining on the statute book, which could otherwise cause legal uncertainty about which instrument is to apply. For example:

    i. The Biocidal Products Regulation (Regulation (EU) No 528/2012) is a qualifying partnership treaty instrument in the SPS Agreement. Existing GB biocides rules are the assimilated version of this Regulation, which includes around 243 pieces of tertiary. All of these tertiary instruments have counterparts in EU law, therefore clause 4(5) will be used to ensure that these are revoked and the EU equivalents will apply in their place.

    ii. The Plant Protection Products Regulation (Regulation (EC) No 1107/2009) is a qualifying partnership treaty instrument in the SPS Agreement. It governs the authorisation of plant protection products and the approval of active substances. Existing GB pesticides rules are the assimilated version of this Regulation, which includes around 243 pieces of tertiary. All of these tertiary instruments have counterparts in EU law, therefore clause 4(5)

[4] The “Implementation Period” is defined in section 1A(6) of the EUWA 2018 - it was the transitional period provided for by the EU Withdrawal Agreement which ended on “IP completion day”.

will be used to ensure that these are revoked and the EU equivalents will apply in their place.

iii. The Free Allocation Regulation (2019/331) is a qualifying partnership treaty instrument in the ETS agreement. This sets out the rules under which certain industrial businesses receive carbon allowances free of charge under the Emissions Trading Scheme. The UK currently has assimilated EU legislation setting out how certain industrial operators receive these carbon allowances under the ETS. This assimilated legislation reflects the EU Free Allocation Regulation as it existed at the point the UK left the EU, and will be automatically revoked on the adoption of the Free Allocation Regulation

iv. The EU's agricultural market standards rules (Regulation (EU) 1308/2013) is a qualifying partnership treaty instrument in the SPS agreement. This regulation sets marketing standards for various products, including eggs, fresh fruit and vegetables and dairy. This regulation already applies in GB as assimilated EU law, therefore the assimilated version will be automatically revoked.

f. Adoption regulations can make supplementary, incidental, consequential, transitional, transitory or saving provision (clause 14(5)(b)).

g. This could be used to save parts of the assimilated direct legislation because it is out of scope of the partnership treaty. Where this is done, the regulations may rename the saved assimilated direct legislation (see clause 14(6)(b)) to distinguish it from its corresponding partnership treaty instrument (see clause 4(7)). For example, the EU's agricultural market standards rules (Regulation (EU) 1308/2013) is a qualifying partnership treaty instrument in the SPS agreement. However, the UK has secured an exception in the agreement, which means this Regulation will not apply in relation to wine. As such, the assimilated version of Regulation (EU) No 1308/2013 will therefore

need to continue to apply wine marketing standards in Great Britain. This power could be used to rename the assimilated Regulation so it is clear that it continues to apply only in relation to wine.

h. Adoption regulations can also be used to make incidental provision: for example, the Monitoring and Reporting Regulation (Commission Implementing Regulation (EU) 2018/2066) is a qualifying partnership treaty instrument in the ETS Agreement. If the EU amends the Regulation, additional provision may be needed to ensure those changes operate effectively in the UK ETS. For example, references and terminology in related legislation may need updating, and existing approvals, reports and regulatory decisions could remain legally valid.

i. Adoption regulations can also be used to make transitory or transitional provision. For example:

    i. The EU Organics Regulation (Regulation (EU) 2018/848) is a qualifying partnership treaty instrument in the SPS agreement. In the SPS agreement, the UK has secured a 12-month transition period for amendments to poultry housing and egg production. This power will enable the necessary domestic provisions to give effect to that transition period, allowing businesses additional time to comply with new requirements while continuing to place products on the market under existing arrangements.

    j. The Plant Protection Products Regulation (Regulation (EC) No 1107/2009) is a qualifying partnership treaty instrument in the SPS Agreement. It governs the authorisation of plant protection products and the approval of active substances. The SPS agreement provides transitional arrangements for pesticides currently undergoing approval in the EU. This means that goods produced which use certain pesticides not currently approved in the EU, but currently undergoing the approval process can continue to be placed on the market in GB until they are approved or rejected in the EU. This power will be used to facilitate those arrangements.

63. **Justification:** The need for the adoption power stems from the nature of the UK's commitments in the draft SPS and ETS agreements. We will be required to implement certain EU instruments as they exist and update in the EU legal order to our domestic legal system. It is therefore not possible to know the extent of changes that will be required, including whether changes may be needed to primary legislation. If primary legislation was required for every change needed in our law to implement evolving obligations in partnership treaties, this would risk failing to deliver the relevant changes in line with the timing obligations set out in the treaty. Therefore, this power will ensure that we can deliver the benefits of these agreements on an ongoing basis.

64. As above, the provisions in clauses 4(2) and (3) regarding EU tertiary instruments are aligned with our domestic post-EU exit processes for managing these kinds of technical changes.

65. The adoption power is a Henry VIII power, allowing a Minister to amend, repeal or revoke any legislation (including primary) in consequence of the designation of a partnership treaty instrument (see clause 14(5) and (6)(a)). As previously stated, this is necessary because the UK's dynamic alignment obligations under partnership treaties may require the amendment of both existing and future primary legislation. Without the power to make changes to primary legislation where required, the UK would face significant risk of non-compliance with partnership treaties, and therefore breach of its international obligations, since the two month implementation window is too narrow to implement changes through primary legislation (see paragraph 19). Conferring Henry VIII powers is also proportionate: changes to primary legislation will be made to effectively fulfil commitments made in the partnership treaties with a defined scope, which will have been agreed by Parliament in accordance with arrangements in the CRAG. In addition, all exercises of Henry VIII powers are automatically subject to the affirmative procedure.

66. For example, we could need to amend the UK Internal Market Act 2020 to replace references to assimilated direct legislation in Schedule 1 to that Act, to the version designated in adoption regulations (e.g. the definition provided for in paragraph 2(7), Schedule 1, which defines Regulation (EC) No 178/2002). As above, it is

necessary that this power can amend primary legislation because of the nature of the dynamic alignment obligation in the draft SPS and ETS agreements. This will ensure that we can deliver the benefits of these agreements on an ongoing basis.

67. **Parliamentary Procedure:** Adoption regulations are subject to the negative procedure (clause 15(1)), unless they amend or repeal primary legislation, in which case the affirmative procedure applies (clause 15(2)(b)). This procedure is considered appropriate for a mechanism that gives effect to an international instrument where the scope and effect are already determined by the relevant partnership treaty.

68. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).

Clause 9(2): Power to disapply or modify the effect of provisions in sections 5 to 8

Power conferred on: *Minister of the Crown*

Power exercised by: *Regulations made by SI*

Henry VIII clause: *Yes*

Parliamentary Procedure: *Negative procedure*

69. **Power conferred on:** Clause 9(2) confers a power on a Minister of the Crown to disapply or modify the effect of provisions in sections 5 to 8.

70. **Context and Purpose:** Clauses 5 to 8 on reconciliation and interpretation are designed to provide the interpretative framework for legislation implementing dynamic alignment-based agreements where we have agreed to implement the same legal requirements in the UK as in the EU. Some of the provisions would not be suitable in the context of agreements (or parts of agreements) that have a different basis - for example where an agreement is based on equivalent standards in the EU and UK, rather than dynamic alignment. The power enables us to disapply the reconciliation and interpretation provisions in relation to treaties or partnership treaty instruments (or parts thereof).

71. **Justification for the power:** Future partnership treaties may not be dynamic alignment-based. Therefore it may not be appropriate to apply dynamic alignment-based interpretation rules to all current or future partnership treaties. For example the UK will not dynamically align with EU financial services rules under the ETS agreement and we will instead establish benchmarking of our respective rules and cooperation arrangements to support the effective oversight of the linked carbon market. Clause 9(2) could be used to disapply or modify the effect of provisions in sections 5 to 8 as appropriate.

72. Given the evolving nature of commitments under partnership treaties, and the inability to predict the terms of all future treaties, a delegated power is the most appropriate approach. This will mean it can be clearly set out on a treaty by treaty basis (as well in relation to particular partnership treaty instruments and

implementing provision) how the reconciliation and interpretation provisions in section 5-8 should apply. The alternative to taking a power would be attempting to set up a test in the Bill to define which provisions of future treaties should be treated as dynamic alignment provisions, but this alternative approach would risk creating legal uncertainty.

73. **Justification for parliamentary procedure:** This power is designed to accomplish a technical aim - identifying where the reconciliation and interpretation provisions do not apply on a treaty by treaty (etc) basis. What needs to be done with this power will be determined by the nature and requirements of the partnership treaties themselves. Parliament will have already been given the opportunity to scrutinise any new partnership treaties (and the affirmative procedure will have already been followed to designate that treaty a partnership treaty) under the procedure in [Clause 11 - Designation of further treaties] discussed below.

74. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).

Clause 10: Regulations for disputes, remediation and suspension

Power conferred on: *Minister of the Crown, the devolved authority, or a Minister of the Crown acting jointly with one or more devolved authorities*

Power exercised by: *Regulations made by SI*

Henry VIII clause: *Yes*

Parliamentary Procedure: *Draft affirmative procedure where a SI amends, revokes or repeals primary legislation, imposes new fees or charges or creates a criminal offence (with the exception of the biosecurity offences referred to above). There is a discretion regarding the use of negative or draft affirmative procedure for other regulations. The urgency procedure (made affirmative) is available for these regulations.*

75. **Power conferred on:** The clause confers power on appropriate authorities (see paragraph 20 above) to make regulations for the purposes of disputes, remediation and suspension. However, the devolved authorities may not make provision having the effect of disapplying, or otherwise modifying, the effect of any partnership treaty instrument designated in adoption regulations.

76. This is necessary to be able to safeguard the position of the UK in the event that the treaties are not functioning as intended, as well as to implement the outcome of a dispute and ensure that we have upheld our international obligations. There is relevant precedent for this power. For example, in section 33 of the EUFRA, for the purposes of the TCA and the Security of Classified Information Agreement, and in Schedule 5 of the Taxation (Cross-border Trade) Act 2018.

77. Clause 10 provides the appropriate authorities the power to make regulations as is considered appropriate, including through amending domestic primary and secondary legislation, in order to give effect to, or deal appropriately with, decisions made by the UK, the EU or other parties to partnership treaties in response to developments in the smooth and proper functioning of a partnership treaty. Subject to the limitations on the power described below, the power enables the appropriate authority to amend primary and secondary legislation to this effect.

78. The decisions in relation to partnership treaties will in certain cases need to be implemented very rapidly. These actions could include the suspension or resumption of all or part(s) of the agreements; the taking of safeguarding, remedial, temporary, interim or rebalancing measures; the implementation of an agreed resolution to a dispute; or any other decision by the UK that relates to a dispute. These measures could be unilateral or bilateral, and may change the balance of rights and obligations in the agreements. This will in certain cases need to be reflected in domestic law. The power is conferred concurrently on the devolved authorities to allow the changes to be implemented in devolved areas in the most efficient and appropriate way in different circumstances. However, the devolved authorities may not, as noted above, make provision having the effect of disapplying, or otherwise modifying, the effect of any partnership treaty instrument designated in adoption regulations.

79. **Constraints on the power:** The government recognises that the implementation power is flexible and requires specified limitations. These are listed in paragraph 3(2) - 3(8) of Schedule 1 (as applied and modified for the purposes of this power by clause 10(7)) and restrict the power from being used to:

    a. Make retrospective provision;

    b. Confer any power to legislate, other than rules of procedure for any court or tribunal (which does not include a power to give directions as to matters of administration);

    c. Amend, repeal or revoke the Human Rights Act 1998;

    d. Amend or repeal the Devolution Settlements; or

    e. Create a new criminal offence with a sanction of imprisonment for 2 years, or 5 years in the case of a new criminal offence which is a qualifying animal welfare offence.

We have not excluded taxation (where it equates to a duty of customs or excise) in the same way we have for implementation regulations. We wish to retain this ability in case it is deemed necessary to impose customs tariffs as a remedial measure in the context of a dispute, for example.

80. Any provision made for any of the situations listed above would therefore need to be made using primary legislation.

81. **Justification for the power:** The power is required to ensure that the parties can take remedial measures where allowed by the partnership treaty, and give domestic effect to decisions taken in connection with disputes, including anything that changes the rights and obligations in the partnership treaties, and including, for example, any mutually agreed solutions to disputes. As above, this power draws closely on the precedent in section 33 of EUFRA which provides powers to deal with suspension, remedial measures and disputes in relation to the TCA and supplementing agreements.

82. Many of the actions taken in relation to this power, for example temporary remedies in response to a dispute, or remedial measures, are designed to come into effect rapidly and temporarily. Secondary legislation is therefore more appropriate than using future primary legislation to give effect to any necessary changes to domestic law.

83. The power is a Henry VIII power[5]. Without the power to make changes to primary legislation where required, the UK would risk not being able to effectively deliver the outcomes of a dispute, which may be incompatible with existing UK primary legislation. Beyond ensuring compliance, this power could be used to take decisions in connection with disputes that minimise disruption to UK businesses. Additionally, without this power we could be prevented from acting swiftly to implement remedial measures to deal with issues where the treaty is not functioning as intended.

84. Use of this power is limited to the circumstances set out in the partnership treaties. The treaties will include agreed detail and processes, and state which measures can be taken at the international level and the scope of those measures. It is anticipated that these mechanisms will generally be based on highly unusual or unique circumstances arising. It will be made clear at the point the regulations are made, the provision of the relevant agreement under which the corresponding action has been taken.

[5] See clause 10(7) as read in conjunction with paragraph 3(1) of Schedule 1

85. **Justification for parliamentary procedure:** These regulations are subject to the draft affirmative procedure if they amend, repeal or revoke primary legislation, impose new fees or charges (but not provision that increases the amount of a fee or charge payable under existing provision), or create a criminal offence (with the exception of biosecurity offences discussed above) (Paragraph 9(1) of Schedule 1). For anything else, regulations are subject to either the draft affirmative or negative procedure, which is a decision to be taken by the appropriate authority making the regulations (Paragraph 9(2) and (3) of Schedule 1).

86. For urgent regulations made by an appropriate authority acting alone that would normally be subject to the draft affirmative procedure, the made affirmative procedure applies (Chapter 2 of Schedule 1). The appropriate authority must make a declaration setting out their opinion why the use of the made affirmative procedure is justified by reason of urgency.

87. The limited power for Ministers to select the appropriate parliamentary scrutiny procedure is proportionate given the wide range of legislative changes required by the UK's dynamic alignment commitments. It ensures that a high level of Parliamentary scrutiny can be given to more significant changes made by SI while allowing for use of the negative procedure where appropriate for technical updates in line with our treaty obligations. This approach is similar to that taken in other EU exit legislation, such as the EUFRA, and is strictly limited by triggers which exclude ministerial discretion. The affirmative procedure is mandatory whenever regulations amend, repeal, or revoke primary legislation under Henry VIII powers, impose new fees or charges, or create or widen the scope of a criminal offence.

88. As noted, this power draws closely on the precedent in section 33 of the EUFRA. That power (which has not yet been exercised) provides for the negative procedure, with the exception of regulations that modify primary legislation.

89. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).

Clause 11: Designation of further treaties (Order in Council)

Power conferred on: *His Majesty by Order in Council*

Power exercised by: *Order in Council*

Henry VIII clause: *No*

Parliamentary Procedure: *Draft affirmative procedure*

90. **Power conferred on:** Clause 11(1) confers a power on His Majesty to designate a treaty as a "partnership treaty" by Order in Council. Once designated a partnership treaty, those treaties are brought under the main operative provisions of this Bill (e.g. the main delegated powers can then apply to those treaties).

91. Clause 11(4)(a) provides that no recommendation is to be made to His Majesty in Council to make an Order in Council unless certain conditions are met in relation to the treaty which the designation relates to. Those conditions are set out in subsections (5) and (6) of clause 11 and include the requirement that either: (i) the treaty relates to trade or cooperation or is otherwise about partnership between the UK and the EU; or (ii) the treaty relates to trade or cooperation or is otherwise about partnership between the UK and one or more countries, territories or the European Free Trade Association *and* reflects or relates to a partnership treaty or any other treaty that falls within the treaties described in (i). This power could therefore be used to extend the effect of the Bill to a future agreement on electricity. As set out in the Joint Statement, this agreement would contribute to enhanced energy security, decrease dependency on fossil fuels and improve the efficiency of electricity trading.

92. If the government wishes to negotiate future EU-related treaties, the purpose of this power is to make sure those treaties can come within the ambit of this Bill. Clause 11(6)(b) is designed to cover situations where the UK might enter into a treaty with non-EU countries which is related to a partnership treaty. Many third countries whom we already trade with have trade deals with the EU which are based on similar parameters to those in our agreements with the EU. Therefore, it makes sense to ensure that we are able to explore and exploit those opportunities. For example, this could be a treaty with countries such as the EEA

states or Switzerland which have their own dynamic alignment based agreements with the EU in areas that we have agreed to dynamically align.

93. **Justification:** This power is necessary for the government to be able to bring in new, relevant international treaties under the framework described above without the need for primary legislation each time. This is on the basis that they form part of the same evolving European relationship, and that any such treaties will have first been scrutinised by Parliament in the usual way. For example, the UK-EU Summit 2026 Joint Statement confirmed that progress has been made towards an agreement on the UK's participation in the EU internal electricity market, and the UK and EU commit to conclude electricity negotiations in 2027, subject to final agreement by both parties.

94. **Justification for parliamentary procedure:** The Order in Council may only be made if:

    a. The procedure in CRAG has been followed and, on the same day as the treaty is laid before Parliament, the Minister has laid before Parliament a statement indicating that he/she is of the opinion that the treaty relates to either (i) trade or cooperation or partnership between the UK and the EU; or (ii) trade or cooperation or partnership between the UK and one or more countries, territories or the European Free Trade Association ***and*** reflects or relates to a partnership treaty or any other treaty that falls within the treaties described in (i).

    b. A draft of the SI containing the Order in Council has been laid before and approved by a resolution of each House of Parliament (clause 11(4)(b)). The draft affirmative procedure is appropriate given that this power adds to the scope of the Act by bringing an entirely new treaty into the domestic legal framework.

95. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).

Clause 13: Consequential provision

Power conferred on: *Minister of the Crown*

Power exercised by: *Regulations made by SI*

Henry VIII clause: *Yes*

Parliamentary Procedure: *Draft affirmative procedure where amending or repealing primary legislation, otherwise subject to the negative procedure.*

96. **Power conferred on:** Clause 13 confers this power on a Minister of the Crown.

97. **Context & purpose:** This power enables a Minister to make regulations containing such provision as is appropriate in consequence of the Bill once it is an Act. This is distinct from the power to make provision consequential on the use of any of the delegated powers in this Bill (clause 14(5)(b)).

98. **Justification:** This is a commonly taken power in Bills to deal with any changes that are necessary as a result of changes brought about by primary legislation, to ensure that the statute book works effectively. In the context of this Bill, it is particularly important to ensure that this power is broad.

99. Delegating powers to make these changes through secondary legislation is therefore necessary, as well as proportionate. Changes will be made to statute book operates effectively following Royal Assent, and all consequential amendment regulations will be subject to proportionate parliamentary procedure to provide appropriate scrutiny.

100. We will need to consider (for example) whether further amendments are needed about how other legislation will interact with partnership treaty instruments adopted via clause 3 (in a similar way to how paragraph 8 of Schedule 2 has expanded the definition of “enactment” in the Data Protection Act 2018 to include “adopted instruments” to ensure that Act works properly with this new category of law).

101. This is similar to the exercise that the government had to undertake when “retained direct EU legislation” was created as a new category of law under EUWA; or when “assimilated direct legislation” was created as a new category of

law under REUL. Then it was necessary to consider how that new category interacted with existing definitions of enactment (and similar) terms across the statute book.

102. **Justification for parliamentary procedure:** The draft affirmative procedure applies where the power is used to amend or repeal primary legislation (clause 15(2)(b)) otherwise consequential amendments made under this power will follow the negative procedure (clause 15(1)). This follows the normal precedents for scrutiny of consequential amendments powers and reflects that consequential amendments are by their nature minor and technical rather than substantive policy matters.

103. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).

Clause 18(2) & (3): Commencement and Transitional Provisions

Power conferred on: *Minister of the Crown*

Power exercised by: Regulations made by SI

Henry VIII clause: *No*

Parliamentary Procedure: *No procedure*

104. **Power conferred on:** Clause 18(2) allows a Minister of the Crown to appoint the day on which clauses 5-8 come into force. Clause 18(3) gives a Minister of the Crown the power to make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act.

105. **Justification:** A transitional power is a standard and technical power necessary to ensure an orderly transition from the pre-existing legal position to the position that will apply after the Bill comes into force.

106. A commencement power is needed to bring clauses 5-8 into effect unlike the rest of the Bill (which commences automatically at Royal Assent). This is because clauses 5-8 are substantive provisions dealing with reconciliation and interpretation principles which we would not want to come into force until we need them to take effect. By contrast, the implementation and adoption powers (and other enabling powers) and technical provision in the Bill are able to enter into force on Royal Assent.

107. **Justification for parliamentary procedure:** No procedure applies. This is normal practice for such powers.

108. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).

Schedule 1, para 2(2) & 2(4): Public authority designation regulations

Power conferred on: *A Minister of the Crown*

Power exercised by: *Regulations made by SI*

Henry VIII clause: *No*

Parliamentary Procedure: *Negative procedure*

109. **Power conferred on:** Schedule 1, paragraph 2(2) allows a Minister of the Crown to designate a public authority as an "appropriate authority" to make implementation regulations, in relation to matters specified in the regulations. Paragraph 2(4) requires the Minister to make provision about the parliamentary procedure for that public authority's regulations.

110. **Justification:** This is an enabling power that allows for the transfer of a delegated power to expert public bodies where necessary for the practical and efficient implementation of highly technical treaty instruments, and where approved by Parliament. In some cases, these bodies will be best placed to make implementation regulations. As the scope and nature of our partnership treaty obligations evolve over time, it is possible that the specific public authorities which should be designated as appropriate authorities may change too. Therefore it is not possible to make explicit provision for transferring these functions on the face of the Bill, necessitating a power to do so as needed. There are important constraints to ensure this power is limited and specific. Specification of an authority as an appropriate authority is done through an implementation regulation, which will be subject to standard Parliamentary scrutiny using the procedure determined by the Minister. As set out in Schedule 1, Part 1, paragraph 2(3), these regulations may impose explicit statutory conditions on the public authority, including mandatory requirements to consult with or obtain the consent of a Minister of the Crown or devolved authority before exercising regulation-making powers. For example, the (now repealed) Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016 was made by the Forestry Commissioners and implemented various EU Decisions implementing

phytosanitary measures. Therefore, it may be necessary in future for the Forestry Commissioners to have the power to make implementing regulations, ensuring that EU decisions can be implemented by the most appropriate authority and preserving flexibility in how such decisions are delivered.

111. We recognise that there is a balance to be struck with regard to this power between ensuring UK international obligations can continue to be met, and ensuring the proper use of delegated powers. We would be interested to hear the Committee's view about the approach to be taken in this instance.

112. There is precedent for taking this type of power in EUWA (Schedule 4, Part 1, paragraph 1(3)(c)), where a Minister may designate a public authority as an appropriate authority to make subordinate legislation.

113. **Justification for parliamentary procedure:** These regulations will follow the negative procedure (clause 15(1)). For regulations subsequently made by appropriate authorities who have been specified using this power, they will follow the parliamentary procedure as set by a Minister of the Crown under paragraph 2(4) of Schedule 1.

114. Under clause 15(8), if a regulation is brought forward under the powers in the Bill which would otherwise normally be treated as a hybrid instrument, it will proceed in either House as if it were not a hybrid instrument (see paragraph 53).