

## Withdrawal bill amendments

### Principles

No	Page	Amendment	Explanatory note
101	11	<p>Schedule 1, page 15, line 17, delete paragraph 2 and insert–</p> <p>2. (1) Any general principle of EU law will remain part of domestic law on or after exit day if:</p> <ul style="list-style-type: none"> <li>- it was recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case);</li> <li>- it was recognised as a general principle of EU law in the EU Treaties immediately before exit day;</li> <li>- it was recognised as a general principle of EU law by any direct EU legislation (as defined in section 3 (2) of this Act) operative immediately before exit day; or</li> <li>- it was recognised as a general principle of EU law by an EU directive that was in force immediately before exit day.</li> </ul> <p>(2) Without prejudice to the generality of sub-paragraph (1), the principles set out in Article 191 of the Treaty on the Functioning of the European Union shall be considered to be general principles for the purposes of that sub-paragraph.</p>	<p>This amendment clarifies that all the existing principles of EU law will be retained within domestic law whether they originate in the case law of the European Court, the EU treaties, direct EU legislation or EU directives. It also makes clear that the key environmental law principles in Article 191 of the Treaty are retained.</p>
NC28	67	<p>To move the following clause–</p> <p><b>“General Environmental Principles</b></p> <p>(1) In carrying out their duties and functions arising by virtue of this act, public authorities must have regard to and apply the principles set out in this section.</p> <p>(2) Any duty or function conferred on a public authority must be construed and have effect in a way that is compatible with the principles in this section and the aim of achieving a high level of environmental protection and improvement of the quality of the environment.</p>	<p>This new clause ensures that public authorities carrying out their duties arising by virtue of this act, must have regard to environmental principles currently enshrined in EU law.</p>

- (3) The principles in this section are—
- (a) the need to promote sustainable development in the UK and overseas;
  - (b) the need to contribute to preserving, protecting and improving the environment;
  - (c) the need to contribute to prudent and rational utilisation of natural resources;
  - (d) the need to promote measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change;
  - (e) the precautionary principle as it relates to the environment;
  - (f) the principle that preventive action should be taken to avert environmental damage;
  - (g) the principle that environmental damage should as a priority be rectified at source;
  - (h) the polluter pays principle;
  - (i) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities, in particular with a view to promoting sustainable development.
  - (j) the need to guarantee participatory rights including access to information, public participation in decision making and access to justice in relation to environmental matters.
- (together the “environmental principles”).
- (4) In carrying out their duties and functions, public authorities shall take account of—
- (a) available scientific and technical data;
  - (b) environmental benefits and costs of action or lack of action; and
  - (c) economic and social development.
- (5) Public authorities, shall when making proposals concerning health, safety, environmental protection and consumer protection policy, take as a base a high level of protection, taking account in particular of any new development based on scientific facts.
- (6) Subsection (7) applies in any proceedings in which a court or tribunal determines whether a provision of primary or subordinate legislation is compatible with the environmental principles.
- (7) If the court is satisfied that the provision is incompatible with the environmental principles, it may make a declaration of that incompatibility. (8) In formulating and implementing agriculture, fisheries, transport, research and technological development and

		space policies, public authorities shall pay full regard to the welfare requirements of animals as sentient beings, while respecting the administrative provisions and customs relating in particular to religious rites, cultural traditions and regional heritage.”	
105	12	Schedule 1, page 15, line 21, leave out paragraph 3	This amendment leave out paragraph 3, thus retaining the right of action in domestic law in relation to general principles of EU law.

## Fully retain and secure environmental law

### Full conversion

93	6	Clause 4, page 2, line 45, leave out—  “(b) are enforced, allowed and followed accordingly,”	The test set out at clause 4(1)(a), that such rights are available in domestic law immediately before exit day, is sufficient for those rights to continue to be available following the UK’s exit from the EU.
94, 95	7,8	Clause 4, page 3, leave out subclause (2)(b) and after subclause (3) insert—  (4) Where, following the United Kingdom’s exit from the EU, no specific provision has been made in respect of an aspect of EU law applying to the United Kingdom or any part of the United Kingdom immediately prior to the United Kingdom’s exit from the EU, that aspect of EU law shall continue to be effective and enforceable in the United Kingdom with equivalent scope, purpose and effect as immediately before exit day.  (5) Where, following the United Kingdom’s exit from the EU, retained EU law is found to incorrectly or incompletely transpose the requirements of EU legislation in force on exit day, a Minister of the Crown shall make regulations made subject to an enhanced scrutiny procedure so as to ensure full transposition of the EU legislation.	Clause 4(2)(b) excludes rights arising under EU directives which are not recognised by the courts. This amendment would remove clause 4(2)(b) so that rights arising under EU directives (but not yet adjudicated on by the courts) are protected and continue to be available in UK courts.  New subsection (4) deals with a situation where the UK has incorrectly implemented a directive. In cases of incorrect implementation, reliance on the

			EU directive may still be necessary. New subsection (5) ensures that where the UK has not correctly or completely implemented EU law, prior to exit day, there will be a statutory obligation on Ministers to modify UK law to ensure that the relevant EU legislation is correctly and fully implemented.
62	12	Schedule 1, page 15, line 28, leave out paragraph 4	This amendment would remove the proposal to end rights in UK domestic law after exit day in relation to damages in accordance with the rule in Francovich.

## Securing environmental law

NC25	19	<p>To move the following clause—</p> <p><b>Treatment of retained law</b></p> <p>Following the commencement of this Act, no modification may be made to retained EU law save by primary legislation, or by subordinate legislation made under this Act.</p> <p>By regulation, the Minister may establish a Schedule listing technical provisions of retained EU law that may be amended by subordinate legislation.</p> <p>Regulations made under subsection (2) will be subject to an enhanced scrutiny procedure including consultation with the public and relevant stakeholders.</p> <p>Regulations may only be made under subsection (2) to the extent that they will have no detrimental impact on the UK environment.</p> <p>Delegated powers may only be used to modify provisions of retained EU law listed in any Schedule made under subsection (2) to the extent that such modification will not limit the scope or weaken standards of environmental protection.</p>	The purpose of this amendment is to ensure that the powers to create secondary legislation given to Ministers by the Bill can be used only in pursuit of the overall statutory purpose, namely to allow retained EU law to continue to operate effectively after exit day.
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102, 103	68	Schedule 8, page 50, leave out paragraphs (3) and (5)	<p>This amendment removes the additional power provided in paragraph 3.</p> <p>This amendment removes the future powers to make subordinate legislation in paragraph 5.</p>

## Limitations on delegated powers to correct retained EU law

### Scope of powers

#### General

NC24	19	<p>To move the following clause—</p> <p><b>Scope of delegated powers</b></p> <p>Subject to clauses 8 and 9 and paragraphs 13 and 21 of Schedule 2, any power to make, confirm or approve subordinate legislation conferred or modified under this Act and its Schedules must be used, and may only be used, insofar as is necessary to ensure that retained EU law continues to operate with equivalent scope, purpose and effect following the United Kingdom’s exit from the EU.</p>	<p>The purpose of this amendment is to ensure that the powers to create secondary legislation given to Ministers by the Bill can be used only in pursuit of the overall statutory purpose, namely to allow retained EU law to continue to operate effectively after exit day.</p>
<b>CLAUSE 7</b>			
96	30	<p>Clause 7, page 6, line 18, at end insert—</p> <p>(g) limit the scope or weaken standards of environmental protection.</p>	<p>This amendment ensures that the power to make regulations in clause 7 may not be exercised to reduce environmental protection.</p>
<b>CLAUSE 8</b>			
97	59	<p>Clause 8, page 6, line 38, at end insert—</p> <p>(e) limit the scope or weaken standards of environmental protection.</p>	<p>This amendment ensures that the power to make regulations in clause 8 may not be exercised to reduce environmental protection.</p>

<b>CLAUSE 9</b>			
98	36	<p>Clause 9, page 7, line 8, at end insert—</p> <p>(e) limit the scope or weaken standards of environmental protection.</p>	This amendment ensures that the power to make regulations in clause 8 may not be exercised to reduce environmental protection.
<b>CLAUSE 17</b>			
99, 100	55	<p>Clause 17, page 14, line 13, at end insert—</p> <p>(8) Regulations under this section may not limit the scope or weaken standards of environmental protection.</p> <p>(9) No regulations may be made under this section after the end of the period of two years beginning with exit day.</p>	This amendment ensures that the power to make regulations in clause 17 may not be exercised to reduce environmental protection.

## Scrutiny

NC26	42	<p>To move the following clause—</p> <p><b>“Scrutiny of statutory instruments</b></p> <p>(1) A Parliamentary Committee shall determine the form and duration of parliamentary and public scrutiny for every statutory instrument proposed to be made under this Act.</p> <p>(2) Where the relevant Committee decides that the statutory instrument will be subject to enhanced parliamentary scrutiny the Committee shall have the power—</p> <p>(a) to require a draft of the proposed statutory instrument be laid before Parliament;</p> <p>(b) to require the relevant Minister to provide further evidence or explanation as to the purpose and necessity of the proposed instrument;</p> <p>(c) to make recommendations to the relevant Minister in relation to the text of the draft statutory instrument;</p>	This new clause seeks to ensure that a Parliamentary Committee rather than ministers should decide what is the appropriate level of scrutiny for regulations made under the Act and that the Parliamentary Committee has the power to require enhanced scrutiny in relation to regulations that it considers to be particularly significant or contentious.
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		<p>(d) to recommend to the House that “no further proceedings be taken” in relation to the draft statutory instrument.</p> <p>(3) Where an instrument is subject to enhanced scrutiny, the relevant Minister must have regard to any recommendations made by the Parliamentary Committee pursuant to subparagraph (c) above before laying a revised draft instrument before each House of Parliament.</p> <p>(4) Where an instrument is subject to public consultation, the relevant Minister must have regard to the results of the consultation before laying a revised draft instrument before each House of Parliament or making a Written Statement explaining why no revision is necessary.”</p>	
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## Governance gap

NC27	20	<p>To move the following clause—</p> <p><b>Institutional arrangements</b></p> <p>(1) Before exit day a Minister of the Crown must make provision that all powers and functions relating to the environment or environmental protection that were exercisable by EU entities or other public authorities anywhere in the United Kingdom before exit day which do not cease to have effect as a result of the withdrawal agreement (“relevant powers and functions”) will—</p> <ul style="list-style-type: none"> <li>(a) continue to be carried out by an EU entity or public authority;</li> <li>(b) be carried out by an appropriate existing or newly established entity or public authority in the United Kingdom; or</li> <li>(c) be carried out by an appropriate international entity or public authority.</li> </ul> <p>(2) For the purposes of this section, relevant powers and functions relating to the UK exercisable by an EU entity or public authority include, but are not limited to—</p> <ul style="list-style-type: none"> <li>(a) monitoring and measuring compliance with legal requirements,</li> <li>(b) reviewing and reporting on compliance with legal requirements,</li> <li>(c) enforcement of legal requirements,</li> <li>(d) setting standards or targets,</li> <li>(e) co-ordinating action,</li> </ul>	<p>This new clause requires the government to establish new domestic governance proposals following the UK’s exit from the EU and to ensure statutory and institutional basis for future environmental protection.</p>
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		<p>(f) publicising information including regarding compliance with environmental standards.</p> <p>(3) Within 12 months of exit day, the Government shall consult on and bring forward proposals for the creation by primary legislation of—</p> <p>(a) a new independent body or bodies with powers and functions at least equivalent to those of EU entities and public authorities in Member States in relation to the environment; and</p> <p>(b) a new domestic framework for environmental protection and improvement.</p> <p>(4) Responsibility for any functions or obligations arising from retained EU law for which no specific provision has been made immediately after commencement of this Act will belong to the relevant Minister until such a time as specific provision for those functions or obligations has been made.</p>	
104	26	<p>Clause 7, page 6, line 6, at end insert—</p> <p>(5A) A public authority established under this Section will be abolished after 2 years.</p>	<p>This amendment provides for any new public authority established under secondary legislation to be temporary.</p>



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## Working with

Wildlife and  
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