

# **LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS OF THE ACT**

#### ***Section 11 – Power to make provision corresponding to EU law after exit day***

95. **Section 11** creates a discretionary power for the Welsh Ministers to keep pace with EU law following the withdrawal of the UK from the EU. The EU Withdrawal Bill would, if passed, repeal the ECA 1972, including section 2(2). Any developments in EU law following the withdrawal of the UK could not be reflected domestically in the absence of any other existing relevant powers. Section 11 continues the power to implement EU law, although, as the UK will no longer be a member of the EU, there would not be an obligation to implement EU law.
96. As with section 2(2) of the ECA 1972, the power can modify primary legislation and is subject to restrictions relating to imposing or increasing taxation, retrospective provision and criminal offences. Subsection (3) reflects that EU law will require varying degrees of modification before it can apply effectively in a domestic context.
97. The restriction in paragraph 1(1)(c) of Schedule 2 to the ECA 1972 on conferring powers to legislate does not apply to the power in section 11. As the definition of devolved competence is framed by reference to provision that could be included in an Act of the Assembly, the power does include the power to delegate the power under section 11. This reflects that an EU regulation, EU decision or EU directive could contain a power to make EU tertiary legislation. If the Welsh Ministers decide to exercise the power in section 11 to make corresponding provision to the EU instrument in question, the Welsh Ministers could consider whether to confer the power to make EU tertiary legislation on themselves or on another public authority.