

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

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## **EXPLANATORY NOTES**

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

#### ***Section 7 – Interpretation of EU derived Welsh law***

76. The withdrawal of the UK from the EU will mean that the CJEU will no longer have jurisdiction in relation to the UK. Domestic courts will therefore be unable to refer cases to the CJEU on or after exit day.
77. [Section 7\(2\)](#) provides that any question as to the validity, meaning or effect of EU derived Welsh law will be determined in UK courts in accordance with relevant pre-exit CJEU case law, retained general principles of EU law and the Charter of Fundamental Rights. This includes, amongst other matters, taking a purposive approach to interpretation where the meaning of the measures is unclear. A purposive approach means considering the purpose of the law from looking at other relevant documents such as the treaty legal base for a measure and, where relevant, the ‘travaux préparatoires’ (the working papers) leading to the adoption of the measure, applying the interpretation that renders the provision of EU law compatible with the treaties, general principles of EU law and the Charter of Fundamental Rights.
78. The general principles of EU law (such as proportionality, fundamental rights, the precautionary principle and non-retroactivity) are applied by the CJEU and domestic courts when determining the lawfulness of legislative and administrative measures within the scope of EU law, and are also an aid to interpretation of EU law.
79. Where EU derived Welsh law has not been amended on or after exit day then it will be interpreted in accordance with pre-exit CJEU case law, retained general principles of EU law and the Charter of Fundamental Rights (so far as they are relevant).
80. Subsection (2)(b) requires UK courts and tribunals to interpret EU derived Welsh law by reference to (among other things) the limits of EU competence, as it exists on the day the UK leaves the EU. A matter could not fall within EU derived Welsh law if the EU had no competence in that area. Article 5(2) of the TEU confirms that the Union could only act within the limits of the competences conferred upon it by the member States. Competences not conferred upon the Union remain with the member States.
81. [Section 7\(2\)](#) only applies to EU derived Welsh law as that law is unmodified on or after exit day. Making corresponding provision to direct EU law under the power in section 3 will often include making modifications to the provision in direct EU law on or after exit day. Similarly, modifications to EU derived Welsh law under sections 4 and 5 will be made on or after exit day. In these cases, the principle in section 7(2) will not apply and therefore there is no requirement to decide questions of validity, meaning or effect of those regulations in accordance with that subsection. However, section 7(5) makes clear that subsection (2) does not operate to prevent a court from determining a question as to the validity, meaning or effect of EU derived Welsh law which has been modified

*These notes refer to the Law Derived from the European Union  
(Wales) Act 2018 (c.3) which received Royal Assent on 6 June 2018*

on or after exit day as provided for in subsection (2) if doing so is consistent with the intention of the modifications.

82. **Section 7(3)** enables the Supreme Court, but no other domestic court, to depart from pre-exit CJEU case law. Subsections (2) and (3) combine to provide that pre-exit CJEU case law will have the same binding, or precedent, status in domestic courts and tribunals as existing decisions of the Supreme Court. Subsection (4) reflects the current practice employed by the Supreme Court when deciding whether to depart from its own previous decision. The test the UK Supreme Court uses is set out in an existing practice statement made by the House of Lords in 1966 and adopted by the Supreme Court in 2010. That statement set out, among other things, that while treating its former decisions as normally binding, it will depart from its previous decisions “when it appears right to do so”.
83. **Section 7(6)** provides definitions for the purposes of section 7. The definitions of retained domestic case law, retained EU case law and retained general principles of EU law are limited to such matters as are relevant to anything in respect of which regulations may be made under section 3, 4 or 5. The effect of section 7 is therefore limited to the scope of EU derived Welsh law.