



# Retained EU Law (Revocation and Reform) Act 2023

## 2023 CHAPTER 28

### *Powers relating to retained EU law and assimilated law*

#### **11 Power to restate retained EU law**

- (1) A relevant national authority may by regulations restate, to any extent, any secondary retained EU law.
- (2) In this Act “secondary retained EU law” means—
  - (a) any retained EU law that is not primary legislation;
  - (b) any retained EU law that is primary legislation the text of which was inserted by subordinate legislation.
- (3) A restatement is not retained EU law.
- (4) Any effect which is produced in relation to the thing being restated by virtue of the retained EU law mentioned in [subsection \(5\)](#) does not apply in relation to the restatement.
- (5) The retained EU law referred to in [subsection \(4\)](#) is—
  - (a) the principle of the supremacy of EU law,
  - (b) retained general principles of EU law, and
  - (c) anything which is retained EU law by virtue of section 4 or 6(3) or (6) of the European Union (Withdrawal) Act 2018.
- (6) But a restatement may, if the relevant authority considers it appropriate, itself produce an effect that is equivalent to an effect referred to in [subsection \(4\)](#).
- (7) No regulations may be made under [this section](#) after the end of 2023.
- (8) In [this section](#)—

“restatement”: references to restatement, in relation to anything which is retained EU law by virtue of section 4 or 6(3) or (6) of the European Union (Withdrawal) Act 2018, include codification;

“retained general principles of EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.

## **12 Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc**

- (1) A relevant national authority may by regulations restate, to any extent, any secondary assimilated law.
- (2) In this Act “secondary assimilated law” means—
  - (a) any assimilated law that is not primary legislation;
  - (b) any assimilated law that is primary legislation the text of which was inserted by subordinate legislation.
- (3) A restatement is not assimilated law.
- (4) Any effect which is produced in relation to the thing being restated by virtue of anything that is assimilated law by virtue of section 6(3) or (6) of the European Union (Withdrawal) Act 2018 does not apply in relation to the restatement.
- (5) But a restatement may, if the relevant national authority considers it appropriate, itself produce an effect that is equivalent to an effect referred to in [subsection \(4\)](#).
- (6) A restatement may also, if the relevant national authority considers it appropriate, produce an effect that is equivalent to an effect within [subsection \(7\)](#).
- (7) An effect is within this subsection if it would, but for sections 2 to 4, be produced in relation to the thing being restated by virtue of—
  - (a) the principle of the supremacy of EU law,
  - (b) retained general principles of EU law, or
  - (c) anything which was retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018.
- (8) A relevant national authority may by regulations reproduce, to any extent, the effect that anything which was retained EU law by virtue of section 4 or 6(3) or (6) of European Union (Withdrawal) Act 2018 would have, but for sections 2 to 4 of this Act.
- (9) No regulations may be made under this section after 23 June 2026.
- (10) In this section—
 

“restatement”: references to restatement, in relation to anything which is assimilated law by virtue of section 6(3) or (6) of the European Union (Withdrawal) Act 2018, include codification;

“retained general principles of EU law” has the meaning that was given by section 6(7) of the European Union (Withdrawal) Act 2018 immediately before the end of 2023.

## **13 Powers to restate or reproduce: general**

- (1) [This section](#) applies for the purposes of [sections 11](#) and [12](#).

- (2) A restatement may use words or concepts that are different from those used in the law being restated.
- (3) A restatement may make any change which the relevant national authority considers appropriate for one or more of the following purposes—
  - (a) resolving ambiguities;
  - (b) removing doubts or anomalies;
  - (c) facilitating improvement in the clarity or accessibility of the law (including by omitting anything which is legally unnecessary).
- (4) Regulations under [section 11](#) or [12](#)—
  - (a) may make provision about the relationship between what is restated and a relevant enactment specified in the regulations, but
  - (b) subject to that, may not make express provision about the relationship between what is restated and other enactments.
- (5) Regulations under [section 11](#) or [12](#) may not codify or reproduce the principle of the supremacy of EU law or a retained general principle of EU law.
- (6) Nothing in [subsection \(5\)](#)—
  - (a) prevents regulations under [section 11](#) or [12](#) from codifying or reproducing, in relation to a particular enactment, an effect equivalent to an effect which is produced, or would but for [sections 2 to 4](#) be produced, in relation to the enactment by virtue of the principle of supremacy of EU law or retained general principles of EU law, or
  - (b) prevents regulations under [section 11](#) or [12](#) which codify or reproduce anything which is or was retained EU law by virtue of [section 4](#) of the European Union (Withdrawal) Act 2018 from producing an effect equivalent to an effect which is produced, or would but for [sections 2 to 4](#) be produced, in relation to that thing by virtue of the principle of supremacy of EU law or retained general principles of EU law.
- (7) The provision that may be made by regulations under [section 11](#) or [12](#) may be made by modifying any enactment.
- (8) In [sections 11](#) and [12](#), references to producing an effect that is equivalent to another effect are to doing so by express provision or otherwise.
- (9) In [subsection \(4\)\(a\)](#) “relevant enactment” means—
  - (a) if the provision made by the regulations is made by modifying retained direct EU legislation, any retained direct EU legislation;
  - (b) otherwise, any domestic enactment (as defined by [section 5](#) of the European Union (Withdrawal) Act 2018).
- (10) In [subsections \(5\)](#) and [\(6\)](#) “retained general principles of EU law” has the same meaning as in [section 11](#) or [12](#) (as the case may be).
- (11) In this section “restatement”—
  - (a) in relation to [section 11](#), has the same meaning as in that section;
  - (b) in relation to [section 12](#), has the same meaning as in that section but also includes reproduction;and similar references are to be read accordingly.

## 14 Powers to revoke or replace

- (1) A relevant national authority may by regulations revoke any secondary retained EU law without replacing it.
- (2) A relevant national authority may by regulations revoke any secondary retained EU law and replace it with such provision as the relevant national authority considers to be appropriate and to achieve the same or similar objectives.
- (3) A relevant national authority may by regulations revoke any secondary retained EU law and make such alternative provision as the relevant national authority considers appropriate.
- (4) Regulations under [subsection \(2\)](#) or [\(3\)](#)—
  - (a) may confer a power to make subordinate legislation that corresponds or is similar to a power to make subordinate legislation conferred by secondary retained EU law revoked by the regulations (and may not otherwise confer a power to make subordinate legislation);
  - (b) subject to that, may confer functions (including discretions) on any person;
  - (c) may create a criminal offence that corresponds or is similar to a criminal offence created by secondary retained EU law revoked by the regulations (and may not otherwise create a criminal offence);
  - (d) may provide for the imposition of monetary penalties in cases that correspond or are similar to cases in which secondary retained EU law revoked by the regulations enables monetary penalties to be imposed (and may not otherwise provide for the imposition of monetary penalties);
  - (e) may provide for the charging of fees;
  - (f) may not—
    - (i) impose taxation;
    - (ii) establish a public authority.
- (5) No provision may be made by a relevant national authority under [this section](#) in relation to a particular subject area unless the relevant national authority considers that the overall effect of the changes made by it under [this section](#) (including changes made previously) in relation to that subject area does not increase the regulatory burden.
- (6) For the purposes of [subsection \(5\)](#), the creation of a voluntary scheme is not to be regarded as increasing the regulatory burden.
- (7) The provision that may be made by regulations under [this section](#) may be made by modifying any secondary retained EU law.
- (8) Any provision made by virtue of [this section](#) is not retained EU law.
- (9) No regulations may be made under [this section](#) after 23 June 2026.
- (10) In [this section](#)—

“burden” includes (among other things)—

  - (a) a financial cost;
  - (b) an administrative inconvenience;
  - (c) an obstacle to trade or innovation;
  - (d) an obstacle to efficiency, productivity or profitability;
  - (e) a sanction (criminal or otherwise) which affects the carrying on of any lawful activity;

“revoke”—

- (a) includes repeal, and
- (b) in relation to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, means provide that it is not recognised or available in domestic law (and, accordingly, not to be enforced, allowed or followed);

“secondary retained EU law”: references to secondary retained EU law are to be read after the end of 2023 as references to secondary assimilated law.

- (11) In subsection (8) the reference to retained EU law is to be read after the end of 2023 as a reference to assimilated law.

## **15 Power to update**

- (1) A relevant national authority may by regulations make such modifications of any secondary retained EU law, or of any provision made by virtue of [section 11](#), [12](#) or [14](#), as the relevant national authority considers appropriate to take account of—
  - (a) changes in technology, or
  - (b) developments in scientific understanding.
- (2) In [subsection \(1\)](#), the reference to secondary retained EU law is to be read after the end of 2023 as a reference to secondary assimilated law.

## **16 Power to remove or reduce burdens**

- (1) Part 1 of the Legislative and Regulatory Reform Act 2006 (order-making powers) is amended as follows.
- (2) In section 1(6) (power to remove or reduce burdens: definition of “legislation”) after paragraph (aa) (and before the “or” at the end of the paragraph) insert—
  - “(ab) any retained direct EU legislation,”.
- (3) In section 12 (procedure: introductory) after subsection (2) insert—
  - “(3) Paragraph 4 of Schedule 8 to the European Union (Withdrawal) Act 2018 (procedure for certain modifications of retained direct EU legislation or anything which is retained EU law by virtue of section 4 of that Act) does not apply in relation to orders under this Part.”