



European Union (Withdrawal) Act 2018

CHAPTER 16

EUROPEAN UNION (WITHDRAWAL) ACT 2018

Repeal of the ECA

- 1 Repeal of the European Communities Act 1972

Savings for implementation period

- 1A Saving for ECA for implementation period
- 1B Saving for EU-derived domestic legislation for implementation period

Retention of saved EU law at end of implementation period

- 2 Saving for EU-derived domestic legislation
- 3 Incorporation of direct EU legislation
- 4 Saving for rights etc. under section 2(1) of the ECA
- 5 Exceptions to savings and incorporation
- 5A Savings and incorporation: supplementary
- 6 Interpretation of retained EU law
- 7 Status of retained EU law

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- 7C Interpretation of relevant separation agreement law

Main powers in connection with withdrawal

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Status: Point in time view as at 31/12/2020.

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- 8C Power in connection with Ireland/Northern Ireland Protocol in withdrawal agreement
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- 10 Protection for North-South co-operation and ... prevention of new border arrangements
- 11 Powers involving devolved authorities corresponding to sections 8 to 8C
- 12 Retaining EU restrictions in devolution legislation etc.

Parliamentary oversight of withdrawal

- 13 Parliamentary approval of the outcome of negotiations with the EU
- 13A Review of EU legislation during implementation period
- 13B Certain dispute procedures under withdrawal agreement

Financial and other matters

- 14 Financial provision
- 15 Publication and rules of evidence
- 15A Prohibition on extending implementation period
- 15B Ministerial co-chairs of the Joint Committee
- 15C No use of written procedure in the Joint Committee
- 16 Maintenance of environmental principles etc.
- 17 Family unity for those seeking asylum or other protection in Europe
- 18 Customs arrangement as part of the framework for the future relationship
- 19 Future interaction with the law and agencies of the EU

General and final provision

- 20 Interpretation
- 21 Index of defined expressions
- 22 Regulations
- 23 Consequential and transitional provision
- 24 Extent
- 25 Commencement and short title

SCHEDULES

SCHEDULE 1 — Further provision about exceptions to savings and incorporation

Challenges to validity of retained EU law

- 1 (1) There is no right in domestic law on or...

General principles of EU law

- 2 No general principle of EU law is part of domestic...
- 3 (1) There is no right of action in domestic law...

Rule in Francovich

- 4 There is no right in domestic law on or after...

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Interpretation

5 (1) References in section 5 and this Schedule to the...

SCHEDULE 2 — Corresponding powers involving devolved authorities

Part 1 — DEALING WITH DEFICIENCIES ARISING FROM WITHDRAWAL

Power to deal with deficiencies

1 (1) A devolved authority may by regulations make such provision...

No power to make provision outside devolved competence

2 (1) No provision may be made by a devolved authority...

No power to modify retained direct EU legislation or confer certain functions

3 (1) No provision may be made by the Scottish Ministers...

Requirement for consultation in certain circumstances

4 No regulations may be made under this Part by a...

Requirement for consent where it would otherwise be required

5 (1) The consent of a Minister of the Crown is...

Requirement for joint exercise where it would otherwise be required

6 (1) No regulations may be made under this Part by...

Requirement for consultation where it would otherwise be required

7 (1) No regulations may be made under this Part by...

Meaning of devolved competence: Part 1

8 (1) A provision is within the devolved competence of the...

9 (1) A provision is within the devolved competence of the...

10 (1) A provision is within the devolved competence of a...

11 References in paragraphs 8 to 10, in connection with the...

PART 1A — PROVISION IN CONNECTION WITH IMPLEMENTATION PERIOD

11A Supplementary power in connection with implementation period

11B No power to make provision outside devolved competence

11C Certain requirements for consent, joint exercise or consultation

11D Meaning of devolved competence: Part 1A

11E A provision is within the devolved competence of the Welsh...

11F A provision is within the devolved competence of a Northern...

PART 1B — PROVISION IN CONNECTION WITH CERTAIN OTHER SEPARATION

ISSUES

11G Powers in connection with Part 3 of withdrawal agreement and EEA
EFTA separation agreement

11H No power to make provision outside devolved competence

11I Certain requirements for consent, joint exercise or consultation

11J Meaning of devolved competence: Part 1B

11K A provision is within the devolved competence of the Welsh...

11L A provision is within the devolved competence of a Northern...

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PART 1C — PROVISION IN CONNECTION WITH PROTOCOL ON IRELAND/
NORTHERN IRELAND

- 11M Power in connection with Protocol on Ireland/Northern Ireland
- 11N No power to make provision outside devolved competence
- 11O Certain requirements for consent, joint exercise or consultation
- 11P Meaning of devolved competence: Part 1C
- 11Q A provision is within the devolved competence of the Welsh...
- 11R A provision is within the devolved competence of a Northern...

Part 2 — IMPLEMENTING THE WITHDRAWAL AGREEMENT

Power to implement withdrawal agreement

- 12 (1) A devolved authority may by regulations make such provision...

No power to make provision outside devolved competence

- 13 (1) No provision may be made by a devolved authority...

No power to modify retained direct EU legislation etc.

- 14 (1) No provision may be made by the Scottish Ministers...

Requirement for consultation in certain circumstances

- 15 (1) No regulations may be made under this Part by...

Certain requirements for consent, joint exercise or consultation

- 16 Paragraphs 5 to 7 apply for the purposes of this...

Meaning of devolved competence: Part 2

- 17 A provision is within the devolved competence of the Scottish...
- 18 A provision is within the devolved competence of the Welsh...
- 19 A provision is within the devolved competence of a Northern...

SCHEDULE 3 — Further amendments of devolution legislation and reporting
requirement

Part 1 — CORRESPONDING PROVISION IN RELATION TO EXECUTIVE
COMPETENCE

Scotland Act 1998

- 1 In section 57 of the Scotland Act 1998 (EU law...

Government of Wales Act 2006

- 2 In section 80 of the Government of Wales Act 2006...

Northern Ireland Act 1998

- 3 In section 24 of the Northern Ireland Act 1998 (EU...

Part 2 — REPORTS IN CONNECTION WITH RETAINED EU LAW
RESTRICTIONS

Reports on progress towards removing retained EU law restrictions

- 4 (1) After the end of each reporting period, a Minister...

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Interpretation

- 5 In this Part— “appropriate authority” means— the Scottish Ministers, the...

Part 3 — OTHER AMENDMENTS OF DEVOLUTION LEGISLATION

Scotland Act 1998

- 6 The Scotland Act 1998 is amended as follows.
7 In section 2 (ordinary general elections), in subsection (2A), omit...
8 In section 12 (power of the Scottish Ministers to make...
9 (1) Section 12A (power of the Secretary of State to...
10 In section 32 (submission of Bills for Royal Assent), in...
11 Omit section 34 (ECJ references).
12 (1) Section 36 (stages of Bills) is amended as follows...
13 (1) Section 57 (EU law and Convention rights) is amended...
14 (1) Section 80D (Scottish taxpayers) is amended as follows.
15 In section 80DA (Scottish taxpayers: Welsh parliamentarians), in subsection (2)(a),...
16 (1) Section 82 (limits on salaries of members of the...
17 (1) Section 106 (power to adapt functions) is amended as...
18 In section 119 (Consolidated Fund etc.), omit subsection (4).
19 (1) Section 126 (interpretation) is amended as follows.
20 In section 127 (index of defined expressions), omit the entry...
21 (1) Schedule 4 (enactments etc. protected from modification) is amended...
22 In Part 2 of Schedule 5 (specific reservations), in section...
23 (1) Paragraph 1 of Schedule 6 (devolution issues) is amended...
24 (1) The table in paragraph 1(2) of Schedule 7 (procedure...
25 After paragraph 5 of Schedule 7 (procedure for subordinate legislation:...
26 In Schedule 8 (modifications of enactments), omit paragraph 15 and...

Government of Wales Act 2006

- 27 The Government of Wales Act 2006 is amended as follows...
28 In section 3 (ordinary general elections), in subsection (1A), omit...
29 In section 13(5) (power of the Welsh Ministers to make...
30 (1) Section 13A (power of the Secretary of State to...
31 In section 16(3) (disqualification from being Assembly member) omit “(other...
32 (1) Section 21 (limit on salaries of Assembly members) is...
33 In section 58A (executive ministerial functions), in subsection (4)(d), for...
34 Omit section 58B (implementation of EU law: general).
35 (1) Section 59 (implementation of EU law: designation of Welsh...
36 In the heading before section 80 (EU law, human rights...
37 (1) Section 80 (EU law) is amended as follows.
38 In section 111 (proceedings on Bills)— (a) in subsection (6),...
39 Omit section 113 (ECJ references).
40 In section 115 (Royal Assent), in subsection (3), omit paragraph...
41 (1) Section 116E (Welsh taxpayers) is amended as follows.
42 In section 116F (Welsh taxpayers: Scottish parliamentarians), in subsection (2)(a),...

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- 43 After section 157 (orders, regulations and directions) insert—
Explanatory statements...
- 44 In section 158(1) (interpretation)— (a) omit the definition of “EU...
- 45 In section 159 (index of defined expressions), omit the entry...
- 46 In Schedule 3 (transfer etc. of functions: further provisions), omit...
- 47 In Part 2 of Schedule 7A (specific reservations), in section...
- 48 In paragraph 5(1) of Schedule 7B (protected enactments), in the...
- 49 In Schedule 11 (transitional provisions), omit paragraph 35A and the...

Northern Ireland Act 1998

- 50 The Northern Ireland Act 1998 is amended as follows.
- 51 (1) Section 7 (entrenched enactments) is amended as follows.
- 52 Omit section 12 (reconsideration where reference made to ECJ).
- 53 In section 13 (stages of Bills), omit subsection (5)(b).
- 54 In section 14 (submission of Bills by the Secretary of...
- 55 In the heading of section 24 (EU law, Convention rights...
- 56 (1) Section 27 (quotas for purposes of international etc. obligations)...
- 57 After section 96(4) (orders and regulations) insert—
- 58 After section 96 (orders and regulations) insert— Explanatory
statements in...
- 59 In section 98(1) (interpretation)— (a) omit the definition of “EU...
- 60 (1) Schedule 2 (excepted matters) is amended as follows.
- 61 In Schedule 3 (reserved matters), in paragraph 38, for the...
- 62 In paragraph 1(c) of Schedule 10 (devolution issues) omit the...

SCHEDULE 4 — Powers in connection with fees and charges

Part 1 — CHARGING IN CONNECTION WITH CERTAIN NEW FUNCTIONS

Power to provide for fees or charges

- 1 (1) An appropriate authority may by regulations make provision for,...

Meaning of “appropriate authority”

- 2 (1) A Minister of the Crown is an “appropriate authority”...

Requirements for consent

- 3 (1) A Minister of the Crown may only make regulations...

Minister of the Crown power in relation to devolved authorities

- 4 A Minister of the Crown may by regulations—

Time limit for making certain provision

- 5 (1) Subject to sub-paragraphs (2) and (2A), no regulations may...

Relationship to other powers

- 6 This Part does not affect the powers under sections 8...

Part 2 — MODIFYING PRE-EXIT FEES OR CHARGES

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Power to modify pre-exit fees or charges

- 7 (1) Sub-paragraph (2) applies where any subordinate legislation contains provision...

Meaning of “appropriate authority”

- 8 In this Part an “appropriate authority” means a Minister of...

Restriction on exercise of power

- 9 (1) Where the charging provision consists solely of 1972 Act...

Requirement for consent

- 10 If a Minister of the Crown— (a) is an appropriate...

Relationship to other powers

- 11 This Part does not affect the powers under sections 8...

SCHEDULE 5 — Publication and rules of evidence

Part 1 — PUBLICATION OF RETAINED DIRECT EU LEGISLATION ETC.

Things that must or may be published

- 1 (1) The Queen's Printer must make arrangements for the publication...

Exceptions from duty to publish

- 2 (1) A Minister of the Crown may create an exception...
Part 2 — RULES OF EVIDENCE

Questions as to meaning of EU law

- 3 (1) Where it is necessary, in legal proceedings, to decide...

Power to make provision about judicial notice and admissibility

- 4 (1) A Minister of the Crown may by regulations—

SCHEDULE 6 — Instruments which are exempt EU instruments

EU decisions

- 1 (1) An EU decision is “an exempt EU instrument” so...

EU regulations

- 2 An EU regulation is “an exempt EU instrument” so far...

EU tertiary legislation

- 3 EU tertiary legislation is “an exempt EU instrument” so far...

Interpretation

- 4 The following are “relevant Protocols” for the purposes...

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SCHEDULE 7 — Regulations

Part 1 — SCRUTINY OF POWERS TO DEAL WITH DEFICIENCIES

Scrutiny of regulations made by Minister of the Crown or devolved authority acting alone

- 1 (1) A statutory instrument containing regulations under section 8(1) which...

Scrutiny of regulations made by Minister of the Crown and devolved authority acting jointly

- 2 (1) This paragraph applies to regulations under Part 1 of...

Parliamentary committee to sift certain deficiencies regulations of a Minister of the Crown

- 3 (1) Sub-paragraph (2) applies if a Minister of the Crown...

Committee of the National Assembly for Wales to sift certain deficiencies regulations of Welsh Ministers

- 4 (1) Sub-paragraph (2) applies if the Welsh Ministers are to...

Scrutiny procedure in certain urgent deficiencies cases: Ministers of the Crown

- 5 (1) Sub-paragraph (2) applies to— (a) a statutory instrument to...

Scrutiny procedure in certain urgent deficiencies cases: devolved authorities

- 6 (1) This paragraph applies to— (a) regulations to which paragraph...
7 (1) Sub-paragraph (2) applies to— (a) a statutory instrument to...
8 (1) This paragraph applies to— (a) regulations to which paragraph...

PART 1A — SCRUTINY OF SPECIFIC POWERS RELATING TO WITHDRAWAL AGREEMENT ETC.

8A Powers in connection with Part 4 of the withdrawal agreement

- 8B (1) A statutory instrument containing regulations under section 8A which...

- 8C (1) This paragraph applies to regulations under Part 1A of...

8D Powers in connection with other separation issues in the withdrawal agreement etc.

- 8E (1) This paragraph applies to regulations under Part 1B of...

8F Powers in connection with the Ireland/Northern Ireland Protocol in the withdrawal agreement

- 8G (1) This paragraph applies to regulations under Part 1C of...

Part 2 — SCRUTINY OF OTHER POWERS UNDER ACT

Power to enable challenges to validity of retained EU law

- 9 (1) A statutory instrument containing regulations under paragraph 1(2) (b) of...

Power in relation to interpretation of retained EU law

- 9A A statutory instrument containing regulations under section 6(5A) may not...

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...

- 10 (1) A statutory instrument containing regulations under section 9 which...

Power to repeal provisions relating to retained EU law restrictions

- 11 A statutory instrument containing regulations under section 12(9) may not...

Powers in connection with fees and charges

- 12 (1) A statutory instrument containing regulations of a Minister of...

Power to make provision about judicial notice and admissibility

- 13 A statutory instrument containing regulations under paragraph 4 of Schedule...

Power to amend the definition of “exit day”

- 14 A statutory instrument containing regulations under section 20(4) is subject...

Power to make consequential provision

- 15 (1) A statutory instrument containing regulations under section 23(1) is...

Power to make transitional, transitory or saving provision

- 16 (1) Sub-paragraph (2) applies if a Minister of the Crown...

Parliamentary committee to sift ... consequential regulations of a Minister of the Crown

- 17 (1) Sub-paragraph (2) applies if a Minister of the Crown...

...

- 18 Paragraph 4 applies to regulations under Part 2 of Schedule...

Scrutiny procedure for certain powers to which this Part applies in urgent cases

- 19 (1) Sub-paragraph (2) applies to— (a) a statutory instrument to...
Part 3 — GENERAL PROVISION ABOUT POWERS UNDER ACT

Scope and nature of powers: general

- 20 (1) Any power to make regulations under this Act—
21 Any power to make regulations under this Act—
22 The fact that a power to make regulations is conferred...

Scope of consequential and transitional powers

- 23 (1) The fact that anything continues to be, or forms...

Anticipatory exercise of powers in relation to section 1B(2) saved law

- 23A Any power to make regulations under this Act which modify...

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Anticipatory exercise of powers in relation to retained EU law

24 Any power to make regulations under this Act which modify...

Anticipatory exercise of powers in relation to the withdrawal agreement etc.

24A Any power to make regulations under this Act in relation...

Scope of appointed day powers

25 Any power of a Minister of the Crown under this...

Effect of certain provisions in Schedule 8 on scope of powers

26 The modifications made by Part 1 of Schedule 8 and...

Disapplication of certain review provisions

27 Section 28 of the Small Business, Enterprise and Employment Act...

Explanatory statements for certain powers: appropriateness, equalities etc.

28 (1) This paragraph applies where— (a) a statutory instrument containing...

29 (1) This paragraph applies where— (a) a Scottish statutory instrument...

Further explanatory statements in certain sub-delegation cases

30 (1) This paragraph applies where— (a) a statutory instrument containing...

31 (1) This paragraph applies where— (a) a Scottish statutory instrument...

Annual reports in certain sub-delegation cases

32 (1) Each person by whom a relevant sub-delegated power is...

33 (1) Each person by whom a relevant sub-delegated power is...

Further explanatory statements in urgency cases

34 (1) This paragraph applies where a statutory instrument containing regulations...

35 (1) This paragraph applies where regulations are to be made...

Hybrid instruments

36 If an instrument, or a draft of an instrument, containing...

Procedure on re-exercise of certain powers

37 (1) A power to make regulations which, under this Schedule,...

Combinations of instruments

38 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations...

SCHEDULE 8 — Consequential, transitional, transitory and saving provision
Part 1 — GENERAL CONSEQUENTIAL PROVISION

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Existing ambulatory references to retained direct EU legislation

- 1 (1) Any reference so far as it, immediately before IP...

Existing ambulatory references to relevant separation agreement law

- 1A (1) Any reference which, immediately before IP completion day—

Other existing ambulatory references

- 2 (1) Any reference so far as it—

Existing non-ambulatory references

- 2A (1) Any reference which, immediately before IP completion day—

Existing powers to make subordinate legislation etc.

- 3 (1) Any power to make, confirm or approve subordinate legislation...
4 (1) Any subordinate legislation which— (a) is, or is to...
5 (1) This paragraph applies to any power to make, confirm...
6 Any subordinate legislation which is, or is to be, made,...
7 Any power to make, confirm or approve subordinate legislation
which,...
8 (1) Paragraphs 3 to 7 and this paragraph—

Review provisions in existing subordinate legislation

- 9 (1) In carrying out a review of a provision of...

Future powers to make subordinate legislation

- 10 (1) This paragraph applies to any power to make, confirm...
11 (1) Sub-paragraph (2) applies to any power to make, confirm...
12 (1) Paragraphs 10 and 11 and this paragraph—

Affirmative procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the ECA (including subordinate legislation implementing EU directives)

- 13 (1) A statutory instrument which— (a) is to be made...

Enhanced scrutiny procedure for instruments which amend or revoke subordinate legislation under section 2(2) of the ECA (including subordinate legislation implementing EU directives)

- 14 (1) This paragraph applies where, on or after IP completion...

Explanatory statements for instruments amending or revoking regulations etc. under section 2(2) of the ECA

- 15 (1) This paragraph applies where, on or after IP completion...
16 (1) This paragraph applies where, on or after IP completion...

Part 2 — SPECIFIC CONSEQUENTIAL PROVISION

Finance Act 1973

- 17 In section 56 of the Finance Act 1973 (charges for...

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Interpretation Act 1978

- 18 The Interpretation Act 1978 is amended as follows.
- 19 In section 21(1) (meaning of “subordinate legislation”) after “any Act”...
- 20 After section 23 (application to other instruments) insert— Retained direct...
- 21 In section 24 (application to Northern Ireland), in subsection (4)—...
- 22 In Schedule 1 (words and expressions defined)—

European Economic Area Act 1993

- 23 The European Economic Area Act 1993 is amended as follows....
- 24 Omit section 1 (EEA agreement to be an EU Treaty)....
- 25 (1) Section 2 (consistent application of law to the whole...
- 26 (1) Section 3 (general implementation of the EEA agreement) is...
- 27 Omit section 4 (modification of section 3 of the European...
- 28 In section 6 (interpretation), in subsection (1), in the definition...

Criminal Procedure (Scotland) Act 1995

- 29 (1) Section 288ZA of the Criminal Procedure (Scotland) Act 1995...

Human Rights Act 1998

- 30 (1) This paragraph has effect for the purposes of the...

Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)

- 31 The Interpretation and Legislative Reform (Scotland) Act 2010 is amended...
- 32 (1) Section 1 (application of Part 1 of the Act)...
- 33 In section 30 (other instruments laid before the Scottish Parliament),...
- 34 In section 37 (interpretation of Part 2 of the Act)—...
- 35 In Schedule 1 (definitions of words and expressions)—

Small Business, Enterprise and Employment Act 2015

- 36 In section 30 of the Small Business, Enterprise and Employment...
Part 3 — GENERAL TRANSITIONAL, TRANSITORY OR SAVING PROVISION

Continuation of existing acts etc.

- 36A (1) Anything done— (a) in connection with anything which continues...
- 37 (1) Anything done— (a) in connection with anything which continues...
Part 4 — SPECIFIC TRANSITIONAL, TRANSITORY AND SAVING PROVISION

Retention of saved EU law at end of implementation period

- 37A The repeal of section 1A(1) to (4) by section 1A(5)...
- 38 Section 4(2)(b) does not apply in relation to any rights,...
- 39 (1) Subject as follows and subject to relevant separation agreement...

Main powers in connection with withdrawal

- 40 The prohibition on making regulations under section 6(5A), 8, 8A...

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Devolution

- 41 (1) The amendments made by section 12 and Part 1...
- 42 The amendments made by Part 1 of Schedule 3 do...
- 43 A consent decision of the Scottish Parliament, the National Assembly...

Other provision

- 44 (1) The definition of “relevant criminal offence” in section 20(1)...
- 45 (1) The amendment made by paragraph 17 does not affect...

SCHEDULE 9 — Additional repeals

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