



## EXPLANATORY NOTES

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### European Union (Future Relationship) Act 2020

Chapter 29

£11.50



# EUROPEAN UNION (FUTURE RELATIONSHIP) ACT 2020

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the European Union (Future Relationship) Act 2020 (c. 29) which received Royal Assent on 30 December 2020.

- These Explanatory Notes have been prepared by the Cabinet Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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## Overview of the Act

- 1 The European Union (Future Relationship) Act implements the Trade and Cooperation Agreement (TCA), Agreement on Nuclear Cooperation and Agreement on Security Procedures for Exchanging and Protecting Classified Information ('the Agreements'), as agreed between the United Kingdom and the European Union (EU).
- 2 It also enables the implementation of arrangements and agreements that are either foreseen in the Agreements, or which are agreed by the UK and EU to be 'supplementary' to the TCA where these do not engage Section 20 of the Constitutional Reform and Governance Act 2010; these are, together with the Agreements, the future relationship agreements. The Act is required to implement the Agreements for them to have domestic legal effect and to enable the UK Government to ratify the Agreements.
- 3 The Act provides for the application of the Agreements in domestic law where relevant. The Act also creates powers to make secondary legislation, where appropriate, to enable the Agreements to be implemented domestically or for domestic law to be interpreted in light of the Agreement. These measures provide for the implementation of the Agreements agreed between the UK and the EU.
- 4 The Act also makes a small number of additional provisions relating to the UK's relationship with the EU.

## Policy background

- 5 On 23 June 2016, a referendum was held in the UK and Gibraltar on whether the UK should remain a member of the EU. More than 33.5m people, some 72 per cent of registered voters, voted in the referendum and 52 per cent of those who voted, voted to leave the EU.
- 6 The European Union (Notification of Withdrawal) Act 2017 was passed into law on 16 March 2017. This gave the Prime Minister the power to notify the European Council of the UK's intention to withdraw from the EU under Article 50(2) of the Treaty on the European Union (TEU). This notification was then given on 29 March 2017.
- 7 On 26 June 2018, the European Union (Withdrawal) Act 2018 (EUWA) passed into law. Its purpose is to give effect to withdrawal and to provide a functioning statute book when the UK leaves the EU.
- 8 On 13 November 2017, the previous Government announced its intention to bring forward a new Act to implement the Withdrawal Agreement in domestic law. This confirmed that the major policies set out in the Withdrawal Agreement would be given effect in domestic law through new primary legislation, rather than by secondary legislation under what became the European Union (Withdrawal) Act 2018.
- 9 On 14 November 2018, the previous Government published a draft of the Withdrawal Agreement (agreed at negotiator level). This Agreement was agreed by European leaders on 25 November 2018 and laid before Parliament on 26 November 2018.
- 10 The Agreement was subject to votes in the House of Commons as prescribed under section 13 of the European Union (Withdrawal) Act 2018 on 15 January 2019 and 12 March 2019, whilst the Withdrawal Agreement alone, without the Political Declaration, was voted on by the House of Commons on 29 March 2019. The Agreement was rejected in all these votes. The Agreement was also subject to take note motions in the House of Lords.

- 11 On 22 March 2019, the European Council and the United Kingdom agreed to an extension to the Article 50 period until 22 May 2019, provided the Withdrawal Agreement was approved by the House of Commons before 29 March 2019, or otherwise until 12 April 2019 (European Council Decision (EU) 2019/476, O.J. No. L 80 I, p.1). The definition of ‘exit day’ in the European Union (Withdrawal) Act 2018 was amended by statutory instrument, The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 (S.I. 2019/718), to reflect this, having been approved by the House of Commons and the House of Lords on 27 March 2019.
- 12 On 5 April 2019, the then Prime Minister wrote to the then President of the European Council seeking a second extension of the Article 50 period. On 11 April 2019, the European Council and the UK agreed an extension to the Article 50 period until 31 October 2019 (European Council Decision (EU) 2019/584, O.J. No. L 101, p.1). This extension could be terminated early if the Withdrawal Agreement was ratified and came into force before this date. Following the conclusion of the European Council, a statutory instrument, The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 (S.I. 2019/859), was made under the negative procedure on 11 April amending the definition of ‘exit day’ in the European Union (Withdrawal) Act 2018 to 31 October 2019 at 11.00 p.m.
- 13 On 23 May 2019, Prime Minister Theresa May resigned. Following a change in Government, Prime Minister Boris Johnson committed to negotiating a new Withdrawal Agreement. This Withdrawal Agreement was agreed by European leaders at the European Council on 17 October 2019. In addition, the Government made a unilateral declaration concerning the operation of the ‘Democratic consent in Northern Ireland’ provision of the Protocol on Ireland/Northern Ireland, which was published on the same day.
- 14 On 19 October 2019, the Government laid before Parliament the new Withdrawal Agreement and new framework for the future relationship between the UK and the EU.
- 15 On 21 October 2019, the European Union (Withdrawal Agreement) Bill was introduced to Parliament. The House of Commons voted for the Act at Second Reading, which passed by 329-299, but the House did not vote in favour of the timetable to debate the Act. On 30 October 2019, in accordance with the European Union (Withdrawal) (No. 2) Act 2019, an amendment to the definition of “exit day” was made to European Union (Withdrawal) Act 2018, amending the day of exit to 31 January 2020. Parliament subsequently legislated for an early general election and was dissolved on 6 November 2019.
- 16 On 19 December 2019, the European Union (Withdrawal Agreement) Bill was introduced to Parliament.
- 17 On 23 January 2020 the European Union (Withdrawal Agreement) Act 2020 was passed into law. The principal purpose of the Act was to implement the Withdrawal Agreement, the separation agreement between the UK and the EEA EFTA countries (EEA EFTA Separation Agreement) and the Swiss Citizens’ Rights Agreement.
- 18 On 31 January 2020, the UK left the European Union and the Withdrawal Agreement concluded with the EU entered into force. The Transition Period provided for in that agreement ends at 11pm on 31 December 2020.
- 19 On 2 March 2020, the first round of negotiations began.
- 20 The Agreements were agreed by the UK and EU on 24 December 2020. The UK and EU have agreed to provisionally apply the Agreements from the end of the Transition Period ahead of ratification.
- 21 On 30 December 2020 the European Union (Future Relationship) Bill was introduced to Parliament.

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## Approach to the European Union (Future Relationship) Act 2020

- 22 The UK has a dualist legal system, in which an international treaty ratified by the Government, although binding in international law, does not alter the laws of the state unless and until the treaty is incorporated into domestic law by legislation. This means that the UK Parliament has to pass implementing legislation before an international treaty can have effect domestically.
- 23 This Act is a necessary step in the process of ratifying the Agreements as international treaties.
- 24 The principal purpose of the Act is to implement the Agreements. This is primarily done by way of detailed, specific provisions and amendments to existing legislation to meet the UK's commitments under the Agreements. The Act also includes a general provision requiring existing domestic law to be modified to give effect to the Agreements, but only so far as necessary to implement the Agreements. The Act also provides a delegated power to be used to make further provision to give effect to the Agreements. In the event that the Agreements are not ratified and provisional application comes to an end, the Act enables the termination or suspension of domestic legal provisions that give effect to the Agreements.

## Security

### Criminal Records

- 25 The Agreement provides for the fast and effective exchange of criminal records data between the UK and individual EU Member States. The arrangements include streamlined and time-limited processes for exchanging criminal records information and specifying that information can be exchanged for crime prevention and safeguarding purposes.
- 26 The Act provides for criminal record exchange to allow UK law enforcement to send and receive conviction information for law enforcement purposes to and from the UK, thereby giving effect to the terms of the Agreement. The UK designated authority will act on behalf of all UK law enforcement agencies.

### Passenger and Vehicle Registration Data

#### Passenger Name Record Data

- 27 Passenger Name Record Data (PNR) data is a unique law enforcement tool which enables law enforcement authorities to identify previously unknown individuals who may be involved in terrorism or serious crime as well as individuals at risk of exploitation.
- 28 The Act implements the TCA, which provides for transfers of PNR data from the EU to the UK. The Agreement is based on precedents for PNR Agreements between the EU and third countries, and provides for more frequent transfers of PNR data from airlines to the UK prior to flights taking off between the EU and the UK. The Agreement also provides for specific data protection safeguards, for an implementation period during which the UK will make necessary technical adjustments to its systems to effectively operate those safeguards, and for cooperation between the UK and EU authorities that use PNR data.

#### Biometric and Vehicle Registration Data Exchange

- 29 The Act provides for Biometric data exchange. Biometric data exchange refers to the reciprocal searching and comparison of fingerprints and DNA profiles in databases in the UK and EU Member States. For example, states can search for a DNA profile in the databases held by other states, or compare unidentified DNA profiles, to determine whether there is a match.

Where there is a match, the searching state may request that further available personal data and other information in relation to the relevant DNA profile be sent, subject to the domestic law and legal assistance rules of the requested state.

- 30 Vehicle Registration Data Exchange refers to a procedure for states to search the contents of vehicle registration databases held in other states, using either vehicle chassis numbers or full registration numbers, and to obtain data from those databases relating to owners or operators of the vehicle and further data relating to that vehicle. Among other things, this may include the owner's name and address, and the make and model of the relevant vehicle. Both biometric and vehicle registration data exchange can only occur for the law enforcement purposes set out in the Agreement.
- 31 The TCA provides for the fast and effective exchange of national DNA, fingerprint and vehicle registration data between the UK and individual EU Member States to aid law enforcement agencies in investigating crime and terrorism. DNA and fingerprint data will continue to be exchanged through the Prüm system, and the Agreement enables the exchange of vehicle registration data in the future.

## Evidence

### **Mutual Legal Assistance and Asset Freezing and Confiscation**

- 32 Mutual legal assistance (MLA) is a method of cooperation between states for obtaining assistance in the investigation or prosecution of criminal offences. MLA is generally used for obtaining material that cannot be obtained on a police cooperation basis, particularly for assistance that requires court authorisation before it can be carried out. An aspect of MLA is reciprocal assistance in the context of measures taken to identify, freeze and confiscate the proceeds of crime.
- 33 The Act provides for the aspects of the TCA which support effective cooperation on MLA in criminal matters and asset freezing and confiscation, supplementing the relevant Council of Europe Conventions by providing for streamlined processes, including standard formats for making requests and specific timescales for action. On asset freezing and confiscation, the Agreement provides for more limited grounds for refusal of a request allowing for the broadest cooperation possible. On MLA, the Agreement provides for direct transmission, allowing UK prosecutors to send requests directly to competent authorities in EU Member States. This will ensure action can be taken quickly and effectively.

## Extradition

- 34 Extradition is the formal legal process by which a person accused or convicted of a crime is surrendered from one State to another for trial or punishment. The extradition of persons from the United Kingdom is governed by the Extradition Act 2003, ("the 2003 Act") which provides for two distinct sets of procedures to apply to incoming extradition requests.
- 35 Part 1 of the 2003 Act implements extradition arrangements based on the exchange of arrest warrants directly between judicial authorities (before the end of the Transition Period in particular, the European Arrest Warrant (EAW) Framework Decision and the Norway/Iceland Surrender Agreement). Part 2 of the 2003 Act covers other territories that the United Kingdom has extradition relations with, based on the exchange of extradition requests between governments.
- 36 The Act provides for aspects of the TCA which provide for streamlined extradition arrangements, akin to the EU's Surrender Agreement with Norway and Iceland but with appropriate and further safeguards for individuals, beyond those in the European Arrest Warrant. To streamline cooperation, it provides for direct transmission between judicial

authorities, limited grounds for refusal and time-limited processes. It also includes additional provisions which make clear that a person's surrender can be refused if their fundamental rights are at risk, extradition would be disproportionate, or they are likely to face long periods of pre-trial detention. Where extradition of own nationals from certain EU Member States is not possible due to their constitutional principles, the Agreement provides that there is always a mechanism to address this, for example, by obliging EU Member States to refer cases to their own prosecution authorities.

## Trade and Other Matters

### Technical Barriers to Trade

#### **Information about non-food product safety**

- 37 As part of the TCA, the UK and the EU agreed a chapter on Technical Barriers to Trade ('TBT') and related annexes, including on medicinal products; motor vehicles, equipment and parts; and chemicals, as well as for organic products and wine.
- 38 The TBT chapter applies to the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, and market surveillance, while the annexes make provisions for more detailed arrangements in the relevant sectors. The TBT chapter and annexes include, amongst other things, provision relating to international standards and provision for the UK and EU to share information on non-food product safety.
- 39 The Act will give effect to the provisions in the TBT chapter and certain annexes to share non-food product safety information by creating two gateways: one for the UK to share this data with the EU, and another to share information received from the EU in the UK. These gateways will enable the UK to implement the agreement to share non-food product safety information as provided in the TBT chapter and relevant annexes.
- 40 The information on non-food product safety shared between the UK and EU will complement and enhance the information that UK (and EU) authorities already collect independently. This will help to ensure the safety and compliance of non-food products on the UK market, protecting consumers, health, safety, and the environment across the UK. This is not intended to restrict a Minister's ability to share similar information under other information sharing powers.
- 41 Information shared as part of the arrangements in the TCA may include information that is not publicly available, such as traceability information about businesses in the supply chain. The Act therefore includes provisions that restrict the onward distribution of the information received from the EU and ensures that it is only shared for a permitted purpose. A permitted purpose is where the sharing of the information is to ensure the protection of consumers, health, safety, or the environment.

#### **Use of relevant international standards**

- 42 The TBT Chapter provisions on international standards in the Agreement include their interaction with product regulation. Product regulation seeks to make sure that goods, and related processes, support public policy objectives including consumer safety, public health, and environmental protection. Voluntary standards can support public policy objectives and are often recognised as best practice for businesses. In some cases, particular voluntary standards can also be one way to meet some or all of the legal requirements in a regulation. For the purposes of the TBT Chapter (and the World Trade Organization ('WTO') TBT Agreement), standards are documents approved by bodies recognised for standardisation, which provide rules, guidelines or characteristics for products or related processes, with

which compliance is voluntary. International standards are approved by international standardising bodies.

- 43 At the end of the Transition Period, most areas of UK product legislation will become retained EU law. The retained EU law will enable the Secretary of State to designate certain standards in respect of Great Britain so that they give rise to the rebuttable presumption of conformity with requirements set in regulations.
- 44 Article TBT.4(3) of the TCA requires the UK and EU to use relevant international standards as a basis for their technical regulations, except where these would be ineffective or inappropriate to meet the legitimate objectives pursued. A similar requirement applies in the WTO Agreement on TBT. Article TBT.4(4)-(5) defines relevant international standards for the purposes of the TBT Chapter of the TCA.
- 45 The Act will amend retained EU law to enable this commitment to be met, by providing extra clarity that international standards can be used among the standards which the Secretary of State may designate for the presumption of conformity with manufactured goods regulation in Great Britain. The Act will enable UK Ministers to designate an international standard directly where that is in the UK's interests.

## Customs and Tax

### **Disclosure of information and co-operation with other customs services**

- 46 Her Majesty's Revenue and Customs (HMRC) exercises a range of statutory customs functions in respect of both the collection and management of customs duty and the control and administration of imports/exports more generally. To support these functions, HMRC needs to be able to disclose information lawfully to and cooperate with a range of entities, including law enforcement agencies and other customs services for purposes including trade facilitation, ensuring the security of UK borders and combating fraud.
- 47 The Customs and Trade Facilitation chapter in the TCA contains provisions on customs cooperation and a Protocol on Mutual Administrative Assistance which together provide a basis in international law for cooperation between customs authorities, reciprocal assistance and the exchange of information between the UK and the EU to uphold their respective customs regimes. The TCA provisions also impose various Treaty-level conditions on the use of any such information received by either Party, including purpose limitations on the use of information and consent for any onwards disclosure.
- 48 HMRC's statutory framework on confidentiality requires a legal basis to be able to lawfully disclose HMRC information held in connection with departmental functions. The sections replace existing provisions contained within sections 25 and 26 of the Taxation (Cross-border Trade) Act 2018, which currently provide such a legal basis for disclosure and cooperation for purposes related to UK Import Duty. This section will create equivalent powers for all matters related to HMRC's customs functions.
- 49 These Sections will provide a suitable legal basis for disclosure and cooperation on the full range of customs matters, including where there is no clear link to UK Import Duty. This covers a number of important areas, including customs safety and security, mutual assistance, and information in respect of Authorised Economic Operators. This will entail a repeal of the relevant sections of the Taxation (Cross-border Trade) Act 2018 and insertion of these new sections into the Customs and Excise Management Act 1979 ('CEMA'). This approach will maintain current restrictions on use and further disclosure of any information under the sections, by reference to existing penalties under the Commissioners for Revenue and Customs Act 2005.

## **Powers to make regulation about movement of goods**

- 50 Alongside matters related to customs duty, customs authorities are responsible for monitoring and controlling the movement of goods across borders for other purposes, including the protection of public health and safety, national security and the protection of the environment, including plant and animal health. Standards in the area of safety and security can be set both domestically and at international level. This is reflected in the objectives of the Customs and Trade Facilitation chapter of the TCA, which commit the parties to cooperate to achieve public policy objectives, and commit the UK and the EU to maintain consistency with international instruments and standards applicable in the area of customs and trade.
- 51 Such international obligations can change over time. For example, the World Customs Organization's SAFE Framework of Standards ('SAFE Framework') sets out minimum requirements for regulating, monitoring and securing the international supply chain. This Framework is subject to periodic review which can result in updates to standards.
- 52 The Act provides the necessary powers to ensure that HMRC can make any necessary changes to retained EU law in the area of safety and security, to ensure the UK can keep pace with international standards governing the movement of goods and meet TCA commitments.

## **VAT and Debt Recovery Protocol**

- 53 The Customs and Trade Facilitation chapter of the TCA contains a Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties. This commits parties to co-operate and share information for the purposes of ensuring trader compliance with VAT legislation. It also commits the UK and EU member state authorities to give assistance to each other in recovering debts relating to taxes and duties, by collecting claims referred from another country as if they were domestic claims. The Act makes provision to implement this Protocol

## **Transport**

- 54 The UK and the EU have agreed updated terms for the carriage of goods between their markets by road in the Transport of Goods chapter of the TCA. The TCA ensures continued rights for UK and EU hauliers to travel to, from and through each other's territories with no quantitative restrictions. It also provides for limited additional internal movements. The international carriage of goods by road for hire or reward within the EU is currently carried out under EU rules on operator licensing, which enables hauliers established in a Member State to carry goods internationally within the EU, providing the haulier has an operator licence. The Act provides for the updated terms agreed between the EU and the UK in the TCA to permit road haulage operators access to each other's markets after the end of the Transition Period.
- 55 Under the terms of the TCA, UK and EU road haulage operators are permitted access to each other's markets, providing the operator holds the correct licence. A UK haulier permitted to operate in the EU under the TCA will be required to obtain and must carry a UK Licence for the Community in order to carry goods for hire or reward in the EU, a model of which is set out in the TCA to assist enforcement authorities. The Act provisions amend UK legislation so that the model UK Licence for the Community in UK law corresponds to the model licence in the TCA
- 56 A UK haulier may carry out international journeys between, through and within the EU and EU hauliers within the UK. The Act amends UK law to reflect the reduced number of international journeys permitted within a set time frame under the TCA. The Act also amends the definition of "international carriage" to permit this type of journey under the Agreement.



- 57 The TCA requires the UK and EU Member States to maintain national electronic registers that hold personal data on all commercial drivers that hold driver cards and that these electronic registers to be interconnected and accessible using the TACHOnet messaging system. The TCA provides for the exchange of driver card data between EU Member States and the UK to continue through the TACHOnet messaging system. This exchange of data is necessary so that relevant authorities such as the Driver and Vehicle Licensing Agency and Driver and Vehicle Standards Agency in the UK can make the necessary checks when they receive a driver card application and to check the validity of a driver card presented at the roadside, respectively.
- 58 The Act provides for relevant authorities to access information through the TACHOnet system when issuing, replacing, exchanging or renewing tachograph cards. This allows authorities to confirm, for example, that an applicant does not already hold a valid tachograph card, or validate driver details when carrying out roadside enforcement.

## Social Security

- 59 The Act gives effect in domestic law to the Protocol on Social Security Coordination of the TCA, ensuring that individuals can rely on the provisions of the Protocol before domestic courts, tribunals and administrative authorities.
- 60 The provisions in the Protocol on Social Security Coordination ensure that individuals who move between the UK and the EU in the future will be able to protect their contributions for state pensions and access a range of social security benefits (including healthcare) in line with those provisions.
- 61 The UK and EU Member States will be able to take into account relevant social security contributions paid into each other's social security systems, or relevant periods of work or residence, by individuals in order to determine those individuals' entitlement to a state pension and to a range of benefits (for example unemployment and invalidity benefits). The Protocol also provides for the up-rating of the UK State Pension paid to pensioners who retire to the EU after the end of the Transition Period.
- 62 The Protocol ensures that cross-border workers and their employers pay social security contributions in only one State.
- 63 On healthcare, where the UK or an EU Member State is responsible for the healthcare of an individual, that person will be entitled to reciprocal healthcare cover in accordance with the Protocol. In addition, the Protocol contains necessary healthcare provisions – akin to those provided under the European Health Insurance Card (EHIC) scheme – for people who are travelling (during a “stay”) to a State other than their responsible State. The Protocol also enables individuals to seek authorisation to receive planned medical treatment in certain circumstances in the UK or the EU, funded by their responsible State.
- 64 The Protocol allows for the Specialised Committee on Social Security Coordination to make amendments to the Protocol's associated Annexes and Appendices.

## Privileges and Immunities for the EU and Euratom and related organisations and bodies

- 65 Privileges and Immunities ('P&Is') are a standard feature of international law and are generally considered necessary for the proper functioning of international organisations. The UK has agreed, or is in the process of agreeing, to grant P&Is to three specific entities as part of its future relationship with the EU and European Atomic Energy Community ('Euratom'), and may also be required to grant P&Is to other entities related to the EU or Euratom where an agreement is reached in the future.

- 66 The Act amends an existing power under the International Organisations Act 1968 ('the IOA') to enable the conferral of P&Is on the EU, Euratom, and related organisations and bodies. This will allow the UK to implement the international obligations that it has in respect of those entities by virtue of agreements to which it (or Her Majesty's Government) is party. The IOA currently provides only limited powers to confer P&Is on an organisation of which the UK is not a member and certain specified EU bodies only.
- 67 As part of TCA negotiations, the UK has reached an agreement with the EU and Euratom to participate in the Euratom Research and Training programme, and as a member of the Fusion for Energy ('F4E') which continues UK participation in the ITER project ('ITER'), subject to the adoption of the EU regulations establishing these programmes and the draft Protocol by the Specialised Committee on Participation in Union Programmes. As a condition of membership of F4E, the UK will need to grant certain P&Is to F4E and ITER. Such P&Is were originally agreed by all Euratom members in 2007 and their application under the TCA maintains UK practice.
- 68 The UK is also in discussions with the EU on the long-term P&Is of their Delegation to the UK. The section will enable these P&Is to be granted to the EU Delegation in domestic law in order to implement the Establishment Agreement that is reached with the EU.

## Nuclear Cooperation Agreement

- 69 The UK and the Euratom have agreed a Nuclear Cooperation Agreement ('NCA').
- 70 NCAs are commonly used international treaties which give legal underpinning to civil nuclear cooperation and provide key non-proliferation assurances, including in respect of nuclear safeguards, and a framework for nuclear trade. The UK-Euratom NCA achieves this in respect of cooperation between the UK and Euratom. All members of the EU are also members of Euratom, and Euratom officials are part of the European Commission.
- 71 The UK-Euratom NCA provides a framework for trade in nuclear materials and technology, facilitates research and development, and enables exchange of information and expertise including on medical radioisotopes. It provides robust mutual assurances that traded nuclear material will remain subject to safeguards and provides a comprehensive framework and other key assurances for transfers of nuclear materials and related items, including procedures for retransfers to third countries.
- 72 The UK already has a number of bilateral NCAs with countries such as Japan and India, and has signed new bilateral NCAs with the USA, Canada and Australia which will come into force at the end of the Transition Period. Euratom also has a number of NCAs with other states.
- 73 The Act ensures the UK is in a position to fully comply with its obligations under the UK Euratom NCA.

## General Implementation

### Implementation power

- 74 The Act contains a power enabling Ministers, the devolved authorities, and Ministers and the devolved authorities acting jointly, to make regulations necessary to implement the Agreements and matters relating to them. This will ensure that the UK can fully implement its obligations under the Agreements, including any changes to the Agreements in the future, for example where obligations or arrangements, such as decisions of the Partnership Council, need to be implemented domestically. It will also be capable of implementing changes to the agreement that are made as part of the legal revision process under the Agreements, e.g. such as amending cross references to the agreement following their renumbering.

## **General implementation of agreements**

- 75 The Act will ensure that the UK is compliant with its international obligations and that such obligations are appropriately implemented. Section 29 provides that existing domestic law has effect with any modifications that are required to implement the TCA and the Security of Classified Information Agreement. This general implementation is subject to more detailed provision which means that, over time, the general implementation will be replaced with detailed provision made under the general implementation power. The general implementation section applies to the version of the agreement when it comes into force which means that domestic law is to be modified in line with that version of the Agreements.

## **Provisional application**

- 76 The UK and the EU have agreed to provisionally apply the Agreements pending ratification. To ensure the Agreements have effect in the UK as well as the EU, the Act will enable the UK to bring into force the provisions that implement the Agreements. It also provides a power for the effect of the domestic implementation provisions to be terminated in the event that the Agreements are not ratified by the EU and provisional application comes to an end.

## **Powers relating to the functioning of the agreements**

- 77 This section contains a power to make regulations to implement or reflect actions taken at the international level by the UK or the EU in connection with specific governance provisions in the TCA or other relevant agreements. Those provisions of the Agreements enable the parties, in certain specific contexts, to take unilateral or reciprocal actions, that change the balance of rights and obligations in the agreements; changes that would need to be reflected in UK domestic law through this provision.
- 78 Changes in the balance of rights and obligations are linked to provisions in the Agreements that allow parties to suspend, cease cooperation under or terminate, in whole or in part, these Agreements. These are, generally, standard provisions for international agreements, and follow prescribed processes aimed at resolving any dispute by mutual agreement, rather than resorting to suspension or termination.
- 79 These suspension, cessation of cooperation and termination provisions in the TCA can be engaged: i) as part of the dispute settlement process (which can lead to other temporary remedies but not termination); ii) unilaterally, in certain direct or indirect circumstances set out in the agreement, notably for example INST 36, LAW.GEN.5 and LAW.PRUM.19; or iii) under INST.35 following a serious breach of the 'essential elements' noted in COMPROV 12 of the agreement.
- 80 The power also allows for the implementation of a resumption of cooperation following suspension. The agreement additionally provides for mutually agreeable solutions to disputes to be agreed between the parties, which might also affect the agreement and need to be implemented domestically - this power would enable that.
- 81 The TCA provides that a party can take unilateral safeguard measures under INST.36 in the event of serious societal, economic or environmental difficulties; where this results in an imbalance between the rights and obligations under the agreement, the agreement also contains provision for the other party to take rebalancing measures in response. There are also other targeted remedial, interim and/or rebalancing measures that feature in the Agreements and can be taken in specific circumstances and areas of cooperation.
- 82 In order to implement any such changes to the balance of rights and obligations in the Agreements made by the UK, Ministers may need to make regulations under this section to reflect such changes in domestic law. This is to ensure a functioning statute book that reflects UK decisions taken at an international level, and maintains legal certainty for businesses and citizens.



- 83 The Act will, therefore, include provisions to enable the Government to amend primary and secondary legislation, including the Act itself, as a consequence of decisions made by HMG at an international level, as described above.

#### **PEACE PLUS programme**

- 84 The EU's PEACE PLUS programme builds upon previous PEACE and INTERREG programmes and continues their focus on contributing to a more prosperous and stable society in Northern Ireland and the border region of Ireland.
- 85 In January 2019, the UK Government committed to support the PEACE PLUS programme until at least 2027. This commitment does not, however, form part of any "future relationship agreement" (as defined in section 37(1)).
- 86 It is therefore not covered by the general financial authority provided in section 35. A separate financial authority is accordingly required, and provided by this section, to allow the UK government to fulfil this financial commitment.
- 87 This provision does not affect the powers or ability of the Northern Ireland Executive to pay its contribution, nor the role of the Special EU Programmes Body in delivering the programme.

#### **General financial provision**

- 88 The Act authorises expenditure incurred by virtue of any "future relationship agreement" (as defined in section 37(1)), for example expenditure resulting from the UK's future participation in EU programmes. It also authorises expenditure in anticipation of the exercise of powers to make subordinate legislation conferred or modified by or under the Act.

## **Legal background**

- 89 The relevant legal background is explained in the policy background section of these notes. Further information on the legislation amended by this Act is also contained in the commentary on the individual sections of the Act.

## Territorial extent and application

- 90 Section 40 sets out the territorial extent of the Act; that is the legal jurisdictions of which the provisions in the Act are intended to form part of the law.
- 91 The provisions of the Act extend to the whole of the UK except for section 25(1) and paragraph 2 of Schedule 4 which extend to England and Wales and Scotland, and section 25(2) which extends to Northern Ireland only. Where the Act amends or repeals a provision the extent will be the same as the enactment that is amended or repealed. The Act does not extend to any of the Crown Dependencies or Overseas Territories.
- 92 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the Government to seek the consent of the devolved legislatures for provisions which would alter the competence of those legislatures or the devolved administrations in Scotland, Wales and Northern Ireland.
- 93 The provisions for which the Government will seek legislative consent are set out in full in Annex A. These include, for example:
- a. Provisions in Parts 1 and 2 of the Act which legislate in areas of devolved legislative competence or alter the competence of the devolved administrations.
  - b. Provisions in Part 3 of the Act which relate to general implementation, insofar as these provisions operate in relation to matters which fall within the legislative competence of the devolved legislatures. This includes sections 31 and 33 which, respectively, confer powers on the devolved administrations to make regulations to implement the TCA and for the purposes of implementing a decision to suspend, terminate, or resume, in whole or in part, the TCA. Part 2 of Schedule 5 of the Act defines areas of devolved competence, in respect of which these powers are conferred on Ministers in the devolved administrations.

## Fast-Track Legislation

- 94 The Government asked Parliament to expedite the parliamentary progress of the Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards<sup>1</sup>, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked<sup>2</sup>.

### Why was fast-tracking necessary?

- 95 The Act was required to implement the Agreements for them to have domestic legal effect and to enable the UK Government to ratify the Agreements. Royal Assent was required before the end of the Transition Period (11pm on 31 December 2020).

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<sup>1</sup> House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

<sup>2</sup> House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

**What was the justification for fast-tracking each element of the Bill?**

96 The Act's primary purpose was to implement the Agreements and enable the Government to ratify the Agreements before the end of the Transition Period. It was therefore vital that the entire Bill be fast-tracked to have completed all of its Stages and that it gained Royal Assent prior to 11pm on 31 December 2020.

**What efforts were made to ensure the amount of time made available for parliamentary scrutiny was maximised?**

97 In order for the measures included in the Bill to be effective when the Transition Period came to an end, Royal Assent needed to be secured by 11pm on 31 December 2020. The Government therefore asked Parliament to pass the Bill before that date. Given the reliance on negotiations in order to draft and then pass this legislation, it was not possible to give Parliament more time to scrutinise the Bill.

**To what extent were interested parties and outside groups given an opportunity to influence the policy proposal?**

98 With the need to pass the legislation prior to the end of the Transition Period following the conclusion of negotiations, there was limited opportunity to give interested parties and outside groups an opportunity to influence the Bill. The Government engaged with relevant Parliamentary Committees throughout the duration of negotiations.

**Does the Act include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion was not appropriate?**

99 The Act is required to implement and ratify the Agreements, an international treaty agreed between the UK and EU, and to fulfil the international obligations incumbent on the UK under the Agreements. The inclusion of any sunset clause would not have been appropriate.

**Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?**

100 The Act is not suitable for post legislative scrutiny as it implements an international treaty.

**Was an assessment made as to whether existing legislation was sufficient to deal with any or all of the issues in question?**

101 Yes. The Act introduces new measures to implement the Agreements reached with the EU which could not be implemented either via existing Acts or administratively.

**Was the relevant parliamentary committee given the opportunity to scrutinise the legislation?**

102 Given the need to pass legislation at pace following the conclusion of negotiations with the European Union, the relevant committees were communicated with via correspondence at the time of introduction of the Bill.

# Commentary on provisions of Act

## Section 1: Duty to notify member States of convictions

- 103 This section places a duty on the UK designated authority to notify the EU Member State(s) (all Member States of which the individual is a national) of the conviction information of an EU national convicted in the UK. The duty is created by subsection (3). The relevant authority is designated by the Secretary of State (see section 6).
- 104 Subsection (1) sets out that the duty applies where the person has been convicted by or before a court in a part of the UK and the conviction is recorded in the relevant criminal records database.
- 105 Subsection (2) sets out that the duty also applies to convictions which have arisen in service disciplinary proceedings (including where those have taken place outside of the UK) and the conviction is included in the relevant criminal records database.
- 106 Subsection (4) provides that where a person is a national of more than one EU Member State, the UK designated authority must notify every EU Member State of which the individual is a national.
- 107 Subsection (5) requires the notification to be sent within 28 days from the date the conviction information is entered on the relevant criminal records database.
- 108 Subsection (6) provides that the conviction notification, when sent, must include the information set out in Schedule 1 of this Act and may include any other information the designated UK authority considers appropriate.
- 109 Subsection (7) sets out that if the conviction information is deleted or amended following the original notification, so as to alter certain key information relating to the conviction, the UK designated authority must send an updated record to the relevant EU Member State(s).
- 110 Subsection (8) clarifies that the section does not require the UK designated authority to disclose any information if to do so would contravene UK data protection legislation, although in determining whether a contravention exists, this duty must be taken into account.
- 111 Subsection (9) ensures that convictions relating to a person with more than one nationality are to be disclosed even where one of the nationalities concerned is of the UK.

## Section 2: Retention of information received from member States

- 112 This section places a duty on the UK designated authority to store the information received in relation to a UK national from an EU Member State via a conviction notification, and any further updates or deletions of that conviction information. The duty is created by subsections (2) and (4).
- 113 Subsection (1) applies the duty in respect of UK nationals convicted under the law of an EU Member State where the central authority of that State notifies the UK of the conviction.
- 114 Subsection (3) sets out that the UK can store the information by whatever means it considers appropriate to provide flexibility so that the conviction data can be stored on all relevant national systems. In practice, the information will be entered into the criminal records database.
- 115 Subsection (4) requires the UK designated authority to amend the domestic record if any updates or deletions are received from an EU Member State.

116 Subsection (5) provides that the duty to retain conviction information does not apply where its retention would contravene UK data protection legislation, although in determining whether a contravention exists this duty must be taken into account.

### Section 3: Transfers to third countries of personal data notified under section 2

117 This section introduces rules about the circumstances in which personal data notified by an EU Member State may be sent to a country outside of the EU (a third country).

118 Subsection (1) provides that personal data notified by an EU Member State may not be disclosed to a third country unless certain conditions are met.

119 Subsection (2) sets out condition A: that the transfer must be based on data adequacy regulations or the existence of appropriate safeguards.

120 Subsection (3) provides that subsection (2) is to be interpreted in accordance with the definitions of “adequacy regulations” and “appropriate safeguards” provided for in the Data Protection Act 2018.

121 Subsection (4) sets out condition B: that the intended recipient in the third country has functions relating to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

122 Subsection (5) clarifies that this section should be read in conjunction with section 73 of the Data Protection Act 2018 which sets out additional conditions that must be met before personal data can be transferred to a third country. For example, the Data Protection Act 2018 provides that the transfer be required for law enforcement purposes and that permission may be needed from the State who provided the data before it can be sent.

123 Subsection (6) places a duty on the person making the transfer to impose a condition that the data may be used only for the purpose for which it is being transferred.

124 Subsection (7) defines “personal data” in accordance with its meaning in the Data Protection Act 2018 and “third country” as meaning a country or territory other than the United Kingdom or an EU Member State.

### Section 4: Requests for information from Member States

125 This section enables the UK designated authority to send requests, for law enforcement purposes, to any EU Member State for conviction information on any individual held in their criminal records database and imposes a duty on the UK designated authority to request such conviction information when requested by an EU national. The power is created by subsection (1) and the duty arises under subsection (2).

126 Subsection (1) creates a power for the UK designated authority to send requests for conviction information to any EU Member State for information relating to any overseas convictions of any individual held on their criminal records database for law enforcement purposes.

127 Subsection (2) imposes a duty on the UK designated authority to make a request for conviction information to the relevant authority in the State of nationality, when an EU national requests their criminal record information from the UK designated authority.

128 Subsection (3) provides that where a person who makes a request to the UK designated authority under subsection (2) has more than one nationality, the UK designated authority must make a request to every EU Member State of which the person is a national.

- 129 Subsection (4) sets out how the conviction information may be used once it is received. The information received may only be used for the purposes for which it was requested and subject to any limitations on use imposed by the EU Member State which transmitted the information.
- 130 As an exception to subsection (4), subsection (5) provides that the information can be used to prevent a serious and immediate threat to public security.
- 131 Subsection (6) defines "overseas conviction" as a conviction under the law of a country or territory which is not the UK.

## Section 5: Requests for information made by Member States

- 132 This section places a duty on the UK designated authority to respond to a request made for law enforcement purposes by EU Member States for conviction information held within the criminal records database as soon as practicable but no later than 20 working days from receipt of the request (subsection 4), where certain conditions are met. Subsection (1) creates the duty and the conditions are set out in subsections (2) and (3).
- 133 Subsection (1) places a duty on the UK designated authority to respond to requests for information relating to an individual's convictions from EU Member States as soon as practicable and in any event within 20 working days of receipt, where certain conditions are met.
- 134 Subsection (2) sets out condition A: the request must have been made for a law enforcement purpose or to enable the central authority of the EU Member State to comply with a request made by a UK national for information relating to their convictions.
- 135 Subsection (3) sets out condition B: the information requested must be recorded on the criminal records database (for any part of the United Kingdom) or otherwise stored following the notification of a conviction from another EU Member State.
- 136 Subsection (4) provides that "The relevant period" for responding to a request is 20 working days beginning with the day the UK designated authority receives the request.
- 137 Subsection (5) sets out that, in responding to requests, the UK designated authority does not have to provide information relating to spent convictions unless the request has been made for the purposes of criminal investigation or criminal proceedings, or for the purposes of determining the suitability of an individual to work with children.
- 138 Subsection (6) creates a duty on the designated UK authority to provide information relating to any conviction of an individual for a child sexual offence (whether spent or not) if the request is made for the purposes of determining the suitability of an individual to work with children.
- 139 Subsection (7) clarifies that the duties under the section do not require the UK designated authority to disclose any information if it would contravene UK data protection legislation, although the duties imposed by this section should be taken into account when determining this.
- 140 Subsection (8) provides the relevant definitions for the section.
- 141 Subsection (9) provides that a conviction is "spent" if it is "spent" within the meaning of the relevant legislation for England, Wales and Scotland or Northern Ireland.

## Section 6: Interpretation of the criminal records provisions

- 142 This section provides definitions for the terms used in the criminal records sections.

143 Subsection (1) provides that the “central authority” means the authority which has been designated by the EU Member States as the appropriate authority to perform the criminal record exchanges with the UK designated authority.

144 Subsection (1) also provides definitions for “conviction” in relation to UK service disciplinary proceedings, as well as “service offence” and “service disciplinary proceedings”. “Criminal records database” is defined for England and Wales, Scotland and Northern Ireland. The “designated UK authority” is defined as the person, or body, who has been designated to carry out the powers and duties described throughout these sections by direction made by the Secretary of State. “The law enforcement purposes” are defined as meaning the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. “UK national” is defined to capture all British nationals including those in overseas territories.

145 Subsection (2) provides that certain provisions of law in England and Wales, Scotland and Northern Ireland, which would otherwise deem a conviction of a person discharged absolutely or conditionally not to be a conviction, are disapplied for the purposes of the criminal records provisions. The effect is that such “convictions” are exchanged.

146 Subsections (3) and (4) provide a power for the appropriate national authority, being the Secretary of State for England and Wales, Scottish Ministers for Scotland and Department of Justice for Northern Ireland to change the meaning of “criminal records database” by regulations.

## Section 7: Passenger name record data

147 This section introduces Schedule 2 to the Act which contains provision on passenger name record (PNR) data. The Schedule makes amendments to existing legislation to implement the provisions of the Agreement which relate to PNR data and allows the Secretary of State to extend the legislation on the processing of PNR data to operators of international maritime and Channel Tunnel rail services.

## Section 8: Disclosure of vehicle registration data

148 This section provides the Secretary of State with the power to disclose certain vehicle registration data in accordance with the Agreement and its Annex, as referenced in subsections (1)(a) and (1)(b) respectively.

149 Subsection (2) sets out that a disclosure of vehicle registration data in reliance on the power is in conformity with the Secretary of State’s other obligations in respect of confidence and restrictions on the disclosure of data.

150 Subsection (3) clarifies that disclosures of vehicle registration data which contravene data protection law are not authorised by this section, but clarifies that the power conferred by this section is to be taken into account when considering whether any disclosure contravenes that law.

151 Subsection (4) specifies that the section does not seek to restrict the circumstances in which data can be exchanged under any other powers of disclosure.

152 Subsection (5) provides that “vehicle registration data” has the same meaning as in Article LAW.PRUM.6: Definitions.

## Section 9: Mutual assistance in criminal matters

153 This section introduces Schedule 3 to the Act. The Schedule ensures that the correct legislation is in place to implement the agreements on mutual legal assistance.



## Section 10: Accreditation of forensic service providers

- 154 This section amends the Accreditation of Forensic Service Providers 2018 Regulations (S.I. 2018/1276) (“the 2018 Regulations”) so that certain definitions and cross-references which currently refer to the Forensic Services Framework Decision, will instead refer to specific provisions within the Agreement. It does not amend the Regulations in any other way.
- 155 Subsection (2) modifies definitions in the 2018 Regulations so that they reference the relevant terms in the Agreement, rather than the Forensic Services Framework Decision. Specifically:
- a. Subsection (2)(a) replaces the definitions of “dactyloscopic data”, “DNA-profile” and “laboratory activity”, with a reference to the definitions in Article LAW.PRUM.6: Definitions of the Agreement. The definitions referred to are identical in substance to those in the Forensic Services Framework Decision.
  - b. Subsection (2)(b) removes the definition of “Framework Decision”, while subsection (2)(c) inserts a definition of the Agreement.
- 156 Subsection (3) modifies the 2018 Regulations so that references to forensic service providers accredited in accordance with Forensic Services Framework Decision, now reference those accredited in accordance with the relevant part of the Agreement. The Agreement does not set the standard or mechanism for accreditation, instead referring to a mutually-agreed non-EU International Standards Organisation standard.

## Section 11: Member States to remain category 1 territories

- 157 This section moves the 27 EU Member States back into Part 1 of the Extradition Act 2003 (“the 2003 Act”) in order to implement the Agreements. The EU Member States are otherwise automatically moved from Part 1 into Part 2 by existing regulations the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 at the end of the Transition Period.
- 158 This section moves the EU Member States immediately back into Part 1, with the effect that, in practice, they never leave Part 1. Specifically:
- 159 Subsection (1) lists the countries that are to be included in the relevant Part 1 Schedule.
- 160 Subsection (2) removes these countries from the relevant Part 2 Schedule.

## Section 12: Dual criminality

- 161 This section makes technical amendments to the Extradition Act 2003 (“the 2003 Act”) (subsection (1)).
- 162 Subsections (2) and (3) make amendments to sections 64 and 65 of the 2003 Act (which define the conduct that constitutes an extradition offence for requests sent to the UK by EU Member States under Part 1 of the 2003 Act) to remove the ability for UK courts to waive the requirement of dual criminality under the Agreements. As a result, the list of exempted offences under the European Arrest Warrant framework, which is made optional under the European Arrest Warrant framework, which is made operational under the Agreement, will no longer be considered by UK courts in relation to any extradition request received by the UK.
- 163 Subsection (4) makes amendments to section 142 of the 2003 Act to maintain an ability for UK courts to certify when a request sent by the UK relates to conduct which falls in the “framework list”. Such certification facilitates the waiver of dual criminality by EU Member States under the Agreement should they choose to do so.
- 164 Subsections (5) and (6) make amendments to section 215 of and Schedule 2 to the 2003 Act to provide that the list of offences now optionally exempted from dual criminality consideration



refers to the Agreement rather than to the arrant European Arrest Warrant Framework Decision. The list is retained in order to provide for the mechanism in subsection (4).

### Section 13: Category 1 territories not applying Trade and Cooperation Agreement to old cases

165 This section amends section 155A of the Extradition Act 2003 so that the references to the European Arrest Warrant (EAW) Framework Decision are changed to references to the Agreement. This will allow section 155A to be applied to any Part 1 EU Member State in relation to an extradition request which concerns criminal acts committed before the introduction of the Extradition Act 2003. This will mean that extradition requests that relate to ‘old cases’, which may have been exempted from consideration under the EAW Framework Decision, can continue to be made under different arrangements than the new Agreement (should that be necessary), rather than fall out of any current Part 1 extradition arrangements because of the arrangements in place in specific EU Member States. Specifically:

- a. Subsection (1) introduces the amendments to section 155A.
- b. Subsections (2) and (3) insert new definitions to align with those in the Agreements.
- c. Subsection (4) removes references to the previous regime and inserts references to align with those in the Agreements.

### Section 14: Disclosure of non-food product safety information within UK

166 The section establishes a gateway for the UK to share non-food product safety information received from the European Commission, or a person nominated by the European Commission, in the UK provided it is for a permitted purpose. This section will ensure that information received by the contact point in the UK Government can be disseminated to the appropriate person so that the information can be used for the protection of consumers and others.

167 Subsection (1) outlines that the section applies where a “relevant authority” i.e. a Minister or the Health and Safety Executive receives non-food product safety information from the European Commission, or a person nominated by the European Commission, for the purpose of giving effect to a provision under Article TBT.9 (or an annex to Article TBT.9) or the chemicals and automotive annexes to the TBT Chapter.

168 Subsection (2) provides that a Minister or the Health and Safety Executive, can disclose non-food product safety information received from the EU for a permitted purpose. There is no restriction on who the information can be shared with, provided it is for the permitted purpose. In practice, it is expected that this information will be shared with public authorities, such as market surveillance authorities and the Crown Dependencies, as part of their inclusion in the TCA.

169 Subsection (3) defines a “permitted purpose”. A permitted purpose is one of the following: to ensure health and safety, ensure the protection of consumers, and ensure the protection of the environment. These reflect the purposes outlined in Article TBT.9(6) of the TCA. These are broad purposes and will include health and safety in the workplace.

170 Subsection (4) provides that a person who receives EU non-food product safety information, under section 14(2), may only use the information for a permitted purpose, and may not further disclose the information except with the consent of the relevant authority. These restrictions take account of provisions in Article TBT.9 that the information can only be used for certain purposes and that information must be treated confidentially.

## Section 15: Disclosure of non-food product safety information to Commission

- 171 The section establishes a gateway enabling a Minister or the Health and Safety Executive to share with the European Commission, or a person specified by the European Commission, information which relates to non-food product safety as defined in section 18.
- 172 Subsection (1) provides that this applies to information which relates to the safety of non-food products, as defined in section 18, which is held by a Minister or the Health and Safety Executive.
- 173 Subsection (2) establishes a gateway for a Minister or the Health and Safety Executive to share for the purpose of giving effect to Article TBT.9 (or an annex to Article TBT.9) or the chemicals or motor vehicles annexes. This provision is therefore limited to sharing for the purpose of the TCA. The TCA establishes contact points through which this information will be exchanged between the UK Government and the European Commission.

## Section 16: Offence relating to disclosure under section 14(4)(b)

- 174 The section restricts how a person who receives EU information on non-food product safety can use that information.
- 175 Subsection (1) provides that if a person discloses non-food product safety information without the consent of a Minister or the Health and Safety Executive, and a person's identity is revealed by that disclosure, the person will have committed an offence. This includes the identity of a legal, as well as a natural, person. As is common with criminal offences, this will not apply to unintentional disclosure.
- 176 Subsection (2) provides a defence for someone charged with an offence under this section, which is if the person reasonably believed that the disclosure was lawful or that the information had already been lawfully made public. For example, a defence would apply if the information had already been made publicly available on an EU database.
- 177 Subsection (3) provides that for an offence under this section to be brought in England and Wales or in Northern Ireland, the consent of the Director of Public Prosecutions and of the Director of Public Prosecutions Northern Ireland is required, respectively. In Scotland, the Procurator Fiscal handles all prosecutions in the public interest, so there is no need for an equivalent provision to be made for Scotland.
- 178 Subsection (4) provides the penalties for a person guilty of improperly disclosing non-food product safety information.
- 179 Subsection (5) reflects the fact that the provision increasing the statutory maximum term of imprisonment on summary conviction in England and Wales has not yet been commenced. This means that where a person is found guilty of committing an offence in England and Wales in relation to acts of disclosure that took place before this provision is commenced, the maximum term of imprisonment is 6 months.

## Section 17: General provisions about disclosure of non-food product safety information

- 180 The section provides for how the previous sections interact with existing obligations and requirements in relation to the disclosure of information.
- 181 Subsection (1) provides that nothing in section 14 or section 15 prevents disclosure under another enactment or rule of law.
- 182 Subsection (2) provides a general disapplication of constraints on disclosure of certain information held by the Minister or the Health and Safety Executive to enable this information

to be shared. As a result, disclosure under this section does not breach any obligations of confidence owed by the Minister or the Health and Safety Executive or any other restriction on the disclosure of this information. This enables information held by the Minister or the Health and Safety Executive to be disclosed provided section 14 or section 15 are satisfied. This will not affect obligations of confidence owed under the TCA.

183 Subsection (3) confirms that nothing in these sections (14, 15, 17) permits disclosure of information which is not also permitted under data protection legislation.

### Section 18: Interpretation of sections 14 to 17

184 This section defines the scope of information which relates to non-food product safety that can be shared under section 14 and section 15. The scope of this section catches the broad range of information that could be shared pursuant to Article TBT.9 (or any annex to that Article) of the TCA, and the annexes on chemicals and motor vehicles and equipment and parts thereof.

185 Subsection (1) provides a list of definitions for terms that are used in the section, and in sections 14 to 17. It includes a broad definition of “market surveillance” and “market surveillance authority” that will include the activities of enforcement authorities. This includes bodies like Local Authority Trading Standards, who carry out market surveillance for a range of products in their own area, as well as specialised agencies like the Maritime and Coastguard Agency who carry out market surveillance for specific products like marine equipment.

186 Subsection (2) sets out a non-exhaustive definition of non-food product safety information. This will include the compliance of products, as well as whether they are safe, and will include the information listed in Article TBT.9(3) of the TCA and information under the annexes on chemicals and motor vehicles.

### Section 19: Use of relevant international standards

187 This section introduces Schedule 4 which amends provisions regarding designation of standards in certain product legislation.

### Section 20: Disclosure of information and co-operation with other customs services

188 This section inserts two new sections into the Customs and Excise Management Act 1979 (“CEMA”). These provisions provide a legal basis for information disclosure for domestic purposes but also for the purposes of meeting international obligations. An example of this would be where HMRC is under an international obligation to disclose information relating to prohibitions and restrictions on imported or exported goods to the National Crime Agency or other Government departments. Such information disclosure provides the Government with better access to compliance data and improves its efficacy in protecting revenue and preventing fraud.

189 Subsection (1) of the section inserts new sections 8A and 8B into CEMA.

190 New section 8A (1) sets out the general power for HMRC to disclose information related to its customs functions, specifically for purposes connected to those functions.

191 Section 8A (2) defines HMRC’s customs functions as covering both the regulation of duty and the more general movement of goods, including movements of cash.

192 Section 8A (3) sets out general principles of confidentiality including use and disclosure of information. Any person who receives information under this section may use it only for the purpose for which it was disclosed, and cannot forward it on (or otherwise further disseminate it) without HMRC’s consent.

- 193 Section 8A (4) confirms that this data sharing section does not limit or constrain data sharing powers in the Commissioners for Revenue and Customs Act 2005 or in any other enactment or rule of law. In effect this means that any restrictions on the sharing of data under this provision are limited to the scope of this Act.
- 194 Section 8A (5) ensures that this section does not affect the circumstances in which information may be disclosed and ensures that nothing in this section breaches existing legislation relating to information sharing.
- 195 Section 8A (6) defines the legislation referenced in subsection (5).
- 196 Section 8A (7) clarifies the interaction with the proposed section 8B. In the context of TCA commitments, section 8A will provide a legal basis for disclosure, such as to relevant bodies to support HMRC's customs functions, and meet commitments in the TCA around coordination of all border agencies, while section 8B will provide a basis for cooperation, including by way of information disclosure with other customs services.
- 197 Section 8A (8) defines "HMRC" and "cash" for the purposes of this section.
- 198 New section 8B of CEMA allows HMRC to cooperate with other customs services on matters of mutual concern and for the purposes of implementing any international obligations of the United Kingdom. This would include the TCA Protocol on Mutual Administrative Assistance in Customs Matters, which commits HMRC to exchanging information with EU Member State authorities to facilitate effective targeting and identification of non-compliant or fraudulent activity and combat any breach of customs legislation.
- 199 Section 8B (1) is in identical terms to the Taxation (Cross-border Trade) Act 2018 ("TCTA") section 26(1). The inclusion of provision for anyone acting on behalf of HMRC is intended to reflect the role that other Government departments and agencies, particularly Border Force, play in the management of customs issues.
- 200 Section 8B (2) provides for cooperation, including exchange of information, with other customs services for the purpose of implementing international obligations. As an example, HMRC may exchange personnel or expertise with Member States in order to share best practice or undertake initiatives such as pilot projects to support respective customs regimes. HMRC may also engage with customs services from other countries as TCA commitments on cooperation to secure global supply chains can involve trade across a number of territories.
- 201 Sections 8B (3) to (7) contain similar provisions to section 8A providing for safeguards on the use of any information disclosed in the course of cooperation.
- 202 Section 8B (8) defines the scope of co-operation as any international obligation defined in any international agreement to which the UK is party for the purposes of this section .
- 203 Subsections (2) and (3) of this section make consequential changes to the CEMA and the TCTA to tidy up the statute book and avoid duplication.

## Section 21: Powers to make regulations about movement of goods

- 204 This section further amends the Customs and Excise Management Act 1979 ("CEMA") by inserting three new sections into the Act relating to maintaining security and safety standards of goods.
- 205 Subsections (1) and (2) of this section amend CEMA by inserting new sections 166A, 166B and 166C.
- 206 New section 166A(1) gives HMRC the power to make regulations for the purpose of monitoring and controlling the movement of goods for the purposes of combating risks to

public health or safety, national security, or the environment, including plant or animal health.

- 207 In practice this power would enable changes to be made to the legislative framework in the United Kingdom which govern entry and exit summary declarations and related processes, including as a result of any changes to international standards.
- 208 Section 166A (2) provides a power to allow HMRC to make regulations to implement further international obligations relating to the movement of goods. This could include, for example, other international agreements regulating trade in endangered species or other goods subject to a prohibition or restriction. It could also support any legislative changes required to support any further customs cooperation initiatives which the Parties may agree within the framework of co-operation provisions set out in the TCA.
- 209 Section 166A (3) offers indicative examples of the activities which may be regulated for. This includes information and declaratory requirements but also practical activity which would be carried out by Border Force on the ground, including searches, sampling of goods and subsequent handling of goods, including seizure and disposal.
- 210 Section 166A (4) defines the movement of goods as a movement into, out of or within the United Kingdom and including a reference to their loading or unloading.
- 211 Section 166A (5) defines “international obligation of the United Kingdom” to include obligations under international agreements or arrangements to which the UK is a party, whenever these were entered into.
- 212 Section 166A (6) confirms that the power is capable of being exercised before a relevant international agreement or arrangement comes into effect, in case it is required to support the introduction of the agreement or arrangement.
- 213 New section 166B (1) allows HMRC to disapply or simplify relevant requirements for operators with Authorised Economic Operator status for security and safety purposes (AEO-S) or take the status of AEOs into account in the exercise of a power or function under the regulations.
- 214 Section 166B (2) provides a definition for “authorised economic operator” for this purpose and defines the relevant legislation as being the CEMA and customs legislation within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.
- 215 Section 166B (3) sets out that regulations may specify criteria that can be applied in determining whether or not AEO status should be granted, making the granting of AEO status conditional on compliance with conditions specified, and establish different classes of AEO.
- 216 New section 166C sets out further provisions and limitations concerning the regulation-making provisions in section 166A and makes consequential changes to CEMA.
- 217 Section 166C (1) sets out a list of ways that the powers given by section 166A can be exercised. For example, HMRC would need the power to impose fees for the exercise of functions in connection with these provisions, or to sanction a person if they do not comply with a requirement that is imposed.
- 218 Sections 166C (2) and (3) provide that HMRC may set out in a public notice the administrative requirements relating to any requirement or condition imposed by the regulations or any declaration or application for which provision is made by the regulations.

- 219 Section 166C (4) set limitations on regulations made under section 166A, ensuring that regulations cannot be used to impose or vary the amount of any duty or other form of taxation, or establish a public authority.
- 220 Section 166C (5) sets out that regulations cannot include provisions which would fall within the legislative competence of the devolved administrations.
- 221 Section 166C (6) provides the power that regulations made under section 166A can amend an enactment as defined in this Act, which ensure that it can apply to the relevant retained EU law.
- 222 Section 166C (7) clarifies certain definitions for the purposes of the subsection.
- 223 Subsection (3) of this section makes an amendment to section 172 of CEMA provisions to ensure that any statutory instrument to be made under new section 166A must be subject to the affirmative procedure if it were to amend primary or devolved legislation.

## Section 22: Administrative co-operation on VAT and mutual assistance on tax debts

- 224 This section implements the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties (“the Protocol”) to the TCA into UK law.
- 225 Subsection (1) gives effect to the Protocol in domestic law and clarifies that this is in spite of any previous enactment.
- 226 Subsection (2) names HMRC as the relevant authority, as the Protocol requires the UK to designate a single competent authority for its operation.
- 227 Subsection (3) allows arrangements made under section 173 of the Finance Act 2006, which provides for the implementation of international tax arrangements, to be used for the operation of the Protocol.
- 228 Subsection (4) defines the Protocol as that contained in the TCA and associated Specialised Committee decisions. The Protocol’s Annex and the Specialised Committee decisions provide for the operational detail of the arrangements, to meet the obligations set out in the Protocol.
- 229 Subsections (5) and(6) stipulate that the Protocol and Specialised Committee decisions have effect in domestic law as they stand at the coming into force of the TCA.
- 230 Subsection (7) allows for future amendments to domestic law by regulation, for example to give effect to future decisions of the Specialised Committee or to any future amendments to the Protocol.

## Section 23: Licences for access to the international road haulage market

- 231 This section updates the model UK Licence for the Community which UK operators have to obtain and carry when operating in the EU. The section replaces an older version of the model UK Licence for the Community contained in the Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019, with a new model reflecting the journeys allowed under the TCA. This will mean that UK road haulage operators can be issued with the correct documentation to lawfully access the EU market after the end of the Transition Period.
- 232 Annex II of Regulation (EC) 1072/2009 in retained EU law is replaced with a new Annex containing the new model UK Licence for the Community, as agreed under the TCA. The model licence substituted by this section is intended to be the model set out in the English language version of the TCA.



## Section 24: International road haulage

- 233 This section makes amendments to retained EU law to reflect the types of international road haulage journeys which are permitted under the TCA. The section amends the definition of “international carriage” for these purposes. It also sets out the permitted number of journeys an EU haulier can carry out within the UK to collect and drop off goods after an international journey, and the timeframe that these journeys can take place within.
- 234 Subsection (1) sets out that the provision relates to retained EU legislation, as set out in subsection (4). The retained EU legislation that is amended by this provision is Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (“the 2009 regulations”), as amended by the Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/708).
- 235 Subsection (2) makes specific amendments to the 2009 regulations (as amended) to change the definition of “international carriage” to reflect the types of international journeys for which a licence is required. The amendment permits a UK haulier to carry goods between two Member States following an international journey from the UK to the first Member State (a “cross-trade” journey). This is in addition to those permitted journeys already set out in the 2009 regulations.
- 236 Subsection (3) amends the 2009 regulations (as amended) to specify the journeys that an EU haulier is permitted to carry out within the UK after dropping the final part of their international load within the UK (a “cabotage” journey), and vice versa. The provision changes the number of permitted journeys within a specified period.
- 237 Subsection (4) sets out the retained EU legislation that is amended by the provision.

## Section 25: Disclosure of data relating to drivers’ cards for tachographs

- 238 This section allows the continuation of data sharing related to drivers’ cards for tachographs. This data sharing is currently in place and this provision allows this data sharing to continue in the same manner after the end of the Transition Period.
- 239 Subsection (1) allows the Secretary of State to continue to disclose data held on Great Britain (GB) electronic registers.
- 240 Subsection (2) allows the Department for Infrastructure for Northern Ireland to disclose data held on Northern Ireland electronic registers. This data is disclosed to allow for the interconnection and accessibility of electronic registers so that the TACHOnet messaging system may be used throughout the EU and the UK to exchange data related to drivers’ cards for tachographs. This will allow licencing authorities in the UK and the EU to make the necessary checks when they receive a driver card application and for roadside enforcement.
- 241 Subsections (1) and (2) also enable control officers to access the electronic registers to these electronic registers to check the status of a driver card.
- 242 Subsection (3) confirms that disclosures under this provision do not breach obligations of confidence owed by the Secretary of State and the Department for Infrastructure and that the disclosures under this provision do not breach any other restrictions on the disclosure of this data.
- 243 Subsection (4) states that the sharing of data related to drivers’ hours for tachographs does not contravene data protection legislation, whilst subsection (5) clarifies that the data may also be disclosed where permitted by other enactment or rule of law.
- 244 Subsection (6) defines terms used in this section.

## Section 26: Social security co-ordination

245 This section gives effect to the Protocol on Social Security Coordination and specified relevant provisions of the TCA (“the Protocol”) by providing that they form part of domestic law and provides that domestic legislation has effect with modifications required to give effect to the Protocol and specified relevant provisions, where those modifications can be ascertained from the Protocol or specified relevant provisions or otherwise from the TCA.

246 Subsection (1)(a) gives effect to the Protocol in domestic law (defined as being the law of England and Wales, Scotland and Northern Ireland, in subsection (5)(a) and (b)).

247 Subsections (1)(b) and (c) give effect in domestic law to:

- a. Title I of Heading 4 of Part II (Trade) of the TCA (which is a provision setting out a number of overarching principles relating to the application of the Protocol); and
- b. Articles COMPROV.17 and FINPROV.2 of the TCA so far as applying the SSC Protocol.

248 Subsection (2)(a) and (b) modify domestic law so far as required for the purposes of implementing the Protocol under subsection (1).

249 Subsection (3)(a) provides that implementation of the Protocol in subsection (1) is subject to provisions made under or by this Act and other domestic law for the purposes of implementing the Protocol, the TCA, or any other future relationship agreement. Subsection (3)(a) makes clear that departments may use secondary legislation to implement and operationalise aspects of the agreement (such as the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 (S.I. 2019/1293)).

250 Subsection (3)(b) provides that subsection (1) does not limit the scope of any other power which could be used to implement the Protocol or the TCA.

251 Subsection (4) provides that references to the TCA, in subsections (1) and (2), and the definition of the Protocol in subsection (5), are to be read as being the Agreement as it has effect on the relevant day (for any provision that is provisionally applied, defined in subsection (5) as the time and day from which provisional application applies; for any provision that is not provisionally applied, defined as the time and day when it comes into force).

252 Subsection (5) defines terms used in this section including defining “the SSC Protocol” as the Protocol and Annexes including as modified in accordance with Articles SSC.11(6), SSC.11(8) or SSC.68 of the Protocol.

## Section 27: the EU and Euratom and related organisations and bodies

253 This section amends an existing power, exercisable by Her Majesty by Order in Council, under the International Organisations Act 1968 to provide for the conferral of privileges and immunities on organisations and bodies in relation to which the UK will have obligations by virtue of its future relationship with the EU and Euratom, as well as on the EU and Euratom themselves.

254 Subsection (1) provides that section 4B of the International Organisations Act 1968 is amended in accordance with the rest of the section.

255 Subsection (2) is a textual amendment to the title of section 4B of the International Organisations Act 1968 so that it refers to “the EU and Euratom and related organisations and bodies”.



256 Subsection (3) amends section 4B(1) of the International Organisations Act 1968 so that the power applies to the EU, Euratom, or any EU or Euratom organisation or body that the UK or Her Majesty’s Government owes obligations to under the terms of any international agreement entered into by the UK or Her Majesty’s Government.

257 Subsections (4) and (5) make textual amendments to sections 4B(2) and 4B(3) of the International Organisations Act 1968 to ensure that the powers to provide privileges and immunities under section 4B(2) of the International Organisations Act 1968 may be conferred upon the EU, Euratom, and any relevant EU or Euratom organisations and bodies.

258 Subsection (6) inserts a new section 4B(3A) into the International Organisations Act 1968 to ensure that the power conferred by section 4B(2) includes the power to make any appropriate consequential amendments. These are amendments that may be needed as a result of the EU, Euratom or any relevant EU or Euratom organisation being granted privileges and immunities under section 4B(2) of the International Organisations Act 1968. This includes the power to amend retained EU law.

259 Subsection (7) inserts definitions of “body” and “EU or Euratom organisation or body” into section 4B of the International Organisations Act 1968.

## Section 28: Nuclear Cooperation Agreement

260 This section provides for two changes to existing legislation.

261 Subsection (1) amends regulation 3 of the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 to ensure that the UK-Euratom NCA is added to the definition of “relevant international agreement” for the purpose of the Energy Act 2013.

262 Subsection (2) amends regulation 49 of the Nuclear Safeguards (EU Exit) Regulations 2019 (“NS Regulations”) to ensure that the UK-Euratom NCA is added to the definition of “specified international agreement” for the purpose of Part 13 those regulations.

## Section 29: General implementation of agreements

263 This section provides that domestic law is to have effect with the modifications that are required for implementation of the TCA and the Security of Classified Information Agreement. It only applies to provisions of the Agreements which are not implemented by another mechanism and is designed to ensure that all aspects of the Agreements are implemented to the extent necessary to comply with international obligations.

264 Subsection (1) provides that existing domestic law is to be read with such modifications necessary to comply with the Agreements.

265 Subsection (2) limits the use of the glossing mechanism in subsection (1), so that any equivalent or other provision in or under this Act or in or under any other Act used for the purposes of implementing the Agreements has precedence. Subsection (1) cannot limit any power to give effect to such an obligation.

266 Subsection (3) provides that references to the Agreements in subsection (1) are to be read as those that have effect when the Agreements come into force or are provisionally applied.

267 Subsection (4) defines the terms used in this section.

## Section 30: Interpretation of agreements

268 This section recognises in domestic law the principles, themselves a reflection of customary international law practice, contained in COMPROV.13 in the TCA.

269 COMPROV.13 provides that the provisions of the TCA and any supplementing agreements shall be interpreted in good faith in accordance with their ordinary meaning in their context, in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of the Treaties.

270 There is no obligation to interpret the provisions of the TCA, or any supplementing agreement, in line with the domestic law of either party. An interpretation of the Agreements by the courts of either party will not bind the courts of the other Party. Therefore, UK courts are not bound by any interpretation of these Agreements by the Court of Justice of the European Union.

### Section 31: Implementation power

271 This section ensures that the Agreements can be fully and effectively implemented in line with the UK's obligations under those Agreements. It does so by way of granting a power to make appropriate regulations to implement those agreements or to deal with matters arising from or related to those Agreements.

272 Subsection (1) provides a Minister of the Crown, a devolved authority, or a Minister of the Crown acting jointly with one or more devolved authority, with a power to make secondary legislation for the purposes of implementing the relevant Agreements (which are defined in subsection (7) below). The power applies to those Agreements as they are updated which allows for the power to be used to implement changes to the Agreements. This power also allows Ministers to make provision to deal with matters arising from or related to these Agreements; for example, decisions made by the UK-EU Partnership Council.

273 Subsection (2) provides that secondary legislation made under the power in this section is capable of doing anything an Act of Parliament can do.

274 Subsection (3) provides that the power can be used to reimplement any aspect of the Agreements, where it has already been implemented. This allows the power to be used to make more specific and detailed implementation where the Agreements have already been implemented under the general implementation section.

275 Subsection (4) places a series of restrictions on the power. The power cannot be used to: impose or increase taxation; make retrospective provision; create a relevant criminal offence; amend or repeal key devolution legislation (with limited exceptions) or amend, repeal or revoke the Human Rights Act 1998 and any legislation made under that Act.

276 Subsection (5) provides for an exception to the restriction on making retrospective provision, by stating that this restriction does not apply if a regulation is made under this power in connection with the replacement and/or modification of any references to the Agreements, where this happens after a final legal revision.

277 The scrutiny procedures, and restrictions for devolved authorities, for this power are set out in Schedule 5.

278 Subsection (7) defines "relevant agreements" for this section. This includes any agreements covered by Article 2.4.4. of Chapter 2 of Title XI of Part 2 of the TCA, which envisages a competition cooperation agreement.

### Section 32: Powers relating to the start of the agreements

279 This section provides a power for Ministers, the devolved authorities and Ministers and the devolved authorities acting jointly to deal with certain matters that might arise as a result of the provisional application of the Agreements by the UK and EU where relevant. This

includes dealing with matters that might arise as a result of a 'gap' between the end of the transition period and the start of the Agreements coming into force or being provisionally applied.

280 This is a contingency, and is a power which is unlikely to be used as the UK and EU have agreed that provisional application will occur from the end of the transition period as long as both parties have been able to take the necessary steps to facilitate provisional application ahead of that time. This power would also allow parts of the Act which have been brought into force to facilitate the provisional application of the Agreements to be effectively 'turned off' again if ratification was not to go ahead and provisional application of the Agreements needed to be stopped.

281 Subsection (3) places the following limits on regulations that can be made under this provision: regulation may not create a relevant criminal offence; amend, repeal or revoke the Human Rights Act 1998 or legislation made under it, or amend or repeal the devolution Acts subject to limited specific exclusions.

282 The procedure for regulations made under this power are set out in Schedule 5, and described below.

283 This power is part of a set of provisions made in the Act to enable provisional application of the Agreements where necessary. The main other provisions necessary for making provisional application work are the following:

- a. A gloss in the interpretation provisions at section 37(3) which allows references in the Act to the Agreements or to parts of the Agreements to be read as references to the relevant agreement as provisionally applied;
- b. The definition of "relevant day" in section 29(4) general implementation of agreements which makes the provision in section 29(1) (discussed above - which requires pre-existing domestic legislation to be read as if it was compliant with the Agreements) work in a provisional application scenario from the time the Agreements are provisionally applied; and
- c. the commencement power at section 40(7) (discussed below) which gives flexibility to turn provisions in the Act on as and when they are needed.

### Section 33: Powers relating to the functioning of the agreements

284 Subsection (1) provides Ministers, the devolved authorities or Ministers acting jointly with the devolved authorities with the power to make regulations which they consider appropriate for the purposes of implementing a decision to suspend, terminate, or resume, in whole or in part, the Agreements covered by the section. This power is to be used in accordance with the relevant provisions in the TCA; there are specific cases in which the Agreements, or parts thereof, can be suspended or terminated, such as a breach of the 'essential elements' Articles.

285 Subsection (2) provides the same relevant authorities with an equivalent power to make regulations which they consider appropriate to implement any remedial measures taken under the Agreements. By way of example, this includes Article INST.36 of the TCA, allowing either party to take exceptional, short-term measures to protect certain interests in the event of serious economic, societal or environmental difficulties.

286 Subsection (3) provides Ministers with the power to make regulations that they consider appropriate to implement any resolution to a dispute that has been agreed by both the UK and EU, under the relevant Agreements. This power can also be used in relation to any other decision of the United Kingdom associated with any such dispute resolution except for a decision to suspend, resume, terminate or take safeguard or rebalancing measures. For the

avoidance of doubt, safeguard and rebalancing measures can be separate from dispute resolution procedures (although the correct application of such measures is subject to the dispute resolution procedure in the TCA).

287 Subsection (4) provides that the power can do anything that an Act of Parliament can do, including modifying this Act.

288 Subsection (5), provides constraints on this power. It cannot make retrospective provision, create a relevant criminal offence, confer a power to legislate, implement a ruling of an arbitration tribunal under the Agreements, amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or amend or repeal key devolution legislation (with limited exceptions).

289 Subsection (6) provides that the limit on conferring a power to legislate does not prevent the modification or extension of such a power. In the case of extension, this would be limited to instances where it is being extended for a reason that is similar to the power's original intent.

290 Subsection (7) refers to Part 2 of Schedule 5, which sets out restrictions relating to any devolved exercise of this power.

291 Subsection (8) clarifies that suspension, resumption or termination includes any measures taken by the parties under the Agreements that result in the equivalent effect but that may be referred to differently in the text. For example, if a provision in the agreement was to "cease to apply" or there is a "cessation of cooperation" leading to the same practical effect as suspension or termination.

292 Subsection (9) defines "rebalancing measures" with reference to such measures as the Parties are permitted to take under Article INST.36 of the TCA, as well as any other safeguard, remedial, rebalancing, temporary or interim measures taken under the Agreements. This excludes any actions taken in connection with suspension, termination, or resumption of parts of all of the Agreements, which is covered by subsection (1).

### Section 34: Funding of PEACE PLUS programme

293 PEACE PLUS is an EU programme focused on supporting social, economic and regional stability, in particular by promoting cohesion between communities. It is the successor programme to the current Peace Programme.

294 Subsection (1) authorises any expenditure incurred by the Secretary of State when making payments to the EU or an EU entity for the purposes of supporting the PEACE PLUS programme and any successor programmes. It is drafted to satisfy the general principle of constitutional propriety (often known as the 'PAC Concordat' or 'Baldwin Convention') that, subject to certain recognised exceptions, new functions involving expenditure which is neither modest nor temporary for the purposes of Box 2.6 of Managing Public Money should be authorised by specific legislation and not by Supply and Appropriation Acts alone.

295 This subsection provides financial authority for any such expenditure to be paid out of money provided by Parliament through its annual Supply and Appropriation process. This provision is required as support for the PEACE PLUS programme does not form part of the "future relationship agreement" as defined in section 37(1)), and as such is not covered by the general financial provision in section 35.

296 Subsection (2) defines "EU entity" and "the PEACE PLUS programme" for the purposes of this section.

## Section 35: General financial provision

297 Subsection (1) authorises any expenditure incurred by a Minister of the Crown, government department or other public authority by virtue of the “future relationship agreement” as defined in section 37(1). This will cover, for example, expenditure resulting from the UK’s future participation in EU programmes under any “future relationship agreement”, or domestic spending required to implement any “future relationship agreement”. This subsection is drafted to satisfy the general principle of constitutional propriety (often known as the ‘PAC Concordat’ or ‘Baldwin Convention’) that, subject to certain recognised exceptions, new functions involving expenditure which is neither modest nor temporary for the purposes of Box 2.6 of Managing Public Money should be authorised by specific legislation and not by Supply and Appropriation Acts alone.

298 Subsection (2) provides that Ministers of the Crown, government departments or devolved authorities may incur expenditure in preparation for making subordinate legislation under the Act (or under existing powers to make subordinate legislation as modified by or under the Act) from Royal Assent.

299 Subsections (3) and (4) deal with the further financial provision as necessary as a result of the Act.

300 Subsection (5) defines “government department” for the purposes of this section.

## Section 36: Requirements in Part 2 of CRAGA

301 Section 20 of the Constitutional Reform and Governance Act (CRAGA) 2010 sets out certain conditions that must be met before treaties can be ratified. It requires that: a treaty text is published, a Minister of the Crown lays the treaty text before both Houses of Parliament, and that the required 21 sitting days passes without either House resolving against ratification.

302 Section 36 of the Act disapplies section 20 of CRAGA in relation to the Agreements. Section 36 enables ratification of the Agreements to take place without the conditions of section 20 of CRAGA having been met.

303 Section 36 does not extend to any future modifications of the Agreements to which section 20 may apply.

## Section 37: Interpretation

304 This section defines terms used throughout the Act.

305 Subsection (4) and (5) provide that any version of the Agreements that results from a process of final legal revision replaces from the beginning the signed version of the agreement. It is necessary to include such a provision so that the UK can comply with Article FINPROV.9 of the TCA which provides that the final legal revision version of the Agreement replaces the signed version from the beginning.

## Section 38: Regulations

306 This section introduces Schedule 5 of the Act which contains provisions about regulations made under the Act. Schedule 5 includes provision about the parliamentary procedures applicable to the exercise of the powers in the Act.

## Section 39: Consequential and transitional provision etc.

307 Subsection (1) allows a Minister of the Crown to make regulations which are appropriate as a consequence of the Act.

- 308 The scope of this power is elaborated on, in subsection (2), which clarifies that consequential provision may include modifying (such as amending, repealing or revoking) both primary and secondary legislation. Consequential provision is also made on the face of the Act in Part 1 of Schedule 6.
- 309 Subsection (4) allows a Minister of the Crown to make transitional, transitory or saving provision by regulations. Specific provision on the face of the Act can be found in Part 2 of Schedule 6.

#### Section 40: Extent, commencement and short title

- 310 Subsections (1) to (4) set out which of the jurisdictions of the UK the different provisions of the Act extend to. Subsection (5) specifies that where the act amends or repeals a provision the extent will be the same as the enactment that is amended or repealed.
- 311 Subsection (6) specifies which provisions come into force on Royal Assent.
- 312 Subsection (7) provides a power to bring the remaining provisions into force on the day or days appointed by regulations.
- 313 Subsection (8) provides that the short title of the Act is the European Union (Future Relationship) Act 2020.

#### Schedule 1: Information to be included with notification of conviction

- 314 Paragraph (1) sets out that the information, in accordance with the TCA, set out in the subsequent paragraphs of this schedule should be included when notifying EU Member States of an individual's convictions. The information mentioned in paragraphs (4), (8) to (12), (15) and (18) is only required when recorded on the criminal records database.
- 315 The information required is as follows:
- a. Paragraph (2): The individual's name
  - b. Paragraph (3): Any previous name of the individual
  - c. Paragraph (4): Any other name used by the individual (when available on the criminal records database)
  - d. Paragraph (5): The individual's gender
  - e. Paragraph (6): The individual's date and place of birth
  - f. Paragraph (7): The individual's nationality or nationalities
  - g. Paragraph (8): The names of the individual's parents (when available on the criminal records database)
  - h. Paragraph (9): The number of any passport held by the individual (when available on the criminal records database)
  - i. Paragraph (10): The issue number and description of any identity document (when available on the criminal records database)
  - j. Paragraph (11): The individual's fingerprints (when available on the criminal records database)
  - k. Paragraph (12): A photograph or other image of the individual's face (when available on the criminal records database)
  - l. Paragraph (13): The date of the conviction



- m. Paragraph (14): In the case of a conviction by or before a court, the court by or before which the individual was convicted. In any other case, the person or description of person by or before which the individual was convicted
- n. Paragraph (15): The reference number of the conviction (when available on the criminal records database)
- o. Paragraph (16): The offence of which the individual was convicted.
- p. Paragraph (17): The date on which the offence was committed.
- q. Paragraph (18): The place where the offence was committed (when available on the criminal records database).
- r. Paragraph (19): Any sentence in respect of the offence.
- s. Paragraph (20): Any other order made in respect of the offence.

## Schedule 2: Passenger name records data

### **PART 1: AMENDMENTS TO THE PNR REGULATIONS**

- 316 Paragraph 1 outlines that the Passenger Name Record and Miscellaneous Amendments Regulations 2018 (S.I. 598/2018) (“the PNR Regulations”) are amended as follows.
- 317 Paragraph 2 amends existing, and adds new definitions in regulation 2 of the PNR Regulations.
- 318 Sub-paragraph (2) inserts new definitions to align with those in the TCA.
- 319 Sub-paragraph (3) deletes three definitions which are no longer needed as a result of the amendments made.
- 320 Sub-paragraphs (4) to (8) amend existing definitions to ensure they work with the rest of the regulations as amended and to align them with the definitions used in the TCA.
- 321 Sub-paragraph (9) provides further clarity on the definition of the term “protecting the vital interests of persons”, specifying that it includes protecting persons who are, or may be, at risk of death or serious injury and from significant threats against public health.
- 322 Paragraph 3 amends regulation 3 of the PNR Regulations which concerns the designation of the Passenger Information Unit (“PIU”). The PIU is responsible for collecting, storing, processing and exchanging PNR data under the Regulations.
- 323 Sub-paragraphs (2) and (3) provide that the PIU is able to cooperate with the PIUs of the EU Member States, Europol and Eurojust and competent authorities in third countries.
- 324 Sub-paragraph (5) provides that the Secretary of State may amend by regulations (subject to the negative resolution procedure) the designation of the PIU, and may do so by designating different authorities for different purposes or in relation to different parts of the UK. The Secretary of State may also make supplementary, incidental, consequential, transitional, transitory or saving provisions in connection with the designation.
- 325 Paragraph 4 inserts a new regulation 4A, which requires that the Secretary of State designate by direction an independent authority, to carry out specific functions under the PNR Regulations. It also provides for specific requirements in respect of the nature of that independent authority, in particular, that it acts independently of any person processing PNR data and has sufficient expertise and knowledge to carry out its functions.

- 326 Paragraph 5 amends regulation 5 to extend the provisions of the PNR Regulations to PNR data provided to the PIU by a PIU of an EU Member State or a third country competent authority.
- 327 Paragraph 6 amends regulation 6 and the purposes for which the PIU may process PNR data and aligns them with the description of processing activities in the Agreement. In particular it provides that the PIU can also process PNR data to protect the vital interests of persons, as well as to prevent, detect, investigate and prosecute terrorist offences and serious crime (sub-paragraph (4)); the conditions under which the PIU can transfer PNR data to law enforcement authorities and can process PNR data against pre-established criteria and databases (sub-paragraphs (4) and (5)); and prevents the PIU from taking decisions which have an adverse impact in an individual based only on automated processing or on the basis of a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation (sub-paragraph (6)).
- 328 Paragraph 7 amends regulation 7 to provide that a UK competent authority cannot further share PNR data received from the UK PIU without the permission of the PIU.
- 329 Paragraph 8 inserts new regulation 10, which prescribes the conditions under which the PIU may make a request for PNR data to the PIU of an EU Member State or the authorities of a third country.
- 330 Paragraph 9 amends regulation 11 in relation to requests for PNR data made by UK competent authorities to the PIUs of EU Member States or third country competent authorities.
- 331 Paragraph 10 inserts new regulations 11A and 11B, which implement the obligation in the TCA on the PIU to cooperate with the EU Member State PIUs, Europol and Eurojust. The PIU is able to cooperate and share PNR data on a proactive basis and upon request where necessary for the purposes described in regulation 6(3)(a).
- 332 Paragraph 11 amends regulation 12 in relation to the transfer of PNR data by the PIU to third countries to align it with new regulations 11 and 11A.
- a. Sub-paragraphs (3) to (5) amend the conditions attached to the onward transfer of non-EU PNR data, as the onward transfers of EU PNR data will be subject to different conditions.
  - b. Sub-paragraph (6) outlines the additional conditions attached to the onward transfer of EU PNR data by the PIU to third countries. In particular, such transfers can only take place, subject to some exceptions, where the third country has been found to ensure an adequate level of data protection by the European Commission or it has concluded an agreement with the EU that provides for an equivalent level of protection to the TCA.
- 333 Paragraph 12 amends regulation to the retention and depersonalisation of PNR data to implement the requirements of the TCA in relation to EU PNR.
- a. Sub-paragraph (2) provides that the rules on data retention and depersonalisation also apply to PNR data transferred to the PIU from an EU Member State PIU.
  - b. Sub-paragraph (3) differentiates the data retention period for non-EU PNR and EU PNR data. Non-EU PNR data must be retained for five years and permanently deleted at the end of that period. The retention of EU PNR is subject to new requirements; it must be permanently deleted no later than five years after the date of transfer if it is not subject to the deletion requirements in new regulation 13B.



- c. Sub-paragraph (6) provides that where data that is older than six months is masked (where certain elements that could identify a person are prevented from being viewed), that subsequent access to that data be limited to a small number of specifically authorised persons.
- d. Sub-paragraph (8) ensures that where PNR data is transferred to a UK competent authority and is used in the context of a specific case it can retain it for as long as is necessary for that case.

334 Paragraph 13 inserts new regulation 13A, which specifies additional conditions in relation to the use and transfer of EU PNR data in accordance with the requirements of the TCA. Therefore, these are different from the conditions attached to non-EU PNR.

- a. Regulation 13A(1) to (5) outlines the conditions under which EU PNR data can be used or transferred by the PIU: for the purposes of security and border control checks, for developing or verifying the accuracy of pre-determined criteria, in urgent cases; or otherwise with the permission of the independent authority.
- b. Regulation 13A(6) to (9) provides that where a person's EU PNR data is used, that person should be notified of that use except where such a notification would be likely to jeopardise investigations.

335 Paragraph 14 inserts new regulation 13B, which specifies additional conditions in relation to the retention and deletion of EU PNR data in accordance with the requirements of the TCA. Therefore, these are different from the conditions attached to non-EU PNR.

- a. Regulation 13B(1) defines a subcategory of EU PNR data, namely "restricted EU PNR data" that is comprised of data that relates to a person who is not a UK national nor resident in the UK.
- b. Regulation 13B(2) to (4) provides that the PNR data of an individual who has departed the UK is subject to deletion when that person leaves the UK, except where on the basis of objective evidence a risk assessment identifies that the retention of that PNR data is necessary for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious crime.
- c. Regulation 13B(5) requires that the approach taken to the retention of EU PNR data on the basis of objective evidence by the PIU is reviewed annually by the designated independent authority.
- d. Regulation 13B(6) defines "UK national" for the purposes of this regulation.

336 Paragraph 15 amends regulation 14 to provide that the PIU must not process, and must permanently delete, any special categories of personal data that it receives.

337 Paragraph 16 amends regulation 16, which extends the application of other data protection enactments to Part 3 of the Regulations, to provide that nothing in Part 3 has the effect of disapplying the provisions of any other enactment so far as they relate to the protection of the public against threats to public health.

## **PART 2: INTERIM PERIOD**

338 Paragraph 17 provides for the application of additional safeguards in relation to the retention and deletion of EU PNR data that is subject to deletion for an interim period. The TCA provides for this whilst the UK makes the technical adjustments necessary to transform its PNR processing systems into systems able to delete PNR data in accordance with the TCA.

- a. Sub-paragraphs (1) and (2) provide that until the commencement of paragraph 14, new regulation 13AA is inserted into the PNR Regulations which provides for this interim period.
- b. Regulation 13AA (1) to (3) replicate the provisions in regulation 13A (1) to (3) that prescribes which EU PNR data is subject to deletion and when.
- c. Regulation 13AA (4) and (5) provides that during the interim period, PNR data that is subject to deletion should be accessible only to a limited number of authorised persons, can only be accessed by them for the purpose of determining whether it is subject to deletion, and that such data should be deleted as soon as possible once the UK's PNR systems are technically capable of doing so.
- d. Regulation 13AA (6) to (9) provides that any requests to use PNR data that is subject to deletion should be refused and outlines the specific details required to be recorded in respect of the request and its refusal.
- e. Regulation 13AA (10) and (11) outline the nature of the authorised persons responsible for accessing PNR data that is subject to deletion and that the number of authorised persons should be limited.
- f. Regulation 13AA(12) defines "UK national" for the purposes of this regulation.
- g. Sub-paragraph (4) to (6) provide for additional modifications to the PNR Regulations in order to ensure the PNR Regulations continue to operate effectively during the interim period when regulation 13AA is in force.

### **PART 3: POWER TO AMEND PNR REGULATIONS FOR SEA AND RAIL TRAVEL**

339 Paragraph 18 provides that the Secretary of State may by regulations make provision, including by amending the PNR Regulations, for the implementation of a new agreement between the UK and the EU or an EU Member State. Such an agreement must modify the TCA by extending its provision to PNR data provided by sea and rail operators, or make provision in respect of such PNR data that correspond to the provisions of the TCA.

#### **Schedule 3: Mutual Assistance in Criminal Matters**

340 Paragraph 1 of the Schedule clarifies that references to "the 2003 Act" in this Schedule are references to the Crime (International Cooperation) Act 2003.

341 Paragraph 2 reverses changes made to the 2003 Act by the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 ("the Regulations"). These changes would, if they took effect, deprive UK authorities of the ability to provide assistance under the Agreement.

- a. The provisions reinserted by sub-paragraph (2)(a) and (b) omit paragraphs from the Regulations which would have removed powers to:
  - i. administer service of process requests relating to administrative and clemency proceedings;
  - ii. make, send and vary freezing orders;
  - iii. administer requests seeking freezing of evidence; and
  - iv. administer requests relating to banking transactions.
- b. Sub-paragraph (3), as a consequence of the amendments above, removes changes which would otherwise alter powers of seizure available to the police under the Criminal Justice and Police Act 2001 and implement savings provisions to manage the amendments removed by sub-paragraph (2).

- c. Sub-paragraphs (4)-(6) make technical amendments to the way that the Regulations would have amended the designation of certain countries under the 2003 Act. In particular, Iceland, Japan and Switzerland will cease to be participating countries at the end of the Transition Period for the purposes of sections 32, 35, 37, 40 and 43 - 45 of the 2003 Act. Switzerland will also cease to be a participating country for the purposes of sections 4 and 4B of that Act. This is consequential upon the UK no longer being part of existing EU agreements with those countries at the end of the Transition Period. There is also a savings provision for existing requests from countries which will no longer be participating countries to ensure in-flight cases received before the end of the Transition Period can be honoured.

342 Paragraph 3 makes changes in respect of Part 4 of the 2003 Act. Sub-paragraphs (2)-(4) widen the scope of “customer information” as defined in sections 32 and 37 of the Crime (International Cooperation) Act 2003 to include safe deposit box information in England, Wales and Scotland respectively for each section.

343 Paragraph 4 widens the scope of “customer information” as defined in article 57 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013 (the “2013 Order”) to include safe deposit box information.

344 Paragraph 5 widens the scope of “customer information” as defined in article 23 of the Proceeds of Crime Act 2002 (External Investigations) Order 2015 to include safe deposit boxes.

345 Paragraph 6 ensures that the offence of disclosure and the practical arrangements contained in section 42 of the Crime (International Cooperation) Act 2003 apply where a request is received by the Secretary of State or Lord Advocate under section 13 of that Act in any circumstance.

346 Paragraph 7 replaces references to “the Mutual Legal Assistance Convention” with references to the “European Convention on Mutual Assistance in Criminal Matters” (the Council of Europe framework which the Agreement supplements).

#### Schedule 4: Use of relevant international standards

347 Schedule 4 amends provisions regarding designation (and similar selection) of standards in certain product legislation. Paragraphs 1 and 3-24 would amend the legislation to which they relate in the following ways:

- a. The amendments add international standardising bodies to the bodies whose standards may be designated under the relevant legislation (sub-paragraph (a));
- b. Where the legislation requires the Secretary of State have regard to consistency with other standards before designating a standard, the amendments provide that regard should also be had to consistency with international standards which are considered to be relevant (generally sub-paragraph (c), but also sub-paragraph (b) of paragraphs 6, 20 and 22);
- c. For the purposes of these amendments, the term international standardising body is to be interpreted consistently with the WTO Agreement on TBT (generally sub-paragraph (b), but sub-paragraph (c) of paragraphs 6, 20 and 22). This ensures that relevant international standards within the TCA definition can be designated, and allows designation of other standards meeting the broader WTO definition if the former are ineffective or inappropriate.

348 Paragraph 2 adds standards approved by international standardising bodies to the standards which can be published in order to give rise to a presumption of conformity and taken into account when assessing a product’s safety, reflecting regulation 6 of the General Product Safety Regulations 2005, which it amends.

349 Schedule 4 amends legislation covering certain products including toys, radio equipment, and personal protective equipment. The amended legislation will give the Secretary of State the option to designate a standard approved by an international standardising body, for presumption of conformity with the requirements set in the relevant regulations. This will mean that, if an international standard is designated for legislation relating to toys for example, manufacturers can produce toys to the relevant international standard and they will have a rebuttable presumption of conformity with the corresponding requirements in the regulation.

350 The legislation amended under Schedule 4 and the amendments, will be limited in extent or application to England and Wales and Scotland, or will not have relevance to Northern Ireland.

### **Schedule 5: Regulation made under this Act**

351 Schedule 5 sets out the parliamentary scrutiny procedures by which regulations can be made under the powers contained in the Act. The main procedures are the draft affirmative (generally referred to as the affirmative), the negative (subject to a sifting procedure, in certain cases) and, for urgent cases, the made affirmative.

- a. Draft affirmative resolution procedure: these instruments cannot be made unless a draft has been laid before and approved by both Houses.
- b. Negative resolution procedure: these instruments become law when they are made (they may come into force on a later date) and remain law unless there is an objection from either House. The instrument is laid after making, and subject to annulment if a motion to annul (known as a 'prayer') is passed within forty days.
- c. Made affirmative resolution procedure: these instruments can be made and come into force before they are debated, but cannot remain in force unless approved by both Houses within 28 days. The 28 day time limit for approval does not include time when Parliament is dissolved, prorogued or adjourned for more than 4 days. The Government believes that the time frames surrounding the Bill's passage might necessitate the use of the made affirmative procedure so the Act allows for this as a contingency.

### **Criminal Record**

352 Paragraph 1 covers the procedure to be used in regulations made under the power in section 6(3) to change the definition of criminal records database. Sub-paragraph (1) states that the negative procedure should apply to regulations made by the Secretary of State.

353 Sub-paragraphs (2) and (3) provide for equivalent procedures for regulations made by Scottish ministers and the Department of Justice of Northern Ireland, respectively.

### **Passenger name record data**

354 Paragraph 2 provides that any regulations made under the power in paragraph 18 of Schedule 2 to amend PNR regulations for sea and rail travel are subject to the draft affirmative procedure.

### **Administrative co-operation on VAT and mutual assistance on tax debts**

355 Paragraph 3 provides that any regulations made under the power in section 22(7) to redefine "the relevant time" for the purposes of that section are subject to the draft affirmative procedure.

### **Implementation power: before IP completion day**

- 356 In relation to the implementation power section 31 different procedures apply depending on whether it is being used before the end of the implementation period, or after. Paragraphs 4 and 5 deal with uses of the power before IP completion day and paragraphs 6 and 7 deal with uses on or after IP completion day.
- 357 Paragraph 4, sub-paragraph (1) sets out that where the implementation power is used by a Minister of the Crown acting alone, and the power is used before the end of the transition period, then the draft affirmative procedure must be used.
- 358 Sub-paragraphs (2) - (4) makes equivalent provisions for each devolved authority.
- 359 Sub-paragraph (5) cross-refers to the urgency procedures in paragraphs 14 - 17 which are described below and can, in suitable circumstances, be used instead of following the draft affirmative procedure.
- 360 Paragraph 5 covers scrutiny by the UK Parliament and the devolved legislatures for instruments made jointly by a Minister of the Crown and a devolved authority, under section 31, before the end of the implementation period. In these cases the regulations will need to follow the draft affirmative procedure in Parliament and the equivalent procedure in the relevant devolved legislature.

### **Implementation power: on or after IP completion day**

- 361 Paragraph 6 provides the procedures to be followed where regulations are being made by a Minister of the Crown or a DA acting alone after IP completion day. Where any of the conditions in sub-paragraph (2) are met, then the draft affirmative procedure must be followed (or in the case of regulations made by a DA, the equivalent procedure in the devolved legislature). There is however an exception to this in the urgency procedures in paragraphs 14 to 17 which are described below and can, in suitable circumstances, be used instead of following the draft affirmative procedure.
- 362 The conditions set out in sub-paragraph (2) cover any regulations made under this power that either amend, repeal or revoke primary legislation, or do the same to retained direct principal EU legislation, or create a power to legislate. The concept of retained direct principal EU legislation comes from section 7(6) of the European Union (Withdrawal Act) 2018 and essentially covers EU regulations that are not EU tertiary legislation and that will be brought into UK law at the end of the IP.
- 363 Any regulations not falling within the conditions set out in sub-paragraph (2), may (instead of the affirmative procedure) follow the negative procedure or, where applicable, the devolved equivalent. Some negative instruments planned to be made under the implementation power will however be subject to the sifting procedures described below in paragraphs 8 and 9 that apply in Parliament and Senedd Cymru respectively.
- 364 Paragraph 7 covers any regulations made on or after the end of the transition period, under the implementation power, by a minister acting jointly with a devolved authority. The conditions in paragraph 6(2) described above also apply to determine whether instruments made jointly with a DA should follow the draft affirmative procedure (and the equivalent procedure in the devolved legislature) or the negative procedure (and the devolved legislature's equivalent procedure should be followed instead).

### **Sifting – regulations to be made by a Minister of the Crown**

- 365 Paragraph 8 applies to regulations to be made by a Minister of the Crown under section 31, within two years from IP completion day, where it is proposed that those regulations should be made under the negative procedure.

366 In these cases the Minister must (a) make a statement in writing setting out that in their opinion the negative procedure is appropriate and (b) lay a copy of that statement and the reasons for it, along with a draft of the instrument, before Parliament. The Minister may not then make the negative instrument until either of the relevant Parliamentary committees have made a recommendation on the appropriate procedure for an instrument, or the relevant time period for them doing so has expired. Sub-paragraph (10) sets out the definition of “the relevant period” for these purposes.

367 Where either committee recommends that the affirmative procedure is followed the instrument must either (a) be made following an affirmative procedure or (b) the Minister must make a statement explaining why they disagree with the committee’s recommendations prior to making the instrument by the negative procedure.

368 There is an exception to following the sifting procedure that can be used in certain urgent cases contained in paragraph 14(8) of the Schedule (as described below).

### **Sifting - regulations to be made by a Welsh Minister**

369 Paragraph 9 applies to regulations which a Welsh Minister proposes to make under the general implementation power following the negative procedure, within two years from the end of the implementation period. It provides for a similar sifting procedure to that in paragraph 9 described above - but with minor adaptations to reflect the procedures of Senedd Cymru.

### **Powers relating to the start of agreements**

370 Paragraph 10 sets out the procedure for regulations made by a Minister of the Crown or a DA acting alone under the powers in section 32 relating to the start of agreements. These regulations must be made by the draft affirmative procedure (or the equivalent procedure in the devolved legislature where the regulations are made by a DA). This is subject to an exception where the urgency procedures in paragraphs 14 to 17 (described below) are used.

371 Paragraph 11 sets out the procedure where regulations are made by a Minister of the Crown and a DA acting jointly under the powers in section 32 - in these cases the regulations must follow the draft affirmative procedure in Parliament and the equivalent procedure in the relevant devolved legislature.

### **Powers relating to the functioning of agreements**

372 Paragraph 12 sets out the procedure for regulations made by a Minister of the Crown or a DA acting alone under the powers in section 33.

373 For any regulations under this power that amend primary legislation or retained direct principal EU legislation the affirmative procedure (or where applicable the equivalent procedure within a devolved legislature) must be used. This is subject to an exception where the urgency procedures in paragraphs 14 to 17 (described below) are used. Otherwise the negative procedure (or where applicable the equivalent procedure in the devolved legislature) must be used.

374 Paragraph 13 sets out the procedure for regulations made by a Minister of the Crown and a DA acting jointly under the powers in section 33. The same triggers for the affirmative procedure as are in paragraph 12 apply here - where primary legislation or retained direct principal EU legislation is amended then the affirmative procedure and the equivalent procedure in the devolved legislature must be followed. Otherwise the negative procedure and the equivalent procedure in the relevant devolved legislature must be followed.

### **Implementation and other powers: certain urgent cases**

375 Paragraph 14(1) to 14(6) covers cases where a Minister of the Crown is making regulations under section 31 - the implementation power, section 32 - powers relating to the start of agreements or section 33 - powers relating to functioning of agreements, where those regulations would normally have to be made under the draft affirmative procedure.

376 In urgent cases this paragraph provides the option for the regulations to be made by the made affirmative procedure rather than the draft affirmative procedure. When this made affirmative route is followed the Minister is required by subparagraph (2) to make a declaration that in their view it is necessary by reason of urgency to do so.

377 Sub-paragraph (8) provides an exemption from the sifting procedures described above in urgent cases. Where this exemption is used the Minister is required to make a statement that by reason of urgency it is necessary to proceed without going through the normal sifting procedures.

378 Paragraphs 15, 16 and 17 provide for equivalent urgency procedures in each of the devolved legislatures where they are acting alone.

### **Consequential provision**

379 Paragraph 18 provides that any regulations made under the consequential amendment power in section 39(1) are to be subject to the negative procedure.

## **Part 2**

### **No power to make provision outside devolved competence**

380 Paragraph 19, sub-paragraph (1) provides that where a devolved authority, acting alone, makes regulations under the powers in sections 31, 32 and 33 of the Act (which are all conferred concurrently on the devolved administrations) they cannot make any provision that would be outside of devolved competence. Devolved competence is defined for these purposes in paragraphs 24 to 26 of the Schedule (as described below).

### **Requirement for consent where it would otherwise be required**

381 Paragraph 20 sets out that if a devolved authority is making a provision using these powers that would require consent if it were a provision in legislation of the relevant devolved legislature, or where the devolved administration would normally require consent to make such a provision via secondary legislation, then that consent will still be required. This will not apply if the devolved authority already has power to make such provision using secondary legislation without needing the consent of the Minister of the Crown.

### **Requirement for joint exercise where it would otherwise be required**

382 Paragraph 21 sets out that where a devolved authority would normally only be able to make legislation jointly with the UK Government, the devolved authority will still have to make such legislation jointly when exercising the powers in the Act.

### **Requirement for consultation where it would otherwise be required**

383 Paragraph 22 requires consultation with the UK Government on legislation made by a devolved authority in the exercise of powers in the Act, where the devolved authority would normally be required to consult with the UK Government when making those kinds of changes in legislation.



### **Meaning of devolved competence**

384 Paragraphs 23 - 25 define devolved competence, and provide that a provision would be within the competence of a devolved authority if it would either be within the legislative competence of an Act of the relevant devolved legislature (Scottish Parliament, Senedd Cymru, Northern Ireland Assembly) or if it could be made by that devolved authority in other subordinate legislation.

### **Part 3**

#### **Scope and nature of powers: general**

385 Paragraph 26 provides that powers to make regulations in the Act are exercisable by statutory instrument (where exercised by a Minister of the Crown, by a Welsh minister or by a Minister of the Crown acting jointly with a devolved authority) and by statutory rule (where the powers are exercised by a Northern Ireland department alone). Regulations made by Scottish ministers acting alone will be made by Scottish statutory instrument, as provided for by section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010.

386 Paragraph 27 clarifies the scope of the powers in the Act by providing that all the powers in the Act can be used to make different provision for different cases or descriptions of case, in different circumstances, areas or for different purposes and include the power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

387 Paragraph 28 provides that powers in the Act do not affect any other powers to make regulations, whether they are in this Act or in another enactment.

#### **Anticipatory exercise of powers in relation to future relationship agreements etc.**

388 Paragraph 29 provides that powers to make regulations in relation to the Agreements may be used ahead of the signature, provisional application or ratification of those Agreements.

#### **Scope of appointed day power**

389 Paragraph 30 provides that the power of a minister to appoint a day as per section 40(7) also enables them to pick a time on the appointed day, if they consider it appropriate.

#### **Disapplication of certain review provisions**

390 Paragraph 31 provides for section 28 of the Small Business, Enterprise and Employment Act 2015 (which requires review provisions to be inserted into secondary legislation in certain circumstances) to be disapplied in relation to any powers to make regulations under this Act as they relate to ongoing obligations under international law.

#### **Hybrid instruments**

391 Paragraph 32 sets out that regulations brought forward under the powers in this Act are never to be treated as hybrid instruments. Some statutory instruments which need to be approved by both Houses (affirmative instruments) are ruled to be hybrid instruments because they affect some members of a group (be it individuals or bodies) in a manner different from others in the same group.

#### **Procedure on re-exercise of certain powers**

392 Paragraph 33 provides that if a power to make regulations, which under this Schedule is capable of being subject to different procedures, is used to revoke, amend or re-enact an instrument then it can be subject to a different procedure when doing so than the one the instrument in question was originally subject to.

## **Combinations of instruments**

393 Paragraph 34 makes provision for what happens when instruments that would normally be subject to different procedures are combined.

## **Schedule 6: Consequential and transitional provision etc.**

### **Part 1: Consequential Provision**

#### **Scotland Act 1998, Northern Ireland Act 1998 and Government of Wales Act 2006**

394 Paragraph 1 makes a consequential amendment to the (currently uncommenced) subsection 57(5) of the Scotland Act 1998 to include the section 31 implementation power, the section 32 powers relating to the start of agreements and the section 33 powers relating to the functioning of agreements in the list of exemptions from the (currently uncommenced) subsection 57(4) restrictions on executive competence.

395 The amendments to introduce subsection 57(4) and (5) were introduced by Schedule 3 of the European Union (Withdrawal) Act 2018 and will be brought into force by commencement regulations at the end of the transition period.

396 These amendment in this paragraph to these provisions would mean that in the event that regulations were made under the new section 57(4) power to restrict devolved executive competence to modify certain areas of retained EU law then the Scottish Government would nonetheless still be able to use the powers in this Act as necessary to implement or deal with certain other matters relating to the Agreements.

397 Paragraphs 2 and 3 make equivalent provision to the Northern Ireland Act 1998 and Government of Wales Act 2006 respectively.

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

398 Paragraph 4 contains an amendment to section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 to to reflect the urgency procedure applicable to certain regulations that could be made by Scottish Ministers under this Act.

#### **European Union (Withdrawal) Act 2018**

399 Paragraph 5 introduces a set of amendments to the EU (Withdrawal) Act 2018 in the subsequent paragraphs.

400 Paragraph 6 amends section (20)(1) (interpretation) of the EU (Withdrawal) Act 2018 and inserts a definition of ‘future relationship agreement’, providing that the term has the same meaning as in this Act.

401 In light of the inclusion of that term by paragraph 6, paragraph 7 amends section 21(1) (index of defined expressions) of the EU (Withdrawal) Act 2018 to include the definition of ‘future relationship agreement’ within the index of defined expressions in that Act.

402 Paragraph 8 amends Part 1 of Schedule 8 (general consequential provision) of the EU (Withdrawal) Act 2018. Part 1 of Schedule 8 provides for enhanced procedural requirements for any statutory instrument that amends or revokes subordinate legislation made under powers conferred by section 2(2) of the European Communities Act 1972. This includes requiring such instruments to be subject to the affirmative procedure in Parliament, other enhanced scrutiny procedures or making explanatory statements. Exemptions from the procedural requirements are listed in Schedule 8 of the EU (Withdrawal) Act 2018. Paragraph 8 adds to that list, exempting instruments made for the purposes of implementing the Agreements from the enhanced procedural requirements.

## **Part 2: Transitional, Transitory and Saving Provision**

### **Passenger name record data**

403 This provision provides that the amendments made by Schedule 2 do not have any effect in relation to PNR data, or the results of processing that data, received by the Passenger Information Unit (PIU) by virtue of the PNR Directive before the end of the Transition Period, or any PNR data received as a result of cases which are “in-flight” at the end of the Transition Period (that is, where the request was received for the PNR data before the end of the Transition Period).

404 Such data will be dealt with in accordance with the transitional provision provided for in regulations 106A and 106B of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (as inserted by Regulation 31 of the Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020), as required under the Withdrawal Agreement.

### **Extradition**

405 Under the terms of the Withdrawal Agreement, where a person has been arrested pursuant to a European Arrest Warrant before the end of the Transition Period, their case should continue to completion under the provisions of the European Arrest Warrant Framework Decision. Paragraph 10 ensures that where a person has been arrested on this basis, the amendments to the dual criminality provisions made in this Act do not apply to their extradition case but remain as provided under the provisions of the European Arrest Warrant Framework Decision.

### **“relevant criminal offence”**

406 Section 37 of the Act defines “relevant criminal offence”. That definition corresponds to provisions made in section 81(3)(a) of the Regulation of Investigatory Powers Act 2000 (RIPA) as they are to be amended by paragraph 211 of Schedule 7 of the Criminal Justice and Court Services Act 2000. Those amendments have yet to come into force. Paragraph 11 modifies the definition of “relevant criminal offence”, ensuring that it reflects the operation of RIPA until such time as the corresponding amendments in RIPA take effect.

### **Powers of devolved authorities in relation to EU law**

407 Paragraph 12 provides that the restrictions on the devolved administrations making secondary legislation that is incompatible with EU law found in section 57(2) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 and section 24(1)(b) of the Northern Ireland Act 1998 do not apply to regulations made under the section 31 implementation power, the section 32 powers relating to the start of agreements, or the section 33 powers relating to the functioning of agreements.

### **Modifications of subordinate legislation**

408 Paragraph 13 makes clear that the modification of subordinate legislation made by this Act does not prevent the subordinate legislation as modified from being further modified by the power under which it was made or by other subordinate legislation.

## Commencement

409 Section 40(6) sets out the provisions of the Act that commence on Royal Assent.

410 Section 40(7) sets out that the remaining provisions will commence on the day or days appointed by regulations.

## Financial implications of the Act

411 The Act has financial implications as set out in the following paragraphs.

412 Section 35(1) is a Baldwin provision (see paragraph 294 above) which authorises expenditure arising out of any future relationship agreement (as defined in section 37(1)). This will cover, for example, expenditure resulting from the UK's future participation in EU programmes under the agreements and expenses arising from the UK participating in the Partnership Council.

413 Section 34 is another Baldwin provision authorising expenditure arising out of the PEACE PLUS programme. This expenditure does not arise from any future relationship agreement but is an EU programme to which the UK will continue to contribute. The PEACE PLUS programme follows on from the previous Peace programmes, which the UK has supported since the establishment of the Special EU Programme Body (SEUPB), a North South Implementation Body, under the 1999 North South Implementation Bodies Treaty between the Government of Ireland and the UK.

414 In addition, expenditure is likely to arise out of the domestic implementation of the agreements by section 29 and under section 31. Expenditure will also arise by virtue of some of the subject-specific provisions in Parts 1 and 2 of the Act, for example in relation to criminal records, passenger name records and social security co-ordination

## Related documents

415 The following documents are relevant to the Act and can be read at the locations:

- [The Trade and Cooperation Agreement and other agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union](#)
- [The Future Relationship with the EU The UK's Approach to Negotiations](#)

## Annex A - Territorial extent and application in the United Kingdom

416 This Act extends and applies to the whole of the UK. The table below sets the position out in more detail.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
<b>Part 1 Security</b>				
<b>Section 1 &amp; Schedule 1 - Duty to notify member States of convictions</b>	Yes	Yes	Yes	Yes
<b>Section 2 - Retention of information received from member States</b>	Yes	Yes	Yes	Yes
<b>Section 3 - Transfers to third countries of personal data notified under section 2</b>	Yes	Yes	Yes	Yes
<b>Section 4 - Requests for information from member States</b>	Yes	Yes	Yes	Yes
<b>Section 5 - Requests for information made by member States</b>	Yes	Yes	Yes	Yes
<b>Section 6 - Interpretation of the criminal records provisions</b>	Yes	Yes	Yes	Yes
<b>Section 7 &amp; Schedule 2 - Passenger name record data</b>	Yes	Yes	Yes	Yes
<b>Section 8 - Disclosure of vehicle registration data</b>	Yes	Yes	Yes	Yes
<b>Section 9 &amp; Schedule 3 - Mutual assistance in criminal matters</b>	Yes	Yes	Yes	Yes
<b>Section 10 - Accreditation of foreign service providers</b>	Yes	Yes	Yes	Yes
<b>Section 11 - Member States to remain category 1 territories</b>	Yes	Yes	Yes	Yes
<b>Section 12 - Dual criminality</b>	Yes	Yes	Yes	Yes
<b>Section 13 - Category 1 territories not applying Trade and Cooperation Agreement to old cases</b>	Yes	Yes	Yes	Yes
<b>Part 2 Trade and other matters</b>				
<b>Section 14 - Disclosure of non-food product safety information from Europe within UK</b>	Yes	Yes	Yes	Yes

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<b>Section 15 - Disclosure of non-food product safety information to Commission</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 16 - Offence relating to disclosure under section 14(4)(b)</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 14 - General provisions about disclosure of non-food product safety information</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 18 - Interpretation of sections 14 to 17</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 19 &amp; Schedule 4 - Use of relevant international standards</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 20 - Disclosure of information and co-operation with other customs services</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 21 - Powers to make regulations about movement of goods</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 22 - Administrative co-operation on VAT and mutual assistance on tax debts</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 23 - Licences for access to the international road haulage market</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 24 - International road haulage</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 25 - Disclosure of data relating to drivers' cards for tachographs</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 26 - Social security co-ordination</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 27 - The EU and Euratom and related organisations and bodies</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 28 - Nuclear Cooperation Agreement</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Part 3 General Implementation</b>				
<b>Section 29 - General implementation of agreements</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 30 - Interpretation of agreements</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 31 - Implementation power</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 32 - Powers relating to the start of agreements</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 33 - Powers relating to the functioning of agreements</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 34 - Funding of PEACE PLUS programme</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Section 35 - General financial provision</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

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<b>Section 36 - Requirements in part 2 of CRAGA</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Part 4 Supplementary and final provision &amp; Schedules 5 and 6 *</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>



## Annex B - Hansard References

417 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	30 December 2020	<a href="#">Vol. 686 Col. 507</a>
Second Reading	30 December 2020	<a href="#">Vol. 686 Col. 513</a>
Committee	30 December 2020	<a href="#">Vol. 686 Col. 594</a>
Third Reading	30 December 2020	<a href="#">Vol. 686 Col. 594</a>
<i>House of Lords</i>		
Introduction	30 December 2020	<a href="#">Vol. 808 Col. N/A</a>
Second Reading and remaining stages	30 December 2020	<a href="#">Vol. 808 Col. 1806</a>
Royal Assent	30 December 2020	<a href="#">House of Commons Vol. 686 Col. 717</a>
		<a href="#">House of Lords Vol. 808 Col. 1932</a>

## Annex C - Progress of Act Table

418 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as introduced in the Lords
Section 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 18
Section 19	Clause 19	Clause 19
Section 20	Clause 20	Clause 20
Section 21	Clause 21	Clause 21
Section 22	Clause 22	Clause 22
Section 23	Clause 23	Clause 23
Section 24	Clause 24	Clause 24
Section 25	Clause 25	Clause 25
Section 26	Clause 26	Clause 26
Section 27	Clause 27	Clause 27
Section 28	Clause 28	Clause 28
Section 29	Clause 29	Clause 29
Section 30	Clause 30	Clause 30
Section 31	Clause 31	Clause 31
Section 32	Clause 32	Clause 32
Section 33	Clause 33	Clause 33

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Section 34	Clause 34	Clause 34
Section 35	Clause 35	Clause 35
Section 36	Clause 36	Clause 36
Section 37	Clause 37	Clause 37
Section 38	Clause 38	Clause 38
Section 39	Clause 39	Clause 39
Section 40	Clause 40	Clause 40
Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6

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