



# Retained EU Law (Revocation and Reform) Act 2023

## 2023 CHAPTER 28

### *Modification of retained EU law*

#### **9 Scope of powers**

- (1) Part 1 of Schedule 8 to the European Union (Withdrawal) Act 2018 (general consequential provision) is amended as specified in subsections (2) to (7).
- (2) In paragraph 3 (existing powers to make subordinate legislation etc: modifications)—
  - (a) in sub-paragraph (1) omit paragraph (b) (and the “and” immediately before it);
  - (b) omit sub-paragraph (2).
- (3) In paragraph 4 (procedure for existing powers to make subordinate legislation etc)—
  - (a) omit sub-paragraphs (1) to (5);
  - (b) before sub-paragraph (6) insert—

“(5A) Any subordinate legislation which is (or is to be) made, confirmed or approved by virtue of paragraph 3 is subject to the same procedure (if any) before Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.”;
  - (c) in sub-paragraph (9) omit “amending or repealing an enactment contained in primary legislation or” and “amending or repealing or (as the case may be)”;
  - (d) omit sub-paragraph (10).
- (4) Omit paragraphs 5 and 6.
- (5) Omit paragraphs 10 and 11 (but not the italic heading before paragraph 10).
- (6) Before paragraph 12 insert—

“11A —

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- (1) This paragraph applies to a power to make, confirm or approve subordinate legislation which is conferred—
  - (a) on or after the day on which this Act is passed, and
  - (b) before the day on which [section 9](#) of the Retained EU Law (Revocation and Reform) Act 2023 comes into force.
- (2) The power is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.
- (3) But [sub-paragraph \(2\)](#) enables a power in retained direct minor EU legislation to be exercised to modify (or result in the modification of) any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4 only if—
  - (a) the modification is—
    - (i) consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
    - (ii) supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation, or
  - (b) the power is a power to make, confirm or approve transitional, transitory or saving provision.

11B —

- (1) This paragraph applies to a power to make, confirm or approve subordinate legislation which is conferred on or after the day on which [section 9](#) of the Retained EU Law (Revocation and Reform) Act 2023 comes into force.
- (2) The power is to be read, so far as applicable and unless the contrary intention appears, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.
- (3) But [sub-paragraph \(2\)](#) enables a power in retained direct minor EU legislation to be exercised to modify (or result in the modification of) any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4 only if—
  - (a) the modification is—
    - (i) consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
    - (ii) supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation, or
  - (b) the power is a power to make, confirm or approve transitional, transitory or saving provision.

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- (4) For the purposes of [sub-paragraph \(2\)](#), there is no contrary intention merely because a power is expressed as being capable of being exercised—
- (a) to modify all enactments or a particular category of enactments, or
  - (b) to make a particular category of modifications to all enactments or to a particular category of enactments.”
- (7) In paragraph 12—
- (a) in sub-paragraphs (1) and (2) for “10 and 11” substitute “[11A](#) and [11B](#)”;
  - (b) after sub-paragraph (3) insert—
- “(4) [Sub-paragraph \(5\)](#) applies in relation to a power if—
- (a) [paragraph 11A](#) applies in relation to the power, and
  - (b) immediately before the coming into force of [section 9](#) of the Retained EU Law (Revocation and Reform) Act 2023, and by virtue of a combination of provision in the power and paragraph 10 or 11 as it then had effect, the power was capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.
- (5) The continued existence of the provision in the power does not prevent the context from permitting or requiring the power to be read in accordance with [paragraph 11A](#) so far as the reading provided for by that paragraph is not provided for by the provision concerned (and, accordingly, the power continues to be capable of being exercised as mentioned in [sub-paragraph \(4\)](#) on and after the coming into force of [section 9](#) of the Retained EU Law (Revocation and Reform) Act 2023).”
- (8) [Part 1](#) of [Schedule 3](#) contains amendments altering the parliamentary procedure applicable to certain powers when they modify retained direct EU legislation.
- (9) [Part 2](#) of that Schedule contains amendments consequential on the amendments made by this section.

#### Commencement Information

**II** S. 9 in force at Royal Assent, see [s. 22\(1\)\(d\)](#)

## 10 Procedural requirements

- (1) In Schedule 8 to the European Union (Withdrawal) Act 2018 omit—
- (a) paragraph 13 (affirmative procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the European Communities Act 1972);
  - (b) paragraph 14 (enhanced scrutiny procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the European Communities Act 1972);

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- (c) paragraph 15 (explanatory statements for instruments which amend or revoke subordinate legislation made under section 2(2) of that Act);  
including the italic headings before paragraphs 13 and 14 (but not the italic heading before paragraph 15).
- (2) In consequence of the amendments made by [subsection \(1\)](#)—
- (a) in section 7(5) of the European Union (Withdrawal) Act 2018 for paragraph (d) substitute—
- “(d) paragraph 16 of Schedule 8 (information about Scottish instruments which amend or revoke subordinate legislation under section 2(2) of the European Communities Act 1972),”;
- (b) in paragraph 16 of Schedule 8 to that Act, for sub-paragraph (7) substitute—
- “(7) The references in this paragraph to subordinate legislation made under section 2(2) of the European Communities Act 1972—
- (a) do not include references to any provision of such legislation which is made (whether or not by way of amendment) otherwise than under section 2(2) of that Act, and
- (b) do include references to subordinate legislation made otherwise than under section 2(2) of that Act so far as that legislation is amended by provision made under that section (but do not include references to any primary legislation so far as so amended).”;
- (c) in Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 omit paragraph 54(8) to (10).
- (3) The amendments made by this section—
- (a) so far as relating to paragraph 13 of Schedule 8 to the European Union (Withdrawal) Act 2018, do not apply to any statutory instrument where a draft of the instrument has been laid before each House of Parliament (or, as the case may be, the House of Commons only) before the day on which this Act is passed;
- (b) so far as relating to paragraph 14 of that Schedule, do not apply to any statutory instrument or draft statutory instrument where a draft of the instrument has been published under sub-paragraph (2) of that paragraph before the day on which this Act is passed;
- (c) so far as relating to paragraph 15 of that Schedule, do not apply to any statutory instrument or draft statutory instrument where—
- (i) a statement has been made under sub-paragraph (2) or (3) of that paragraph before the day on which this Act is passed, or
- (ii) the instrument or draft has been laid before each House of Parliament (or, as the case may be, the House of Commons only) before the day on which this Act is passed and no statement has been made under sub-paragraph (2) or (3) of that paragraph.

#### Commencement Information

**I2** S. 10 in force at Royal Assent, see [s. 22\(1\)\(d\)](#)

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**Changes to legislation:**

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