



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 (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.
- (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.