

2018 No. 1242

EXITING THE EUROPEAN UNION

**The European Union (Withdrawal) Act 2018 (Consequential
Amendments) Regulations 2018**

Made - - - - - *27th November 2018*

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the power conferred by section 23(1) of the European Union (Withdrawal) Act 2018(a), makes the following Regulations.

In accordance with paragraph 15 of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018 and come into force on the commencement date.

(2) In these Regulations, “the commencement date” means the day after the day on which these Regulations are made.

Repeals and transitional provisions

2.—(1) The enactments mentioned in Part 1 of Schedule 1 are repealed to the extent specified.

(2) Part 2 of Schedule 1 (which contains transitional provisions in relation to the repeals in Part 1) has effect.

Amendment of legislation

3. Schedule 2 (which contains amendments to legislation in consequence of the European Union (Withdrawal) Act 2018) has effect.

Signed by authority of the Secretary of State for Exiting the European Union.

27th November 2018

Chris Heaton-Harris
Parliamentary Under Secretary of State,
Department for Exiting the European Union

Repeals and Transitional Provisions

PART 1

Repeals

Table

<i>Short Title</i>	<i>Extent of Repeal</i>
The Constitutional Reform and Governance Act 2010(a)	Section 23(1)
European Union (Croatian Accession and Irish Protocol) Act 2013(b)	Sections 1 and 2
European Union (Approvals) Act 2017(c)	The whole Act

PART 2

Transitional Provisions

Disapplication of section 20 of the Constitutional Reform and Governance Act 2010 to treaties already approved

1. Where, before the commencement date, a treaty has been approved in accordance with the requirements of either—

- (a) section 5 of the European Union (Amendment) Act 2008(d), or
- (b) Part 1 of the European Union Act 2011(e),

then that treaty will continue to be exempt from the requirements in section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) notwithstanding the repeal of section 23(1) of that Act.

Approvals under the European Union Act 2011

2. The repeals of sections 1 and 2 of the European Union (Croatian Accession and Irish Protocol) Act 2013 and the European Union (Approvals) Act 2017, which approved matters in accordance with the requirements of the European Union Act 2011, have no effect on the validity of anything done, or omitted to be done, in relation to the matters approved.

(a) 2010 c. 25; section 23(1) was amended by section 14(2) of the European Union Act 2011 (c. 12).

(b) 2013 c. 5.

(c) 2017 c. 35.

(d) 2008 c. 7; section 5 was amended by section 14 of the European Union Act 2011 and repealed by S.I. 2018/808.

(e) See relevant repeals in S.I. 2018/808.

Consequential Amendments

The Statutory Instruments Act 1946

1. After section 11A of the Statutory Instruments Act 1946(a) (application in relation to Wales) insert—

“11B Application in relation to retained direct EU legislation etc

(1) For the purposes of this Act, if any retained direct EU legislation confers a power, which is expressed to be exercisable by Order in Council or statutory instrument, to make, confirm or approve any orders, rules, regulations or other subordinate legislation, this Act applies in relation to any document by which that power is exercised as if the retained direct EU legislation were an Act passed after the commencement of this Act.

(2) For the purposes of this Act, if regulations under the European Union (Withdrawal) Act 2018 confer a power, which is expressed to be exercisable by Order in Council or statutory instrument, to make, confirm or approve any orders, rules, regulations or other subordinate legislation, this Act applies in relation to any document by which that power is exercised as if the regulations conferring the power were an Act passed after the commencement of this Act”.

The Laying of Documents before Parliament (Interpretation) Act 1948

2. In the Laying of Documents before Parliament (Interpretation) Act 1948(b) in section 1(1) (meaning of references to laying before Parliament)—

- (a) after “any Act of Parliament” insert “, retained direct EU legislation”, and
- (b) after “any such Act” insert “, retained direct EU legislation”.

The Statutory Rules (Northern Ireland) Order 1979

3. In Article 4(a) of the Statutory Rules (Northern Ireland) Order 1979(c) (meaning of “statutory rules”), after sub-paragraph (iv) insert—

- “(v) any retained direct EU legislation (within the meaning of the European Union (Withdrawal) Act 2018), if the power is expressed to be exercisable by statutory rule for the purposes of this Order;
- (vi) any regulations made under the European Union (Withdrawal) Act 2018, if the power is expressed to be exercisable by statutory rule for the purposes of this Order;”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedule 1 to these Regulations makes repeals consequential to the repeal of section 5 of the European Union (Amendment) Act 2008 (c. 7) (“the 2008 Act”) and the repeal of sections 1 to 13 of the European Union Act 2011 (c. 12) (“the 2011 Act”) by the European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”).

(a) 1946 c. 36; section 11A was inserted by the Government of Wales Act 2006 (c.32), Schedule 10 paragraph 3.

(b) 1948 c. 59; section 1 was amended by section 160 of, and paragraph 4 of Schedule 10 to the Government of Wales Act 2006 (c. 32).

(c) S.I. 1979/1573 (N.I. 12).

The European Union (Croatian Accession and Irish Protocol) Act 2013 (c. 5) (“the 2013 Act”) which is partially repealed and the European Union (Approvals) Act 2017 (c. 35) (“the 2017 Act”) which is repealed by these Regulations contained Parliamentary approvals of treaties which were required by the 2011 Act.

The Constitutional Reform and Governance Act 2010 (c. 25) (the “CRAG Act”) contained an exemption from the normal CRAG Act procedures for approval of treaties prior to ratification where the treaty approval procedures in either the 2008 Act or the 2011 Act had been followed instead. These Regulations repeal this exemption.

Part 2 of Schedule 1 contains transitional provisions in relation to the repeals in Schedule 1.

Paragraph 1 of Schedule 1 makes it clear that despite the repeal of section 23(1) of the CRAG Act – which created an exemption from the normal CRAG Act treaty approval procedures where the more onerous treaty approval procedures in the 2008 Act or 2011 Act had been followed instead – any treaty which had already been approved under the 2008 Act or 2011 Act will still be treated as exempt from the CRAG Act procedures.

Paragraph 2 of Schedule 1 provides that the repeal of the approvals in the 2013 Act and the 2017 Act have no effect on the continuing validity of anything done in relation to matters approved by those Acts.

Schedule 2 to these Regulations makes certain consequential amendments in consequence of the creation of the new category of “retained direct EU legislation” by the Withdrawal Act and in consequence of the ability of certain powers under that Act to be used to sub-delegate powers.

Paragraph 1 of Schedule 2 amends the Statutory Instruments Act 1946 (c. 36) to make it clear that the normal requirements of that Act will apply to—

- (a) statutory instruments made under a power contained in retained direct EU legislation; and
- (b) statutory instruments made under new powers created in regulations under the Withdrawal Act.

Paragraph 2 of Schedule 2 amends the Laying of Documents Before Parliament (Interpretation) Act 1948 to make the normal rules on how to comply with a duty to lay a document before Parliament (that currently apply to duties in Acts of Parliament and subordinate legislation) apply to any duties to lay a document before Parliament that are added into retained direct EU legislation.

Paragraph 3 of Schedule 2 amends the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573) (the “1979 NI Order”) to make it clear that when a relevant Northern Ireland Authority makes a statutory rule under a power contained in retained direct EU legislation, the normal requirements in that Order will apply to the making of that statutory rule.

Paragraph 3 of Schedule 2 also amends the 1979 NI Order to apply the normal requirements of that Order to statutory rules made under new powers created in regulations under the Withdrawal Act.

A full impact assessment has not been prepared as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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