

**2022 No. 357**

**EXITING THE EUROPEAN UNION**

**DEVOLUTION**

**The European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022**

*Made* - - - - *22nd March 2022*

*Coming into force* *31st March 2022*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 12(9) of the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 11 of Schedule 7 to that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

**PART 1**

Introductory provision

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022, and come into force on 31st March 2022.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland, except as provided by paragraph (3).

(3) Regulations 5 and 6(5)(b) extend to Scotland only.

**PART 2**

Repeal of EU restrictions in devolution Acts and consequential amendment of devolution Acts

**Amendment of the Scotland Act 1998**

**2.**—(1) The Scotland Act 1998(b) is amended as follows.

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(a) 2018 c. 16. “Minister of the Crown”, “modify” and “enactment” are each defined in section 20(1) of that Act.

(b) 1998 c. 46.

(2) In section 29(2) (provisions outside legislative competence)(a), in paragraph (d), omit “or in breach of the restriction in section 30A(1)”.

(3) Omit section 30A (legislative competence: restriction relating to retained EU law)(b).

(4) In section 57 (Convention rights and retained EU law)(c)—

(a) in the heading, omit “and retained EU law”;

(b) omit subsections (4) to (15).

(5) In Schedule 6 (devolution issues)(d), in paragraph 1(d), omit “or in breach of the restriction in section 57(4)”.

(6) In Schedule 7 (procedure for subordinate legislation)(e)—

(a) in paragraph 1(2), in the table—

(i) omit the entry for section 30A;

(ii) omit the entry for section 57(4);

(b) omit paragraph 6.

### **Amendment of the Northern Ireland Act 1998**

**3.—**(1) The Northern Ireland Act 1998(f) is amended as follows.

(2) In section 6(2) (provisions outside legislative competence)(g), omit paragraph (d).

(3) Omit section 6A (restriction relating to retained EU law)(h).

(4) In section 24 (Convention rights, retained EU law etc.)(i)—

(a) in the heading, omit “, retained EU law”;

(b) omit subsections (3) to (15).

(5) In section 96 (orders and regulations)(j), omit subsection (4A).

(6) Omit section 96A (explanatory statements in relation to certain regulations)(k).

### **Amendment of the Government of Wales Act 2006**

**4.—**(1) The Government of Wales Act 2006(l) is amended as follows.

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- (a) Section 29(2) was amended by section 12(1) of the European Union (Withdrawal) Act 2018.
- (b) Section 30A was inserted by section 12(2) of the European Union (Withdrawal) Act 2018, and amended by paragraph 18 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).
- (c) The heading of section 57 was amended by paragraph 13(2) of Schedule 3 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Subsections (4) to (15) were inserted by paragraph 1(b) of Schedule 3 to the 2018 Act, and were amended by paragraph 19 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020, paragraph 1 of Schedule 6 to the European Union (Future Relationship) Act 2020 (c. 29) and paragraph 1 of Schedule 3 to the Trade Act 2021 (c. 10). There are other amendments to section 57 which are not relevant to these Regulations.
- (d) Paragraph 1(d) of Schedule 6 was amended by paragraph 23(2) of Schedule 3 to the European Union (Withdrawal) Act 2018. There are other amendments to Schedule 6 that are not relevant to these Regulations.
- (e) The relevant entries in the table in paragraph 1(2) of Schedule 7 were inserted by paragraph 24 of Schedule 3 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Paragraph 6 was inserted by paragraph 25 of Schedule 3 to the 2018 Act. There are other amendments to Schedule 7 that are not relevant to these Regulations.
- (f) 1998 c. 47.
- (g) Section 6(2)(d) was amended by section 12(5) of the European Union (Withdrawal) Act 2018. There are other amendments to section 6(2) that are not relevant to these Regulations.
- (h) Section 6A was inserted by section 12(6) of the European Union (Withdrawal) Act 2018, and amended by paragraph 23 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020.
- (i) The heading of section 24 was amended by paragraph 55 of Schedule 3 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Subsections (3) to (15) were inserted by paragraph 3(b) of Schedule 3 to the 2018 Act, and amended by paragraph 25 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020, paragraph 2 of Schedule 6 to the European Union (Future Relationship) Act 2020 and paragraph 3 of Schedule 3 to the Trade Act 2021. There are other amendments to section 24 which are not relevant to these Regulations.
- (j) Subsection (4A) was inserted in section 96 by paragraph 57 of Schedule 3 to the European Union (Withdrawal) Act 2018. There are other amendments to section 96 which are not relevant to these Regulations.
- (k) Section 96A was inserted by paragraph 58 of Schedule 3 to the European Union (Withdrawal) Act 2018.
- (l) 2006 c. 32.

(2) In the italic heading before section 80 (retained EU law, human rights and international obligations etc.)(a), for “law” substitute “obligations”.

(3) In section 80 (retained EU law)(b)—

(a) in the heading, for “law” substitute “obligations”;

(b) omit subsections (8) to (8L);

(c) in subsection (9), for “Subsections (1), (8) and (8L) apply” substitute “Subsection (1) applies”.

(4) In section 108A(2)(e) (no competence to legislate incompatibly with Convention rights or in breach of section 109A(1))(c), omit “or in breach of the restriction in section 109A(1)”.

(5) Omit section 109A (legislative competence: restriction relating to retained EU law)(d).

(6) Omit section 157ZA (explanatory statements in relation to certain regulations)(e).

## PART 3

### Further consequential amendments

#### **Amendment of the Criminal Procedure (Scotland) Act 1995**

**5.**—(1) The Criminal Procedure (Scotland) Act 1995(f) is amended as follows.

(2) In the italic heading before section 288ZA (Convention rights and EU law compatibility issues, and devolution issues)(g), omit “and EU law”.

(3) In section 288ZA(2) (right of Advocate General to take part in proceedings: meaning of “compatibility issue”)(h)—

(a) in paragraph (a), omit sub-paragraph (ii) and the “or” at the end;

(b) in paragraph (b), omit the words from “or in breach” to “retained EU law”.

#### **Amendment of the European Union (Withdrawal) Act 2018**

**6.**—(1) The European Union (Withdrawal) Act 2018 is amended as follows.

(2) In section 12 (retaining EU restrictions in devolution legislation etc.), omit subsections (1) to (6), (8), (10), (11) and (13).

(3) In Schedule 2 (corresponding powers involving devolved authorities)—

(a) in Part 1 (dealing with deficiencies arising from withdrawal)—

(i) omit paragraph 3 (and the italic heading before it);

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(a) The heading was amended by paragraph 36 of Schedule 3 to the European Union (Withdrawal) Act 2018, and by article 6(2)(a) of the Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043).

(b) The heading of section 80 was amended by article 6(2)(a) of the Treaty of Lisbon (Changes in Terminology) Order 2011 and paragraph 37(2) of Schedule 3 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Subsections (8) to (8L) were inserted by paragraph 2 of Schedule 3 to the 2018 Act, and amended by paragraph 28 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020, paragraph 3 of Schedule 6 to the European Union (Future Relationship) Act 2020, paragraph 2(19) of Schedule 1 to the Senedd and Elections (Wales) Act 2020 (anaw 1) and paragraph 2 of Schedule 3 to the Trade Act 2021. Subsection (9) was amended by paragraph 37(7) of Schedule 3 to the 2018 Act. There are other amendments to section 80 that are not relevant to these Regulations.

(c) Section 108A was inserted by section 3(1) of the Wales Act 2017 (c. 4). Subsection (2)(e) was amended by section 12(3) of the European Union (Withdrawal) Act 2018.

(d) Section 109A was inserted by section 12(4) of the European Union (Withdrawal) Act 2018 and amended by paragraph 29 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 and by paragraph 2(19) of Schedule 1 to the Senedd and Elections (Wales) Act 2020.

(e) Section 157ZA was inserted by paragraph 43 of Schedule 3 to the European Union (Withdrawal) Act 2018 and amended by paragraph 2(19) of Schedule 1 to the Senedd and Elections (Wales) Act 2020.

(f) 1995 c. 46.

(g) The italic heading before section 288ZA was substituted by section 34(2) of the Scotland Act 2012 (c. 11).

(h) Section 288ZA was inserted by section 34(3) of the Scotland Act 2012. Subsection (2) was amended by paragraph 29(2) of Schedule 8 to the European Union (Withdrawal) Act 2018.

- (ii) in paragraph 8(1)(a), omit the words from “(ignoring” to “retained EU law)”;
  - (iii) in paragraph 9(1)(a), omit the words from “ignoring” to “but”;
  - (iv) in paragraph 10(1), in paragraphs (a)(i) and (b)(ii), omit the words from “(ignoring” to “1998)”;
- (b) in Part 1B (provision in connection with certain other separation issues)(a)—
- (i) in paragraph 11J—
    - (aa) in paragraph (a), omit the words from “(ignoring” to “retained EU law)”;
    - (bb) in paragraph (b), omit the words from “(ignoring” to “that Act)”;
  - (ii) in paragraph 11K—
    - (aa) in paragraph (a), omit the words from “ignoring” to “but”;
    - (bb) in paragraph (b), omit the words from “(ignoring” to “2006)”;
  - (iii) in paragraph 11L, in paragraphs (a)(i), (b)(ii) and (c), omit the words from “(ignoring” to “1998)”.
- (4) In Schedule 3 (further amendments of devolution legislation and reporting requirement)—
- (a) in Part 1 (corresponding provision in relation to executive competence), omit paragraphs 1(b), 2 (and the italic heading before it) and 3(b);
  - (b) omit Part 2 (reports in connection with retained EU law restrictions);
  - (c) in Part 3 (other amendments of devolution legislation), omit paragraphs 13(2)(b), 23(2), 24, 25, 37(7), 43, 55(b), 57 and 58.
- (5) In Schedule 8 (consequential, transitional, transitory and saving provision)—
- (a) in Part 1 (general consequential provision)—
    - (i) omit paragraph 8(1)(b) but not the “and” at the end;
    - (ii) omit paragraph 12(1)(b) but not the “and” at the end;
  - (b) in Part 2 (specific consequential provision), omit paragraph 29(2);
  - (c) in Part 4 (specific transitional, transitory and saving provision), omit paragraph 43.

### **Amendment of the European Union (Withdrawal Agreement) Act 2020**

- 7.—**(1) The European Union (Withdrawal Agreement) Act 2020(b) is amended as follows.
- (2) In Schedule 1 (powers of devolved authorities under sections 12, 13 and 14)—
- (a) in paragraph 2—
    - (i) in paragraph (a), omit the words from “(ignoring” to “retained EU law)”;
    - (ii) in paragraph (b), omit the words from “(ignoring” to “that Act)”;
  - (b) in paragraph 3—
    - (i) in paragraph (a), omit the words from “ignoring” to “but”;
    - (ii) in paragraph (b), omit the words from “(ignoring” to “2006)”;
  - (c) in paragraph 4, in paragraphs (a)(i), (b)(ii) and (c), omit the words from “(ignoring” to “1998)”.
- (3) In Schedule 5 (consequential and transitional provision etc.), omit paragraphs 18, 19, 23, 25, 28, 29 and 54(5)(a) (and the “and” at the end) and (7)(a) (and the “and” at the end).

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(a) Part 1B of Schedule 2 was inserted by section 19 of the European Union (Withdrawal Agreement) Act 2020.  
 (b) 2020 c. 1.

## **Amendment of the European Union (Future Relationship) Act 2020**

**8.** Omit paragraphs 1 to 3 (and the italic heading before each of those paragraphs) of Schedule 6 to the European Union (Future Relationship) Act 2020 (consequential provision)(a).

## **Amendment of the Trade Act 2021**

**9.**—(1) The Trade Act 2021(b) is amended as follows.

(2) In Schedule 1 (restrictions on devolved authorities)—

(a) in paragraph 6—

(i) in paragraph (a), omit the words from “(ignoring” to “retained EU law”);

(ii) in paragraph (b), omit the words from “(ignoring” to “that Act”);

(b) in paragraph 7—

(i) in paragraph (a), omit the words from “ignoring” to “but”;

(ii) in paragraph (b), omit the words from “(ignoring” to “2006”);

(c) in paragraph 8, in paragraphs (a)(i), (b)(ii) and (c), omit the words from “(ignoring” to “1998”.

(3) In Schedule 3 (exceptions to restrictions in the devolution settlements), omit paragraphs 1 to 3 (and the italic heading before each of those paragraphs).

*Neil O’Brien*

Parliamentary Under Secretary of State

Department for Levelling Up, Housing and Communities

22nd March 2022

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision to repeal the limitations on devolved legislative and executive competence introduced by section 12 of and Part 1 of Schedule 3 to the European Union (Withdrawal) Act 2018, and further provision in consequence of the repeals. The competence limitations, which were inserted as sections 30A and 57(4) to (15) of the Scotland Act 1998, sections 80(8) to (8L) and 109A of the Government of Wales Act 2006 and sections 6A and 24(3) to (15) of the Northern Ireland Act 1998, provided that the devolved legislatures could not legislate, and the devolved administrations could not exercise functions, contrary to restrictions specified by UK government ministers in regulations. No such regulations have been made.

Part 2 repeals those limitations and makes further consequential amendments to the devolution settlements.

Part 3 makes consequential amendments to other legislation as a result of the repeals made by Part 2 of this instrument.

An impact assessment has not been produced for this instrument as no, or no significant, impact on business, charities or the public or voluntary sector is foreseen.

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(a) 2020 c. 29.

(b) 2021 c. 10.





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