



# European Union (Withdrawal) Act 2018

## 2018 CHAPTER 16

### *Main powers in connection with withdrawal*

#### **8 Dealing with deficiencies arising from withdrawal**

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate—
- (a) any failure of retained EU law to operate effectively, or
  - (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (2) Deficiencies in retained EU law are where the Minister considers that retained EU law—
- (a) contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant,
  - (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom or any part of it,
  - (c) makes provision for, or in connection with, reciprocal arrangements between—
    - (i) the United Kingdom or any part of it or a public authority in the United Kingdom, and
    - (ii) the EU, an EU entity, a member State or a public authority in a member State,which no longer exist or are no longer appropriate,
  - (d) makes provision for, or in connection with, other arrangements which—
    - (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
    - (ii) are otherwise dependent upon the United Kingdom's membership of the EU [<sup>F1</sup>or Part 4 of the withdrawal agreement],and which no longer exist or are no longer appropriate,

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- (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties [<sup>F2</sup>or as a result of either the end of the implementation period or any other effect of the withdrawal agreement],
  - [<sup>F3</sup>(ea) is not clear in its effect as a result of the operation of any provision of sections 2 to 6 or Schedule 1,]
  - (f) does not contain any functions or restrictions which—
    - (i) were in an EU directive and in force immediately before [<sup>F4</sup>IP completion day] (including any power to make EU tertiary legislation), and
    - (ii) it is appropriate to retain, or
  - (g) contains EU references which are no longer appropriate.
- (3) There is also a deficiency in retained EU law where the Minister considers that there is—
- (a) anything in retained EU law which is of a similar kind to any deficiency which falls within subsection (2), or
  - (b) a deficiency in retained EU law of a kind described, or provided for, in regulations made by a Minister of the Crown.
- (4) But retained EU law is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into force or only applies on or after [<sup>F5</sup>IP completion day].
- (5) Regulations under subsection (1) may make any provision that could be made by an Act of Parliament.
- (6) Regulations under subsection (1) may (among other things) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
- (a) exercisable instead by a public authority (whether or not established for the purpose) in the United Kingdom, or
  - (b) replaced, abolished or otherwise modified.
- (7) But regulations under subsection (1) may not—
- (a) impose or increase taxation or fees,
  - (b) make retrospective provision,
  - (c) create a relevant criminal offence,
  - (d) establish a public authority,
  - [<sup>F6</sup>(e) .....
  - (f) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
  - (g) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).
- (8) No regulations may be made under this section after the end of the period of two years beginning with [<sup>F7</sup>IP completion day].

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- (9) The reference in subsection (1) to a failure or other deficiency arising from the withdrawal of the United Kingdom from the EU includes a reference to any failure or other deficiency arising from <sup>F8</sup>—
- (a) any aspect of that withdrawal, including (among other things)—
    - (i) the end of the implementation period, or
    - (ii) any other effect of the withdrawal agreement, or
  - (b) that withdrawal, or any such aspect of it, taken together] with the operation of any provision, or the interaction between any provisions, made by or under this Act <sup>F9</sup>or the European Union (Withdrawal Agreement) Act 2020].

#### Textual Amendments

- F1** Words in s. 8(2)(d)(ii) inserted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(2)(a), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F2** Words in s. 8(2)(e) inserted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(2)(b), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F3** S. 8(2)(ea) inserted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(2)(c), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F4** Words in s. 8(2)(f)(i) substituted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(2)(d), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F5** Words in s. 8(4) substituted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(3), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F6** S. 8(7)(e) omitted (31.1.2020) by virtue of European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(4), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F7** Words in s. 8(8) substituted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(5), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F8** S. 8(9)(a)(b) substituted for words (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(6)(a), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F9** Words in s. 8(9) inserted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), **ss. 27(6)(b), 42(7)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)

#### Modifications etc. (not altering text)

- C1** S. 8 applied in part (with modifications) (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 1(2), **3(3)**
- C2** S. 8(5)-(7) applied (with modifications) (30.1.2020) by Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2), **ss. 3(6)(7), 9(3)**

#### <sup>F10</sup>8A Supplementary power in connection with implementation period

- (1) A Minister of the Crown may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f)(i) (whether applying in all cases or particular cases or descriptions of case),
  - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
  - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section,
  - (d) modify any enactment contained in this Act in consequence of any repeal made by section 1A(5) or 1B(6), or

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- (e) make such provision not falling within paragraph (a), (b), (c) or (d) as the Minister considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.
- (3) In subsection (2) “enactment” does not include primary legislation passed or made after IP completion day.
- (4) No regulations may be made under subsection (1) after the end of the period of two years beginning with IP completion day.]

#### Textual Amendments

**F10** S. 8A inserted (23.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), **ss. 3, 42(6)** (a) (with s. 38(3), Sch. 5 para. 66)

#### [<sup>F11</sup>8B Power in connection with certain other separation issues

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate—
  - (a) to implement Part 3 of the withdrawal agreement (separation provisions),
  - (b) to supplement the effect of section 7A in relation to that Part, or
  - (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7A and that Part).
- (2) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate—
  - (a) to implement Part 3 of the EEA EFTA separation agreement (separation provisions),
  - (b) to supplement the effect of section 7B in relation to that Part, or
  - (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7B and that Part).
- (3) Regulations under this section may make any provision that could be made by an Act of Parliament.
- (4) Regulations under this section may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of—
  - (a) section 7A above and Part 3 of the withdrawal agreement, or
  - (b) section 7B above and Part 3 of the EEA EFTA separation agreement.
- (5) But regulations under this section may not—
  - (a) impose or increase taxation or fees,
  - (b) make retrospective provision,
  - (c) create a relevant criminal offence,
  - (d) establish a public authority,
  - (e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or

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- (f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).
- (6) In this section references to Part 3 of the withdrawal agreement or of the EEA EFTA separation agreement include references to any provision of EU law which is applied by, or referred to in, that Part (to the extent of the application or reference).]

#### Textual Amendments

- F11** S. 8B inserted (19.5.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 18, 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/518, reg. 2(g)

### [<sup>F12</sup>8C **Power in connection with Ireland/Northern Ireland Protocol in withdrawal agreement**

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate—
- to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement,
  - to supplement the effect of section 7A in relation to the Protocol, or
  - otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 7A and the Protocol).
- (2) Regulations under subsection (1) may make any provision that could be made by an Act of Parliament (including modifying this Act).
- (3) Regulations under subsection (1) may (among other things) make provision facilitating the access to the market within Great Britain of qualifying Northern Ireland goods.
- (4) Such provision may (among other things) include provision about the recognition within Great Britain of technical regulations, assessments, registrations, certificates, approvals and authorisations issued by—
- the authorities of a member State, or
  - bodies established in a member State,
- in respect of qualifying Northern Ireland goods.
- (5) Regulations under subsection (1) may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of section 7A and the Protocol.

[ Regulations under subsection (1) may not amend, repeal or otherwise modify the <sup>F13</sup>(5A) operation of section 47 of the United Kingdom Internal Market Act 2020 (“the 2020 Act”), except by making—

- provision of the sort that is contemplated by section 47(2) of the 2020 Act (permitted checks);
- provision under subsection (6);
- provision of the sort described in paragraph 21(b) of Schedule 7 (supplementary and transitional provision etc) in connection with—

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- (i) provision within either of the preceding paragraphs;
  - (ii) Articles 5 to 10 of the Northern Ireland Protocol ceasing to apply (and the resulting operation of section 55(1) of the 2020 Act).]
- (6) A Minister of the Crown may by regulations define “qualifying Northern Ireland goods” for the purposes of this Act.
- (7) In this section any reference to the Protocol on Ireland/Northern Ireland includes a reference to—
- (a) any other provision of the withdrawal agreement so far as applying to the Protocol, and
  - (b) any provision of EU law which is applied by, or referred to in, the Protocol (to the extent of the application or reference),
- but does not include the second sentence of Article 11(1) of the Protocol (which provides that the United Kingdom and the Republic of Ireland may continue to make new arrangements that build on the provisions of the Belfast Agreement in other areas of North-South cooperation on the island of Ireland).]

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**Textual Amendments**

- F12** S. 8C inserted (19.5.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), **ss. 21**, 42(7) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/518, reg. 2(i)
- F13** S. 8C(5A) inserted (31.12.2020) by [United Kingdom Internal Market Act 2020 \(c. 27\)](#), **ss. 55(3)**, 59(3) (with s. 55(1)); S.I. 2020/1621, reg. 2(l)

**F149** **Implementing the withdrawal agreement**

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**Textual Amendments**

- F14** S. 9 repealed (23.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), **ss. 36(a)**, 42(6)(c) (with s. 38(3), Sch. 5 para. 66)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 6(4)-(5ZA) word substituted by [2023 c. 28 Sch. 2 para. 8\(3\)\(c\)](#) (The inserted text to be amended is still prospective so this amendment is not applied yet.)
- s. 6(5ZA) inserted by [2023 c. 28 s. 6\(4\)](#)
- s. 6(6B) inserted by [2023 c. 28 s. 6\(6\)](#)
- s. 6A-6C inserted by [2023 c. 28 s. 6\(8\)](#)
- s. 6A word substituted by [2023 c. 28 Sch. 2 para. 8\(4\)](#) (The inserted text to be amended is still prospective so this amendment is not applied yet.)
- s. 6B word substituted by [2023 c. 28 Sch. 2 para. 8\(5\)](#) (The inserted text to be amended is still prospective so this amendment is not applied yet.)
- s. 6C word substituted by [2023 c. 28 Sch. 2 para. 8\(6\)](#) (The inserted text to be amended is still prospective so this amendment is not applied yet.)