

Status: Point in time view as at 26/06/2018. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 8 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 8

Section 23(5) and (7)

CONSEQUENTIAL, TRANSITIONAL, TRANSITORY AND SAVING PROVISION

VALID FROM 31/01/2020

PART 1

GENERAL CONSEQUENTIAL PROVISION

VALID FROM 31/12/2020

Existing ambulatory references to retained direct EU legislation

- 1
- (1) Any reference which, immediately before exit day—
 - (a) exists in—
 - (i) any enactment,
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
 - (iii) any document relating to anything falling within sub-paragraph (i) or (ii), and
 - (b) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3,
is to be read, on or after exit day, as a reference to the EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement as it forms part of domestic law by virtue of section 3 and, unless the contrary intention appears, as modified by domestic law from time to time.
 - (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subordinate legislation so far as the power to make the subordinate legislation—
 - (a) continues to be part of domestic law by virtue of section 2, and
 - (b) is subject to a procedure before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
 - (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

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VALID FROM 31/12/2020

Other existing ambulatory references

- 2 (1) Any reference which—
- (a) exists, immediately before exit day, in—
 - (i) any enactment,
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
 - (iii) any document relating to anything falling within sub-paragraph (i) or (ii),
 - (b) is not a reference to which paragraph 1(1) applies, and
 - (c) is, immediately before exit day, a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,
- is to be read, on or after exit day, as a reference to the EU Treaty, instrument or document as it has effect immediately before exit day.
- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subordinate legislation so far as the power to make the subordinate legislation—
- (a) continues to be part of domestic law by virtue of section 2, and
 - (b) is subject to a procedure before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

Modifications etc. (not altering text)

- C1** Sch. 8 para. 2 excluded (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\)](#), s. 9(3), [Sch. 1 para. 2](#)

Existing powers to make subordinate legislation etc.

- 3 (1) Any power to make, confirm or approve subordinate legislation which—
- (a) was conferred before the day on which this Act is passed, and
 - (b) is capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in primary legislation,
- 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.
- (2) But sub-paragraph (1) does not apply if the power to make, confirm or approve subordinate legislation is only capable of being exercised to amend or repeal (or,

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as the case may be, result in the amendment or repeal of) an enactment contained in Northern Ireland legislation which is an Order in Council.

Modifications etc. (not altering text)

C2 Sch. 8 paras. 3-8 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

I1 Sch. 8 para. 3 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

- 4
- (1) Any subordinate legislation which—
 - (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
 - (b) amends or revokes any retained direct principal EU legislation,is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.
 - (2) Any subordinate legislation which—
 - (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
 - (b) either—
 - (i) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct principal EU legislation, or
 - (ii) modifies (otherwise than as a connected modification) anything which is retained EU law by virtue of section 4,is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.
 - (3) Any subordinate legislation which—
 - (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
 - (b) amends or revokes any retained direct minor EU legislation,is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales 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.
 - (4) Any subordinate legislation which—
 - (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
 - (b) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct minor EU legislation,is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales 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.
 - (5) Any subordinate legislation which—

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- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
 (b) modifies as a connected modification any retained direct EU legislation or anything which is retained EU law by virtue of section 4,
 is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to the modification to which it is connected.
- (6) Any provision which may be made, confirmed or approved by virtue of paragraph 3 may be included in the same instrument as any other provision which may be so made, confirmed or approved.
- (7) Where more than one procedure of a kind falling within sub-paragraph (8) would otherwise apply in the same legislature for an instrument falling within sub-paragraph (6), the higher procedure is to apply in the legislature concerned.
- (8) The order of procedures is as follows (the highest first)—
- (a) a procedure which requires a statement of urgency before the instrument is made and the approval of the instrument after it is made to enable it to remain in force,
 - (b) a procedure which requires the approval of the instrument in draft before it is made,
 - (c) a procedure not falling within paragraph (a) which requires the approval of the instrument after it is made to enable it to come into, or remain in, force,
 - (d) a procedure which provides for the annulment of the instrument after it is made,
 - (e) a procedure not falling within any of the above paragraphs which provides for the laying of the instrument after it is made,
 - (f) no procedure.
- (9) The references in this paragraph to amending or repealing an enactment contained in primary legislation or amending or revoking an enactment contained in subordinate legislation do not include references to amending or repealing or (as the case may be) amending or revoking an enactment contained in any Northern Ireland legislation which is an Order in Council.
- (10) In this paragraph “connected modification” means a modification which is supplementary, incidental, consequential, transitional or transitory, or a saving, in connection with—
- (a) another modification under the power of retained direct EU legislation or anything which is retained EU law by virtue of section 4, or
 - (b) anything else done under the power.

Modifications etc. (not altering text)

C2 Sch. 8 paras. 3-8 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

I2 Sch. 8 para. 4 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

- 5 (1) This paragraph applies to any power to make, confirm or approve subordinate legislation—

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- (a) which was conferred before the day on which this Act is passed, and
 - (b) is not capable of being exercised as mentioned in paragraph 3(1)(b) or is only capable of being so exercised in relation to Northern Ireland legislation which is an Order in Council.
- (2) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) is to be read—
- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
 - (b) 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 minor EU legislation.
- (3) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) 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)—
- (a) any retained direct principal EU legislation, or
 - (b) anything which is retained EU law by virtue of section 4,
- so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).
- (4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision 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)—
- (a) any retained direct EU legislation, or
 - (b) anything which is retained EU law by virtue of section 4.

Modifications etc. (not altering text)

- C2 Sch. 8 paras. 3-8 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

- I3 Sch. 8 para. 5 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

- 6 Any subordinate legislation which is, or is to be, made, confirmed or approved by virtue of paragraph 5(2), (3) or (4) is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were doing anything else under the power.

Modifications etc. (not altering text)

- C2 Sch. 8 paras. 3-8 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

- I4 Sch. 8 para. 6 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

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- [^{F1}7 Any power to make, confirm or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read—
- (a) on or after exit day, without that restriction, and
 - (b) on or after IP completion day, without any corresponding restriction in relation to compatibility with retained EU law,
- so far as the restriction concerned is not applicable to and in the United Kingdom by virtue of the withdrawal agreement.]

Textual Amendments

- F1** Sch. 8 para. 7 substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(7\)](#), [Sch. 5 para. 54\(4\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(n)(xxv)

Modifications etc. (not altering text)

- C2** Sch. 8 paras. 3-8 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

- I5** Sch. 8 para. 7 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

- 8 (1) Paragraphs 3 to 7 and this paragraph—
- (a) do not prevent the conferral of wider powers,
 - (b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after [^{F2}IP completion day]), and
 - (c) are subject to any other provision made by or under this Act or any other enactment.
- (2) For the purposes of paragraphs 3 and 5—
- (a) a power is conferred whether or not it is in force, and
 - (b) a power in retained direct EU legislation is not conferred before the day on which this Act is passed.
- (3) A power which, by virtue of paragraph 3 or 5 or any Act of Parliament passed before, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before [^{F3}IP completion day] so as to come into force on or after [^{F3}IP completion day].

Textual Amendments

- F2** Words in Sch. 8 para. 8(1)(b) substituted (30.1.2020 for specified purposes, 31.1.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(7\)](#), [Sch. 5 para. 54\(5\)\(a\)](#) (with s. 38(3), Sch. 5 para. 66); [2020 c. 2, s. 2\(11\)\(c\)](#); S.I. 2020/75, reg. 4(n)(xxv)
- F3** Words in Sch. 8 para. 8(3) substituted (30.1.2020 for specified purposes, 31.1.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(7\)](#), [Sch. 5 para. 54\(5\)\(b\)](#) (with s. 38(3), Sch. 5 para. 66); [2020 c. 2, s. 2\(11\)\(c\)](#); S.I. 2020/75, reg. 4(n)(xxv)

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Modifications etc. (not altering text)

- C2** Sch. 8 paras. 3-8 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

- I6** Sch. 8 para. 8 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)
I7 Sch. 8 para. 8 in force at 31.1.2020 in so far as not already in force by [S.I. 2020/74, reg. 2\(c\)\(i\)](#)

VALID FROM 31/12/2020

Review provisions in existing subordinate legislation

- 9 (1) In carrying out a review of a provision of subordinate legislation on or after exit day (whether under provision made in accordance with section 28 of the Small Business, Enterprise and Employment Act 2015 or otherwise), a person is not required, by any pre-exit enactment, to have regard to how any former EU obligation is implemented elsewhere than in the United Kingdom.
- (2) In this paragraph—
- “former EU obligation” means an obligation by which the United Kingdom is, as a result of the United Kingdom's withdrawal from the EU, no longer bound at the time of the review;
 - “pre-exit enactment” means an Act passed, or subordinate legislation made, before exit day;
 - “subordinate legislation” does not include an instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales.

Future powers to make subordinate legislation

- 10 (1) This paragraph applies to any power to make, confirm or approve subordinate legislation which is conferred on or after the day on which this Act is passed.
- (2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may—
- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
 - (b) so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.
- (3) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct principal EU legislation, or
 - (b) anything which is retained EU law by virtue of section 4,

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so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).

- (4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct EU legislation, or
 - (b) anything which is retained EU law by virtue of section 4.

Modifications etc. (not altering text)

C3 Sch. 8 paras. 10-12 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\)](#), **ss. 2(3)-(5)**, 9(3)

Commencement Information

I8 Sch. 8 para. 10 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

I9 Sch. 8 para. 10 in force at 31.1.2020 in so far as not already in force by [S.I. 2020/74](#), **reg. 2(c)(ii)**

- 11 (1) Sub-paragraph (2) applies to any power to make, confirm or approve subordinate legislation which—
- (a) is conferred on or after the day on which this Act is passed, and
 - (b) is capable of being exercised to amend or revoke (or, as the case may be, result in the amendment or revocation of) any retained direct principal EU legislation.
- (2) The power may, so far as applicable and unless the contrary intention appears, be exercised—
- (a) to modify otherwise than by way of amendment or revocation (or, as the case may be, result in such modification of) any retained direct principal EU legislation, or
 - (b) to modify (or, as the case may be, result in the modification of) anything which is retained EU law by virtue of section 4.

Modifications etc. (not altering text)

C3 Sch. 8 paras. 10-12 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\)](#), **ss. 2(3)-(5)**, 9(3)

Commencement Information

I10 Sch. 8 para. 11 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)

I11 Sch. 8 para. 11 in force at 31.1.2020 in so far as not already in force by [S.I. 2020/74](#), **reg. 2(c)(ii)**

- 12 (1) Paragraphs 10 and 11 and this paragraph—
- (a) do not prevent the conferral of wider powers,
 - (b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after [F⁴IP completion day]), and

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(c) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraphs 10 and 11—

- (a) a power is conferred whether or not it is in force,
- (b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed, and
- (c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).

(3) A power which, by virtue of paragraph 10 or 11 or any Act of Parliament passed after [^{F5}this Act and before IP completion day], is capable of being exercised to modify any retained EU law is capable of being so exercised before [^{F6}IP completion day] so as to come into force on or after [^{F6}IP completion day].

Textual Amendments

- F4** Words in Sch. 8 para. 12(1)(b) substituted (30.1.2020 for specified purposes, 31.1.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(7\), Sch. 5 para. 54\(7\)\(a\)](#) (with s. 38(3), Sch. 5 para. 66); 2020 c. 2, s. 2(11)(c); S.I. 2020/75, reg. 4(n)(xxv)
- F5** Words in Sch. 8 para. 12(3) substituted (30.1.2020 for specified purposes, 31.1.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(7\), Sch. 5 para. 54\(7\)\(b\)\(i\)](#) (with s. 38(3), Sch. 5 para. 66); 2020 c. 2, s. 2(11)(c); S.I. 2020/75, reg. 4(n)(xxv)
- F6** Words in Sch. 8 para. 12(3) substituted (30.1.2020 for specified purposes, 31.1.2020 in so far as not already in force) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(7\), Sch. 5 para. 54\(7\)\(b\)\(ii\)](#) (with s. 38(3), Sch. 5 para. 66); 2020 c. 2, s. 2(11)(c); S.I. 2020/75, reg. 4(n)(xxv)

Modifications etc. (not altering text)

- C3** Sch. 8 paras. 10-12 applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 2\(3\)-\(5\), 9\(3\)](#)

Commencement Information

- I12** Sch. 8 para. 12 in force at 30.1.2020 for specified purposes by [2020 c. 2, s. 2\(11\)\(a\)\(b\)](#)
- I13** Sch. 8 para. 12 in force at 31.1.2020 in so far as not already in force by [S.I. 2020/74, reg. 2\(c\)\(ii\)](#)

VALID FROM 31/12/2020

Affirmative procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the ECA (including subordinate legislation implementing EU directives)

- 13 (1) A statutory instrument which—
- (a) is to be made on or after exit day by a Minister of the Crown under a power conferred before the beginning of the Session in which this Act is passed,
 - (b) is not to be made jointly with any person who is not a Minister of the Crown,
 - (c) amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, and
 - (d) would otherwise be subject to a lower procedure before each House of Parliament and no procedure before any other legislature,

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may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

- (2) Sub-paragraph (1) has effect instead of any other provision which would otherwise apply in relation to the procedure for such an instrument before each House of Parliament but does not affect any other requirements which apply in relation to making, confirming or approving the instrument.
- (3) Any provision which—
- (a) may be made under the power mentioned in sub-paragraph (1)(a),
 - (b) is not provision which falls within sub-paragraph (1)(c), and
 - (c) is subject to a lower procedure than the procedure provided for by sub-paragraph (1),
- may be included in an instrument to which sub-paragraph (1) applies (and is accordingly subject to the procedure provided for by that sub-paragraph instead of the lower procedure).
- (4) If a draft of a statutory instrument which—
- (a) is to be made on or after exit day by a Minister of the Crown under a power conferred before the beginning of the Session in which this Act is passed,
 - (b) is not to be made jointly with any person who is not a Minister of the Crown,
 - (c) amends or revokes any provision, made otherwise than under section 2(2) of the European Communities Act 1972 (whether or not by way of amendment), of subordinate legislation made under that section, and
 - (d) would otherwise be subject to a lower procedure before each House of Parliament and no procedure before any other legislature,
- is laid before, and approved by a resolution of, each House of Parliament, then the instrument is not subject to the lower procedure.
- (5) This paragraph applies to an instrument which is subject to a procedure before the House of Commons only as it applies to an instrument which is subject to a procedure before each House of Parliament but as if the references to each House of Parliament were references to the House of Commons only.
- (6) For the purposes of this paragraph, the order of procedures is as follows (the highest first)—
- (a) a procedure which requires a statement of urgency before the instrument is made and the approval of the instrument after it is made to enable it to remain in force,
 - (b) a procedure which requires the approval of the instrument in draft before it is made,
 - (c) a procedure not falling within paragraph (a) which requires the approval of the instrument after it is made to enable it to come into, or remain in, force,
 - (d) a procedure which provides for the annulment of the instrument after it is made,
 - (e) a procedure not falling within any of the above paragraphs which provides for the laying of the instrument after it is made,
 - (f) no procedure.

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- (7) For the purposes of this paragraph a power is conferred whether or not it is in force.
- (8) References in this paragraph, other than in sub-paragraph (4), 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).
- (9) This paragraph is subject to any other provision made by or under this Act or any other enactment.

VALID FROM 31/12/2020

Enhanced scrutiny procedure for instruments which amend or revoke subordinate legislation under section 2(2) of the ECA (including subordinate legislation implementing EU directives)

- 14
- (1) This paragraph applies where, on or after exit day—
 - (a) a statutory instrument which—
 - (i) amends or revokes subordinate legislation made under section 2(2) of the European Communities Act 1972, and
 - (ii) is made under a power conferred before the beginning of the Session in which this Act is passed, or
 - (b) a draft of such an instrument,is to be laid before each House of Parliament and subject to no procedure before any other legislature.
 - (2) The relevant authority must publish, in such manner as the relevant authority considers appropriate, a draft of the instrument at least 28 days before the instrument or draft is laid.
 - (3) The relevant authority must make a scrutiny statement before the instrument or draft is laid.
 - (4) A scrutiny statement is a statement—
 - (a) setting out the steps which the relevant authority has taken to make the draft instrument published in accordance with sub-paragraph (2) available to each House of Parliament,
 - (b) containing information about the relevant authority's response to—
 - (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and
 - (ii) any other representations made to the relevant authority about the published draft instrument, and

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Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 8 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
- (5) A scrutiny statement must be in writing and must be published in such manner as the relevant authority considers appropriate.
- (6) Sub-paragraphs (2) to (5) do not apply if the relevant authority—
- (a) makes a statement in writing to the effect that the relevant authority is of the opinion that, by reason of urgency, sub-paragraphs (2) to (5) should not apply, and
 - (b) publishes the statement in such manner as the relevant authority considers appropriate.
- (7) This paragraph does not apply in relation to any laying before each House of Parliament of an instrument or draft instrument where an equivalent draft instrument (ignoring any differences relating to procedure) has previously been laid before both Houses.
- (8) This paragraph applies to an instrument which is subject to a procedure before the House of Commons only as it applies to an instrument which is subject to a procedure before each House of Parliament but as if references to each or either House of Parliament, or both Houses, were references to the House of Commons only.
- (9) For the purposes of this paragraph—
- (a) a power is conferred whether or not it is in force,
 - (b) the draft instrument published under sub-paragraph (2) need not be identical to the final version of the instrument or draft instrument as laid,
 - (c) where an instrument or draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses, and
 - (d) in calculating the period of 28 days, no account is to be taken of any time during which—
 - (i) Parliament is dissolved or prorogued, or
 - (ii) either House of Parliament is adjourned for more than four days.
- (10) Sub-paragraph (8) of paragraph 13 applies for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (11) In this paragraph “the relevant authority” means—
- (a) in the case of an Order in Council or Order of Council, the Minister of the Crown who has responsibility in relation to the instrument,
 - (b) in the case of any other statutory instrument which is not to be made by a Minister of the Crown, the person who is to make the instrument, and
 - (c) in any other case, the Minister of the Crown who is to make the instrument.
- (12) This paragraph is subject to any other provision made by or under this Act or any other enactment.

Status: Point in time view as at 26/06/2018. This version of this schedule contains provisions that are not valid for this point in time.

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VALID FROM 31/12/2020

Explanatory statements for instruments amending or revoking regulations etc. under section 2(2) of the ECA

- 15 (1) This paragraph applies where, on or after exit day—
- (a) a statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, or
 - (b) a draft of such an instrument,
- is to be laid before each House of Parliament or before the House of Commons only.
- (2) Before the instrument or draft is laid, the relevant authority must make a statement as to why, in the opinion of the relevant authority, there are good reasons for the amendment or revocation.
- (3) Before the instrument or draft is laid, the relevant authority must make a statement otherwise explaining—
- (a) the law which is relevant to the amendment or revocation, and
 - (b) the effect of the amendment or revocation on retained EU law.
- (4) If the relevant authority fails to make a statement required by sub-paragraph (2) or (3) before the instrument or draft is laid—
- (a) a Minister of the Crown, or
 - (b) where the relevant authority is not a Minister of the Crown, the relevant authority,
- must make a statement explaining why the relevant authority has failed to make the statement as so required.
- (5) A statement under sub-paragraph (2), (3) or (4) must be made in writing and be published in such manner as the person making it considers appropriate.
- (6) For the purposes of this paragraph, where an instrument or draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.
- (7) This paragraph applies in relation to instruments whether the power to make them is conferred before, on or after exit day including where the power is conferred by regulations under this Act (but not where it is conferred by this Act).
- (8) This paragraph does not apply in relation to any laying before each House of Parliament, or before the House of Commons only, of an instrument or draft instrument where an equivalent draft instrument (ignoring any differences relating to procedure) has previously been laid before both Houses or before the House of Commons only.
- (9) Sub-paragraph (8) of paragraph 13 applies for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (10) In this paragraph “the relevant authority” means—
- (a) in the case of an Order in Council or Order of Council, the Minister of the Crown who has responsibility in relation to the instrument,

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Changes to legislation: *European Union (Withdrawal) Act 2018, SCHEDULE 8 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) in the case of any other statutory instrument which is not made by a Minister of the Crown, the person who makes, or is to make, the instrument, and
- (c) in any other case, the Minister of the Crown who makes, or is to make, the instrument.
- 16 (1) This paragraph applies where, on or after exit day—
- (a) a Scottish statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, or
- (b) a draft of such an instrument,
- is to be laid before the Scottish Parliament.
- (2) Before the instrument or draft is laid, the relevant authority must make a statement as to why, in the opinion of the relevant authority, there are good reasons for the amendment or revocation.
- (3) Before the instrument or draft is laid, the relevant authority must make a statement otherwise explaining—
- (a) the law which is relevant to the amendment or revocation, and
- (b) the effect of the amendment or revocation on retained EU law.
- (4) If the relevant authority fails to make a statement required by sub-paragraph (2) or (3) before the instrument or draft is laid, the relevant authority must make a statement explaining why the relevant authority has failed to make the statement as so required.
- (5) A statement under sub-paragraph (2), (3) or (4) must be made in writing and be published in such manner as the relevant authority considers appropriate.
- (6) This paragraph applies in relation to instruments whether the power to make them is conferred before, on or after exit day including where the power is conferred by regulations under this Act (but not where it is conferred by this Act).
- (7) Sub-paragraph (8) of paragraph 13 applies for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (8) In this paragraph “the relevant authority” means—
- (a) in the case of a Scottish statutory instrument which is not made by the Scottish Ministers, other than an Order in Council, the person who makes, or is to make, the instrument, and
- (b) in any other case, the Scottish Ministers.

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Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 8 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 04/07/2018

PART 2

SPECIFIC CONSEQUENTIAL PROVISION

VALID FROM 31/12/2020

Finance Act 1973

- 17 In section 56 of the Finance Act 1973 (charges for services etc. by Government departments), in subsection (1), omit “any EU obligation or”.

Interpretation Act 1978

- 18 The Interpretation Act 1978 is amended as follows.

Commencement Information

- I14** Sch. 8 para. 18 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(i)

VALID FROM 30/04/2020

- 19 In section 21(1) (meaning of “subordinate legislation”) after “any Act” insert “ or made or to be made on or after exit day under any retained direct EU legislation [^{F7}other than retained direct EU CAP legislation as so defined] ”.

Textual Amendments

- F7** Words in Sch. 8 para. 19 inserted (30.4.2020) by The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (S.I. 2020/463), regs. 1(1), 8

- 20 After section 23 (application to other instruments) insert—

“23ZA Retained direct EU legislation

- (1) The provisions of this Act (except sections 1 to 4, 13 and 19(2)) apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation so far as it—
- (a) is amended by an Act, subordinate legislation or devolution legislation, and
 - (b) is not subordinate legislation,
- as they apply to an Act passed at the corresponding time.
- (2) In their application by virtue of subsection (1)—

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- (a) section 10 has effect as if the reference to the passing of the Act were a reference to the corresponding time,
 - (b) section 11 has effect as if the second reference to an Act included a reference to the retained direct EU legislation so far as unamended (as well as a reference to that legislation so far as amended), and
 - (c) section 16(1) has effect as if the reference to the repealing Act not being passed were a reference to the repeal not having been made.
- (3) References in this Act to the repeal of an enactment are to be read, in the case of an enactment which is retained direct EU legislation, as references to the revocation of the enactment.
- (4) In Schedule 1—
- (a) in the definition of “Commencement”, the references to an enactment do not include any retained direct EU legislation other than—
 - (i) any such legislation to which subsection (1) applies, or
 - (ii) any instrument made on or after exit day under any retained direct EU legislation, and
 - (b) in the definitions of “The Corporation Tax Acts” and “The Income Tax Acts”, the references to an enactment do not include any retained direct EU legislation.
- (5) For the application of this Act to retained direct EU legislation which is subordinate legislation, see section 23(1) and (2).
- (6) In this section—
- “corresponding time” means the time when the amending Act, subordinate legislation or devolution legislation was passed or (as the case may be) made, and
- “devolution legislation” means—
- (a) an Act of the Scottish Parliament,
 - (b) a Measure or Act of the National Assembly for Wales,
 - (c) Northern Ireland legislation (for the meaning of which see section 24(5)), or
 - (d) an instrument made under anything falling within paragraph (a), (b) or (c).”

Commencement Information

I15 Sch. 8 para. 20 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(ii)

VALID FROM 31/12/2020

21

In section 24 (application to Northern Ireland), in subsection (4)—

- (a) omit “and related expressions”,
- (b) after “Corporation Tax Acts;” insert—

“E.C.S.C. Treaty;

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- E.E.C. Treaty;”,
- (c) after “state;” insert—
- “Entry date;
The EU or the European Union;
EU institution;
EU instrument;
Euratom, Economic Community and Coal and Steel Community;
Euratom Treaty;
European Court;”,
- (d) after “Income Tax Acts;” insert— “ Member (in the expression “member State”); ”, and
- (e) after “The Tax Acts” insert “;
The Treaties or the EU Treaties”.

22

In Schedule 1 (words and expressions defined)—

- (a) omit “ “The EU” or “the EU Treaties” and other expressions defined by section 1 of and Schedule 1 to the European Communities Act 1972 have the meanings prescribed by that Act.”,
- (b) omit the definition of “EEA agreement”,
- (c) omit the definition of “EEA state”,
- (d) in the definition of “enactment”, before “does” insert “ includes any retained direct EU legislation but ”, and
- (e) at the end insert—

“Definitions relating to the EU and the United Kingdom’s withdrawal

“The Communities” means Euratom, the Economic Community and the Coal and Steel Community, but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU.

“E.C.S.C. Treaty” means the Treaty establishing the European Coal and Steel Community, signed at Paris on 18 April 1951.

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time, but does not include any retained direct EU legislation. [8 January 2007]

“EEA state”, in relation to a time, means—

- (a) a state which at that time is a member State, or
- (b) any other state which at that time is a party to the EEA agreement. [8 January 2007]

“E.E.C. Treaty” means the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957.

Status: Point in time view as at 26/06/2018. This version of this schedule contains provisions that are not valid for this point in time.

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“Entry date” means the date on which the United Kingdom became a member of the Communities (which neither includes nor is a reference to the EU).

“The EU” or “the European Union” means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended by any later Treaty); and includes, so far as the context permits or requires, Euratom.

“EU institution” means any institution of the EU.

“EU instrument” means any instrument issued by an EU institution other than any retained direct EU legislation.

“Euratom”, “Economic Community” and “Coal and Steel Community” mean respectively the European Atomic Energy Community, the European Economic Community and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities).

“Euratom Treaty” means the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957.

“European Court” means the Court of Justice of the European Union.

“Exit day” (and related expressions) have the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1) to (5) of that Act).

“Member”, in the expression “member State”, refers to membership of the EU.

“Retained EU law”, “retained direct minor EU legislation”, “retained direct principal EU legislation” and “retained direct EU legislation” have the same meaning as in the European Union (Withdrawal) Act 2018 (see sections 6(7), 7(6) and 20(1) of that Act).

“Retained EU obligation” means an obligation that—

- (a) was created or arose by or under the EU Treaties before exit day, and
- (b) forms part of retained EU law,

as modified from time to time.

“The Treaties” or “the EU Treaties” means the Treaties or EU Treaties, within the meaning given by section 1(2) of the European Communities Act 1972 as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act 2018, as at immediately before exit day.”

Commencement Information

I16 Sch. 8 para. 22(d)(e) in force at 4.7.2018 for specified purposes by S.I. 2018/808, reg. 3(g)(iii)(iv)

Status: Point in time view as at 26/06/2018. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: *European Union (Withdrawal) Act 2018, SCHEDULE 8 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 31/12/2020

European Economic Area Act 1993

- 23 The European Economic Area Act 1993 is amended as follows.
- 24 Omit section 1 (EEA agreement to be an EU Treaty).
- 25 (1) Section 2 (consistent application of law to the whole of the EEA) is amended as follows.
- (2) In subsection (3)—
- (a) in paragraph (a), after “Act” insert “ as at immediately before exit day ”, and
- (b) omit paragraph (b), the “or” before that paragraph and the words after that paragraph.
- (3) After that subsection insert—
- “(3A) This section is subject to any amendment, repeal, revocation or other modification of retained EU law on or after exit day.”
- (4) Omit subsections (4) to (6).
- 26 (1) Section 3 (general implementation of the EEA agreement) is amended as follows.
- (2) In subsection (3)—
- (a) in paragraph (a), after “Act” insert “ as at immediately before exit day ”, and
- (b) omit paragraph (b), the “or” before that paragraph and the words after that paragraph.
- (3) After subsection (4) insert—
- “(4A) This section is subject to any amendment, repeal, revocation or other modification of retained EU law on or after exit day.”
- 27 Omit section 4 (modification of section 3 of the European Communities Act 1972).
- 28 In section 6 (interpretation), in subsection (1), in the definition of “the 1972 Act”, after “1972” insert (before its repeal by section 1 of the European Union (Withdrawal) Act 2018)“.

VALID FROM 31/12/2020

Criminal Procedure (Scotland) Act 1995

- 29 (1) Section 288ZA of the Criminal Procedure (Scotland) Act 1995 (right of Advocate General to take part in proceedings) is amended as follows.
- (2) In subsection (2)—

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- (a) in paragraph (a)(ii), for “incompatible with EU law” substitute “ made unlawful by section 57(4) of the Scotland Act 1998 (restriction on subordinate legislation modifying retained EU law) ”, and
 - (b) in paragraph (b), for “with EU law” substitute “ in breach of the restriction in section 30A(1) of the Scotland Act 1998 (restriction on the modification of retained EU law) ”.
- (3) In subsection (3), omit paragraph (c).

VALID FROM 31/12/2020

Human Rights Act 1998

- 30 (1) This paragraph has effect for the purposes of the Human Rights Act 1998.
- (2) Any retained direct principal EU legislation is to be treated as primary legislation.
- (3) Any retained direct minor EU legislation is to be treated as primary legislation so far as it amends any primary legislation but otherwise is to be treated as subordinate legislation.
- (4) In this paragraph “amend”, “primary legislation” and “subordinate legislation” have the same meaning as in the Human Rights Act 1998.

Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)

- 31 The Interpretation and Legislative Reform (Scotland) Act 2010 is amended as follows.

Commencement Information

I17 Sch. 8 para. 31 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(v)

- 32 (1) Section 1 (application of Part 1 of the Act) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), after “day” insert “ , in the case of Scottish instruments made as mentioned in paragraph (a) or (b) of the definition of “Scottish instrument” in subsection (4), ”, and
 - (b) after paragraph (b) (but before the “and” at the end of that paragraph) insert—
 - “(ba) Scottish instruments made on or after exit day, in the case of Scottish instruments made as mentioned in paragraph (c) or (d) of the definition of “Scottish instrument” in subsection (4),”.
- (3) In subsection (4)—
- (a) omit the “or” at the end of paragraph (a), and
 - (b) after paragraph (b) insert—
 - “(c) an Act of the Scottish Parliament (whenever passed) and any retained direct EU legislation (whenever made), or

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(d) an Act of the Scottish Parliament and an Act of Parliament (in each case, whenever passed) and any retained direct EU legislation (whenever made).”

(4) After subsection (9) insert—

“(10) In this section “exit day” (and related expressions) and “retained direct EU legislation” have the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1) to (5) of that Act).”

Commencement Information

I18 Sch. 8 para. 32 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(v)

33 In section 30 (other instruments laid before the Scottish Parliament), after subsection (6), insert—

“(7) This section does not apply in relation to any regulations made in accordance with paragraph 6 of Schedule 7 to the European Union (Withdrawal) Act 2018 (including that paragraph as applied by paragraph 19(7) of that Schedule).”

Commencement Information

I19 Sch. 8 para. 33 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(v)

34 In section 37 (interpretation of Part 2 of the Act)—

(a) in the definition of “enactment”, at the end insert “ and any retained direct EU legislation ”,

(b) after that definition insert—

““retained direct EU legislation” has the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1) of that Act).”, and

(c) at the end insert—

““subordinate legislation” includes an instrument made or to be made under any retained direct EU legislation on or after exit day (within the meaning of the European Union (Withdrawal) Act 2018 (see section 20(1) to (5) of that Act)).”

Commencement Information

I20 Sch. 8 para. 34 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(v)

VALID FROM 31/12/2020

35 In Schedule 1 (definitions of words and expressions)—

(a) omit from “the EU” to “meanings given by that Act”, and

(b) at the end insert—

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“Definitions relating to the EU

“The Communities” means Euratom, the Economic Community and the Coal and Steel Community, but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU.

“E.C.S.C. Treaty” means the Treaty establishing the European Coal and Steel Community, signed at Paris on 18 April 1951.

“E.E.C. Treaty” means the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957.

“Entry date” means the date on which the United Kingdom became a member of the Communities (which neither includes nor is a reference to the EU).

“The EU” or “the European Union” means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended by any later Treaty); and includes, so far as the context permits or requires, Euratom.

“EU institution” means any institution of the EU.

“EU instrument” means any instrument issued by an EU institution other than any retained direct EU legislation (within the meaning of the European Union (Withdrawal) Act 2018 (see section 20(1) of that Act)).

“Euratom”, “Economic Community” and “Coal and Steel Community” mean respectively the European Atomic Energy Community, the European Economic Community and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities).

“Euratom Treaty” means the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957.

“European Court” means the Court of Justice of the European Union.

“Member”, in the expression “member State”, refers to membership of the EU.

“The Treaties” or “the EU Treaties” means the Treaties or EU Treaties, within the meaning given by section 1(2) of the European Communities Act 1972 as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act 2018, as at immediately before exit day (within the meaning of that Act (see section 20(1) to (5) of that Act)).”

Small Business, Enterprise and Employment Act 2015

36 In section 30 of the Small Business, Enterprise and Employment Act 2015 (meaning of “provision for review”), in subsection (3)—

- (a) omit “EU obligation or any other”, and
- (b) omit “Member States or”.

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Commencement Information

I21 Sch. 8 para. 36 in force at 4.7.2018 by S.I. 2018/808, reg. 3(g)(vi) (with reg. 5)

VALID FROM 31/12/2020

PART 3

GENERAL TRANSITIONAL, TRANSITORY OR SAVING PROVISION

Continuation of existing acts etc.

^{F8}36A(1) Anything done—

- (a) in connection with anything which continues to be domestic law by virtue of section 1A(2) or 1B(2), or
 - (b) for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or otherwise related to the EU or the EEA,
- if in force or effective immediately before exit day, continues to be in force or effective on and after exit day.

(2) Anything done—

- (a) in connection with anything which continues to be domestic law by virtue of section 1A(2) or 1B(2), or
 - (b) for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or otherwise related to the EU or the EEA,
- which, immediately before exit day, is in the process of being done continues to be done on and after exit day.

(3) Sub-paragraphs (1) and (2) are subject to—

- (a) sections 1 to 1B and the withdrawal of the United Kingdom from the EU,
- (b) any provision made under section 23(6) of this Act or section 41(5) of the European Union (Withdrawal Agreement) Act 2020, and
- (c) any other provision made by or under this Act, the European Union (Withdrawal Agreement) Act 2020 or any other enactment.

(4) References in this paragraph to anything done include references to anything omitted to be done.]

Textual Amendments

F8 Sch. 8 para. 36A inserted (31.1.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), s. 42(7), **Sch. 5 para. 55(2)** (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(n)(xxvi)

37 (1) Anything done—

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 2, 3, 4 or 6(3) or (6), or
- (b) for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or otherwise related to the EU or the EEA,

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if in force or effective immediately before exit day, continues to be in force or effective on and after exit day.

- (2) Anything done—
- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 2, 3, 4 or 6(3) or (6), or
 - (b) for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or otherwise related to the EU or the EEA,
- which, immediately before exit day, is in the process of being done continues to be done on and after exit day.
- (3) Sub-paragraphs (1) and (2) are subject to—
- (a) section 1 and the withdrawal of the United Kingdom from the EU,
 - (b) sections 2 to 6 and Schedule 1,
 - (c) any provision made under section 23(6), and
 - (d) any other provision made by or under this Act or any other enactment.
- (4) References in this paragraph to anything done include references to anything omitted to be done.

PART 4

SPECIFIC TRANSITIONAL, TRANSITORY AND SAVING PROVISION

VALID FROM 31/12/2020

Retention of existing EU law

- 38 Section 4(2)(b) does not apply in relation to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they are of a kind recognised by a court or tribunal in the United Kingdom in a case decided on or after exit day but begun before exit day (whether or not as an essential part of the decision in the case).
- 39 (1) Subject as follows and subject to any provision made by regulations under section 23(6), section 5(4) and paragraphs 1 to 4 of Schedule 1 apply in relation to anything occurring before exit day (as well as anything occurring on or after exit day).
- (2) Section 5(4) and paragraphs 1 to 4 of Schedule 1 do not affect any decision of a court or tribunal made before exit day.
 - (3) Section 5(4) and paragraphs 3 and 4 of Schedule 1 do not apply in relation to any proceedings begun, but not finally decided, before a court or tribunal in the United Kingdom before exit day.
 - (4) Paragraphs 1 to 4 of Schedule 1 do not apply in relation to any conduct which occurred before exit day which gives rise to any criminal liability.
 - (5) Paragraph 3 of Schedule 1 does not apply in relation to any proceedings begun within the period of three years beginning with exit day so far as—

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- (a) the proceedings involve a challenge to anything which occurred before exit day, and
 - (b) the challenge is not for the disapplication or quashing of—
 - (i) an Act of Parliament or a rule of law which is not an enactment, or
 - (ii) any enactment, or anything else, not falling within sub-paragraph (i) which, as a result of anything falling within that sub-paragraph, could not have been different or which gives effect to, or enforces, anything falling within that sub-paragraph.
- (6) Paragraph 3(2) of Schedule 1 does not apply in relation to any decision of a court or tribunal, or other public authority, on or after exit day which is a necessary consequence of any decision of a court or tribunal made before exit day or made on or after that day by virtue of this paragraph.
- (7) Paragraph 4 of Schedule 1 does not apply in relation to any proceedings begun within the period of two years beginning with exit day so far as the proceedings relate to anything which occurred before exit day.

VALID FROM 04/07/2018

Main powers in connection with withdrawal

- 40 The prohibition on making regulations under section 8, 9 or 23(1) or Schedule 2 after a particular time does not affect the continuation in force of regulations made at or before that time (including the exercise after that time of any power conferred by regulations made at or before that time).

Commencement Information

I22 Sch. 8 para. 40 in force at 4.7.2018 by S.I. 2018/808, reg. 3(h)

Devolution

- 41 (1) The amendments made by section 12 and Part 1 of Schedule 3 do not affect the validity of—
- (a) any provision of an Act of the Scottish Parliament, Act of the National Assembly for Wales or Act of the Northern Ireland Assembly made before exit day,
 - (b) any subordinate legislation which is subject to confirmation or approval and is made and confirmed or approved before exit day, or
 - (c) any other subordinate legislation made before exit day.
- (2) Accordingly and subject to sub-paragraphs (3) to (10), the validity of anything falling within sub-paragraph (1)(a), (b) or (c) is to be decided by reference to the law before exit day.
- (3) Section 29(2)(d) of the Scotland Act 1998, so far as relating to EU law, does not apply to any provision of an Act of the Scottish Parliament made before exit day if the provision—

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- (a) comes into force on or after exit day or comes into force before that day and is a power to make, confirm or approve subordinate legislation, and
 - (b) is made when there are no regulations under section 30A of the Scotland Act 1998 by virtue of which the provision would be in breach of the restriction in subsection (1) of that section when the provision comes into force (or, in the case of a provision which comes into force before exit day, on or after exit day) if the provision were made and the regulations were in force at that time.
- (4) Section 108A(2)(e) of the Government of Wales Act 2006, so far as relating to EU law, does not apply to any provision of an Act of the National Assembly for Wales made before exit day if the provision—
- (a) comes into force on or after exit day or comes into force before that day and is a power to make, confirm or approve subordinate legislation, and
 - (b) is made when there are no regulations under section 109A of the Government of Wales Act 2006 by virtue of which the provision would be in breach of the restriction in subsection (1) of that section when the provision comes into force (or, in the case of a provision which comes into force before exit day, on or after exit day) if the provision were made and the regulations were in force at that time.
- (5) Section 6(2)(d) of the Northern Ireland Act 1998, so far as relating to EU law, does not apply to any provision of an Act of the Northern Ireland Assembly made before exit day if the provision—
- (a) comes into force on or after exit day or comes into force before that day and is a power to make, confirm or approve subordinate legislation, and
 - (b) is made when there are no regulations under section 6A of the Northern Ireland Act 1998 by virtue of which the provision would be in breach of the restriction in subsection (1) of that section when the provision comes into force (or, in the case of a provision which comes into force before exit day, on or after exit day) if the provision were made and the regulations were in force at that time.
- (6) Section 57(2) of the Scotland Act 1998, so far as relating to EU law, does not apply to the making, confirming or approving before exit day of any subordinate legislation if the legislation—
- (a) comes into force on or after exit day, and
 - (b) is made, confirmed or approved when there are no regulations under subsection (4) of section 57 of the Scotland Act 1998 by virtue of which the making, confirming or approving would be in breach of the restriction in that subsection when the legislation comes into force if—
 - (i) the making, confirming or approving had occurred at that time,
 - (ii) in the case of legislation confirmed or approved, the legislation was made at that time, and
 - (iii) the regulations were in force at that time.
- (7) Section 80(8) of the Government of Wales Act 2006, so far as relating to EU law, does not apply to the making, confirming or approving before exit day of any subordinate legislation if the legislation—
- (a) comes into force on or after exit day, and
 - (b) is made, confirmed or approved when there are no regulations under subsection (8) of section 80 of the Government of Wales Act 2006 by virtue of which the making, confirming or approving would be in breach of the

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- restriction in that subsection, so far as relating to retained EU law, when the legislation comes into force if—
- (i) the making, confirming or approving had occurred at that time,
 - (ii) in the case of legislation confirmed or approved, the legislation was made at that time, and
 - (iii) the regulations were in force at that time.
- (8) Section 24(1)(b) of the Northern Ireland Act 1998, so far as relating to EU law, does not apply to the making, confirming or approving before exit day of any subordinate legislation if the legislation—
- (a) comes into force on or after exit day, and
 - (b) is made, confirmed or approved when there are no regulations under subsection (3) of section 24 of the Northern Ireland Act 1998 by virtue of which the making, confirming or approving would be in breach of the restriction in that subsection when the legislation comes into force if—
 - (i) the making, confirming or approving had occurred at that time,
 - (ii) in the case of legislation confirmed or approved, the legislation was made at that time, and
 - (iii) the regulations were in force at that time.
- (9) For the purposes of sub-paragraphs (3) to (8) assume that the restrictions relating to retained EU law in—
- (a) sections 30A(1) and 57(4) of the Scotland Act 1998,
 - (b) sections 80(8) and 109A(1) of the Government of Wales Act 2006, and
 - (c) sections 6A(1) and 24(3) of the Northern Ireland Act 1998,
- come into force on exit day.
- (10) Section 57(2) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 and section 24(1)(b) of the Northern Ireland Act 1998, so far as relating to EU law, do not apply to the making of regulations under Schedule 2 or 4.

Commencement Information

I23 Sch. 8 para. 41(10) in force at Royal Assent, see [s. 25\(1\)\(g\)](#)

VALID FROM 31/12/2020

- 42 The amendments made by Part 1 of Schedule 3 do not affect the validity of any act (other than the making, confirming or approving of subordinate legislation) done before exit day by a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government, a Northern Ireland Minister, the First Minister in Northern Ireland, the deputy First Minister in Northern Ireland or a Northern Ireland department.
- 43 A consent decision of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly made before the day on which this Act is passed, or the commencement of the 40-day period before the day on which this Act is passed, is as effective for the purposes of—
- (a) section 30A(3) or 57(6) of the Scotland Act 1998,
 - (b) section 80(8C) or 109A(4) of the Government of Wales Act 2006, or

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(c) section 6A(3) or 24(5) of the Northern Ireland Act 1998, as a consent decision made, or (as the case may be) the commencement of that period, on or after that day.

Other provision

- 44 (1) The definition of “relevant criminal offence” in section 20(1) is to be read, until the appointed day, as if for the words “the age of 18 (or, in relation to Scotland or Northern Ireland, 21)” there were substituted “ the age of 21 ”.
- (2) In sub-paragraph (1), “the appointed day” means the day on which the amendment made to section 81(3)(a) of the Regulation of Investigatory Powers Act 2000 by paragraph 211 of Schedule 7 to the Criminal Justice and Court Services Act 2000 comes into force.

VALID FROM 31/12/2020

- 45 (1) The amendment made by paragraph 17 does not affect whether the payment of any fees or other charges may be required under section 56 of the Finance Act 1973 in connection with a service or facilities provided, or an authorisation, certificate or other document issued, before that amendment comes into force.
- (2) Sub-paragraph (3) applies where—
- (a) immediately before the amendment made by paragraph 17 comes into force, the payment of fees or other charges could be required, under section 56 of the Finance Act 1973, in connection with the provision of a service or facilities, or issuing an authorisation, certificate or other document, in pursuance of an EU obligation, and
 - (b) after the amendment made by paragraph 17 comes into force—
 - (i) regulations made under that section (whether or not modified under Part 2 of Schedule 4 or otherwise) prescribing the fees or charges, or under which the fees or charges are to be determined, form part of retained EU law, and
 - (ii) the service or facilities are provided, or the authorisation, certificate or other document is issued, under or in connection with retained EU law.
- (3) Despite the amendment made by paragraph 17, the payment of fees or other charges may be required, under that section and in accordance with the regulations, in connection with the provision of the service or facilities, or the issuing of the authorisation, certificate or other document.

Status:

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Changes to legislation:

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