EXPLANATORY NOTES

Retained EU Law (Revocation and Reform) Act 2023

Chapter 28

£11.50

RETAINED EU LAW (REVOCATION AND REFORM) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Retained EU Law (Revocation and Reform) Act 2023 which received Royal Assent on 29 June 2023 (c. 28).

- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act affects existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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These Explanatory Notes relate to the Retained EU Law (Revocation and Reform) Act 2023 which received Royal Assent on 29 June 2023 (c. 28).

Overview of the Act

1 The purpose of the Retained EU Law (Revocation and Reform) Act 2023 (the Act) is to enable the amendment of retained EU law (REUL) and to remove the special features it has in the UK legal system. These reforms were announced in the Queen's speech in May 2022.

2 The Act gives effect to policies that were set out in the Benefits of Brexit Report[1] published on gov.uk in January 2022 and the Government's announcement of the review into the substance and status of REUL in September 2021.

3 To achieve this, the Act:

- Revokes 587 instruments of REUL listed in Schedule 1 to the Act and assimilates all REUL remaining on the statute book by the end of 2023;
- Repeals the principle of supremacy of EU law from UK law by the end of 2023;
- Facilitates domestic courts departing from retained case law;
- Provides a mechanism for UK Government law officers and law officers in the devolved administrations to intervene in cases regarding retained case law, or to refer them to an appeal court, where relevant;
- Repeals directly effective EU law rights and obligations in UK law by the end of 2023;
- Abolishes general principles of EU law in UK law by the end of 2023;
- Establishes a new priority rule requiring retained direct EU legislation (RDEUL) to be interpreted and applied consistently with domestic legislation;
- Downgrades the status of RDEUL for the purpose of amending it more easily;
- Creates a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or reformed so as not to increase the regulatory burden in relation to a particular subject area.
- Imposes a duty to update the retained EU law dashboard;
- Imposes a duty to periodically report to Parliament on retained EU law reforms and set out plans for further reform.

4 The Act also repeals the Business Impact Target (BIT) contained in the Small Business, Enterprise and Employment Act 2015. This is an outcome of the Benefits of Brexit Report published by the Government in January 2022, in response to the 'Reforming Better Regulation Framework' consultation.

5 The Act contains 23 sections and 5 Schedules, addressing a range of regulatory and constitutional issues and changes. The Act amends the European Union (Withdrawal) Act 2018 (EUWA) and makes minor and consequential amendments to some other Acts.

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[1] https://www.gov.uk/government/publications/the-benefits-of-brexit

Policy background

6 On 23 June 2016, more than 17 million citizens of the UK and Gibraltar voted for the UK to leave the European Union (EU). Since then, the UK has pushed forward with building a framework for the future relationship between the UK and the EU through a series of pieces of legislation.

7 The first step was to process the UK's departure through the EU (Notification of Withdrawal) Act 2017. This was followed by the EUWA and the European Union (Withdrawal Agreement) Act 2020.

8 On 31 January 2020, the UK left the European Union. Pursuant to the Withdrawal Agreement, at the end of the Transition Period at 11pm on 31 December 2020, the UK recovered its full economic and political independence. As such, the UK is no longer part of the EU Single Market or the EU Customs Union, and is therefore no longer bound by its laws and regulations.

9 The UK and EU signed a Trade and Cooperation Agreement on 30 December 2020 on the terms of their future relationship. This was implemented in the European Union (Future Relationship) Act 2020.

10 To maintain legal certainty as the UK ended the Transition Period, the EUWA allowed for the retention of most EU law, as it applied in the UK legal system on 31 December 2020. EUWA incorporated EU law that applied to the UK onto the statute book as "retained EU law" (REUL), creating a new category of domestic law possessing most of the special features of EU law.

11 REUL consists of a combination of EU regulations, decisions and tertiary legislation, domestic legislation passed to implement EU directives, general principles of EU law, directly effective rights and obligations developed in relevant case law of the Court of Justice of the European Union (CJEU), and other principles developed in that case law and the case law of the UK domestic courts.

12 EUWA defined REUL by reference to three categories:

a. Section 2 preserved EU-derived domestic legislation. This (typically) covers any primary or secondary legislation implementing one or more EU obligations, including those under EU directives.

b. Section 3 incorporated direct EU legislation into domestic law. This is defined as all EU regulations, decisions or tertiary legislation that had direct application in the UK, including certain parts of the EEA agreement.

c. Section 4 preserved any directly effective rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law into domestic law.

13 Retained case law and retained general principles of EU law were applied to the interpretation of REUL, under section 6 of EUWA. The REUL framework established by EUWA, however, was not intended to be maintained indefinitely on the UK statute book. The Retained EU Law (Revocation and Reform) Act facilitates the amendment, restatement or revocation and replacement of REUL and assimilates REUL remaining in force after the end of 2023 by removing the special EU law features attached to it.

14 To achieve this, the Act includes provisions outlined below.

Sunset of EU legislation

Sunset of EU-derived subordinate legislation and retained direct EU legislation

15 This Act facilitates the revocation of 587 pieces of Retained EU Law (REUL) listed in Schedule 1. This REUL will sunset at the end of 2023.

16 The sunset kick starts the process of reform and planning for future regulatory changes, which will benefit both UK business and consumers.

17 The sunset, via a revocation Schedule, also increases business certainty by setting out clearly what will be revoked by the end of the year and to allow for business planning before this comes into effect.

Sunset of Section 4 EUWA Rights etc.

18 This Act repeals all former EU directly effective rights etc. that continue to be recognised in domestic law, at the end of 2023. These rights were retained under section 4 of EUWA and by application of the principle of EU law supremacy.

19 In order to provide legal continuity and ensure these provisions could be relied upon in legal proceedings after the UK left the EU, section 4 ensured the recognition and continuation in domestic law of directly effective rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law, which previously had effect in domestic law through section 2(1) of the European Communities Act 1972.

20 This also allowed the continuation of legal effects of domestic legislation related to EU obligations that remained in force once the UK left the EU.

21 This Act repeals these rights etc. and instead provides powers to legislate to codify these rights and obligations directly and more clearly into domestic statute.

Assimilation of retained EU law

Abolition of Supremacy of EU law

22 The principle of the supremacy of EU law is a concept developed by the CJEU. The principle means that, where the domestic law of a Member State is found to be inconsistent with EU law, the latter takes priority.

23 Under EUWA, this principle was incorporated into the UK statute book, so that the supremacy principle still applied in relation to domestic legislation that was made prior to the end of the Transition Period, after the UK's exit from the EU. This ensured that domestic legislation related to EU obligations that remained in force after the UK left the EU continued to produce the same legal effects as before the UK's departure. The principle does not apply to domestic legislation made after the end of the Transition Period.

24 This Act abolishes the principle of supremacy of EU law in UK law at the end of 2023, so that it no longer applies in relation to any domestic legislation, whenever it was made.

Abolition of general principles of EU law

25 General principles of EU law have been developed by the CJEU. CJEU case law provides that they may be used as an aid to the interpretation of the EU Treaties and EU legislation, and may be relied upon directly by individuals against EU institutions or national authorities acting incompatibly with them. There is no definitive list of general principles recognised in the CJEU case law, but examples include the protection of fundamental rights, and the principle of equal treatment.

26 Under EUWA, general principles recognised by the CJEU case law before the end of the transition period were incorporated onto the UK statute book, but with some restrictions, so that they may only be used as an aid to the interpretation of REUL.

27 This Act abolishes these retained general principles in UK law at the end of 2023, so that they no longer influence the interpretation of legislation on the UK statute book.

Assimilated law

28 This Act removes the interpretive effects of EU law on the UK statute book through the sunset of section 4 EUWA rights, the abolition of supremacy and the abolition of general principles of EU law.

29 This Act consequently renames REUL as "assimilated law" at the end of 2023 to reflect that these interpretive effects of EU law no longer apply to this body of law once these changes have taken place.

Interaction with relevant separation agreement law

30 This Act does not affect the operation of the provisions of EUWA relating to relevant separation agreement law (RSAL), i.e. anything which is domestic law by virtue of section 7A or 7B or any domestic law that implements or is otherwise within scope of the Withdrawal Agreement, the EEA EFTA Separation Agreement, or the Swiss Citizen's Rights Agreement (see section 7C(3) EUWA). RSAL includes any retained EU law, and in particular any EU-derived domestic legislation, which implement provisions of UK-EU Withdrawal Agreement (WA) including the Windsor Framework, the EEA-EFTA Separation Agreement and the Swiss Citizens' Rights agreement.

31 The reforms in Sections 2 to 6 of this Act leave intact the existing provisions of EUWA that give effect to relevant separation agreement law.

32 Section 7A EUWA provides that "rights, powers, liabilities, obligations and restrictions… created or arising by or under the withdrawal agreement" have effect "in domestic law". Amongst other things, it ensures that EU law applied by the Agreement capable of applying directly will apply in domestic law without the need for any further implementing legislation. An EU Regulation required to be applied in the UK by the Withdrawal Agreement will continue to apply. This is undisturbed by the Act. Section 7A(3) expressly provides that "every enactment… is to be read and has effect subject to [section 7A]". That includes future enactments, including this Act.

33 Furthermore, section 7C EUWA provides that the "meaning or effect" of RSAL "is to be decided, so far as they are applicable …in accordance with the withdrawal agreement". Amongst other things, this ensures that the principle of Supremacy, general principles of EU law and relevant CJEU case law (as they apply for the purposes of the Withdrawal Agreement) will continue to operate where applicable for the purposes of interpreting RSAL and giving effect to obligations under the Withdrawal Agreement and the Windsor Framework. That includes ensuring that any EU law that is required to apply in the UK by virtue of the Withdrawal Agreement or the Windsor Framework continues to be interpreted in accordance with those principles.

34 This will continue notwithstanding the reforms made by the Act. Section 7C is undisturbed by the Act. The reforms by sections 2 to 6 of the Act are given effect by modifying EUWA. The relevant provisions of EUWA remain expressly subject to RSAL, which includes section 7C (see section 5(7) and 6(6A) EUWA as modified).

Interpretation and effect of retained EU law

Role of UK Courts

35 The EUWA provided that UK domestic courts should remain bound by relevant CJEU judgments made on or before 31 December 2020. This provided legal certainty upon the UK's exit from the EU and prevented the risk of considerable uncertainty for business over how EU law would operate.

36 This has however contributed to establishing legal provisions with different rules of interpretation, meaning that EU case law has continued to influence the interpretation and application of REUL in the UK after the UK's exit from the EU.

37 The Government considers that the UK courts should have greater freedom to develop case law on REUL that remains in force in ways that are not unduly constrained by the continuing influence of previous EU case law. This Act addresses this by facilitating domestic courts departing from retained EU case law.

38 This Act also gives the Attorney General and other Law Officers in the UK and devolved administrations the power to intervene in and refer cases to the higher courts, so that they may be invited to exercise their new discretion to depart from retained EU case law.

39 In practice, interventions and references may not always lead to courts departing from retained case law. However, they will ensure that courts give full consideration to the appropriate influence of retained case law in the continuing development of domestic case law.

Compatibility

40 Following the repeal of the principle of EU law supremacy, this Act establishes a new priority rule for retained direct EU legislation (RDEUL) to be interpreted and applied subject to domestic legislation.

41 This Act also establishes the power to specify the legislative hierarchy between specified pieces of domestic legislation and specified provisions of RDEUL, including that which is assimilated after 2023.

42 By exercising this power, the Government will be able to give priority to certain individual pieces of RDEUL. The power will sunset on 23 June 2026.

Incompatibility Orders

43 This Act requires a court to make an "incompatibility order" where it concludes that a provision of RDEUL is incompatible with any domestic enactment, or vice versa where the power described above has been exercised.

44 Where the court considers it relevant, the order could set out the effect of the incompatible provision in that particular case, delay the coming into force of the order, or remove or limit the effect of the operation of the relevant provision in other ways before the incompatibility order comes into force.

Modification of retained EU law

Scope of powers

45 This Act modifies powers in other statutes, to facilitate their use to amend retained direct EU legislation (RDEUL) in the same way that they can be used to amend domestic secondary legislation. In effect this ensures RDEUL has a more appropriate status in UK law, downgrading it from primary to secondary status for the purposes of amendment.

46 Schedule 8 to EUWA limited the use of such powers by treating Retained Direct Principal EU Legislation as equivalent in status to an Act of Parliament, however this legislation has not undergone the same detailed democratic scrutiny by the UK Parliament.

47 This Act simplifies the status of RDEUL, ensuring that all RDEUL is treated as equivalent to domestic secondary legislation, thus clarifying that it may be amended in a similar way.

Procedural Requirements

48 This Act removes the additional parliamentary scrutiny requirements that applied to the exercise of powers to make amendments to secondary legislation made under section 2(2) of the European Communities Act 1972.

Powers contained in this Act

49 EU law evolved in order to meet the various needs of 28 countries, with differing economic and legal requirements. These laws no longer accurately meet the needs of the UK moving forward as an independent sovereign nation.

50 This Act ensures that only those regulations that are appropriate for the UK will remain on the statute book, by creating a suite of powers that allow retained EU law to be revoked or replaced, restated or updated and removed or amended to reduce burdens.

Powers to restate

51 This Act establishes a power to restate retained EU law. This power will enable UK Ministers and devolved authorities to clarify, consolidate and restate any secondary REUL to preserve the effect of the current law whilst removing it from the category of REUL.

52 This Act also provides for the codification of the effects of retained case law and EU-derived principles of interpretation where necessary to maintain the existing policy effect. The power does not allow the function or substance of the legislation to change nor introduce substantive policy change.

53 This Act also establishes a power to restate assimilated law or reproduce sunsetted EU rights, powers liabilities etc (section 11). This power achieves a similar policy effect as section 12, except that it acts on any assimilated secondary law and can operate up to 23 June 2026.

54 This power will ensure legal certainty in areas of REUL where policy is not intended to immediately change and mitigate any unintended consequences associated with the sunset and the end of the special status of REUL on 31 December 2023.

Powers to revoke or replace

55 This Act establishes powers to revoke or replace any secondary REUL. These powers give the UK Government and the devolved authorities the ability to revoke secondary REUL (or assimilated secondary law after the 31st December 2023), and to replace it if they wish to do so. The replacement can achieve the same or similar objectives (under subsection 2) or implement new provisions with different objectives as the Minister (or devolved authority) considers appropriate (under subsection 3).

Power to update

56 This Act establishes a power to update. This power enables UK Ministers and devolved authorities to amend 'any secondary REUL' or 'secondary assimilated law' (i.e. including the codification of retained case law), as well as regulations made under the powers to restate and powers to revoke or replace under sections 11, 12 and 14 in this Act, to take account of changes in technology or developments in scientific understanding.

57 The power is not intended to make significant policy changes, but is only intended to make relevant technical updates to REUL for these specific purposes. The power is designed so that it can be used more than once on the same piece of legislation as advances in science and technology take place over time.

Power to remove or reduce burdens

58 This Act facilitates a small and targeted reform to the Legislative and Regulatory Reform Act (2006) (LRRA) to confirm that the existing parliamentary framework of Legislative Reform Orders (LROs) extends to retained direct EU legislation (RDEUL) and enables primary RDEUL to be amended within the current procedures and scope of the LRO process.

Retained EU law dashboard and report

59 This section imposes a duty to report on retained EU law reform. This duty is two-fold. Firstly there is a duty to update the retained EU law dashboard. The second duty is to publish and lay before Parliament a report on the revocation and reform of retained EU law at set intervals.

60 The retained EU law dashboard is the database of retained EU law maintained and made publicly available by the Secretary of State. It is an interactive list of retained EU laws. Since its launch, the public has been invited to explore this catalogue of retained EU law. The dashboard allows the public to explore what retained EU law there is and to see when it has been revoked or repealed or updated. The duty to update the dashboard in this Act ensures public scrutiny of the REUL reform programme.

61 The second duty in the Act is a duty to publish and lay before Parliament a report on the revocation and reform of retained EU law. Each report must:

a. summarise data on the retained EU law dashboard,

b. set out progress made in revoking and reforming retained EU law during the relevant reporting period, and

c. detail the Government's plans for revocation and reform of retained EU law in future reporting periods, including a list of provisions of retained EU law which His Majesty's Government intends to revoke or reform.

62 This duty ensures that Parliament is adequately informed of the actions taken by the Government, and their future plans to revoke or reform retained EU law.

Business Impact Target

63 This Act repeals the Business Impact Target (BIT) contained in the Small Business, Enterprise and Employment Act 2015, in order to make use of the UK's regulatory autonomy now that we have left the EU, to ensure that regulation is fit for the UK economy, business and households.

64 The repeal of the Business Impact Target (BIT) forms part of the Governments' response to the 'Better Regulation Framework' consultation, as set out in the Benefits of Brexit Policy paper. It was determined that the BIT is not fit for purpose, as it fails to take into account the wider impacts of regulation outside of businesses.

Devolved Administrations

65 The approach to engaging with the devolved administrations as part of this Act is consistent with other EU Exit legislation, including the European Union (Withdrawal Agreement) Act 2020 and the European Union (Future Relationship) Act 2020 (FRA).

66 The Government has proactively engaged with the devolved administrations in order to ensure the Act works for all four nations.

67 The Government also remains committed to respecting the devolution settlements and the Sewel Convention, and has ensured that the Act will not alter the devolution settlements and will not intrinsically create greater intra-UK divergence.

68 The measures created by this Act are UK wide. This approach is consistent with other EU Exit legislation and will enable the devolved administrations to make provisions for REUL in areas of devolved competence. To achieve this, this Act provides the devolved administrations with the tools to amend, repeal and replace their REUL to enable further opportunities of Brexit to be seized.

Legal background

69 The relevant legal background is explained in the policy background section of these notes. Further information on the EUWA provisions amended by this Act is also contained in the commentary on the individual sections of the Act.

Territorial extent and application

70 Section 23 sets out the territorial extent of this Act, that is the jurisdiction which the Act forms part of the law.

71 In general terms, this Act extends to the whole of the UK and grants substantive powers to the devolved administrations, for instance the powers to restate REUL and the powers to revoke or replace REUL as set out in sections 11, 12 and 14 respectively.

72 In addition, repeals and amendments made by this Act have the same territorial extent as the legislation that they are amending or repealing. For example, section 3 of this Act amends section 5 of EUWA and inserts new text that ends the application of the principle of supremacy. That section has a UK wide extent, and so do the amendments to it made by this Act.

73 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the UK Government to seek the consent of the devolved legislatures for provisions which would alter the competence of those legislatures or the devolved administrations in Scotland, Wales and Northern Ireland.

74 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Sunset of EU-derived legislation

Section 1: Sunset of EU-derived subordinate legislation and retained direct EU legislation

75 This section provides for the revocation of specified retained EU law at the end of 31 December 2023 ("the sunset").

76 Subsection (1) provides that legislation listed in Schedule 1 (Sunset of subordinate legislation and retained direct EU legislation) will be revoked to the extent that it is stated in that schedule at the end of 31 December 2023.

77 Subsection (2) sets out that Schedule 1 is split into two parts. The first part lists subordinate legislation and the second part lists retained direct EU legislation.

78 Subsection (3) clarifies that amendments to other enactments made by legislation revoked under the sunset will be unaffected. For example, where an instrument or a provision made under section 2(2) ECA 1972 is revoked by the sunset, but had prior to that amended another piece of legislation, the amended legislation will be unaffected by the sunset of the instrument which amended it.

79 Subsection (4) sets out a preservation power. It enables a relevant national authority (i.e. a Minister of the Crown or a devolved authority) to specify in regulations those instruments listed in Schedule 1 to which the sunset should not apply. Legislation listed on the Schedule which is specified in regulations made under this power will not be revoked at the end of 31 December 2023.

80 Subsection (5) provides that the preservation power in subsection (4) may not be exercised after 31 October 2023.

Section 2: Revocation of retained EU rights, powers, liabilities etc

81 This section repeals section 4 of EUWA on 31 December 2023, so that nothing retained as a result of that section is recognised, available or enforceable in UK law from that date.

82 Section 4 of EUWA provided that EU rights, powers, liabilities, obligations, restrictions, remedies and procedures which were recognised and available in the UK legal system (via section 2(1) of the European Communities Act 1972), but which did not fall within section 3 of EUWA, continued to be recognised and available in domestic law following the end of the Transition Period and UK's exit from the EU.

83 Section 4 of EUWA consists largely of rights, obligations and remedies developed in case law of the CJEU which during the UK's membership of the EU applied directly in domestic law, in accordance with that case law. It includes, for example, directly effective rights contained within the EU treaties and in EU directives. EU Treaties and EU directives do not generally apply directly in the domestic law of EU member states. However, directly effective rights are those provisions which are sufficiently clear, precise and unconditional as to confer rights directly on individuals and which could be relied on in national law without the need for implementing measures, where national law does not give full effect to them (Case 43/75 Defrenne II EU:C:1976:56).

84 Since the UK left the EU, the effect of sections 4 and 5 of EUWA has been that the rights and obligations retained by that Act may override and lead to the disapplication of domestic legislation, when relied upon in proceedings before domestic courts as an element of the principle of EU law supremacy. Section 2 of this Act repeals section 4 of EUWA, and section 3 abolishes the principle of EU law supremacy as retained in section 5 of EUWA.

85 The powers in sections 11 and 12 enable secondary legislation to be made by codifying elements of retained EU law (see section 13). This may include codifying rights and obligations that are removed from domestic law via the mechanism set out in subsections (2) to (4) of this section.

86 Section 22(5) provides that the changes that this section makes do not apply in relation to events or acts occurring before the end of 2023. Accordingly, they do not affect legal proceedings brought after the end of 2023 that relate to events or acts which took place before that date.

Assimilation of retained EU law

Section 3: Abolition of Supremacy of EU law

87 This section makes amendments to section 5 of EUWA which applies the principle of the supremacy of EU law in relation to any domestic legislation made on or before 31 December 2020. This section repeals the principle at the end of 2023 in relation to any domestic legislation, whenever made.

88 The supremacy principle in EU law means that EU law has the status of a superior source of law within the legal systems of the EU's member states. Domestic laws must give way to EU law if they are found to be inconsistent with it. Sometimes referred to as the principle of the primacy of EU law, this core rule of EU law was established in the case law of the CJEU, beginning with Case 6/64 *Costa v ENEL* EU:C:1964:66.

89 A number of EU law propositions are founded on the supremacy principle, which have continued to operate through section 5 of EUWA and other provisions insofar as they relate to the relationship with domestic legislation made on or before 31 December 2020, including in particular:

a. the principle of consistent interpretation, requiring that, so far as possible, domestic courts must interpret national legislation consistently with provisions of EU law that they give effect to;

b. the conflict rule requiring domestic legislation to give way to provisions of RDEUL (see glossary), where a consistent interpretation of the two is not possible;

c. the direct effect of rights and obligations contained in provisions of EU law that are not RDEUL, which domestic legislation must give way to in the event of inconsistency, if those rights and obligations are sufficiently clear, precise and unconditional to have direct effect; and

d. the principle that courts should interpret domestic legislation and RDEUL consistently with relevant general principles of EU law.

90 All of these aspects of the principle are addressed in sections 2 to 8 of the Act.

91 In particular, section 3 (1) and (3) effect the repeal of the supremacy principle by replacing subsections (1) to (3) of section 5 of EUWA with new subsections (A1) to (A3).

92 Subsection (A1) ends the principle of supremacy after the end of 2023 in relation to all domestic legislation, whenever made. This has the effect of removing the principle of consistent interpretation in relation to all domestic legislation, and the conflict rule requiring domestic legislation to give way to RDEUL where a consistent interpretation is not possible.

93 Subsection (A2) establishes a new priority rule following the repeal of the supremacy principle, requiring RDEUL to be read and given effect in a way which is compatible with standard domestic legislation and, where the two conflict, for domestic legislation to take priority over RDEUL.

94 Subsection (A3) makes the new priority rule set out in subsection (A2) subject to section 186 of the Data Protection Act 2018 (DPA). Section 186 makes more specific provision as to the relationship of priority between various provisions of data protection legislation concerning data subject's rights, and other prohibitions and restrictions. Section 186 provides that any other enactment or rule of law that seeks to prohibit or restrict the giving of information or withholding of information applies only to the extent that it does not interfere with the obligations and rights in relation to personal data contained in specified provisions of the UK GDPR and DPA 2018. The only restrictions that can exist in relation to those obligations and rights are specified exemptions contained in the UK GDPR and DPA.

95 Subsection (A3) also provides that the new priority rule set out in subsection (A2) is subject to any provision to the contrary made in exercise of the power in section 7(1). That power enables secondary legislation to be made that specifies that domestic legislation, or specified provisions of that legislation, should be read and given effect in a way which is compatible with specified pieces of RDEUL, or specified provisions within that RDEUL, and that the relevant piece or provision of RDEUL should take priority where it conflicts with the relevant piece of domestic legislation.

96 Subsection (3) also: (a) amends section 5(7) of EUWA so that the provisions of section 5 of EUWA, as amended by this Act, remain subject to relevant separation agreement law as defined in section 7C of EUWA. "Relevant separation agreement law" is defined in section 7C(3) of EUWA and includes REUL required to implement the Withdrawal Agreement, EEA-EFTA separation agreement and Swiss citizens' rights agreement; (b) makes a consequential amendment to section 7(5)(a) of EUWA, in respect of its cross-reference to section 5 of EUWA, and (c) repeals paragraph 5(2) of Schedule 1 to EUWA. That paragraph clarifies how the principle of supremacy applies in the context of REUL, and will no longer be relevant following the repeal of the principle of supremacy.

97 Subsection (2) defines in section 5 of EUWA a "domestic enactment" as an enactment, other than one consisting of RDEUL. Following the changes being made by this section therefore, all enactments which are not RDEUL will take priority over RDEUL where they conflict.

98 Section 22(5) provides that the changes given effect by this section do not apply in relation to events or acts occurring before the end of 2023. Accordingly, they do not affect legal proceedings after that date that relate to acts or events which took place before that date.

Section 4: Abolition of general principles of EU law

99 This section amends EUWA, so that general principles of EU law are no longer part of UK law from the end of 2023.

100 The general principles are a part of EU law which the EU institutions and member states must comply with. The general principles are applied by the CJEU and national courts when determining the lawfulness of legislative and administrative measures within the scope of EU law, and they are also an aid to interpretation of EU law. Examples of the general principles include proportionality (Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA* EU:C:2005:741), and protection of fundamental rights (Case 44/79 *Hauer* EU:C:1979:290).

101 Section 6(3) EUWA has provided that general principles of EU law have continued to have effect in domestic law following the UK's exit from the EU, by requiring REUL to be interpreted consistently with them. However, pursuant to paragraph 2 of Schedule 1 to EUWA, general principles developed in CJEU case law after the end of the Transition Period following the UK's exit from the EU do not form part of domestic law. Paragraph 3 of Schedule 1 to EUWA provides that the general principles may not be relied upon in proceedings to disapply or quash any legislation, rule of law or conduct.

102 Section 4 of this Act removes the remaining effects of general principles of EU law in domestic law, which are not already limited by these EUWA provisions. This means that from the end of 2023 our domestic courts will no longer apply these retained principles of interpretation which this Act removes, when they are interpreting and applying REUL (and, after the end of 2023, assimilated law). Instead, they will apply standard domestic principles of interpretation, including rules of interpretation provided for in this Act.

103 Subsection (2) will amend section 5 of EUWA by inserting a new subsection (A4) which ends the effects of general principles of EU law in domestic law from the end of 2023. It will also repeal section 5(5) of EUWA. Section 5(5) provided that fundamental rights and principles contained in general principles of EU law and rights saved by section 4 of EUWA continue to apply in UK law.

104 Subsection (3) makes a consequential amendment to section 6(3) of EUWA so that REUL is no longer required to be interpreted consistently with general principles by the courts. As set out in EUWA, section 6(3) provides that any question as to the meaning of unmodified retained EU law will be determined by the UK courts in accordance with relevant CJEU case law decided before the end of the Transition Period and general principles of EU law. This has meant, for example, taking a purposive approach to interpretation where the meaning of the measure is unclear (i.e. considering the purpose of the law from looking at other relevant materials such as the treaty legal base for a measure, its recitals and preambles, and the travaux preparatoires (working papers) leading to the adoption of the measure). The changes made by section 4 of this Act, mean that after the end of 2023, courts will no longer be bound to interpret assimilated law by such principles.

105 Subsections (4) and (5) make consequential amendments to sections 7 and 21 of EUWA, to omit references to retained general principles of EU law, as they will no longer form part of UK law after the end of 2023.

106 Subsection (6) makes consequential amendments to Schedule 1 to EUWA to remove the restrictions on general principles in paragraphs 2 and 3 which are rendered unnecessary by subsection (2) of this section.

107 Subsection (7) makes consequential amendments to the transitional provisions in paragraph 39 of Schedule 8 to EUWA, to remove the references to paragraphs 2 and 3 of Schedule 1 to EUWA. Schedule 8 contained transitional provisions concerning the effect of the restrictions on general principles in Schedule 1. These are unnecessary as the relevant paragraphs are removed from Schedule 1 to EUWA by subsection (6).

108 Section 22(5) of this Act provides that the changes given effect by this section do not apply in relation to events or acts occurring before the end of 2023. Accordingly, the abolition of general principles of EU law does not affect legal proceedings after the end of 2023 if those proceedings relate to acts or events which took place before the end of 2023.

109 The amendments to sections 5 and 6 of EUWA made by section 4 of this Act are subject to sections 5(7) and 6(6A) of EUWA. This means that the abolition of general principles of EU law remain subject to "relevant separation agreement law", so that these principles will

continue to apply in so far as the application of EU law is required to implement the Withdrawal Agreement, EEA-EFTA separation agreement and Swiss citizens' rights agreement.

Section 5: Assimilated law

110 Section 5 establishes "assimilated law" as a new body of law. At all times after the end of 2023, REUL that remains in force will be known as "assimilated law". Assimilated law will be domestic law which was previously REUL, but which is no longer interpreted in line with the retained EU law principles of interpretation which from the end of 2023 will be removed from domestic law by sections 2 to 4 of the Act. New subsection (1) sets out that retained EU law and related terms (for example, retained direct EU legislation and retained case law), will be known as assimilated law and related terms after the end of 2023 as set out in the table below. Subsection (2) clarifies that the name retained EU law and related terms will continue to apply up until the end of 2023.

At or before the end of 2023	**After the end of 2023**
Retained EU law	Assimilated law
Retained case law	Assimilated case law
Retained direct EU legislation	Assimilated direct legislation
Retained direct minor EU legislation	Assimilated direct minor legislation
Retained direct principal EU legislation	Assimilated direct principal legislation
Retained domestic case law	Assimilated domestic case law
Retained EU case law	Assimilated EU case law
Retained EU obligation	Assimilated obligation
Retained EU law governing the CAP direct payment schemes	Assimilated law governing the CAP direct payment schemes
Retained direct EU CAP legislation	Assimilated direct CAP legislation

111 Subsection (3) highlights that Schedule 2 to this Act, '"Assimilated law": consequential amendments', will make amendments to change references to REUL or related terms in other relevant enactments to assimilated law and related terms

112 Subsection (4) clarifies that the references to retained EU law or related terms set out in the table in subsection (1) of this section are to be read as assimilated law or related terms after the end of 2023.

113 Subsection (5) clarifies that the renaming of retained EU law or related terms to assimilated law or related terms after the end of 2023 does not apply to the titles of enactments or references to those titles.

114 Subsection (6) provides that, by using the power conferred by section 19 of this Act (power to make consequential provision), a Minister of the Crown may:

a. add new entries to the table in subsection (1) of this section to rename related terms of retained EU law to related terms of assimilated law, and add definitions for those things to subsection (7); and

b. change other enactments to reflect changes made by subsection (1) so that references to REUL and related terms, may be changed to assimilated law and related terms. Under section 19 other enactments may also be amended to rename references to REUL as assimilated law, and related terms.

c. Subsection (7) sets out definitions for the terms listed in subsection (1).

Interpretation and effect of retained EU Law

Section 6: Role of courts

115 This section amends section 6 of EUWA and inserts new sections 6A, 6B and 6C in relation to the application of retained case law by domestic courts interpreting and applying REUL.

116 Section 6 modifies section 6 of EUWA as follows. Subsections (2), (3) and (4) insert amended provisions into section 6 of EUWA as regards the test to be applied by higher courts (that is, courts equivalent in authority, or higher than, the Court of Appeal, and their equivalents in Scotland and Northern Ireland) when considering whether to depart from retained EU case law or retained domestic case law. Retained EU case law and retained domestic case law continue to be defined in section 6(7) of EUWA.

117 Subsection (3) establishes a new test to be applied by higher courts when considering whether to depart from retained EU case law, replacing the test in section 6(5) of EUWA. The new test sets out a non-exhaustive list of three factors for the higher court to consider, so that it must (among other things) have regard to:

a. the fact that decisions of a foreign court are not usually binding,

b. any changes of circumstances which are relevant to the retained EU case law, and

c. the extent to which the retained EU case law restricts the proper development of domestic law.

118 These reflect some of the factors which the Court of Appeal in England and Wales took into account in deciding whether to depart from retained EU case law in the case of TuneIn Inc v Warner Music UK Ltd & Anor [2021] EWCA Civ 441.

119 Subsection (4) establishes a new test to be applied by higher courts when considering whether to depart from their own retained domestic case law, by inserting a new paragraph (5ZA) into section 6 of EUWA. This also sets out a non-exhaustive list of three factors for the higher court to consider:

a. The extent to which the retained domestic case law is determined or influenced by retained EU case law from which the court has departed or would depart,

b. Any changes of circumstances which are relevant to the retained domestic case law, and

c. The extent to which the retained domestic case law restricts the proper development of domestic law.

120 This list of factors in relation to retained domestic case law is similar to the list of factors in relation to retained EU case law. They differ on the first factor, as regards the relevance of the decisions of foreign courts as a factor according to whether EU or domestic case law is under consideration. The second and third factors are the same in each test.

121 Subsection (5) repeals the powers in subsections (5A) to (5D) of section 6 of EUWA which are now spent, but which were exercised to make the European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 ("the 2020 Regulations"). These regulations provided that the Court of Appeal and equivalent courts across the UK have the power to depart from retained EU case law, applying the same test as that used by the UK Supreme Court in deciding whether to depart from its own case law. The regulations are now superseded by the amendments made to section 6(4) EUWA by section 6(2). As amended, section 6(4) EUWA provides that the Supreme Court, High Court of Justiciary and "relevant

appeal court" are not bound by retained EU case law (except so far as there is relevant domestic case law modifying or applying the retained EU case law and which is binding on the relevant appeal court). Subsection (6) inserts a new subsection (6B) into section 6 of EUWA with definitions for "compatibility issue", "devolution issue", "relevant appeal court" and "relevant domestic case law", and subsection (7) inserts a definition of "higher court" into section 6(7) of EUWA. The provisions in the Act on the role of the courts maintain the position under section 6 of EUWA and the 2020 Regulations that only courts (in England & Wales, Scotland and Northern Ireland) equivalent in authority, or higher than, the Court of Appeal, have the discretion to depart from retained case law.

122 Section 6(4)(b)(i) of EUWA sets out that the High Court of Justiciary is not bound by retained EU case law when it is sitting as a court of appeal otherwise than in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998). Subsection (2) of section 6 of the Act amends section 6(4)(b)(i), together with section 6(4)(ba) of EUWA and inserts new provisions after section 6(4)(b)(ii) of EUWA. This codifies and clarifies in section 6 that the High Court of Justiciary is not bound by any retained EU case law in these instances, or when it is sitting as a court of appeal in relation to a compatibility issue or devolution issue. This means that the High Court of Justiciary can depart from retained EU case law across the whole of its jurisdiction, where there is no relevant domestic case law which modifies or applies the retained EU case law which is binding on the court. This represents no change from the current position.

123 Section 6 does not disturb section 6(6A) of EUWA, which makes clear that the provisions in section 6 of EUWA about the interpretation of retained EU law are subject to "relevant separation agreement law". Section 7C of EUWA directs courts to interpret that law in accordance with the Withdrawal Agreement, the EEA EFTA separation agreement and the Swiss Citizens' Rights Agreement (so far as they are applicable). Therefore the measures taken by this Act to introduce new tests for the higher courts to follow when considering departure from retained EU case law will also be subject to relevant separation agreement law.

New Section 6A EUWA – References on retained case law by lower courts or tribunals

124 Section 6(8) inserts a new section 6A into EUWA. It establishes a new reference procedure enabling a lower court or tribunal which is bound by retained case law under section 6 of EUWA to refer a point of law to a higher court (which is not so bound) to decide.

125 New section 6A(1) provides that the lower court or tribunal may, at its discretion, refer one or more points of law which arise on retained case law, if they are relevant to the proceedings before it. The court or tribunal must:

a. be bound by the retained case law on the point of law concerned, and

b. consider that the point or points of law are of general public importance.

126 The test of 'general public importance' is similar to that set out in section 12 of the Administration of Justice Act 1969, in relation to 'leapfrog' appeals that may be made directly from the High Court in England and Wales to the Supreme Court.

127 New section 6A(2) provides that references may be initiated by the court or tribunal of its own motion, or following an application by any party to the proceedings.

128 New section 6A(3) provides that a reference must be made to the appropriate appeal court, but must be made to the Supreme Court if it concerns the retained case law of that court. The appeal court is defined in new section 6A(9) as the court listed in subsection (10) to which an appeal would lie in the case.

129 New section 6A(4) and (5) provides that the higher court may accept a validly made reference if, like the lower court or tribunal, it considers that the point of law referred is relevant to the proceedings and is of general public importance.

130 The higher court is not compelled to accept a validly made reference, and has a general discretion to decline references—for instance, on issues which have recently been decided, are currently under consideration, or have no reasonable prospect of success

131 New section 6A(6) provides that, after accepting a reference, the higher court must decide the point(s) of law concerned. The case will then return to the lower court or tribunal, which must follow and apply the decision so far as relevant to the proceedings.

132 New section 6A(7) provides that the decisions on whether or not to make a reference, or to accept one, are decisions for the court or tribunal concerned alone; no appeal may be made against such a decision. New section 6A(8) provides that, where an appeal court has accepted a reference and made a decision on the point(s) of law concerned, an appeal may lie against that decision to the Supreme Court, subject to obtaining permission to appeal.

New section 6B EUWA: References on retained case law by law officers

133 Section 6(8) inserts a new section 6B into EUWA, which establishes a new procedure for a law officer of the UK Government or the devolved administrations to refer a point of retained case law to a higher court.

134 Law officers may exercise the reference power on behalf of their respective Governments in cases where other ministers have a particular view as to the meaning and effect of a relevant piece of REUL. It is expected that law officers and ministers would agree this approach in the usual way, as they would for other legal proceedings that their Government participates in. For example, in a case concerning English legislation in the area of fisheries or agriculture, the Attorney General might consult the relevant Secretary of State on the Government's view of the relative merits of referring a point of law to the higher court. The power will allow the law officers to then bring the point of law before a higher court to consider in light of the new tests for departure from retained case law, for the court to give a decision on the correct interpretation of relevant REUL.

135 The law officers are listed in new section 6B(2) and (8) as the Lord Advocate, the Counsel General for Wales, the Attorney General for Northern Ireland, the Attorney General for England and Wales, the Advocate General for Scotland, and the Advocate General for Northern Ireland.

136 New section 6B(1) provides that the new reference procedure applies where proceedings have concluded in a court or tribunal which was required by section 6 of EUWA to follow retained case law. This applies where:

a. proceedings have been brought and concluded before a lower court or tribunal that was bound by retained case law under section 6 of EUWA,

b. no reference was made by the lower court in the case to a higher court, under new section 6A (as described above), and

c. either there has been no appeal, or any appeal has been concluded or dismissed without it being heard by a higher court.

137 New section 6B(2) provides that a law officer of the UK Government or devolved administrations may refer points of law which arise on retained case law in the proceedings to a higher court. A law officer of a devolved administration may only make a reference on a point of law that relates to the meaning or effect of relevant Scotland, Wales or Northern

Ireland legislation (as the case may be), as defined in new section 6B(8). Under section 6 of EUWA, the higher court is not bound by retained case law, and may decide whether or not to depart from retained case law on the point of law referred.

138 New section 6B(3) requires the reference to be made within six months of the last day on which an appeal in the case could have been made, or within six months of the day on which any appeal was finally dealt with. New section 6B(9) provides that the possibility of an appeal out of time is not relevant for the purpose of calculating this period.

139 New subsection 6B(4) provides that a reference must be made to the appropriate appeal court, but must be made to the Supreme Court if it concerns the retained case law of that court. "Appropriate appeal court" is defined in new section 6A(9). The list of courts set out in section 6A(10) applies in this context.

140 New section 6B(5) requires the higher court to accept a validly made reference.

141 New section 6B(6) provides that the decision of the higher court on the point of law referred has no effect on the outcome of the proceedings which concluded before the lower court or tribunal. However, in accordance with the doctrine of precedent, the decision on the point of law will be binding on lower courts or tribunals in future proceedings where the same point of law arises.

142 New section 6B(7) provides that, where the appropriate appeal court has made a decision on the point(s) of law concerned, an appeal may lie against that decision to the Supreme Court, subject to obtaining permission to appeal.

143 New section 6B(8) defines relevant Scotland, Wales or Northern Ireland legislation for the purpose of references made by a law officer of a devolved administration as:

a. an Act or measure passed by a devolved legislature;

b. subordinate legislation made by a devolved administration;

c. provisions inserted by such an Act, measure or subordinate legislation into any other legislation; or

d. any other provision that:

i. would be within the legislative competence of a devolved legislature if it were contained in an Act or measure passed by that devolved legislature, or

ii. a provision which could be made in subordinate legislation by a devolved administration acting alone.

144 Appeal courts have discretionary case management powers which they may exercise in references under new section 6B. For example, in the event of multiple references from different law officers, a court may choose to join references for a single hearing where appropriate. Or in the event of a reference by one law officer, it may choose to permit an intervention from another law officer or other interested party

New section 6C EUWA: Interventions on retained case law by law officers

145 Section 6(8) inserts a new section 6C into EUWA, which confers on the law officers of the UK Government and devolved administrations a right to intervene in proceedings before a higher court. It applies the same definitions of law officers as new section 6B. New section 6C(1) provides for the right to intervene to apply where a higher court is considering any arguments that the court depart from retained case law.

146 In a similar way to the reference power in new section 6B, law officers may exercise the intervention power on behalf of their respective Governments in cases where other ministers have a particular view as to the meaning and effect of a relevant piece of REUL, and it is expected that law officers and ministers would agree this approach in the usual way.

147 New section 6C(2) and (3) require that the law officers are given notice of such proceedings and, on giving notice to the court, are entitled to be joined as a party to the proceedings. Under new section 6C(3), the intervention rights of law officers of the devolved administrations apply only where the arguments relate to the meaning or effect of relevant Scotland, Wales or Northern Ireland legislation. New section 6C(5) applies the definition of such legislation set out in new section 6B.

148 New section 6C(4) provides that notice of an intention to join the proceedings may be provided to the court by a law officer at any time during the proceedings.

149 Subsection (9) of section 6 adds an entry to the Table in EUWA in section 21(1) (index of defined expressions), to include "Higher court". This reflects the definition of "higher court" inserted into section 6(7) of EUWA by section 6(7) of the Act.

150 Subsection (10) of section 6 inserts a new subsection (10) into section 60A of the Competition Act 1998. Section 60A makes provision permitting courts, tribunals and other authorities to depart from retained case law and principles of EU law when exercising their competition law functions, and sets out the factors to be taken into consideration when doing so. The new subsection (10) provides that the provisions of section 6(2) to (6) of EUWA (as modified by section 6) on courts and tribunals following or departing from retained case law do not apply in place of the more specific provisions in section 60A.

Section 7: Compatibility

151 Subsection (1) provides that a national authority (a UK government or devolved government minister) may make regulations providing that subsection (2) applies to the relationship between –

a. specified standard domestic legislation or specified provisions of any standard domestic legislation, and

b. specified retained direct EU legislation (RDEUL) or specified provisions of any RDEUL.

152 Where subsection (2) applies, it gives priority to RDEUL, so that the specified standard domestic legislation (or specified provisions of this legislation) –

a. must, as far as possible, be read and given effect in a way which is compatible with the specified RDEUL (or specified provisions of this legislation), and

b. is subject to that RDEUL (or those provisions) so far as it is incompatible with it.

153 Where subsection (2) applies, the relationship between standard domestic legislation and RDEUL specified by the new section 5(A2) of EUWA, which is inserted by section 3, does not apply. (That provision gives priority to standard domestic legislation over RDEUL.)

154 Subsection (3) establishes that the provision that can be made by regulations under this section can be made by making modifications to any enactment.

155 Subsection (4) provides that no regulations may be made under this section after 23 June 2026.

156 Subsection (5) defines "domestic enactment" consistently with the meaning it has in section 5 of EUWA (as inserted by section 3(2) of this Act).

Section 8: Incompatibility orders

157 This section inserts a new section 6D into EUWA, making provision as to the remedies which the courts may grant following the repeal of the supremacy principle. These apply in cases where the courts are applying the new priority rule for domestic legislation over RDEUL in section 5(A2) of EUWA inserted by section 3(1) of the Act, or the contrary priority rule applied by secondary legislation made under the power in section 7(1).

158 New section 6D (1) and (2) require a court to make an "incompatibility order" where it concludes that provisions of domestic legislation and RDEUL cannot be interpreted consistently with one another.

159 New section 6D(3) provides that a court may adapt the terms and effect of an incompatibility order according to the case before it. The order may:

a. set out the effect in the case concerned of one provision taking priority over another;

b. delay the coming into force of the order, or

c. remove or limit the effect of the operation of the relevant provision in other ways before the incompatibility order comes into force, for example, where this might give rise to unfairness to individuals or other effects contrary to the public interest.

160 New section 6D(4) allows the court to make an incompatibility order subject to conditions.

161 New section 6D(5) defines "domestic enactment" consistently with its meaning elsewhere in EUWA as provided for by the Act. It also defines "the relevant provision" by reference to section 5(A2)(b) of EUWA and section 7(1) of the Act, which relate to, respectively, the new priority rule (described above) and the power to reverse that priority rule. .

Modification of retained EU law

Section 9: Scope of Powers

162 Section 9 provides for amendments to Schedule 8 of EUWA 2018. Paragraphs 3 to 12 of Schedule 8 modified powers in other statutes to make secondary legislation, with regard to their use to amend retained direct EU legislation (RDEUL) or section 4 EUWA rights.

163 These modifications of other powers are subject to a number of restrictions on their use, which were set out in paragraphs 3 to 12 of Schedule 8 of EUWA 2018. There are currently greater restrictions for amendments to retained direct principal EU legislation (defined in 7(6) of EUWA) and section 4 EUWA rights than for amendments to retained direct minor legislation (also defined in 7(6) of EUWA). Section 9 removes some of these restrictions to ensure all RDEUL and section 4 EUWA rights can be amended using powers to make secondary legislation.

164 Subsection (2) repeals sub-paragraph (1)(b)and sub-paragraph (2) in paragraph 3 of EUWA 2018. This, together with subsection (4) below, removes the restriction that some existing powers may only be used to amend retained direct principal EU legislation or section 4 EUWA rights if they are also capable of amending domestic primary legislation.

165 Subsection (3) makes amendments to paragraph 4 of Schedule 8 to EUWA. It provides that the parliamentary scrutiny procedure applied to the use of an existing powers amending RDEUL or section 4 EUWA rights, is the same as the procedure applying to the use of that power

when amending domestic secondary legislation. This applies to scrutiny procedures for secondary legislation in Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly. This removes the restriction that, where an existing power is exercised to amend retained direct principal EU legislation or section 4 EUWA rights, the scrutiny procedure that applies to amending domestic primary legislation must be applied.

166 Subsection (4) repeals paragraphs 5 and 6 of Schedule 8 to EUWA. This, together with subsection (2), removes the restriction that powers not capable of amending primary legislation may only be used to amend retained direct minor EU legislation.

167 Subsections (5) remove paragraphs 10 and 11 of Schedule 8 to EUWA.

168 Subsection (6) replaces these with new paragraphs 11A and 11B. These modify how powers conferred in legislation passed after EUWA may be used. Together with the removal of paragraphs 10 and 11 in Schedule 8 EUWA above- these changes remove certain provisions about how new powers can amend RDEUL They do however contain the restriction that power in retained direct minor EU legislation can only be used to modify retained direct principal EU legislation in ways which are consistent with retained direct principal legislation.

169 Subsection (7) amends paragraph 12 of Schedule 8 to EUWA. It provides that the replacement of paragraph 11 with paragraph 11A in Schedule 8 to EUWA, affected by subsection (7), does not affect the question of whether the context of a power permits or requires it to be read as capable of amending RDEUL or section 4 EUWA rights.

170 Subsections (8) and (9) introduce Schedule 2 to the Act, which makes amendments related to the exercise of certain powers to make secondary legislation amending RDEUL.

Section 10: Procedural requirements

171 Section 10 repeals the parliamentary scrutiny and explanatory statement requirements set out in paragraphs 13 to 15 of Schedule 8 to EUWA. These scrutiny requirements applied to the amendment or revocation of "subordinate legislation made under section 2(2) of the European Communities Act 1972".

172 Subsection (1) repeals paragraphs 13 to 15 of Schedule 8 to EUWA. This means that it will no longer be a requirement to:

a. follow the affirmative procedure in relation to certain statutory instruments made on or after IP completion day, which would otherwise be subject to a lesser parliamentary procedure (pursuant to paragraph 13);

b. follow an enhanced scrutiny procedure in relation to certain statutory instruments made on or after IP completion day (pursuant to paragraph 14); and

c. make certain explanatory statements (pursuant to paragraph 15).

173 Subsection (2) makes amendments to EUWA which are consequential on the repeals in sub-paragraph (1).

174 Subsection (3) makes transitional provision relating to the repeals in sub-paragraph (1). It provides for what happens to existing statutory instruments and existing draft statutory instruments that were already laid subject to the procedural requirements of paragraphs 13 to 15 of Schedule 8 when these provisions are repealed.

Powers relating to retained EU law

Section 11: Power to restate retained EU law

175 Section 11 establishes the power to restate provisions of "secondary REUL", (i.e. including the codification of directly effective rights etc. under section 4 of EUWA, retained case law and general principles). Once restated, this legislation will no longer be REUL, and retained general principles, retained case law or the principle of supremacy will not apply. The power does, however, enable the effects of those things to be reproduced. This will enable the same policy outcome to be achieved as the policy outcome produced by the REUL being restated. This power will be capable of making limited amendments to both domestic primary and secondary legislation.

176 Subsection (1) sets out that a relevant national authority (a UK government or devolved government minister) may, by regulations, restate any "secondary retained EU law", defined by subsection (2) as any retained EU law that is not primary legislation, or any retained EU law that is primary legislation, but only to the extent that it has been amended by subordinate legislation. This means that amendments made to primary legislation by subordinate legislation may be restated under the power in subsection (1).

177 Section 11 is supplemented by section 13, which establishes further general parameters of what a restatement can do and how (see below).

178 Subsection (3) states that any provision made by this power will no longer be REUL. Amongst other things, this means that section 6 of EUWA (application of retained case law) will no longer apply.

179 Subsections (4) and (5) establish that the interpretive effects associated with REUL will cease to have effect for the purposes of interpreting restatement provisions. In particular, the principle of supremacy will cease to have effect, retained general principles will cease to be read into the law, and anything that is REUL by virtue of section 4 (retained directly effective rights) or 6(3) or (6) of EUWA (application of retained case law) will cease to have effect.

180 Subsection (6) establishes that a relevant authority may, as part of any restatement, reproduce into domestic legislation an effect that is equivalent to that produced by those interpretive effects that have ceased to apply under subsections (4) and (5). However, the power cannot reproduce the principle of supremacy or general principles per se, but only particular effects derived from them (this is set out in section 13 below). This enables relevant authorities to achieve the same policy outcome as the REUL being restated, where considered appropriate.

181 Subsection (7) establishes that this power expires at the end of 31 December 2023.

Section 12: Power to restate assimilated law or reproduce sunsetted EU rights, powers, liabilities etc

182 Section 12 operates in a similar way to section 11, and is intended to have the same scope as section 11 (i.e. restate or reproduce the same things). However, this section will operate on assimilated law after 2023, when section 2 to 5 have taken effect.

183 Section 12 establishes a power to restate provisions of "secondary assimilated law". Once an instrument is restated by the powers in section 12 it will no longer be classed as assimilated law and any residual interpretive effects of section 6 of EUWA (application of retained case law) will be disapplied for the purposes of any restatement.

184 Other interpretive principles - such as the application of the principle of supremacy, retained general principles and directly effective EU rights under section 4 of EUWA - will have been disapplied under sections 2 to 4 of this Act at the end of 2023. Nonetheless, the power enables the individual "effects" of those things to be reproduced. The purpose of this is to enable the same policy or practical outcome to be achieved as the law would have achieved had such interpretive effects continued to apply. This power will be capable of making limited amendments to both domestic primary and secondary legislation.

185 Subsection (1) sets out that a relevant national authority (a Minister of the Crown or a devolved authority) may, by regulations, restate any "secondary assimilated law". This will apply to the body of law that is referred to as "assimilated law" after 2023 (see section 5). Subsection (2) sets out the definition of secondary assimilated law. In consequence, the power to restate is limited to restating assimilated law that is not primary legislation, or assimilated law that is primary legislation, but only to the extent that it has been amended by subordinate legislation.

186 Subsection (3) states that any provision made by this power will no longer be assimilated law. Amongst other things, this ensures that section 6 of EUWA will no longer apply.

187 Subsections (4) establishes that the application of retained case law by virtue of 6(3) or (6) of EUWA, will not have effect for the purposes of interpreting restatement provisions. Without this provision, any restatement may be interpreted in line with retained case law to the extent set out in section 6 of EUWA (i.e. to the extent that the assimilated law being restated was).

188 Subsection (5) establishes that a relevant authority may, as part of any restatement, reproduce into domestic legislation an effect that is equivalent to that produced by those interpretive effects that ceased to apply under subsections (4). In other words, the effects of the retained case law may be reproduced. This enables relevant authorities to achieve the same policy outcome produced by the assimilated law that is being restated, where considered appropriate.

189 Subsection (6) and (7), enables a relevant national authority as part of any restatement, where considered appropriate, to reproduce an effect equivalent to the interpretive effects of supremacy, general principles or anything that was REUL by virtue of section 4 (retained directly effective rights). This applies to those interpretive effects which are disapplied by sections 2 to 4 of this Act at the end of 2023. This is limited only to reproducing their "effects" and not reproducing such principles or rights themselves (see section 13(4) to (6)).

190 Whereas subsections (6) and (7) enable the reproduction of interpretive effects as part of a "restatement", subsection (8) allows the reproduction of the effects of retained general principles and directly effective rights under section 4 of EUWA (as they would have applied were it not for sections 2 to 4 of this Act) on their own. This reflects the ability in section 11 to codify these aspects of REUL. This enables the effects of retained general principles and directly effective rights to be rewritten back into legislation to which such things were relevant before the end of 2023. That includes reproducing the effects of general principles or section 4 rights etc. into relevant primary legislation. The effects of supremacy may not be capable of being reproduced.

191 Subsection (9) establishes that this power expires on 23 June 2026.

Section 13: Powers to restate: general

192 Section 13 establishes the general parameters of what a restatement under sections 11 and 12 can do and how it should be conducted.

193 Subsection (2) establishes that a restatement can use different words or concepts from those used in the secondary retained EU law that is being restated.

194 Subsection (3) sets out that the relevant national authority may make changes which it considers appropriate for one or more of the below purposes -

a. resolving ambiguities;

b. removing doubts or anomalies; and

c. facilitating improvement in the clarity or accessibility of the law.

195 Subsection (4) places limitations on the powers, preventing a broader reinstatement of the principle of supremacy. So far as sections 11 and 12 may reproduce the effects of supremacy as part of a restatement, subsection (4) establishes that provisions made by regulations under sections 11 and 12 may include provisions about the relationship between the restated legislation and any other specified relevant enactment, but it may not, however, specify the relationship between the restated legislation and *all* enactments. Subsection (9) ensures that this ability to set out the relationship between a relevant enactment and a restatement does not overlap with the power in section 7. Where an authority wishes to set out the relationship between RDEUL and a restatement that is not contained in RDEUL, then the power under section 7 will be available to set out the relationship between the RDEUL and the restatement.

196 Subsection (5) clarifies that the powers under section 11 or 12 may not be used to codify or reproduce the principle of supremacy of EU law or a retained general principle of EU law.

197 Subsection (6) establishes that nothing in subsection (5) prevents regulations under section 11 or 12 from codifying or reproducing for a particular enactment an effect that is equivalent to an effect which is produced by virtue of the principle of supremacy of EU law or retained general principles of EU law, or an effect that would be produced were it not for sections 3 to 5 in this Act. Subsection (6) also outlines that this also applies where codifying and reproducing anything which is or was retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018.

198 Subsection (7) establishes that the provision that can be made by regulations under this section can be made by making modifications to any enactment. Whilst only secondary REUL or secondary assimilated law may be restated under the respective powers in sections 11 and 12, this subsection will allow the restatement to be made in primary legislation, for example. As set out above, that enables the codification or reproduction of case law or general principles to sit alongside related primary legislation, or for the consolidation of any REUL/assimilated law to be placed in primary legislation if appropriate.

199 Subsection (8) clarifies that the restatements under sections 11 and 12 may maintain a particular policy effect by express provision or otherwise.

200 Subsection (10) clarifies that references to "retained general principles of EU law" in subsections (5) and (6) have the same meaning as that set out in sections 11 or 12 of this Act.

201 Subsection (11) clarifies that in section 13 a reference to "restatement" (a) in relation to section 11, has the same meaning as in that section, and (b) in relation to section 12, has the same meaning as in that section but also includes reproduction. Amongst other things this ensures that "restatement" also includes codification.

Section 14: Powers to revoke or replace

202 Section 14 establishes the powers to revoke or replace secondary retained EU law (or assimilated secondary law after the end of 2023), and the parameters in which this can be conducted. The powers are constrained to revocation or replacement law that a relevant national authority considers does not add to the overall regulatory burden.

203 Subsections (1) to (3) set out the ways in which a relevant national authority (a Minister of the Crown or devolved authority) may use the powers to revoke or replace secondary retained EU law. "Secondary retained EU law" has the same meaning as that set out in section 11.

204 Subsection (1) sets out that a relevant national authority may revoke any secondary retained EU law without replacing it with any alternative domestic legislation.

205 Subsection (2) provides that a relevant national authority may revoke any secondary retained EU law and replace it with a provision that is considered by the relevant national authority to be appropriate and achieves the same or similar objectives.

206 Subsection (3) states that a relevant national authority may revoke any secondary retained EU law and make an alternative provision that they consider is appropriate.

207 Subsection (4) states that regulations under subsection (2) or (3) –

a. may confer a power to make subordinate legislation that corresponds or is similar to a power to make subordinate legislation conferred by secondary retained EU law that is revoked by the regulations (and may not otherwise confer a power to make subordinate legislation);

b. subject to that, may confer functions (including discretions) on any person;

c. may create a criminal offence that corresponds or is similar to a criminal offence that was created by the secondary retained EU law that is revoked by the regulations, and may not otherwise create any criminal offence;

d. may provide for the imposition of monetary penalties in cases that correspond or are similar to cases in which secondary retained EU law revoked by the regulations enables monetary penalties to be imposed, and may not otherwise impose monetary penalties;

e. may not provide for the charging of fees;

f. may not –

i. impose taxation; or

ii. establish a public authority.

208 Subsection (5) sets out that no provision may be made under this section in relation to a particular subject area unless the relevant national authority considers that the overall effect of the changes made by it under this section, including those changes made previously, do not increase the regulatory burden on that particular subject area. This means that the aggregate regulatory burden cannot be added to.

209 Subsection (6) sets out that for the purposes of subsection (5), the creation of a voluntary scheme is not to be regarded as increasing the regulatory burden.

210 Subsection (7) sets out that a provision can be made under this section by making modifications to any secondary retained EU law.

211 Subsection (8) specifies that any provision made by this power will not be retained EU law. Amongst other things, this means that section 6 of EUWA will no longer apply (i.e. the application of retained EU case law).

212 Subsection (9) states that no regulations can be made under this power after 23 June 2026.

213 Subsection (10) sets out a non-exhaustive list of things that would be considered a "burden" for the purposes of an authority's consideration as to whether the exercise of the powers under this section might add to the overall regulatory burden in any particular subject area. This includes, among other things, any of the following considerations:

a. a financial cost;

b. an administrative inconvenience;

c. an obstacle to trade or innovation;

d. an obstacle to efficiency, productivity or profitability;

e. a sanction (criminal or otherwise) which affects the carrying out of any lawful activity.

214 Subsection (10) also sets out that for the purpose of this section "revoke"-

a. includes repeal, and

b. in relation to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, means that it is not recognised or available in domestic law and, accordingly, is therefore not to be enforced, allowed or followed.

215 Subsection (10) further states that references to "secondary retained EU law" in this section should be read after the end of 2023 as references to secondary assimilated law. This means that the revoke or replace powers will be able to operate after 2023 on secondary assimilated law up to 23 June 2026.

216 Subsection (11) sets out that in subsection (8) the reference to retained EU law is to be read after the end of 2023 as a reference to assimilated law (i.e. so any provisions made after 2023 will not be assimilated law).

Section 15: Power to update

217 Section 15(1) establishes that a relevant national authority (a Minister of the Crown or devolved authority) may make regulations to modify any secondary REUL or any provision made under sections 11, 12 or 14 of this Act, as considered appropriate, in order to take account of –

a. changes in technology, or

b. developments in scientific understanding

218 Section 16(2) states that the reference to secondary REUL in subsection (1) is to be read as a reference to secondary assimilated law after the end of 2023. This means the power is capable of "updating" assimilated law after 2023.

Section 16: Power to remove or reduce burdens

219 This section amends Part 1 of the Legislative and Regulatory Reform Act 2006 (LRRA) to allow Legislative Reform Orders (LROs) to be used to amend any retained direct EU legislation (RDEUL).

220 Subsection (2) inserts a new paragraph into section 1(6) of the LRRA to amend the definition of "legislation" in the LRRA to explicitly include "any retained direct EU legislation". This enables the use of LROs to reform RDEUL.

221 Subsection (3) inserts a new subsection to section 12 of the LRRA. This subsection amends the LRRA to disapply the procedural requirements in paragraph 4 of Schedule 8 to the European Union (Withdrawal) Act 2018 for existing powers to create subordinate legislation (including LROs) that may operate on RDEUL or REUL by virtue of section 4. This disapplies the requirement for relevant LROs to be subject to the same scrutiny procedure before Parliament as for amending primary legislation.

222 The relevant LROs would still be required to follow the standard procedure, including consultation, committee reports and would be subject to either the negative, affirmative or super affirmative resolution procedure (with both negative and affirmative subject to scrutiny route being increased) as set out in the LRRA.

Section 17: Retained EU law dashboard and report

223 This section imposes a duty to report on retained EU law reform.

224 Subsection (1) places an obligation on the Secretary of State to update the retained EU law dashboard and publish and lay before Parliament a report on the revocation and reform of retained EU law at set intervals of time known as "reporting periods".

225 Subsections (2) and (3) specify that each report must:

a. summarise data on the retained EU law dashboard,

b. set out progress made in revoking and reforming retained EU law during the relevant reporting period, and

c. detail the Government's plans for revocation and reform of retained EU law in future reporting periods, including a list of provisions of retained EU law which His Majesty's Government intends to revoke or reform.

226 The dashboard must be updated and report laid within 30 days after the end of each reporting period.

227 Subsections (4) and (5) define each of the reporting periods. The first report would cover the period from Royal Assent to 23 December 2023. Further reports would cover each subsequent period of 6 months. The final report would cover the period of 6 months from 24 December 2025 to 23 June 2026, to align with the expiry of the powers conferred by section 12 (power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities, etc) and section 14 (powers to revoke or replace).

228 Subsection (6) sets out that, should the Secretary of State fail to meet the requirements in subsection (1), then they must explain why in a written statement which they publish and lay before Parliament.

229 Subsection (7) defines "retained EU law dashboard" as the database of retained EU law maintained and made publicly available by the Secretary of State. It also defines "revoke" consistently with the definition at section 14.

230 Subsection (8) clarifies that "reform" of retained EU law, in subsection (2), includes its replacement.

231 Subsection (9) clarifies that the final report should not include details of the Government's plans to revoke and reform retained EU law reform in future reporting periods (as there will be no further reporting periods).

Business Impact Target

Section 18: Abolition of Business Impact Target

232 Section 18 amends multiple sections of the Small Business, Enterprise and Employment Act 2015 (SBEE Act) in order to repeal the Business Impact Target.

233 As set out in subsection (1), this amendment repeals sections 21 to 27 of the SBEE Act. The impact of this change will be to abolish the Government duty to publish the annual BIT report.

234 Subsection (2) covers minor and consequential amendments including:

a. moves relevant definitions from section 27 of the SBEE Act into subsection 29(5);

b. replaces the definition of undertaking in 33(6) using the amendment in subsection (2)(a);

c. removing BIT previously contained in sections 21 to 27 of the SBEE from the commencement provisions of other acts.

Final provisions

Section 19: Consequential Provision

235 Section 19 provides that a Minister of the Crown or any of the devolved authorities can make provision considered appropriate as a consequence of the provisions of the Act. By virtue of subsection (2) the power can be used to make consequential amendments to any enactments including to primary legislation and the provisions of the Act.

Section 20: Regulations: general

236 This section makes general provision about regulations that may be made under delegated powers conferred by the Act.

237 Subsection (1) provides that powers under this Act may be used to make different provision for different purposes or areas, and may also make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision modifying any enactment, including the provisions of this Act).

238 Subsections (2) and (3) introduce Schedules 2 and 3, which make provision on the exercise of powers by devolved authorities and on procedures for making regulations, respectively.

239 Subsection (4) clarifies that a prohibition in the Act on making regulations after a particular time does not affect the continuation in force of regulations made before that time. For example, regulations made under the power to restate retained EU law under section 11 may only be made before the end of 2023. However, any regulations made under that power will continue to operate after the end of 2023.

240 Subsection (5) disapplies section 28 of the Small Business, Enterprise and Employment Act 2015 in relation to any power to make regulations under this Act. Section 28 provided duties upon Ministers of the Crown to make provision for the review of regulatory provisions under regulations.

Section 21: Interpretation

241 This section sets out the meaning of terms used throughout the Act.

242 Subsection (2) sets out that in this Act references to an instrument made under an Act or under any retained direct EU legislation include any Order in Council, order, rules, regulations, scheme, warrant or byelaw made under an Act or any retained direct EU law.

243 Subsection (3) sets out that in this Act any references to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2019 includes references to any modifications, made on or after IP completion day, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.

Section 22: Commencement, transitional and savings

244 Subsection (1) sets out the sections which come into force on Royal Assent. They are sections 1 and 2 on the sunset of retained EU law; sections 5(1), (2) and (4) to (7) on assimilated law; section 7 on compatibility; sections 9 to 17 and Schedule 3 on the modification of retained EU law and the powers relating to retained EU law or assimilated law; and the final provisions in sections 19 to 23 and Schedules 4 and 5 (which include provision relating to the making of regulations under the Act).

245 Subsection (2) sets out that section 18 on the Business Impact Target comes into force two months after Royal Assent of the Act. In respect of all other provisions, subsection (3) allows a Minister of the Crown to make regulations setting the days such provisions come into force.

246 Subsection (4) allows a Minister of the Crown to make transitional, transitory or saving provisions as the Minister considers appropriate in connection with-

a. any provision in this Act coming into force,

b. the revocation of anything by section 1 (i.e. the revocation of the legislation listed in Schedule 1), or

c. anything ceasing to be recognised or available in domestic law (and, accordingly, ceasing to be enforced, allowed, or followed) as a result of section 2.

247 Subsection (5) and (6) are saving provisions that provide that section 2 to 4 (assimilation of retained EU law) and the changes made by Schedule 2 ("Assimilated law": consequential amendments) do not apply in relation to anything occurring before the end of 2023. The principle of supremacy, retained general principles and the references to "retained EU law" etc. will continue to apply to things occurring before that date, and to any legal proceedings relating to them after that date.

Section 23: Extent and short title

248 This section confirms the extent of this legislation.

249 Subsection (1) provides that, subject to subsection (2), the Act extends to England and Wales, Scotland and Northern Ireland. The Act therefore extends to the UK and not beyond.

250 Subsection (2) provides that any amendments, repeals or revocations by the Act only have the same extent as the legislation which they are acting on. If, for example, the Act amends an enactment that extends only to England and Wales, the amendment will also only extend to England and Wales.

251 Subsection (3) states that the short title of the legislation is the Retained EU Law (Revocation and Reform) Act 2023.

Schedules

Schedule 1: Sunset of Subordinate Legislation and Retained Direct EU Legislation

252 This Schedule contains the list of subordinate legislation and retained direct EU legislation to be revoked at the end of 31 December 2023 by virtue of, and subject to the parameters of, section 1.

253 As per section 1 of this Act, the legislation listed in this Schedule will be revoked only to the extent stated in this Schedule. Part 1 sets out subordinate legislation that will be revoked and part 2 sets out retained direct EU legislation that will be revoked.

254 An explanation of what each piece of subordinate legislation and retained direct EU legislation listed does, and why it is being revoked, can be found on gov.uk here: https://www.gov.uk/government/publications/schedule-of-retained-eu-law

Schedule 2: "Assimilated Law": Consequential Amendments

Interpretation Act (Northern Ireland) 1954

255 Paragraph 1 makes consequential amendments to the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms). Paragraph 1 also updates the names of defined terms in section 44A to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term "retained EU law" is updated so that it is replaced with "assimilated law".

Interpretation Act 1978

256 Paragraph 2 makes consequential amendments to the Interpretation Act 1978 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms). Paragraph 2 also updates the names of defined terms in Schedule 1 to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term "retained direct EU instrument" is updated so that it is replaced with "assimilated direct instrument".

Scotland Act 1998

257 Paragraph 3 makes consequential amendments to the Scotland Act 1998 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms).

Northern Ireland Act 1998

258 Paragraph 4 makes consequential amendments to the Northern Ireland Act 1998 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms).

Government of Wales Act 2006

259 Paragraph 5 makes consequential amendments to the Government of Wales Act 2006 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms).

Legislative and Regulatory Reform Act 2006

260 Paragraph 6 makes consequential amendments to the Legislative and Regulatory Reform Act 2006 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms).

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

261 Paragraph 7 makes consequential amendments to the Interpretation and Legislative Reform (Scotland) Act 2010 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms). Paragraph 7 also updates the names of defined terms in Schedule 1 to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term "retained direct principal EU legislation" is updated so that it is replaced with "assimilated direct principal legislation".

European Union (Withdrawal) Act 2018

262 Paragraph 8 makes consequential amendments to the European Union (Withdrawal) Act 2018 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms) to reflect the changes made by section 5 to this Act.

263 Paragraph 8, subparagraph (3)(e) also updates the names of defined terms in section 6 (interpretation of retained EU law) to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term "retained case law" is replaced with "assimilated case law".

264 Paragraph 8, subparagraph (9) also updates the names of defined terms in section 20

265 ('Interpretation') to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term "retained direct EU legislation" is updated so that it is replaced with "assimilated direct legislation".

Legislation (Wales) Act 2019 (anaw 4)

266 Paragraph 9 makes consequential amendments to the Legislation (Wales) Act 2019 (anaw 4) to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms). Paragraph 9 also updates the names of defined terms in Schedule 1 of the 2019 Act to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term "retained EU obligation" is updated so that it is replaced with "assimilated obligation".

Direct Payments to Farmers (Legislative Continuity) Act 2020

267 Paragraph 10 makes consequential amendments to the Direct Payments to Farmers (Legislative Continuity) Act 2020 to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms). Paragraph 10 also updates the names of defined terms in Section 8 to reflect the updated terms set out in the right hand column of the table at section 5(1) of this Act. For example, the name of the defined term for "retained direct EU CAP legislation" for "assimilated direct cap legislation".

This Act

268 Paragraph 11 makes consequential amendments to this Act to replace references to "retained EU law" (and related terms) with "assimilated law" (and related terms) at the end of 2023. This is to reflect the changes made by section 5, which establishes "assimilated law" as a new body of law and provides that after 2023, references to "retained EU law" and related terms are to be known as "assimilated law"and related terms. This ensures that provisions such as those amended by paragraph 11 of Schedule 2 continue to operate on assimilated law after the end of 2023.

Schedule 3: Amendment of Certain Retained EU Law

Part 1 - Change of parliamentary procedure

269 Part 1 of Schedule 3 provides for amendments that alter parliamentary scrutiny procedure for certain powers. These are powers to make secondary legislation that were conferred by EUWA, or in other statutes after EUWA was passed, and which may be used to amend retained direct EU legislation (RDEUL) and Section 4 EUWA rights. The amendments in Part 1 of Schedule 3 reflect the removal of restrictions on such powers that are made by section 9 of this Act. In particular, they remove restrictions requiring the use of the affirmative parliamentary scrutiny procedure where powers are exercised to amend retained direct principal EU legislation or section 4 EUWA rights. The powers amended by Part 1 Schedule 3 are contained in the following legislation:

a. Environmental Protection Act 1990,

b. Waste and Contaminated Land (Northern Ireland) Order 1997,

c. European Union (Withdrawal) Act 2018,

d. European Union (Withdrawal Agreement) Act 2020,

e. European Union (Future Relationship) Act 2020,

f. Financial Services Act 2021,

g. Environment Act 2021,

h. Public Service Pensions and Judicial Offices Act 2022,

i. Professional Qualifications Act 2022,

j. Subsidy Control Act 2022,

k. Building Safety Act 2022, and

l. Nationality and Borders Act 2022.

Part 2 - Consequential amendments

270 Part 2 of Schedule 3 makes consequential amendments to section 7 of EUWA and to the Direct Payments to Farmers (Legislative Continuity) Act 2020. The amendments modify references to the provisions of Schedule 8 to EUWA that are amended by section 9 of this Act..

Schedule 4 - Regulations: Restrictions on Powers of Devolved Authorities

Introductory

271 Paragraph 1 sets out that this Schedule applies to regulations under this Act where the power to make the regulations is conferred on a relevant national authority (i.e. which includes devolved authorities) - power to preserve (section 1), compatibility power (section 8), powers to restate (section 11 and 12), powers to revoke or replace (section 14), the power to update (section 15), consequential power (section 19), and the power to make transitional, transitory or savings provision (section 22).

No power to make provision outside devolved competence

272 Paragraph 2(1) provides that where a devolved authority is acting alone under a power conferred in the Act, it may only do so if making such provision that is within its devolved competence. Paragraphs 2(2) to 2(4) set out when provisions would be within the devolved competence of Scotland, Wales and Northern Ireland respectively.

Requirement for consent where it would otherwise be required

273 Paragraph 3(1) provides that consent from a Minister of the Crown will be required before any provision is made by Welsh Ministers acting alone where the provision would require the consent of a Minister of the Crown.

274 Paragraph 3(2) sets out that consent from the Secretary of State will be required before any provision is made in regulations by a Northern Ireland department acting alone where that provision would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

275 Paragraph 3(3) sets out that sub-paragraph (1) or (2) does not apply if the provision could be contained in subordinate legislation made without using the powers in this Act by the Welsh Ministers or a Northern Ireland devolved authority acting alone, and no consent would be required in that case.

276 Paragraph 3(4) sets out that consent must be sought from a Minister of the Crown before any provision is made by a devolved authority acting alone where that provision would require consent from a Minister of the Crown if it were contained in –

a. subordinate legislation made other than using the powers under in this Act by the devolved authority, or

b. subordinate legislation not falling within paragraph (a) and made other than using the powers in this Act by the First Minister or Lord Advocate of Scotland or a Northern Ireland devolved authority of Northern Ireland acting alone.

277 Paragraph 3(5) sets out that sub-paragraph (4) does not apply if the provision could be contained within an Act of the Scottish Parliament, Senedd Cymru or of the Northern Ireland Assembly; or different subordinate legislation referenced in sub-paragraph 4(a) or 4(b) and of a devolved authority acting alone or another person acting alone, and where no consent would be required in that instance.

Requirement for joint exercise where it would otherwise be required

278 Paragraph 4 provides for each of the devolved authorities that that no regulations may be made by the devolved authority acting alone where they contain provision which relates to a matter where a power to make subordinate legislation other than using the powers in this Act is exercisable by a devolved authority acting jointly with a Minister of the Crown, unless provision is made jointly to that extent. Paragraph 4(4) sets out that sub-paragraphs (1), (2) or (3) do not apply if the provision could be contained in –

a. an Act of the Scottish Parliament, Senedd Cymru or of the Northern Ireland Assembly where consent from a Minister of the Crown is not required, or

b. different subordinate legislation made other than by using the powers in this Act by any of the devolved authorities where they are acting alone.

Requirement for consultation where it would otherwise be required

279 Paragraph 5(1) to 5(3) sets out for each of the devolved authorities that no regulations to which this Schedule applies may be made by a devolved authority acting alone so far as they contain provisions which would require consultation with a Minister of the Crown. This does not apply where the regulations are, to that extent, made after consulting with the Minister of the Crown.

280 Paragraph 5(5) states that sub-paragraphs (2) to (4) do not apply if the provision could be contained in an Act of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, and consent or consultation with a Minister of the Crown would not be required in that instance.

281 Paragraph 5(6) states that sub-paragraphs (2) to (4) do not apply if –

a. the provision could be contained in different subordinate legislation other than by using powers under this Act by the devolved authorities acting alone, and

b. consent or consultation with a Minister of the Crown would not be required in that instance.

Schedule 5: Regulations - Procedure

Part 1: General

Making of regulations by statutory instrument etc

282 Paragraph 1(1) sets out that a power to make regulations under this Act-

a. where it is exercised by a Minister of the Crown acting alone, the Welsh Ministers acting alone, or by a Minister of the Crown and a devolved authority acting jointly, is exercisable by statutory instrument;

b. where it is exercisable by a Northern Ireland department (other than where acting jointly with a Minister of the Crown) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

283 Paragraph 1(2) sets out that section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 should be referred to for regulations made under this Act by the Scottish Ministers.

Combining provisions

284 Paragraph 2 allows for regulations under this Act subject to the draft affirmative procedure to be combined with regulations made under other powers in this Act or other enactments that are not subject to that procedure. Where regulations have been combined in this way the statutory instrument will be subject to the draft affirmative procedure.

285 Paragraph 2(1) clarifies that sub-paragraph (2) applies to any statutory instrument containing regulations under this Act which is subject to the draft affirmative procedure.

286 Paragraph 2(2) sets out that the statutory instrument may also include regulations under this Act or other enactments which are made by a statutory instrument that is not subject to the draft affirmative procedure, irrespective of whether it is subject to any other procedure before Parliament.

287 Paragraph 2(3) establishes that where regulations that are referenced in sub-paragraph (2) are included, the statutory instrument is subject to the draft affirmative procedure.

288 Paragraph 2(4) sets out that sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which are subject to a procedure before the Senedd Cymru in the same way they apply to a statutory instrument containing regulations under this Act which are subject to a procedure before Parliament.

289 Paragraph 2(5) sets out that sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument, but as though references to Parliament were references to the Northern Ireland Assembly.

290 Paragraph 2(6) sets out that sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which are subject to a procedure before a devolved legislature and Parliament in the same way that they apply to a statutory instrument containing regulations under this Act which are subject to a procedure before Parliament, but as though references to Parliament were references to Parliament and the devolved legislature.

291 Paragraph 2(7) clarifies that the term "devolved legislature" in sub-paragraph (6) means the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

292 Paragraph 2(8) establishes that nothing in paragraph 2 prevents the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act.

Hybrid Instruments

293 Paragraph 3 provides that if an instrument, or draft instrument, that contains regulations under this Act would otherwise be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it should proceed in that House as if it were not a hybrid instrument.

Part 2: Powers of Relevant National Authority: Separate Exercise

Introductory

294 Paragraph 4 sets out that this Part of Schedule 5 applies to regulations under this Act (save those made under section 22(4), relating to powers to make savings, transitional and transitory provisions) where –

a. the power to make the regulations is conferred on a relevant national authority (i.e. a Minister of the Crown and devolved authorities), and

b. the regulations are made by one relevant national authority acting alone.

Separate exercise by a Minister of the Crown

295 Paragraph 5(1) sets out that a Minister of the Crown may not make a statutory instrument containing regulations to which this Part of this Schedule applies and that fall within sub-paragraph (2) unless a draft of the instrument has been laid and approved by both Houses of Parliament (i.e. is subject to the draft affirmative procedure).

296 Paragraph 7(2) sets out that the regulations falling within this sub-paragraph - and therefore subject to the draft affirmative procedure - are:

a. regulations under section 1 (power to disapply the sunset)

b. regulations under section 7 (compatibility power) which amend, repeal or revoke primary legislation;

c. regulations under section 11 (power to restate retained EU law) and section 12 (power to restate assimilated law or reproduce sunsetted EU rights, powers, liabilities etc) which amend, repeal or revoke primary legislation;

d. regulations under section 14(2) (power to revoke and replace REUL with provision achieving same or similar objectives) which confer a power to make subordinate legislation or create a criminal offence;

e. regulations under section 14(3) (power to revoke and replace REUL with any alternative provision); and

f. regulations under section 19 (power to make consequential provision) which amend or repeal primary legislation.

297 Paragraphs 5(3) and (4) provide that the following regulations made by a Minister of the Crown acting alone may be made subject to annulment by either House of Parliament (the negative procedure)-

a. regulations under section 7 (compatibility power) that does not amend, repeal or revoke primary legislation;

b. regulations under section 15 (power to update);

c. regulations under section 19 (power to make consequential amendment) that does not amend, repeal or revoke primary legislation.

298 Paragraph 5(5) sets out that a statutory instrument made by a Minister of the Crown containing regulations to which this Part of Schedule 5 applies and to which neither sub-paragraphs (1) nor sub-paragraphs (3) applies is subject to either the draft affirmative or the negative procedure. In effect, a Minister has a choice about which procedure may apply. If, however, a Minister proposes to use the negative procedure, the requirements of paragraph 6 may apply.

299 Paragraph 6 sets out the requirements for the sifting mechanism which applies to some proposed statutory instruments that contain regulations to be made under section 11 (power to restate retained EU law), section 12 (power to restate assimilated law or sunsetted EU rights, powers, liabilities etc) or section 14 (powers to revoke or replace).

300 Paragraph 6(1) sets out that the conditions of the sifting mechanism under sub-paragraph (2) applies where-

a. a Minister of the Crown who is acting alone makes a statutory instrument containing regulations under section 11, 12 or 14,

b. paragraph 5(5) applies to the regulations (i.e. there is a choice between the negative and draft affirmative procedures), and

c. the Minister is of the opinion that the appropriate procedure for the instrument is for it to be subject to the negative procedure.

301 Paragraph 6(2) sets out that a Minister may not make the instrument so that it is subject to the negative procedure unless-

a. condition 1 is met, and

b. either condition 2 or 3 is met.

302 Paragraph 6(3) outlines condition 1. Condition 1 is where a Minister of the Crown:

a. has produced a written statement that states that in the Minister's opinion the instrument should be subject to the negative procedure, and

b. has laid before each House of Parliament:

i. a draft of the instrument, and

ii. a memorandum setting out the statement and the reasons for the Minister's opinion.

303 Paragraph 6(4) outlines condition 2. Condition 2 is that committees of both the House of Commons and House of Lords, who have been given the authority to do so, each make a recommendation on the appropriate procedure for the instrument within the relevant period (i.e. effectively within 10 sitting days from when the draft instrument is laid; see subparagraph (10) and (11)).

304 Paragraph 6(5) outlines condition 3. Condition 3 is that the relevant period has ended without condition 2 being met.

305 Paragraph 6(6) sets out that sub-paragraph (7) applies where:

a. a committee (of the House of Lords or the House of Commons) makes a recommendation (as set out in sub-paragraph (4)) within the appropriate time frame,

b. the recommendation states that the appropriate procedure for the instrument is for it to be subject to the draft affirmative procedure, and

c. the Minister that is making the instrument is nevertheless of the view that the appropriate procedure for the instrument is for it to be subject to the negative procedure.

306 Paragraph 6(7) sets out that prior to the instrument being made, the Minister must make a statement explaining why the Minister does not agree with the committee's recommendation.

307 Paragraph 6(8) states that if the Minister fails to make the required statement before the instrument is made, then a Minister of the Crown must make a statement explaining why the Minister has failed to do so.

308 Paragraph 6(9) sets out that statements under sub-paragraph (7) or (8) must be in writing and published in a way that the Minister making the statement decides is appropriate.

309 Paragraph 6(10) sets out that in this context the use of "the relevant period" should be understood as the period –

a. starting with the first day on which both Houses of Parliament are sitting following the day the draft instrument was laid before each house, and

b. ending with whichever comes last of the following:

i. the end of the period of 10 Commons sitting days beginning with that first day, and

ii. the end of the period of 10 Lords sitting days beginning with that first day.

310 Paragraph 6(11) explains that in relation to sub-paragraph (10):

a. where a draft of an instrument is laid before each House of Parliament on different days, the later day should be understood as the day it is laid before both Houses,

b. a "Commons sitting day" means a day on which the House of Commons is sitting, and

c. a "Lords sitting day" means a day on which the House of Lords is sitting.

311 Paragraph 6(11) also sets out that for the purposes of sub-paragraph (10) a "day" can only be considered a day where the House of Commons or the House of Lords is sitting if the House concerned starts to sit on that day.

312 Paragraph 6(12) sets out that nothing in this paragraph would prevent a Minister of the Crown from deciding, at any time before a statutory instrument containing regulations under section 11, 12 or 14 is made, that another procedure should apply to the instrument.

313 Paragraph 8(13) sets out that section 6(1)[2] of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply to any statutory instrument to which this paragraph applies.

Separate exercise by Scottish Ministers

314 Paragraph 7(1) sets out that the regulations of the Scottish Ministers to which this Part of Schedule 5 applies and that fall within paragraph 5(2) are subject to the affirmative procedure.

315 Paragraph 7(2) sets out that regulations made by the Scottish Ministers to which this Part of Schedule 5 applies and which are within paragraph 5(4) are subject to the negative procedure.

316 Paragraph 7(3) sets out that regulations made by the Scottish Ministers to which this Part of Schedule 5 applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies are subject to either the draft affirmative or negative procedure.

317 Paragraph 7(4) sets out that sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 should be referred to for the negative and affirmative procedure for Scotland.

Separate exercise by Welsh Ministers

318 Paragraph 8(1) sets out that Welsh Ministers may not make a statutory instrument containing regulations to which this Part of Schedule 5 applies and that fall within paragraph 5(2) unless they have been subject to the draft affirmative procedure in the Senedd Cymru.

319 Paragraph 8(2) sets out that a statutory instrument made by the Welsh Ministers containing regulations to which this Part of Schedule 5 applies and which are within paragraph 5(4) are subject to the negative procedure.

320 Paragraph 8(3) sets out that statutory instrument made by the Welsh Ministers containing regulations to which this Part of Schedule 5 applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or the negative procedure in the Senedd Cymru.

321 Paragraph 9 sets out a sifting mechanism for regulations for some proposed instruments. Paragraph 9(1) sets out that sub-paragraph (2) applies if-

a. the Welsh Ministers acting alone make a statutory instrument containing regulations under section 11, 12 or 14,

[2] https://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/6

b. the paragraph 8(3) applies to the instrument, and

c. the Welsh Ministers are of the opinion that the appropriate procedure for the instrument is for it to be subject to the negative procedure in the Senedd Cymru.

322 Paragraph 9(2) sets out that the Welsh Ministers may not make the instrument so that it is subject to the negative procedure unless condition 1 is met, and either condition 2 or 3 is met. These conditions are outlined in sub-paragraphs (3) to (5).

323 Paragraph 9(3) sets out condition 1. Condition 1 is that the Welsh Ministers –

a. have made a written statement that in their opinion the instrument should be subject to the negative procedure in the Senedd Cymru, and

b. have laid before the Senedd Cymru both –

i. a draft of the instrument, and

ii. a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.

324 Paragraph 9(4) sets out condition 2. Condition 2 is that a committee of Senedd, who has been given the authority to do so, has made a recommendation on the appropriate procedure for the instrument.

325 Paragraph 9(5) sets out condition 3. Condition 3 is that the period of 14 days, starting with the first day after the day the instrument was laid before the Senedd (as mentioned in sub-paragraph (3)(b)(i)), has ended without any recommendation being made as outlined in sub-paragraph (4).

326 Paragraph 9(6) sets out that the period of 14 days should be calculated without including any periods where the Senedd is dissolved or in recess for more than four days.

327 Paragraph 9(7) states that nothing in this paragraph prevents Welsh Ministers from deciding, at any time before a statutory instrument containing regulations under section 11, 12 or 14 is made, that another procedure should apply to the instrument.

328 Paragraph 9(8) states that section 6(1) of the Statutory Instruments Act 1946 as applied by section 11A[3] of the Act (alternative procedure for certain instruments laid in draft before Senedd Cymru) does not apply in relation to any statutory instrument to which this paragraph applies.

Separate exercise by Northern Ireland department

329 Paragraph 10(1) sets out that a Northern Ireland department may not make regulations to which this Part of Schedule 5 applies and that fall within paragraph 6(2) unless they have been subject to the draft affirmative procedure in the Northern Ireland Assembly.

330 Paragraph 10(2) sets out that regulations made by a Northern Ireland department to which this Part of Schedule 5 applies and which are within paragraph 6(4) are subject to negative resolution.

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[3] https://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/11A

331 Paragraph 10(3) sets out that regulations made by a Northern Ireland department to which this Part of Schedule 5 applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or negative procedures.

332 Paragraph 10(4) sets out that in this paragraph the "subject to the negative resolution" has the same meaning as set out in section 41(6) of the Interpretation Act (Northern Ireland) 1954 and as if the regulations were a statutory instrument within the meaning of that Act[4].

Part 3: Powers of Relevant National Authority - Joint Exercise

Parliamentary procedure

333 Paragraph 11(1) sets out that a statutory instrument containing regulations that are made by a Minister of the Crown jointly with a devolved authority and that fall within paragraph 6(2) may not be made unless they are subject to the draft affirmative procedure.

334 Paragraph 11(2) sets out that a statutory instrument containing regulations within paragraph 6(4) made by a Minister of the Crown jointly with a devolved authority is subject to the negative procedure.

335 Paragraph 11(3) sets out that a statutory instrument containing regulations that are made by a Minister of the Crown jointly with a devolved authority and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or the negative procedure.

336 Paragraph 11(4) sets out that the procedure provided for by this paragraph is in addition to any other procedure provided for by this Part of Schedule 5.

Joint exercise with Scottish Ministers

337 Paragraph 12(1) sets out that regulations that are made jointly with Scottish Ministers and that fall within paragraph 5(2) are subject to the affirmative procedure in the Scottish Parliament.

338 Paragraph 12(2) sets out that regulations that are made jointly with Scottish Ministers and that fall within paragraph 5(4) are subject to the negative procedure in the Scottish Parliament.

339 Paragraph 12(3) sets out that regulations made jointly with the Scottish Ministers and to which neither subject to sub-paragraph (1) or sub-paragraph (2) applies may be subject to either the affirmative or the negative procedure.

340 Paragraph 13 sets out the provisions for Scottish Ministers making any procedure in Holyrood (detailed in the Interpretation and Legislative Reform (Scotland) Act 2010) and applies these procedures under the powers in the Act for the negative and affirmative procedure.

341 Paragraph 13(1) sets out that this paragraph applies in relation to regulations to which paragraph 12 applies.

342 Paragraph 13(2) sets out that if the regulations are subject to the affirmative procedure, section 29 of the Interpretation and Legislative Reform (Scotland) Act 2020 applies in the same way that it applies to devolved subordinate legislation (which is defined in Part 2 of that Act)

[4] https://www.legislation.gov.uk/apni/1954/33/section/41

which is subject to the affirmative procedures. Paragraph 13(2) further sets out that any references to a Scottish statutory instrument should be read as though they were references to a statutory instrument.

343 Paragraph 13(3) sets out that if the regulations are subject to the negative procedure, sections 28(2), (3), (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2020 applies in the same way that they apply to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure. As above, paragraph 13(3) further sets out that references to a Scottish statutory instrument should be read as though they were references to a statutory instrument.

344 Paragraph 13(4) sets out that section 32 of the Interpretation and Legislative Reform (Scotland) Act 2020 (laying) applies in relation to laying a statutory instrument containing the regulations before the Scottish Parliament in the same way that it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act).

Joint exercise with Welsh Ministers

345 Paragraph 14(1) sets out that a statutory instrument containing regulations that fall within paragraph 5(2) may not be made jointly with Welsh Ministers unless they are subject to the draft affirmative procedure in the Senedd Cymru.

346 Paragraph 14(2) sets out that a statutory instrument made jointly with the Welsh Ministers containing regulations within paragraph 5(4) is subject to the negative procedure.

347 Paragraph 14(3) sets out that a statutory instrument made jointly with the Welsh Ministers which contains regulations and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or negative procedure in the Senedd Cymru.

Joint exercise with Northern Ireland department

348 Paragraph 15(1) sets out that regulations that fall within paragraph 5(2) may not be made by a Minister of the Crown jointly with a Northern Ireland department unless they have been subject to the draft affirmative procedure in the Northern Ireland Assembly.

349 Paragraph 15(2) sets out that regulations within paragraph 5(4) that are made jointly with a Northern Ireland department are subject to the negative resolution.

350 Paragraph 15(3) sets out that regulations that are made jointly with a Northern Ireland department and to which neither sub-paragraph (1) nor sub-paragraph (2) applies may be subject to either the draft affirmative or negative procedure in the Northern Ireland Assembly.

Paragraph 15(4) further states that the "negative resolution" should be interpreted as set out in section 41(6) of the Interpretation Act (Northern Ireland) 1954 and as if the regulations were a statutory instrument within the meaning of that Act.

Effect of annulment resolution

351 Paragraph 16(1) sets out that if in accordance with this Part of Schedule 5 -

a. either House of Parliament concludes that an address should be presented to His Majesty setting out that the instrument should be annulled, or

b. a relevant devolved legislature concludes that an instrument should be annulled,

no further action should be taken under the instrument after the date that such a resolution is made and His Majesty may decide to revoke the instrument by Order in Council.

352 Paragraph 16(2) sets out that the use of "relevant devolved legislature" in sub-paragraph (1) should be understood to mean –

a. the Scottish Parliament, in cases where regulations are made jointly with Scottish Ministers;

b. Senedd Cymru, in cases where regulations are made jointly with Welsh Ministers;

c. the Northern Ireland Assembly, in cases where regulations are made jointly with a Northern Ireland department.

353 Paragraph 16(3) sets out that sub-paragraph (1) does not –

a. impact the validity of anything previously done under that instrument, or

b. prevent a new instrument from being made.

354 Paragraph 16(4) sets out that this paragraph applies in the place of any other provision being made by another enactment about the effect of such a resolution.

Commencement

355 Section 22 makes provision as to the commencement of the Act's provisions.

Annex A - Territorial extent and application in the United Kingdom

356 This Act extends and applies to the whole of the UK (save where the Act amends, repeals or revokes things)). Repeals, revocations and amendments made by the Act have the same territorial extent and application as the legislation that they are amending. The Act does not extend to any Overseas Territories or Crown dependencies.

357 Regulations made under powers in the Act may have extraterritorial effect where they are being used to amend legislation which already produces a practical effect outside the UK.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1: Sunset of EU-derived subordinate legislation and retained direct EU legislation	Yes	Yes	Yes	Yes
Section 2: Sunset of retained EU rights, powers, liabilities etc	Yes	Yes	Yes	Yes
Section 3: Abolition of supremacy of EU law	Yes	Yes	Yes	Yes
Section 4: Abolition of general principles of EU law	Yes	Yes	Yes	Yes
Section 5: "Assimilated law"	Yes	Yes	Yes	Yes
Section 6: Role of courts	Yes	Yes	Yes	Yes
Section 7: Compatibility	Yes	Yes	Yes	Yes
Section 8: Incompatibility orders	Yes	Yes	Yes	Yes
Section 9: Scope of powers	Yes	Yes	Yes	Yes

Section 10: Procedural requirements	Yes	Yes	Yes	Yes
Section 11-13: Power to restate	Yes	Yes	Yes	Yes
Section 14: Power to revoke or replace	Yes	Yes	Yes	Yes
Section 15: Power to update	Yes	Yes	Yes	Yes
Section 16: Power to remove or reduce burdens under retained direct EU legislation	Yes	Yes	Yes	Yes
Section 18: Abolition of business impact target	Yes	Yes	Yes	Yes
Section 19: Consequential provision	Yes	Yes	Yes	Yes
Section 20: Regulations general	Yes	Yes	Yes	Yes
Section 21: Interpretation	Yes	Yes	Yes	Yes
Section 22: Commencement, transitional and savings	Yes	Yes	Yes	Yes
Section 23: Extent, and short title	Yes	Yes	Yes	Yes
Schedule 1: Amendment of certain retained EU law	Yes	Yes	Yes	Yes
Schedule 2: Assimilated law: consequential amendments	Yes	Yes	Yes	Yes
Schedule 3: Amendments of certain retained EU law	Yes	Yes	Yes	Yes
Schedule 4: Regulations: restrictions on powers of devolved authorities	Yes	Yes	Yes	Yes
Schedule 5: Regulations: procedure	Yes	Yes	Yes	Yes

Annex B - Hansard references

358 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	22 September 2022	Bill as introduced
Second Reading	25 October 2022	Second Reading Hansard
Public Bill Committee 1st sitting	8 - 29 November 2022	Committee Debates: Compilation of sittings Hansard
Report Stage	18 January 2023	Report Stage Hansard
Third Reading	18 January 2023	Third Reading Hansard
Consideration of Lords Amendments	24 May 2023	Consideration of Lords Amendments Hansard
Considerations of Lords Message	12 June 2023	Consideration of Lords Message Hansard
Consideration of Lords Message	21 June 2023	Consideration of Lords Message Hansard
House of Lords		
Introduction	19 January 2023	Bill as introduced Lords First Reading Hansard
Second Reading	6 February 2023	Lords Second Reading Hansard - Part 1 Lords Second Reading Hansard - Part 2
Committee Stage	23 February - 8 March 2023	Lords Committee Stage - Day 1, Part 1 Lords Committee Stage - Day 1, Part 2 Lords Committee Stage - Day 2 Lords Committee Stage - Day 3, Part 1 Lords Committee Stage - Day 3, Part 2 Lords Committee Stage - Day 4, Part 1 Lords Committee Stage - Day 4, Part 2

		Lords Committee Stage - Day 5, Part 1 Lords Committee Stage - Day 5, Part 2
Report Stage	15-17 May 2023	Lords Report Stage - Day 1, Part 1 Lords Report Stage - Day 1, Part 2 Lords Report Stage, Day 2
Third Reading	22 May 2023	Lords Third Reading Hansard
Lords Consideration of Commons amendments	6 June 2023	Lords Consideration of Commons Amendments Hansard
Lords Consideration of Commons amendments	20 June 2023	Lords Consideration of Commons Amendments Hansard
Lords Consideration of Commons amendments	26 June 2023	Lords Consideration of Commons Amendments Hansard
Royal Assent	29 June 2023	Royal Assent Hansard

Annex C - Glossary

Term	Definition
Assimilated Law	Assimilated law will be the name given to REUL which is in force after 2023 and which after the end of 2023 will no longer have the special features of REUL. The idea is that such law will be "assimilated" into domestic law on the sunset date by virtue of the fact it will be stripped of EU–derived interpretive effects (i.e., supremacy of EU law, directly effective rights, and general principles). The rules of interpretation which apply to assimilated law will be closer to the rules which apply to ordinary domestic law.
Act of Parliament	An Act of Parliament is a law that both Houses of Parliament have agreed to and has received Royal Assent. It is enforced in all the areas of the UK where it is applicable.
Bill	A proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration. Once agreed and made into law, it becomes an Act.
Codification	Codification refers to the process of placing law, legal principles or rules, that are currently not found in statute onto a statutory footing. The restatement and reproducing powers in sections 11 and 12 of the Act includes codification. This may be used to make regulations that codify (i.e. put in statute), law which is set out in retained case law or derived from rights etc. under section 4 EUWA.
Coming into force	The process by which an Act of Parliament, secondary legislation or other legal instrument comes to have legal effect. The law can be relied upon from the date on which it comes into force but not any sooner. Also known as commencement.
Consequential amendment	Consequential amendments refer to amendments made to relevant enactments as a result of a later Act or instrument.
Court of Justice of the European Union (CJEU)	The CJEU is the chief judicial authority of the European Union and has jurisdiction to rule on the interpretation and application of EU treaties and legislation. In particular, the Court has jurisdiction to rule on challenges to the validity of EU acts, in infraction proceedings brought by the Commission against member states and on references from national courts concerning the interpretation of EU acts. The Court is made up of two subcourts: the General Court and the Court of Justice (which is sometimes

	called the ECJ). See Article 19 TEU and Articles 251 to 281 TFEU.
[EU] Decision	A legislative act of the EU which is binding upon those to whom it is addressed. If a decision has no addressees, it binds everyone. See Article 288 TFEU.
Devolution settlements	The constitutional arrangements governing which decision making responsibilities and legislation making powers have been devolved and the mechanisms through which these operate.
Devolved administrations	The governments of the devolved nations of the UK. These are the Scottish Government, the Welsh Government and the Northern Ireland Executive.
Devolved competence	The areas in which the devolved legislatures are responsible for making laws ('legislative competence') or the devolved administrations are responsible for governing or making secondary legislation ('executive competence').
Devolved legislatures	The law making bodies of the devolved nations of the UK. These are the Scottish Parliament, the Welsh Parliament / Senedd Cymru and the Northern Ireland Assembly.
[EU] Directive	A legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result. Directives must be transposed into national law using domestic legislation, in contrast to regulations, which are enforceable as law in their own right. See Article 288 TFEU.
Draft affirmative procedure	Under the draft affirmative procedure a statutory instrument is laid before Parliament as a draft and cannot be made into law (signed by a Minister) unless a draft approved, following a debate, by theHouse of Commons and in most cases also the House of Lords.
Enactment	Defined in section 21 of the Act and includes any provisions in primary legislation (including an Act of Parliament) or an instrument made under such primary legislation, and retained direct EU legislation.
EU institutions	There are a number of EU bodies which are defined under the Treaties as EU institutions including the European Parliament, the European Council, the Council of the European Union and the European Commission.
The EU Treaties (including TEU and	The European Economic Community (EEC) was established by the Treaty of Rome in 1957. This Treaty has since been amended and supplemented

TFEU)	by a series of treaties, the latest of which is the Treaty of Lisbon. The Treaty of Lisbon, which entered into force on 1 December 2009, re-organised the two treaties on which the European Union is founded: the Treaty on European Union (TEU) and the Treaty establishing the European Community, which was re-named the Treaty on the Functioning of the European Union (TFEU).
European Commission	The Commission is the main executive body of the EU. It has general executive and management functions. In most cases it has the sole right to propose EU legislation. In many areas it negotiates international agreements on behalf of the EU and represents the EU in international organisations. And the Commission also oversees and enforces the application of Union law, in particular by initiating infraction proceedings where it considers that a member state has not complied with its EU obligations. See Article 17 TFEU and Articles 244 to 250 TFEU.
European Convention on Human Rights (ECHR)	An international convention, ratified by the UK and incorporated into UK law in the Human Rights Act 1998. It specifies a list of protected Human Rights, and establishes a Court (European Court of Human Rights sitting in Strasbourg) to determine breaches of those rights. The Convention is a Council of Europe Convention, which is a different organisation from the EU. Article 6 TEU provides for the EU to accede to the ECHR, so that all member states are parties to the Convention.
European Council	The European Council defines the general political direction and priorities of the EU. It consists of the Heads of State or Government of the member states, together with its President and the President of the Commission. See Article 15 TEU and Articles 235 and 236 TFEU.
European Parliament	The European Parliament (EP) consists of representatives elected by Union citizens. The EP shares legislative and budgetary power with the Council, and has oversight over the actions of the Commission. See Article 14 TEU and Articles 223 to 234 TFEU.
Negative procedure	A statutory instrument subject to the negative procedure may be made (and become law) without having to be debated and approved by either House of Parliament, but may be annulled subsequently by either House of Parliament
[EU] Regulation	A legislative act of the EU which is directly applicable in member states without the need for national implementing legislation (as opposed to a directive, which must be transposed into domestic law by member states using domestic legislation). See Article 288 TFEU.

Retained Direct EU Legislation (RDEUL)	RDEUL is a subcategory of retained EU law (REUL) defined in section 20(1) of the European Union (Withdrawal) Act 2018 as any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under the European Union (Withdrawal) Act 2018 or other domestic law).
Retained Direct Principal EU Legislation	A subset of RDEUL that derives from EU secondary legislation made under powers in the EU Treaties. (It therefore excludes EU "tertiary" legislation that was made under EU secondary legislation). It largely consists of EU regulations converted into domestic law on 1 January 2021.
Retained Direct Minor EU Legislation	A subset of RDEUL that includes retained EU decisions and retained EU tertiary legislation. EU tertiary legislation includes EU delegated acts and EU implementing acts, such as provisions made under an EU regulation, under an EU decision, or under an EU directive.
Retained Case Law	Retained case law means retained EU case law and retained domestic case law.
Retained EU Case Law	Principles laid down by, and any decisions of, the European Court of Justice, as they have effect in EU law immediately before IP Completion Day (11pm on 31 December 2020) and so far as they relate to retained EU law established under EUWA as those principles and decisions are modified by domestic law from time to time.
Retained Domestic Case Law	Principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before IP Completion Day (11pm on 31 December 2020) and so far as they relate to retained EU law established under EUWA as those principles and decisions are modified by domestic law from time to time.
Secondary legislation	Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or delegated legislation.
Statute book	The body of legislation that has been enacted by Parliament or one of the devolved legislatures, and instruments made under such legislation, and has effect in the UK
Statutory instrument	A form of secondary legislation to which the Statutory Instruments Act 1946 applies.

Super affirmative resolution procedure	The super-affirmative procedure in the Legislative and Regulatory Reform Act 2006 is a two stage procedure during which there is opportunity for a draft Legislative Reform Order to be revised by the Minister. A draft order is laid before Parliament, and considered by relevant Parliamentary committees during a 60 day period. The committees may report on the draft order, or either House may make a resolution with regard to the draft order during that period. The Minister must have regard to any such reports and resolutions, as well as to any other representations made about the draft order. Once the 60-day period has expired, if the Minister wishes to make the order with no changes, he must lay a statement giving details of any representations which were made. He can then make the order but provided it is approved by a resolution of each House of Parliament. Alternatively, if the Minister wishes to make changes to the draft order he must lay a revised draft of the order and a statement setting out the revisions he proposes before Parliament, which will be considered by committees of both Houses. The Minister may only make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.

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