

# **LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS OF THE ACT**

#### ***Section 13 and Schedule 1 – Fees and charges***

100. The powers to make regulations contained in the sections listed in paragraph 1(1)(a) to (f) of Schedule 1 are either time limited, restricted in terms of imposing or increasing taxation or both. This power enables the Welsh Ministers to make provision for, or in connection with, the charging of fees or other charges in connection with the exercise of a function conferred on a public authority under the sections specified in paragraph 1(1) on an ongoing basis.
101. Section 2(2) of the ECA 1972 and section 56 of the FA 1973 enable the Welsh Ministers to require the payment of fees and charges for the provision of any services, facilities, authorisations, certificates or documents they provide in pursuance of any EU obligation. The power in paragraph 1 of Schedule 1 will replace these powers.
102. [Paragraph 1\(2\)\(c\)](#) enables the power to set fees and charges to be delegated to a public authority. Any powers delegated under this provision will be subject to the same limitations, restrictions and scrutiny applicable to the Welsh Ministers' exercise of the power.
103. Section 2(2) of the ECA 1972 and section 56 of the FA 1973 have been used on a number of occasions during the UK's membership of the EU to set fees and charges in connection with EU obligations. Section 5 enables the Welsh Ministers to identify and preserve the statutory instruments made under these powers which make provision for fees and charges along with the provisions relating to the accompanying service. Regulations could also be made under section 4 to restate and therefore preserve such charges or fees. However, the EU Withdrawal Bill currently before the UK Parliament, if passed, will mean that the powers in the ECA 1972 and the FA 1973 in relation to fees and charges for EU obligations will no longer be available. Paragraph 2 of Schedule 1 ensures that the Welsh Ministers are able to modify the fees and charges preserved by virtue of regulations made under section 4 or 5.
104. The power in paragraph 2 of Schedule 1 is subject to limitations, notably that the power cannot be used for new charges or fees. The power could for example be used to uprate fees in line with inflation to ensure that the costs of providing a relevant service, such as animal health inspections, can continue to be met by the public authority tasked with providing the service.
105. [Paragraph 3](#) of Schedule 1 ensures that any fees or charges which had been set by regulations made under section 2(2) of the ECA 1972 continue to be subject to the same restrictions under that Act – that they cannot impose or increase taxation (see paragraph 1(1)(a) of Schedule 2 to the ECA 1972).

106. [Paragraph 4](#) reflects that provision for fees and charges could be made under sections 3, 4, 5, 9, 10 and 11. For example, provision about fees and charges in regulations made under section 56 of the FA 1973 could be specified in regulations made under section 5(1). However, the provision may require modification to ensure that it can continue to operate effectively following the withdrawal of the UK from the EU. Paragraph 4 confirms that such provision can be made under section 5(5) and would not need to be made under Schedule 1.