



# Law Derived from the European Union (Wales) Act 2018

2018 anaw 3

*EU derived Welsh law*

## **3 Power to retain direct EU law**

- (1) The Welsh Ministers may by regulations make provision within devolved competence corresponding to direct EU law for the purpose of continuing its operation, so far as the Welsh Ministers consider appropriate, after the United Kingdom withdraws from the European Union.
- (2) In making regulations under this section, the Welsh Ministers must seek to continue the rights, powers, liabilities, obligations, restrictions, remedies and procedures that are recognised and available in the law of England and Wales by virtue of section 2(1) of the European Communities Act 1972 at the time the regulations are made.
- (3) In this section, “direct EU law” means—
  - (a) provision in the EU Treaties that has direct effect in the law of England and Wales by virtue of section 2(1) of the European Communities Act 1972 so far as its effect is not reproduced in an enactment that applies in relation to Wales on the day this section comes into force (whether or not the enactment extends or applies to other territories);
  - (b) provision in any EU regulation, EU decision or EU tertiary legislation so far as its effect is not reproduced in an enactment that applies in relation to Wales on the day this section comes into force (whether or not the enactment extends or applies to other territories);
  - (c) any Annex to the EEA agreement, so far as—
    - (i) it refers to, or contains adaptations of, anything falling within paragraph (b), and
    - (ii) its effect is not reproduced in an enactment that applies in relation to Wales on the day this section comes into force (whether or not the enactment extends or applies to other territories);

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*Status: This is the original version (as it was originally enacted).*

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- (d) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement).
- (4) In making provision corresponding to direct EU law, the Welsh Ministers have the power (among other things)—
- (a) to not include anything in direct EU law that will have no practical application in relation to Wales or any part of Wales or will be otherwise redundant or substantially redundant;
  - (b) to not include functions in direct EU law of, or in relation to, EU entities that will no longer have functions in that respect under EU law in relation to the United Kingdom or any part of the United Kingdom;
  - (c) to not include provision for, or in connection with, reciprocal arrangements between—
    - (i) the United Kingdom or any part of it or a public authority in the United Kingdom, and
    - (ii) the EU, an EU entity, a member State or a public authority in a member State,
 that will no longer exist or will no longer be appropriate;
  - (d) to not include provision for, or in connection with, other arrangements that—
    - (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
    - (ii) are otherwise dependent upon the United Kingdom's membership of the EU,
 and that will no longer exist or will no longer be appropriate;
  - (e) to not include provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) that will no longer exist, or will no longer be appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties;
  - (f) to remove EU references in direct EU law that will no longer be appropriate;
  - (g) to provide for functions in direct EU law of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
    - (i) exercisable by a public authority (whether or not newly established or established for the purpose), or
    - (ii) absent or different in provision made by the regulations;
  - (h) to provide for the establishment of public authorities to carry out functions provided for by regulations under this section;
  - (i) to modify an enactment.
- (5) But regulations under this section may not—
- (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence;
  - (d) confer or impose a function on a Minister of the Crown;
  - (e) remove or modify a pre-commencement function of a Minister of the Crown unless doing so is incidental to, or consequential on, another provision contained in the regulations.
- (6) Regulations under this section—

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- (a) must be made before exit day, and
- (b) must not come into force before exit day.