



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

**2018 anaw 3**

An Act of the National Assembly for Wales to make provision for the operation in relation to Wales of law derived from the European Union relating to subjects devolved to the Assembly, in connection with the withdrawal of the United Kingdom from the European Union. [6 June 2018]

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## *Introduction*

### **1 Overview**

This Act—

- (a) provides for the making, restatement and specification of EU derived Welsh law by the Welsh Ministers in regulations and makes connected provision (sections 2 to 8);
- (b) provides other powers for the Welsh Ministers to make provision in connection with the withdrawal of the United Kingdom from the European Union (sections 9 to 13);
- (c) makes provision about the Welsh Ministers giving consent to subordinate legislation within the scope of EU law made by Ministers of the Crown and others under new functions (sections 14 and 15).

## *EU derived Welsh law*

### **2 EU derived Welsh law**

In this Act, “EU derived Welsh law” means—

- (a) the provisions made in regulations under section 3 (retained direct EU law),

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- (b) the provisions made in regulations under section 4 or continuing in effect under or by virtue of regulations under that section (enactments derived from EU law),
  - (c) the provisions made in statutory instruments specified under section 5 (provision made under EU related powers and continuing in effect under section 5), so far as they have effect under that section,
- as that body of law is added to or otherwise modified by or under this Act or by other enactments from time to time.

### 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);
  - (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—

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

#### **4 Restatement and continuation of EU derived enactments**

- (1) The power in subsection (2) applies to an enactment if—
- (a) it was passed or made, or operates, entirely or to some extent for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 (whether or not made under section 2(2) of, or paragraph 1A of Schedule 2 to, that Act), or
  - (b) it relates otherwise to the EU or the EEA for all or some purposes.
- (2) The Welsh Ministers may by regulations—

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- (a) repeal or revoke an enactment that is wholly within devolved competence;
  - (b) disapply an enactment that is wholly or partly within devolved competence, so far as it is within devolved competence;
  - (c) restate an enactment repealed or revoked under paragraph (a) with or without modifications within devolved competence;
  - (d) restate an enactment disapplied under paragraph (b), so far as it is disapplied, with or without modifications within devolved competence;
  - (e) make further provision within devolved competence in connection with restatement of an enactment under paragraph (c) or (d).
- (3) The Welsh Ministers may by regulations—
- (a) provide for provision in subordinate legislation made under, or by virtue of, a provision repealed or revoked by regulations under subsection (2)(a) to continue in effect as if made under or by virtue of provision in regulations under subsection (2)(c) (including provision in subordinate legislation made under, or by virtue of, functions that are not restated in the regulations under subsection (2)(c));
  - (b) provide for provision in subordinate legislation made under, or by virtue of, a provision so far as it is disapplied by regulations under subsection (2)(b) to continue in effect as if made under or by virtue of provision in regulations under subsection (2)(d) (including provision in subordinate legislation made under, or by virtue of, functions that are not restated in the regulations under subsection (2)(d));
  - (c) modify provision in subordinate legislation that continues in effect under this subsection and make further provision in connection with its continued effect, if the modification or further provision is within devolved competence.
- (4) Regulations under this section may not make modifications of an enactment or further provision in connection with its restatement or continued effect unless the Welsh Ministers consider the modification or further provision necessary to ensure the effective operation of the enactment after the withdrawal of the United Kingdom from the European Union.
- (5) Regulations under this section may include (but are not limited to) provision—
- (a) removing anything that has no practical application in relation to Wales or any part of it or is otherwise redundant or substantially redundant;
  - (b) removing functions of, or in relation to, EU entities that no longer have functions in that respect under EU law in relation to the United Kingdom or any part of the United Kingdom;
  - (c) removing provision for, or in connection with, reciprocal arrangements between—
    - (i) the United Kingdom or any part of it or a public authority exercising functions in relation to Wales, and
    - (ii) the EU, an EU entity, a member State or a public authority in a member State,
 that no longer exist or are no longer appropriate;
  - (d) removing 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,

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- and that no longer exist or are no longer appropriate;
  - (e) removing provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) that no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties;
  - (f) conferring functions or imposing restrictions that—
    - (i) were in an EU directive and in force immediately before exit day (including any power to make EU tertiary legislation), and
    - (ii) it is appropriate to retain;
  - (g) removing EU references that are no longer appropriate.
- (6) Regulations under this section may (among other things)—
- (a) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
    - (i) exercisable instead by a public authority (whether or not newly established or established for the purpose), or
    - (ii) replaced, abolished or otherwise modified;
  - (b) provide for the establishment of public authorities to carry out functions provided for by regulations under this section.
- (7) 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, unless the regulations restate the law;
  - (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.
- (8) Regulations under this section—
- (a) must be made before exit day, and
  - (b) must not come into force before exit day.

## **5 Provision made under EU related powers to continue to have effect**

- (1) Provision made in a statutory instrument made under one or more of the EU related powers set out in subsection (2) that is specified by the Welsh Ministers in regulations has effect under this section instead of under those powers and is to be treated as having been made under this section.
- (2) The EU related powers are—
  - (a) section 2(2) of the European Communities Act 1972;
  - (b) paragraph 1A of Schedule 2 to the European Communities Act 1972;
  - (c) section 56 of the Finance Act 1973 in so far as the provision was made in connection with any EU obligation.
- (3) Provision made in a statutory instrument made under an enactment other than the EU related powers set out in subsection (2) may also be specified under subsection (1) if—

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- (a) the statutory instrument is also made under one or more of the EU related powers, and
  - (b) the provision is made for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or relates otherwise to the EU or the EEA.
- (4) A provision specified under subsection (1) has effect under this section, and is to be treated as having been made under this section, only so far as the provision would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (including any provision that could only be made with the consent of a Minister of the Crown).
- (5) Regulations may modify the provisions specified under subsection (1) or make further provision in connection with them if—
  - (a) the Welsh Ministers consider the modification or further provision necessary to ensure the effective operation of provisions specified under subsection (1) after the withdrawal of the United Kingdom from the European Union, and
  - (b) the modification or further provision is within devolved competence.
- (6) Regulations under subsection (5) may—
  - (a) include (among other things) the kinds of provision mentioned in subsections (5) and (6) of section 4;
  - (b) modify an enactment.
- (7) 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.
- (8) Regulations under this section—
  - (a) must be made before exit day, and
  - (b) must not come into force before exit day.

## **6 Challenges to EU derived Welsh law arising from invalidity of EU instruments**

- (1) There is no right in the law of England and Wales on or after exit day to challenge any EU derived Welsh law on the basis that, immediately before exit day, an EU instrument was invalid.
- (2) Subsection (1) does not apply so far as—
  - (a) the European Court has decided before exit day that the instrument is invalid,
  - (b) it relates to any conduct that occurred before exit day that gives rise to any criminal liability, or
  - (c) the challenge is of a kind described, or provided for, in regulations made by the Welsh Ministers.
- (3) Regulations under subsection (2)(c) may (among other things) provide for a challenge that would otherwise have been against an EU institution to be against a public

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authority exercising functions within devolved competence (other than a Minister of the Crown).

## 7 Interpretation of EU derived Welsh law

- (1) This section applies to the interpretation of EU derived Welsh law.
- (2) Any question as to the validity, meaning or effect of any EU derived Welsh law is to be decided, so far as that law is unmodified on or after exit day and so far as they are relevant to it—
  - (a) in accordance with any retained case law, any retained general principles of EU law and the Charter of Fundamental Rights, and
  - (b) having regard (among other things) to the limits, immediately before exit day, of EU competences.
- (3) But—
  - (a) the Supreme Court of the United Kingdom is not bound by any retained EU case law,
  - (b) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by, and
  - (c) no general principle of EU law is to be taken into account unless it was recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case).
- (4) In deciding whether to depart from any retained EU case law, the Supreme Court must apply the same test as it would apply in deciding whether to depart from its own case law.
- (5) Subsection (2) does not prevent the validity, meaning or effect of any EU derived Welsh law that has been modified on or after exit day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.
- (6) In this section—

“retained case law” (“*cyfraith achosion a ddargedwir*”) means—

  - (a) retained domestic case law, and
  - (b) retained EU case law;

“retained domestic case law” (“*cyfraith achosion ddomestig a ddargedwir*”) means any principles laid down by, and any decisions of, a court or tribunal in England and Wales or the Supreme Court of the United Kingdom, as they have effect immediately before exit day and so far as they—

  - (a) relate to anything in respect of which regulations may be made under section 3, 4 or 5, and
  - (b) are not excluded by section 6 or any other enactment in primary legislation (except an enactment to which subsection (7) applies),

(as those principles and decisions are modified by or under this Act or by other law of England and Wales from time to time);

“retained EU case law” (“*cyfraith achosion yr UE a ddargedwir*”) means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before exit day and so far as they—

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- (a) relate to anything in respect of which regulations may be made under section 3, 4 or 5, and
  - (b) are not excluded by section 6 or any other enactment in primary legislation (except an enactment to which subsection (7) applies),
- (as those principles and decisions are modified by or under this Act or by other law of England and Wales from time to time);
- “retained general principles of EU law” (“*egwyddorion cyffredinol cyfraith yr UE a ddargedwir*”) means the general principles of EU law, as they have effect in EU law immediately before exit day and so far as they—
- (a) relate to anything in respect of which regulations may be made under which section 3, 4 or 5, and
  - (b) are not excluded by section 6 or any other enactment in primary legislation (except an enactment to which subsection (7) applies),
- (as those principles are modified by or under this Act or by other law of England and Wales from time to time).
- (7) This subsection applies to an enactment (other than an enactment contained in an Act of the National Assembly for Wales) that would exclude the Charter of Fundamental Rights from law that applies in relation to Wales (whether or not the exclusion extends or applies to other territories) were it not for this section.
- (8) An enactment to which subsection (7) applies has no effect for the purposes of this section.

## **8 Rules of evidence etc.**

- (1) Where it is necessary, for the purpose of interpreting EU derived Welsh law in legal proceedings, to decide a question as to—
- (a) the meaning or effect in EU law of any of the EU Treaties or any other treaty relating to the EU, or
  - (b) the validity, meaning or effect in EU law of any EU instrument,
- the question is to be treated for that purpose as a question of law.
- (2) In this section—
- “interpreting EU derived Welsh law” (“*dehongli cyfraith Cymru sy'n deillio o'r UE*”) means deciding any question as to the validity, meaning or effect of any EU derived Welsh law;
- “treaty” (“*cytuniad*”) includes—
- (a) any international agreement, and
  - (b) any protocol or annex to a treaty or international agreement.
- (3) The Welsh Ministers may by regulations—
- (a) make provision enabling or requiring judicial notice to be taken of a relevant matter, or
  - (b) provide for the admissibility in any legal proceedings of specified evidence of—
    - (i) a relevant matter, or
    - (ii) instruments or documents issued by or in the custody of an EU entity,
 for the purpose of interpreting EU derived Welsh law.



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- (4) Regulations under subsection (3)(b) may provide that evidence is admissible only where specified conditions are met (for example, conditions as to certification of documents).
- (5) Regulations under this section may modify any provision made by or under an enactment.
- (6) For the purposes of this section, each of the following is a “relevant matter”—
  - (a) EU law,
  - (b) the EEA agreement, and
  - (c) anything that is specified in the regulations and that relates to a matter mentioned in paragraph (a) or (b).

*Further powers of the Welsh Ministers in connection with withdrawal from the EU*

## **9 Complying with international obligations**

- (1) The Welsh Ministers may by regulations make provision within devolved competence they consider appropriate to prevent or remedy any breach, arising from the withdrawal of the United Kingdom from the EU, of the international obligations of the United Kingdom.
- (2) Regulations under this section may modify an enactment.
- (3) But regulations under this section may not—
  - (a) make retrospective provision;
  - (b) create a relevant criminal offence;
  - (c) confer or impose a function on a Minister of the Crown;
  - (d) 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;
  - (e) be made to implement the withdrawal agreement in relation to Wales.
- (4) No regulations may be made under this section after the end of the period of two years beginning with exit day.

## **10 Implementing the withdrawal agreement**

- (1) The Welsh Ministers may by regulations make provision within devolved competence they consider appropriate for the purposes of implementing the withdrawal agreement if they consider that such provision should be in force on or before exit day, subject to the prior enactment of a statute by the Parliament of the United Kingdom approving the final terms of withdrawal of the United Kingdom from the European Union.
- (2) Regulations under this section may modify an enactment (including an enactment contained in this Act).
- (3) 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;

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- (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.

(4) No regulations may be made under this section after exit day.

## **11 Power to make provision corresponding to EU law after exit day**

- (1) The Welsh Ministers may by regulations make provision within devolved competence—
  - (a) corresponding to provision in an EU regulation or EU decision,
  - (b) for the enforcement of provision made under paragraph (a) or to otherwise make it effective, or
  - (c) to implement an EU directive in relation to Wales,
 so far as the EU regulation, EU decision or EU directive has effect in EU law after exit day.
- (2) Regulations under this section may modify an enactment.
- (3) In making provision under subsection (1), the Welsh Ministers have the powers (among others) mentioned in section 3(4); and for this purpose, the reference to “direct EU law” in section 3(4) is to be read as if it included provision in an EU directive.
- (4) But regulations under this section may not—
  - (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence.
- (5) Before making regulations under this section the Welsh Ministers must consult such persons as they consider appropriate.
- (6) For the purpose of this section, “EU Treaties” in the definition of “EU law” given by section 20(1) means—
  - (a) the EU Treaties within the meaning given by section 1(2) of the European Communities Act 1972 (c. 68) as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act 2018, as at immediately before exit day;
  - (b) any treaty entered into by the European Union (except so far as it relates to the Common Foreign and Security Policy), with or without any of the member States, that is specified in regulations made by the Welsh Ministers, and
  - (c) any treaty entered into by member States that is ancillary to a treaty mentioned in paragraph (a) or (b) and specified in regulations made by the Welsh Ministers.

## **12 Review and sunset of the power in section 11(1)**

- (1) No regulations may be made under section 11(1) after the end of a period of 5 years beginning with exit day.
- (2) But the Welsh Ministers may by regulations extend the period mentioned in subsection (1).
- (3) Regulations under subsection (2)—

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- (a) may extend the period on more than one occasion;
  - (b) must come into force before the end of the period mentioned in subsection (1) or, if the period has been extended by previous regulations, the end of that extended period;
  - (c) must not extend the period on any occasion for more than 5 years.
- (4) Before making regulations under subsection (2), the Welsh Ministers must lay before the National Assembly for Wales a report on—
  - (a) the operation and effect of the power in section 11(1) and provision made under it, and
  - (b) the continuing need or otherwise for the power.
- (5) In preparing a report, the Welsh Ministers must consult such persons as they consider appropriate.
- (6) A report does not need to deal with a period dealt with in a previous report.

### **13 Fees and charges**

Schedule 1 (which contains powers in connection with fees and charges) has effect.

*Welsh Ministers' consent to subordinate legislation within the scope of EU law*

### **14 Welsh Ministers' consent to making subordinate legislation**

- (1) Before making subordinate legislation containing a provision to which this section applies, a Minister of the Crown, or any other person (other than the Welsh Ministers) upon whom the function of making the legislation has been conferred, must obtain the Welsh Ministers' consent.
- (2) This section applies to a provision if—
  - (a) conditions 1, 2 and 3 are met, and
  - (b) condition 4 or 5 is met.
- (3) Condition 1 is that the provision applies in relation to Wales (whether or not the provision extends or applies to other territories) and is within devolved competence.
- (4) Condition 2 is that the provision falls, or would have fallen, within the scope of EU law as it has effect on the day this section comes into force.
- (5) Condition 3 is that the provision is to be made under a function exercised by statutory instrument.
- (6) Condition 4 is that the provision is to be made under a function conferred by or under an Act of the Parliament of the United Kingdom enacted after the day on which this section comes into force.
- (7) Condition 5 is that—
  - (a) the provision is to be made under a function modified by or under an Act of the Parliament of the United Kingdom enacted after the day on which this section comes into force,

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- (b) the function mentioned in paragraph (a) is modified by the Act in a way that enables or requires provision to be made that could not be made previously, and
- (c) the provision could not have been made before the function was modified.

## **15 Welsh Ministers' consent to approval or confirmation of subordinate legislation**

- (1) Before approving or confirming subordinate legislation to which this section applies, a Minister of the Crown, or any other person (other than the Welsh Ministers) upon whom the function of approving or confirming the legislation has been conferred, must obtain the Welsh Ministers' consent.
- (2) This section applies to subordinate legislation if—
  - (a) conditions 1, 2 and 3 are met, and
  - (b) condition 4 or 5 is met.
- (3) Condition 1 is that the subordinate legislation contains provision applying in relation to Wales (whether or not the provision extends or applies to other territories) that is within devolved competence.
- (4) Condition 2 is that the provision referred to in condition 1 falls, or would have fallen, within the scope of EU law as it has effect on the day this section comes into force.
- (5) Condition 3 is that the subordinate legislation is to be made by a person other than the Welsh Ministers under a function exercised by statutory instrument.
- (6) Condition 4 is that the subordinate legislation is to be approved or confirmed under a function conferred by or under an Act of the Parliament of the United Kingdom enacted after the day on which this section comes into force.
- (7) Condition 5 is that—
  - (a) the subordinate legislation is to be approved or confirmed under a function modified by or under an Act of the Parliament of the United Kingdom enacted after the day on which this section comes into force, and
  - (b) the subordinate legislation contains the kind of provision that the modification allows or requires or to which the modification applies.
- (8) A function is modified for the purposes of subsection (7) if as a consequence of a modification of an enactment—
  - (a) the subordinate legislation to which the function applies can contain provision within devolved competence that it could not previously contain, or
  - (b) the function applies to subordinate legislation containing provision within devolved competence to which it did not previously apply.
- (9) For the purposes of this section, a function of approving includes a function of giving consent.

## **16 Duty to report on exercise of functions under sections 14(1) and 15(1)**

- (1) The Welsh Ministers must lay before the National Assembly for Wales a report on the exercise of their consent function under section 14(1) or 15(1) before the end of a period of 60 days beginning with the day on which consent is given.
- (2) A report prepared under subsection (1) must—

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- (a) give an explanation of the subordinate legislation being made, approved or confirmed;
  - (b) specify the person upon whom the functions of making, approving or confirming the legislation have been conferred;
  - (c) specify the Welsh Ministers' reasons for giving the consent.
- (3) For the purposes of subsection (1), no account is to be taken of any time during which the National Assembly for Wales is dissolved or in recess for more than four days.

### *Devolved competence*

## **17 Meaning of devolved competence**

- (1) A provision or function is within devolved competence for the purpose of section 3, 4, 5(5), 6(3), 9 or 10 if it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly enacted on the day this section comes into force.
- (2) A provision is within devolved competence for the purpose of sections 11, 14 and 15 if it would be within the legislative competence of the National Assembly for Wales to include the provision in—
- (a) an Act of the Assembly enacted without the consent of a Minister of the Crown on the day this section comes into force, and
  - (b) if section 3 of the Wales Act 2017 is in force, an Act of the Assembly enacted without the consent of a Minister of the Crown under the provisions of the Government of Wales Act 2006 substituted by section 3 of the Wales Act 2017 as they were enacted by the 2017 Act.

### *General*

## **18 Continuing effect of regulations**

The prohibitions on making regulations under this Act after a particular time does not affect the continuation in force of regulations made at or before that time (including the exercise after that time of any power conferred by regulations made at or before that time).

## **19 Regulations**

- (1) A power to make regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make regulations under this Act includes power to make—
- (a) different provision for different purposes, different cases or different areas;
  - (b) incidental, supplementary, consequential, transitory, transitional or saving provision.
- (3) Schedule 2 provides for the procedures that apply to the making of regulations.

## **20 General interpretation**

- (1) In this Act—

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“Charter of Fundamental Rights” (“*Siarter Hawliau Sylfaenol*”) means the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007;

“the EEA” (“*yr AEE*”) means the European Economic Area;

“devolved competence” (“*cymhwysedd datganoledig*”) has the meaning given by section 17;

“enactment” (“*deddfiad*”) means a provision contained in any of the following (whenever enacted or made)—

- (a) an Act of the Parliament of the United Kingdom;
- (b) a Measure or an Act of the National Assembly for Wales;
- (c) subordinate legislation made under an Act of the Parliament of the United Kingdom or a Measure or an Act of the National Assembly for Wales;

“EU decision” (“*penderfyniad gan yr UE*”) means—

- (a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
- (b) a decision under former Article 34(2)(c) of the Treaty on European Union;

“EU directive” (“*cyfarwyddeb gan yr UE*”) means a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU entity” (“*endid o'r UE*”) means an EU institution or any office, body or agency of the EU;

“EU law” (“*cyfraith yr UE*”) means—

- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties, and
- (b) all the remedies and procedures from time to time provided for by or under the EU Treaties;

“EU reference” (“*cyfeiriad at yr UE*”) means—

- (a) any reference to the EU, an EU entity or a member State,
- (b) any reference to an EU directive or any other EU law, or
- (c) any other reference that relates to the EU;

“EU regulation” (“*rheoliad gan yr UE*”) means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU tertiary legislation” (“*deddfwriaeth drydyddol yr UE*”) means—

- (a) any provision made under—
  - (i) an EU regulation,
  - (ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
  - (iii) an EU directive,

by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community, or

- (b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c), but does not include any such provision or measure that is an EU directive;

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“exit day” (“*diwrnod ymadael*”) means a day or a time on a day appointed in regulations made by the Welsh Ministers in accordance with subsection (4);

“member State” (“*Aelod-wladwriaeth*”) (except in the definition of “EU reference”) does not include the United Kingdom;

“Minister of the Crown” (“*un o Weinidogion y Goron*”) has the meaning given by the Ministers of the Crown Act 1975 and also includes the Commissioners for Her Majesty's Revenue and Customs;

“modify” (“*addasu*”) includes amend, repeal or revoke (and related expressions are to be read accordingly);

“pre-commencement function” (“*swyddogaeth cyn cychwyn*”) has the meaning given by Schedule 7 to the Government of Wales Act 2006 (see paragraph 1(3) of Part 2 of that Schedule);

“primary legislation” (“*deddfwriaeth sylfaenol*”) means—

- (a) an Act of the Parliament of the United Kingdom,
- (b) a Measure or Act of the National Assembly for Wales;

“public authority” (“*awdurdod cyhoeddus*”) means a public authority within the meaning of section 6 of the Human Rights Act 1998;

“relevant criminal offence” (“*trosedd berthnasol*”) means an offence for which an individual who has reached the age of 18 is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions);

“retrospective provision” (“*darpariaeth ôl-weithredol*”), in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made;

“tribunal” (“*tribiwnlys*”) means any tribunal in which legal proceedings may be brought;

“Wales” (“*Cymru*”) has the meaning given by the Government of Wales Act 2006 (see section 158 of that Act);

“withdrawal agreement” (“*cytundeb ymadael*”) means an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union that sets out the arrangements for the United Kingdom's withdrawal from the EU.

(2) In this Act—

- (a) where the Welsh Ministers appoint a time as well as a day as exit day, references to before, after or on that day, or to beginning with that day, are accordingly to be read as references to before, after or at that time on that day or (as the case may be) to beginning with that time on that day, and
- (b) where the Welsh Ministers do not appoint a time as well as a day as exit day, a reference to exit day is to be read as a reference to the beginning of that day.

(3) For the purposes of sections 14 and 15, a modification can be express or implied and includes a requirement to comply with EU law no longer applying to the exercise of the function.

(4) In making regulations under subsection (1) for the purposes of the definition of “exit day”, the Welsh Ministers—

- (a) must have regard to any day or any time on a day appointed for the same or similar purposes in or under an Act of the Parliament of the United Kingdom

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to give effect to the withdrawal of the United Kingdom from the European Union;

- (b) must not appoint a day or a time on a day that occurs before the moment that the Treaties cease to apply to the United Kingdom in accordance with Article 50(3) of the Treaty on European Union.

(5) In subsection (4)(b), “the Treaties” means the Treaty on European Union and the Treaty on the functioning of the European Union.

(6) References in this Act to former Article 34(2)(c) of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon.

(7) Any other reference in this Act to an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union includes a reference to that Article as applied by Article 106a of the Euratom Treaty.

## **21 Coming into force**

This Act comes into force on the day after the day on which this Act receives Royal Assent.

## **22 Repeal of this Act**

The Welsh Ministers may by regulations repeal this Act or any provision of this Act.

## **23 Short title**

The short title of this Act is the Law Derived from the European Union (Wales) Act 2018.



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## SCHEDULE 1

(introduced by section 13)

### FEES AND CHARGES

#### *Power to provide for fees or charges: new functions*

- 1 (1) The Welsh Ministers may by regulations make provision for, or in connection with, the charging of fees or other charges in connection with the exercise of a function (“the relevant function”) that a public authority has by virtue of provision made under any of the following sections—
  - (a) section 3 (powers to make provision corresponding to direct EU law);
  - (b) section 4 (powers to restate EU derived enactments);
  - (c) section 5 (powers to specify provision made under EU related powers as continuing to have effect);
  - (d) section 9 (powers relating to compliance with international obligations);
  - (e) section 10 (powers to implement the withdrawal agreement);
  - (f) section 11 (power to implement EU obligations).
- (2) Regulations under this paragraph may (among other things)—
  - (a) specify the fees or charges or make provision as to how they are to be determined;
  - (b) provide for the recovery or disposal of any sums payable under the regulations;
  - (c) confer power on the public authority to make, by subordinate legislation, any provision that the Welsh Ministers may make under this paragraph in relation to the relevant function.
- (3) Regulations under this paragraph may not—
  - (a) confer or impose a function on a Minister of the Crown;
  - (b) 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.

#### *Power to modify pre-exit fees or charges*

- 2 (1) Sub-paragraph (3) applies where subordinate legislation contains provision (“the charging provision”) for, or in connection with, the charging of fees or other charges that—
  - (a) is made in regulations under section 4 or is treated as having been made under section 5, and
  - (b) immediately before exit day, was made under section 2(2) of the European Communities Act 1972 or section 56 of the Finance Act 1973.
- (2) Sub-paragraph (3) also applies where subordinate legislation contains provision modified under this paragraph.
- (3) The Welsh Ministers may by regulations make provision modifying the subordinate legislation for the purposes of—
  - (a) revoking the charging provision,
  - (b) altering the amount of any of the fees or charges that are to be charged,
  - (c) altering how any of the fees or charges are to be determined, or

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- (d) otherwise altering the fees or charges that may be charged in relation to anything in respect of which fees or charges may be charged under the charging provision.
- (4) Regulations under this paragraph may be made before exit day if the charging provision will fall within sub-paragraph (1) on exit day.

*Restriction on exercise of power under paragraph 2*

- 3 (1) Where the charging provision consists solely of 1972 Act provision, regulations under paragraph 2 may not impose or increase taxation.
- (2) In sub-paragraph (1), “1972 Act provision” means—
  - (a) provision within paragraph 2(1)(a) that immediately before exit day was made under section 2(2) of the European Communities Act 1972 and not under section 56 of the Finance Act 1973, including such provision as modified under paragraph 2, or
  - (b) provision that is made under paragraph 2 and is incidental to, or supplements or replaces, provision within paragraph (a).
- (3) Regulations under paragraph 2 may not—
  - (a) confer or impose a function on a Minister of the Crown;
  - (b) 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.

*Relationship to other powers*

- 4 This Schedule does not affect the powers under section 3, 4, 5, 9, 10 or 11, or any other power exercisable apart from this Schedule, to require the payment of, or to make other provision in relation to, fees or other charges.

SCHEDULE 2

(Introduced by section 19(3))

PROCEDURE FOR MAKING REGULATIONS

*Enhanced procedure regulations*

- 1 (1) This paragraph applies to a statutory instrument containing regulations made under this Act that—
  - (a) establish a new public authority;
  - (b) confer functions on a public authority;
  - (c) impose or increase a fee in respect of a function exercisable by a public authority;
  - (d) create, or widen the scope of, a criminal offence;
  - (e) create or amend a power to legislate;
  - (f) modify primary legislation;
  - (g) are made under section 11, section 12 or section 22;
 but this paragraph does not apply if paragraph 4 applies.

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- (2) If the Welsh Ministers consider it appropriate to proceed with the making of regulations they must lay a draft of the regulations before the National Assembly for Wales along with a statement setting out the Welsh Ministers' view on whether the procedure in sub-paragraphs (6) to (14) should apply.
- (3) If the draft regulations contain provision modifying primary legislation, the Welsh Ministers must lay a statement before the National Assembly for Wales that explains why the provision is needed.
- (4) If after the expiry of the 40-day period the draft regulations laid under sub-paragraph (2) are approved by a resolution of the National Assembly for Wales, the Welsh Ministers may make regulations in the terms of the draft regulations, unless the procedure in sub-paragraphs (6) to (14) apply.
- (5) The procedure in sub-paragraphs (6) to (14) applies to the draft regulations instead of the procedure in sub-paragraph (4) if—
  - (a) the draft regulations are to be made under section 12 or section 22,
  - (b) the National Assembly for Wales resolves within the 30-day period that the procedure should apply, or
  - (c) a committee of the National Assembly for Wales charged with reporting on the draft regulations recommends within the 30-day period that the procedure should apply and the Assembly does not by resolution reject the recommendation within that period.
- (6) The Welsh Ministers must have regard to—
  - (a) any representations,
  - (b) any resolution of the National Assembly for Wales, and
  - (c) any recommendations of a committee of the National Assembly for Wales charged with reporting on the draft regulations,made during the 60-day period with regard to the draft regulations.
- (7) If, after the expiry of the 60-day period, the Welsh Ministers wish to make regulations in the terms of the draft, they must lay before the National Assembly for Wales a statement—
  - (a) stating whether any representations were made, and
  - (b) if any representations were made, giving details of them.
- (8) The Welsh Ministers may, after the laying of a statement, make regulations in the terms of the draft if it is approved by a resolution of the National Assembly for Wales.
- (9) But a committee of the National Assembly for Wales charged with reporting on the draft regulations may, at any time after the laying of a statement under sub-paragraph (7) and before the draft regulations are approved by the Assembly under sub-paragraph (8), recommend that no further proceedings be taken in relation to the draft regulations.
- (10) Where a recommendation is made by a committee of the National Assembly for Wales under sub-paragraph (9) in relation to draft regulations, no proceedings may be taken in relation to the draft under sub-paragraph (8) unless the recommendation is rejected by resolution of the Assembly.
- (11) If after the expiry of the 60-day period the Welsh Ministers wish to proceed with the draft regulations but with material changes, the Welsh Ministers must lay before the National Assembly for Wales—

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- (a) the revised draft regulations,
  - (b) a statement—
    - (i) giving a summary of the changes proposed,
    - (ii) stating whether any representations were made, and
    - (iii) if any representations were made, giving details of them.
- (12) If the revised draft regulations are approved by a resolution of the National Assembly for Wales, the Welsh Ministers may make the regulations in the terms of the revised draft regulations.
- (13) But a committee of the National Assembly for Wales charged with reporting on the revised draft regulations may, at any time after the laying of a statement under sub-paragraph (11) and before the draft regulations are approved by the Assembly under sub-paragraph (12), recommend that no further proceedings be taken in relation to the revised draft regulations.
- (14) Where a recommendation is made by a committee of the National Assembly for Wales under sub-paragraph (13) in relation to revised draft regulations, no proceedings may be taken in relation to the revised draft under sub-paragraph (12) unless the recommendation is rejected by resolution of the Assembly.
- (15) For the purposes of this paragraph, regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- (16) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before the National Assembly for Wales.
- (17) For the purposes of sub-paragraph (16), no account is to be taken of any time during which the National Assembly for Wales is dissolved or in recess for more than four days.

#### *Disclosure of representations*

- 2
- (1) Where a person making representations about draft regulations or revised draft regulations under paragraph 1 has requested the Welsh Ministers not to disclose them, the Welsh Ministers must not disclose them under paragraph 1 if or to the extent that to do so would (disregarding any connection with proceedings in the National Assembly for Wales) constitute a breach of confidence actionable by any person.
  - (2) If information in representations relates to another person, the Welsh Ministers need not disclose the information under paragraph 1 if or to the extent that—
    - (a) it appears to the Welsh Ministers that the disclosure of that information could adversely affect the interests of that other person; and
    - (b) the Welsh Ministers have been unable to obtain the consent of that other person to the disclosure.
  - (3) Sub-paragraphs (1) and (2) do not affect any disclosure that is requested by, and made to, a committee of the National Assembly for Wales charged with reporting on the draft regulations or revised draft regulations.

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*Standard procedure regulations*

- 3 (1) This paragraph applies to a statutory instrument containing regulations under this Act, unless paragraph 1 or 4 applies.
- (2) The regulations may not be made unless a draft of the regulations has been laid before and approved by a resolution of the National Assembly for Wales.

*Urgent procedure regulations*

- 4 (1) A statutory instrument containing regulations under this Act (except section 11, section 12 and section 22) may be made without a draft being laid before, and approved by resolution of, the National Assembly for Wales if it contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being laid and approved.
- (2) After an instrument is made in accordance with sub-paragraph (1), the Welsh Ministers must lay it before the National Assembly for Wales along with a statement explaining the circumstances of the urgency and why, in the Welsh Ministers' opinion, it was necessary to make the regulations without a draft being laid and approved.
- (3) Regulations contained in an instrument made in accordance with sub-paragraph (1) cease to have effect at the end of a period of 30 days, beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of the National Assembly for Wales.
- (4) In calculating the period of 30 days, no account is to be taken of any time during which the National Assembly for Wales is dissolved or in recess for more than four days.
- (5) If regulations cease to have effect as a result of sub-paragraph (3), that does not—
- (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.

*Procedure on re-exercise of certain powers*

- 5 An instrument to which paragraph 1, 3 or 4 applies that revokes, amends or re-enacts any such instrument may (despite section 14 of the Interpretation Act 1978) be subject to a different procedure under this Schedule from the procedure to which the instrument containing the original regulations was subject.

*Combinations of instruments*

- 6 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act that is subject to a procedure under paragraph 1, 3 or 4.
- (2) The statutory instrument may also include regulations under another enactment that are made by statutory instrument subject to a procedure before the National Assembly for Wales that provides for the annulment of the instrument after it has been made.
- (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument is the procedure mentioned in sub-paragraph (1) and not the procedure mentioned in sub-paragraph (2).

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- (4) This paragraph does not prevent the inclusion of other regulations in a statutory instrument that contains regulations under this Act.

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