

LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

SUMMARY OF THE ACT

16. The purpose of the Act is to ensure that the legislation covering subjects devolved to Wales works effectively after the ECA 1972 is repealed by the EU Withdrawal Bill, assuming the Bill is passed and the UK leaves the EU.
17. The Act gives regulation making powers to the Welsh Ministers to restate and demarcate EU derived legislation on subjects that are devolved to Wales, with any modifications that are necessary to make the legislation work following the withdrawal of the UK from the EU. This body of law to be set out in regulations is described in the Act as ‘EU derived Welsh law’. As a general rule, the Act will operate so that the same law in subjects devolved to Wales will apply after the UK exits the EU as before, subject to any necessary modifications of the law to deal with the fact that the UK will no longer be part of the institutional and functional arrangements provided under EU law.
18. The powers to restate and demarcate EU derived Welsh law include a power to make any amendments to that body of law in consequence of the UK’s withdrawal from the EU.
19. The Act is intended to operate alongside the EU Withdrawal Bill¹. The EU Withdrawal Bill—
 - repeals the ECA 1972 from “exit day”;
 - converts the body of EU law that applies directly in the UK (e.g. EU regulations that apply directly in the UK through the operation of the ECA 1972) into the domestic law of the UK jurisdictions (“UK law”);
 - preserves all of the laws that have been made in the UK to implement EU obligations (e.g. regulations made under section 2(2) of the ECA 1972 that implement EU directives);
 - incorporates any other rights that are available in domestic law by virtue of the 1972 Act, including the rights contained in the EU Treaties, that can currently be relied on directly in UK law without the need for specific implementing measures; and
 - provides that pre-exit case law of the Court of Justice of the European Union (“CJEU”) be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court.
20. At the time of the passing of the Bill for this Act, “exit day” under the EU Withdrawal Bill, once enacted, will be 29 March 2019 at 11.00pm, unless the day or time on or at which the TEU and the TFEU cease to apply to the UK in accordance with Article

¹ For a detailed explanation of the provisions of the EU (Withdrawal) Bill see the explanatory notes prepared by the UK Government.

*These notes refer to the Law Derived from the European Union
(Wales) Act 2018 (c.3) which received Royal Assent on 6 June 2018*

50(3) of the TEU is different and the EU Withdrawal Bill is amended by regulations made by a Minister of the Crown to change the definition of “exit day” accordingly.

21. The law that is converted or preserved by the EU Withdrawal Bill is “retained EU law”. Retained EU law is defined in clause 6(7) of the EU Withdrawal Bill as anything which, on or after exit day, continues to be, or forms part of domestic law by virtue of the provisions of the Act that convert or preserve EU law and UK law related to EU law. Retained EU law will also include any modifications of the law converted or preserved by or under the EU Withdrawal Bill or by other UK law from time to time; and it may include law on subjects that are devolved to the National Assembly for Wales as well as law on subjects that are not devolved.
22. At the time of the passing of the Bill for the Act, the EU Withdrawal Bill contained restrictions on the ability of the National Assembly for Wales to modify law converted or preserved by the EU Withdrawal Bill. Section 108A of the Government of Wales Act 2006 (“the GoWA 2006”), which provides for the legislative competence of the National Assembly for Wales, is amended by clause 11(2) of the EU Withdrawal Bill. The amendment prevents an Act of the Assembly from modifying, or conferring power to modify, retained EU law unless—
 - the modification would have been within the legislative competence of the Assembly immediately before exit day; or
 - the modification is authorised by provision made by Her Majesty in an Order in Council approved by both Houses of Parliament and the National Assembly for Wales.
23. The law restated and demarcated before exit day as EU derived Welsh law under the Act will not form part of retained EU law converted or preserved from exit day under the EU Withdrawal Bill. EU derived Welsh law will continue to be, or form part of, domestic law in relation to Wales by virtue of the provisions of the Act, rather than by virtue of any provision of the EU Withdrawal Bill. This means that EU derived Welsh law will fall outside the definition of “retained EU law” in clause 6(7) of the EU Withdrawal Bill and will not be subject to the restrictions on the Assembly’s power to modify retained EU law imposed by clause 11(2) of that Bill.
24. The Act provides further powers to the Welsh Ministers to make provision:
 - in relation to ensuring compliance with international obligations,
 - in relation to implementing the withdrawal agreement, and
 - to keep pace with EU law after the UK has withdrawn from the EU.
25. The Act establishes a default position in law that the Welsh Ministers’ consent is required before any person can make, confirm or approve subordinate legislation covering devolved subjects that are made under Acts of Parliament passed after the Act comes into force (and which meet other conditions). This default position can be changed by Parliament if it wishes when it creates new functions to make, confirm or approve subordinate legislation..