LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Section 20 – General interpretation

- 135. The explanatory notes have already highlighted a number of the terms defined in section 20 by reference to the provisions to which they are relevant.
- 136. 'Exit day' is a key term in the Act and is defined in section 20(1). It is to be appointed in regulations made by the Welsh Ministers. Article 50(3) of the TEU provides that the Treaties will cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification under Article 50(2). Article 50(3) goes on to provide that the European Council may, in agreement with the UK, unanimously decide to extend this period.
- 137. The UK notified the European Council of its intention to withdraw from the EU on 29 March 2017. In the absence of a withdrawal agreement being agreed first or an extension being agreed between the UK and the European Council, the Treaties will cease to apply at 11:00p.m. on 29 March 2019. 'Treaties' is defined in Article 1 of the TEU as the TEU and TFEU.
- 138. Leaving the appointing of exit day to regulations reflects the possibilities catered for under Article 50(2) of the TEU. In making regulations that specify exit day the Welsh Ministers must adhere to the requirements laid out in section 20(4).
- 139. First, the Welsh Ministers must have regard to the day appointed for the same or similar purposes in or under an Act of Parliament of the UK to give effect to the withdrawal of the UK from the EU. If passed, the exit day specified in the EU Withdrawal Bill currently before Parliament, will become relevant to the exercise of the power of the Welsh Ministers to appoint exit day for the purposes of the Act. However, this would not require the Welsh Ministers to adopt the same exit day.
- 140. The second requirement in section 20(4) provides that the Welsh Ministers cannot specify exit day at a point in time where the Treaties still apply to the UK. Article 50 of the TEU provides for the withdrawal of Member States from the EU with Article 50(3) providing for the moment at which the Treaties are to cease to apply to a Member State. Section 20(4)(b) therefore ensures that exit day can only be a point in time after the Treaties have ceased to apply to the UK in accordance with Article 50(3). The Welsh Ministers would be unable to specify a date at which the Treaties still apply due to the restriction on legislating incompatibly with EU law contained in section 80(8) of the GoWA 2006, but section 20(4)(b) confirms this position. The Treaties for the purposes of section 20(4)(b), consistent with the TEU, are the TEU and the TFEU, but by virtue of section 20(7) it also captures the Euratom Treaty.
- 141. Section 20(2) contains further provision relevant to the definition of exit day. A number of the provisions in the Act operate by reference to before, after or on exit day. Section

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

20(2) clarifies the exact point in time to which such references are to be read. Where the Welsh Ministers appoint a time as well as day as exit day, references are to be read in accordance with the time specified. For example, if the Welsh Ministers appoint 11:00p.m. on 29 March 2019, a reference in the Act to regulations coming into force on exit day is to be read as a reference to those regulations coming into force at 11:00p.m. on 29 March 2019. Where the Welsh Ministers do not appoint a time as well as a day as exit day, any reference to exit day in the Act is to be read as a reference to the beginning of that day.