

LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Section 6 – Challenges to EU derived Welsh law arising from invalidity of EU instruments

74. All EU derived Welsh law is connected in some way to an EU instrument. The CJEU has jurisdiction over any challenge of an EU instrument. An EU instrument could be challenged on the grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application or misuse of powers¹. A successful challenge to an EU instrument could cast doubt on any related EU derived Welsh law. Section 6(1) sets a default position that a decision of the CJEU that an EU instrument is invalid does not create a right in law to challenge any EU derived Welsh law. This does not affect any challenge on other public law grounds.
75. **Section 6(2)** provides three exceptions to the default position. The third exception, in paragraph (c) is a power for the Welsh Ministers to add further exceptions. This could include instances where the CJEU has determined an EU instrument is invalid after the withdrawal of the UK from the EU. Section 6(3) is a confirmation that the power in section 6(2)(c) includes the power to provide for a challenge to be made against a domestic public authority (but not a Minister of the Crown – reflecting the limits on the Assembly’s legislative competence and specifically the restriction in paragraph 1(2) of Part 2 of Schedule 7 to the GoWA 2006) instead of an EU institution.

¹ Article 263 of the TFEU.