

LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Section 8 - Rules of evidence etc.

84. Generally, the meaning or effect of the law in other jurisdictions is treated as a question of fact, to be proved in legal proceedings by evidence, rather than determined by a judge as a question of law. Section 3 of the ECA 1972 clarified that, when the UK joined the EU, UK judges were to determine the meaning or effect of the EU Treaties, or the validity, meaning or effect of any EU instrument, as a question of law, in accordance with the principles laid down by and relevant decisions of the CJEU. The EU law which is being preserved by the Act will become domestic law, and so fall to be interpreted by judges in the courts of England and Wales. Some EU law will not become EU derived Welsh law, but may still be relevant to the interpretation of the EU derived Welsh law (for example, a court may have to consider the meaning of an EU directive when interpreting domestic regulations made to implement that directive). Section 8(1) provides that, to the extent that determining the meaning or effect of EU law is necessary for a court to interpret EU derived Welsh law, judges will continue to determine that meaning or effect themselves as a question of law, rather than treat it as a question of fact.
85. Matters which are ‘judicially noticed’ are deemed to be already within the knowledge of the court, and so are not required to be ‘proved’ to the court. For example, Acts of the Assembly are required to be judicially noticed¹. Section 8(3) provides that the Welsh Ministers can make regulations which provide for judicial notice to be taken of a relevant matter, and for the admissibility in legal proceedings of evidence of both a relevant matter and instruments and documents issued by or in the custody of an EU entity, to ensure that appropriate evidential rules can be put in place to reflect the new legal landscape after exit. Regulations under section 8 can amend primary legislation (subsection (5)).

¹ See section 107(4) of the GoWA 2006.