



# European Union (Withdrawal) Act 2018

## 2018 CHAPTER 16

### *Devolution*

#### **10 Continuation of North-South co-operation and the prevention of new border arrangements**

- (1) In exercising any of the powers under this Act, a Minister of the Crown or devolved authority must—
- (a) act in a way that is compatible with the terms of the Northern Ireland Act 1998, and
  - (b) have due regard to the joint report from the negotiators of the EU and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 of the Treaty on European Union.
- (2) Nothing in section 8, 9 or 23(1) or (6) of this Act authorises regulations which—
- (a) diminish any form of North-South cooperation provided for by the Belfast Agreement (as defined by section 98 of the Northern Ireland Act 1998), or
  - (b) create or facilitate border arrangements between Northern Ireland and the Republic of Ireland after exit day which feature physical infrastructure, including border posts, or checks and controls, that did not exist before exit day and are not in accordance with an agreement between the United Kingdom and the EU.

#### **11 Powers involving devolved authorities corresponding to sections 8 and 9**

Schedule 2 (which confers powers to make regulations involving devolved authorities which correspond to the powers conferred by sections 8 and 9) has effect.

#### **12 Retaining EU restrictions in devolution legislation etc.**

- (1) In section 29(2)(d) of the Scotland Act 1998 (no competence for the Scottish Parliament to legislate incompatibly with EU law) for “with EU law” substitute “in breach of the restriction in section 30A(1)”.

(2) After section 30 of that Act (legislative competence: supplementary) insert—

**“30A Legislative competence: restriction relating to retained EU law**

- (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.
- (2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the legislative competence of the Parliament.
- (3) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under this section unless—
  - (a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or
  - (b) the 40 day period has ended without the Parliament having made such a decision.
- (4) For the purposes of subsection (3) a consent decision is—
  - (a) a decision to agree a motion consenting to the laying of the draft,
  - (b) a decision not to agree a motion consenting to the laying of the draft, or
  - (c) a decision to agree a motion refusing to consent to the laying of the draft;
 and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).
- (5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—
  - (a) provide a copy of the draft to the Scottish Ministers, and
  - (b) inform the Presiding Officer that a copy has been so provided.
- (6) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Parliament).
- (7) No regulations may be made under this section after the end of the period of two years beginning with exit day.
- (8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.
- (9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Scottish Parliament which receives Royal Assent after the end of that period.
- (10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.

(11) In this section—

“the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers,

and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days.”

(3) In section 108A(2)(e) of the Government of Wales Act 2006 (no competence for the National Assembly for Wales to legislate incompatibly with EU law) for “with EU law” substitute “in breach of the restriction in section 109A(1)”.

(4) After section 109 of that Act (legislative competence: supplementary) insert—

**“109A Legislative competence: restriction relating to retained EU law**

(1) An Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.

(2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the Assembly’s legislative competence.

(3) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(4) A Minister of the Crown must not lay a draft as mentioned in subsection (3) unless—

- (a) the Assembly has made a consent decision in relation to the laying of the draft, or
- (b) the 40 day period has ended without the Assembly having made such a decision.

(5) For the purposes of subsection (4) a consent decision is—

- (a) a decision to agree a motion consenting to the laying of the draft,
- (b) a decision not to agree a motion consenting to the laying of the draft, or
- (c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(6) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—

- (a) provide a copy of the draft to the Welsh Ministers, and
- (b) inform the Presiding Officer that a copy has been so provided.

(7) See also section 157ZA (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Assembly).

- (8) No regulations may be made under this section after the end of the period of two years beginning with exit day.
- (9) Subsection (8) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.
- (10) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Assembly which receives Royal Assent after the end of that period.
- (11) Subsections (4) to (9) do not apply in relation to regulations which only relate to a revocation of a specification.
- (12) In this section—
  - “the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Welsh Ministers,
  - and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.”
- (5) In section 6(2)(d) of the Northern Ireland Act 1998 (no competence for the Northern Ireland Assembly to legislate incompatibly with EU law) for “incompatible with EU law” substitute “in breach of the restriction in section 6A(1)”.
- (6) After section 6 of that Act (legislative competence) insert—

**“6A Restriction relating to retained EU law**

- (1) An Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.
- (2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the legislative competence of the Assembly.
- (3) A Minister of the Crown must not lay for approval before each House of Parliament a draft of a statutory instrument containing regulations under this section unless—
  - (a) the Assembly has made a consent decision in relation to the laying of the draft, or
  - (b) the 40 day period has ended without the Assembly having made such a decision.
- (4) For the purposes of subsection (3) a consent decision is—
  - (a) a decision to agree a motion consenting to the laying of the draft,
  - (b) a decision not to agree a motion consenting to the laying of the draft, or
  - (c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

- (5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—
  - (a) provide a copy of the draft to the relevant Northern Ireland department, and
  - (b) inform the Presiding Officer that a copy has been so provided.
- (6) See also section 96A (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Assembly).
- (7) No regulations may be made under this section after the end of the period of two years beginning with exit day.
- (8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.
- (9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Assembly which receives Royal Assent after the end of that period.
- (10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.
- (11) Regulations under this section may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Minister of the Crown making them considers appropriate.
- (12) In this section—
  - “the relevant Northern Ireland department” means such Northern Ireland department as the Minister of the Crown concerned considers appropriate;
  - “the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the relevant Northern Ireland department,and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.”
- (7) Part 1 of Schedule 3 (which makes corresponding provision in relation to executive competence to that made by subsections (1) to (6) in relation to legislative competence) has effect.
- (8) Part 2 of Schedule 3 (which imposes reporting obligations on a Minister of the Crown in recognition of the fact that the powers to make regulations conferred by subsections (1) to (6) and Part 1 of Schedule 3, and any restrictions arising by virtue of them, are intended to be temporary) has effect.
- (9) A Minister of the Crown may by regulations—
  - (a) repeal any of the following provisions—

- (i) section 30A or 57(4) to (15) of the Scotland Act 1998,
    - (ii) section 80(8) to (8L) or 109A of the Government of Wales Act 2006,  
or
    - (iii) section 6A or 24(3) to (15) of the Northern Ireland Act 1998, or
  - (b) modify any enactment in consequence of any such repeal.
- (10) Until all of the provisions mentioned in subsection (9)(a) have been repealed, a Minister of the Crown must, after the end of each review period, consider whether it is appropriate—
- (a) to repeal each of those provisions so far as it has not been repealed, or
  - (b) to revoke any regulations made under any of those provisions so far as they have not been revoked.
- (11) In considering whether to exercise the power to make regulations under subsection (9), a Minister of the Crown must have regard (among other things) to—
- (a) the fact that the powers to make regulations conferred by the provisions mentioned in subsection (9)(a), and any restrictions arising by virtue of them, are intended to be temporary and, where appropriate, replaced with other arrangements, and
  - (b) any progress which has been made in implementing those other arrangements.
- (12) Part 3 of Schedule 3 (which contains amendments of devolution legislation not dealt with elsewhere) has effect.
- (13) In this section—
- “arrangement” means any enactment or other arrangement (whether or not legally enforceable);
  - “review period” means—
- (a) the period of three months beginning with the day on which subsection (10) comes into force, and
  - (b) after that, each successive period of three months.