



European Union (Withdrawal) Act 2018

2018 CHAPTER 16

Retention of existing EU law

2 Saving for EU-derived domestic legislation

- (1) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.
- (2) In this section “EU-derived domestic legislation” means any enactment so far as—
 - (a) made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972,
 - (b) passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act,
 - (c) relating to anything—
 - (i) which falls within paragraph (a) or (b), or
 - (ii) to which section 3(1) or 4(1) applies, or
 - (d) relating otherwise to the EU or the EEA,but does not include any enactment contained in the European Communities Act 1972.
- (3) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation).

3 Incorporation of direct EU legislation

- (1) Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day.
- (2) In this Act “direct EU legislation” means—
 - (a) any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as—
 - (i) it is not an exempt EU instrument (for which see section 20(1) and Schedule 6),
 - (ii) it is not an EU decision addressed only to a member State other than the United Kingdom, and

- (iii) its effect is not reproduced in an enactment to which section 2(1) applies,
 - (b) any Annex to the EEA agreement, as it has effect in EU law immediately before exit day and so far as—
 - (i) it refers to, or contains adaptations of, anything falling within paragraph (a), and
 - (ii) its effect is not reproduced in an enactment to which section 2(1) applies, or
 - (c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before exit day.
- (3) For the purposes of this Act, any direct EU legislation is operative immediately before exit day if—
 - (a) in the case of anything which comes into force at a particular time and is stated to apply from a later time, it is in force and applies immediately before exit day,
 - (b) in the case of a decision which specifies to whom it is addressed, it has been notified to that person before exit day, and
 - (c) in any other case, it is in force immediately before exit day.
- (4) This section—
 - (a) brings into domestic law any direct EU legislation only in the form of the English language version of that legislation, and
 - (b) does not apply to any such legislation for which there is no such version, but paragraph (a) does not affect the use of the other language versions of that legislation for the purposes of interpreting it.
- (5) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation).

4 Saving for rights etc. under section 2(1) of the ECA

- (1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day—
 - (a) are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and
 - (b) are enforced, allowed and followed accordingly,
 continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).
- (2) Subsection (1) does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they—
 - (a) form part of domestic law by virtue of section 3, or
 - (b) arise under an EU directive (including as applied by the EEA agreement) and are not of a kind recognised by the European Court or any court or tribunal in the United Kingdom in a case decided before exit day (whether or not as an essential part of the decision in the case).
- (3) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation).

5 Exceptions to savings and incorporation

- (1) The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit day.
- (2) Accordingly, the principle of the supremacy of EU law continues to apply on or after exit day so far as relevant to the interpretation, disapplication or quashing of any enactment or rule of law passed or made before exit day.
- (3) Subsection (1) does not prevent the principle of the supremacy of EU law from applying to a modification made on or after exit day of any enactment or rule of law passed or made before exit day if the application of the principle is consistent with the intention of the modification.
- (4) The Charter of Fundamental Rights is not part of domestic law on or after exit day.
- (5) Subsection (4) does not affect the retention in domestic law on or after exit day in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles).
- (6) Schedule 1 (which makes further provision about exceptions to savings and incorporation) has effect.

6 Interpretation of retained EU law

- (1) A court or tribunal—
 - (a) is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court, and
 - (b) cannot refer any matter to the European Court on or after exit day.
- (2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.
- (3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after exit day and so far as they are relevant to it—
 - (a) in accordance with any retained case law and any retained general principles of EU law, and
 - (b) having regard (among other things) to the limits, immediately before exit day, of EU competences.
- (4) But—
 - (a) the Supreme Court is not bound by any retained EU case law,
 - (b) the High Court of Justiciary is not bound by any retained EU case law when—
 - (i) sitting as a court of appeal otherwise than in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998), or
 - (ii) sitting on a reference under section 123(1) of the Criminal Procedure (Scotland) Act 1995, and

- (c) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.
- (5) In deciding whether to depart from any retained EU case law, the Supreme Court or the High Court of Justiciary must apply the same test as it would apply in deciding whether to depart from its own case law.
- (6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after exit day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.
- (7) In this Act—
 - “retained case law” means—
 - (a) retained domestic case law, and
 - (b) retained EU case law;
 “retained domestic case law” means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before exit day and so far as they—
 - (a) relate to anything to which section 2, 3 or 4 applies, and
 - (b) are not excluded by section 5 or Schedule 1,
 (as those principles and decisions are modified by or under this Act or by other domestic law from time to time);
 “retained EU case law” means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before exit day and so far as they—
 - (a) relate to anything to which section 2, 3 or 4 applies, and
 - (b) are not excluded by section 5 or Schedule 1,
 (as those principles and decisions are modified by or under this Act or by other domestic law from time to time);
 “retained EU law” means anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time);
 “retained general principles of EU law” means the general principles of EU law, as they have effect in EU law immediately before exit day and so far as they—
 - (a) relate to anything to which section 2, 3 or 4 applies, and
 - (b) are not excluded by section 5 or Schedule 1,
 (as those principles are modified by or under this Act or by other domestic law from time to time).

7 Status of retained EU law

- (1) Anything which—
 - (a) was, immediately before exit day, primary legislation of a particular kind, subordinate legislation of a particular kind or another enactment of a particular kind, and
 - (b) continues to be domestic law on and after exit day by virtue of section 2,
 continues to be domestic law as an enactment of the same kind.

- (2) Retained direct principal EU legislation cannot be modified by any primary or subordinate legislation other than—
 - (a) an Act of Parliament,
 - (b) any other primary legislation (so far as it has the power to make such a modification), or
 - (c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—
 - (i) paragraph 3, 5(3)(a) or (4)(a), 8(3), 10(3)(a) or (4)(a), 11(2)(a) or 12(3) of Schedule 8,
 - (ii) any other provision made by or under this Act,
 - (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or
 - (iv) any provision made on or after the passing of this Act by or under primary legislation.
- (3) Retained direct minor EU legislation cannot be modified by any primary or subordinate legislation other than—
 - (a) an Act of Parliament,
 - (b) any other primary legislation (so far as it has the power to make such a modification), or
 - (c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—
 - (i) paragraph 3, 5(2) or (4)(a), 8(3), 10(2) or (4)(a) or 12(3) of Schedule 8,
 - (ii) any other provision made by or under this Act,
 - (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or
 - (iv) any provision made on or after the passing of this Act by or under primary legislation.
- (4) Anything which is retained EU law by virtue of section 4 cannot be modified by any primary or subordinate legislation other than—
 - (a) an Act of Parliament,
 - (b) any other primary legislation (so far as it has the power to make such a modification), or
 - (c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—
 - (i) paragraph 3, 5(3)(b) or (4)(b), 8(3), 10(3)(b) or (4)(b), 11(2)(b) or 12(3) of Schedule 8,
 - (ii) any other provision made by or under this Act,
 - (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or
 - (iv) any provision made on or after the passing of this Act by or under primary legislation.
- (5) For other provisions about the status of retained EU law, see—
 - (a) section 5(1) to (3) (status of retained EU law in relation to other enactments or rules of law),
 - (b) section 6 (status of retained case law and retained general principles of EU law),

- (c) section 15(2) and Part 2 of Schedule 5 (status of retained EU law for the purposes of the rules of evidence),
- (d) paragraphs 13 to 16 of Schedule 8 (affirmative and enhanced scrutiny procedure for, and information about, instruments which amend or revoke subordinate legislation under section 2(2) of the European Communities Act 1972 including subordinate legislation implementing EU directives),
- (e) paragraphs 19 and 20 of that Schedule (status of certain retained direct EU legislation for the purposes of the Interpretation Act 1978), and
- (f) paragraph 30 of that Schedule (status of retained direct EU legislation for the purposes of the Human Rights Act 1998).

(6) In this Act—

“retained direct minor EU legislation” means any retained direct EU legislation which is not retained direct principal EU legislation;

“retained direct principal EU legislation” means—

- (a) any EU regulation so far as it—
 - (i) forms part of domestic law on and after exit day by virtue of section 3, and
 - (ii) was not EU tertiary legislation immediately before exit day, or
- (b) any Annex to the EEA agreement so far as it—
 - (i) forms part of domestic law on and after exit day by virtue of section 3, and
 - (ii) refers to, or contains adaptations of, any EU regulation so far as it falls within paragraph (a),

(as modified by or under this Act or by other domestic law from time to time).