



European Union (Withdrawal) Act 2018

2018 CHAPTER 16

Main powers in connection with withdrawal

8 Dealing with deficiencies arising from withdrawal

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate—
- (a) any failure of retained EU law to operate effectively, or
 - (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (2) Deficiencies in retained EU law are where the Minister considers that retained EU law—
- (a) contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant,
 - (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom or any part of it,
 - (c) makes provision for, or in connection with, reciprocal arrangements between—
 - (i) the United Kingdom or any part of it or a public authority in the United Kingdom, and
 - (ii) the EU, an EU entity, a member State or a public authority in a member State,which no longer exist or are no longer appropriate,
 - (d) makes provision for, or in connection with, other arrangements which—
 - (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
 - (ii) are otherwise dependent upon the United Kingdom's membership of the EU [^{F1}or Part 4 of the withdrawal agreement],and which no longer exist or are no longer appropriate,

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- (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties [^{F2}or as a result of either the end of the implementation period or any other effect of the withdrawal agreement],
 - [^{F3}(ea) is not clear in its effect as a result of the operation of any provision of sections 2 to 6 or Schedule 1,]
 - (f) does not contain any functions or restrictions which—
 - (i) were in an EU directive and in force immediately before [^{F4}IP completion day] (including any power to make EU tertiary legislation), and
 - (ii) it is appropriate to retain, or
 - (g) contains EU references which are no longer appropriate.
- (3) There is also a deficiency in retained EU law where the Minister considers that there is—
- (a) anything in retained EU law which is of a similar kind to any deficiency which falls within subsection (2), or
 - (b) a deficiency in retained EU law of a kind described, or provided for, in regulations made by a Minister of the Crown.
- (4) But retained EU law is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into force or only applies on or after [^{F5}IP completion day].
- (5) Regulations under subsection (1) may make any provision that could be made by an Act of Parliament.
- (6) Regulations under subsection (1) may (among other things) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
- (a) exercisable instead by a public authority (whether or not established for the purpose) in the United Kingdom, or
 - (b) replaced, abolished or otherwise modified.
- (7) But regulations under subsection (1) may not—
- (a) impose or increase taxation or fees,
 - (b) make retrospective provision,
 - (c) create a relevant criminal offence,
 - (d) establish a public authority,
 - ^{F6}(e)
 - (f) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
 - (g) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).
- (8) No regulations may be made under this section after the end of the period of two years beginning with [^{F7}IP completion day].

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- (9) The reference in subsection (1) to a failure or other deficiency arising from the withdrawal of the United Kingdom from the EU includes a reference to any failure or other deficiency arising from ^{F8}—
- (a) any aspect of that withdrawal, including (among other things)—
 - (i) the end of the implementation period, or
 - (ii) any other effect of the withdrawal agreement, or
 - (b) that withdrawal, or any such aspect of it, taken together] with the operation of any provision, or the interaction between any provisions, made by or under this Act ^{F9}or the European Union (Withdrawal Agreement) Act 2020].

Textual Amendments

- F1** Words in s. 8(2)(d)(ii) inserted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(2\)\(a\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F2** Words in s. 8(2)(e) inserted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(2\)\(b\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F3** S. 8(2)(ea) inserted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(2\)\(c\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F4** Words in s. 8(2)(f)(i) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(2\)\(d\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F5** Words in s. 8(4) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(3\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F6** S. 8(7)(e) omitted (31.1.2020) by virtue of [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(4\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F7** Words in s. 8(8) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(5\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F8** S. 8(9)(a)(b) substituted for words (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(6\)\(a\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)
- F9** Words in s. 8(9) inserted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(6\)\(b\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)

Modifications etc. (not altering text)

- C1** S. 8 applied in part (with modifications) (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), regs. 1(2), **3(3)**
- C2** S. 8(5)-(7) applied (with modifications) (30.1.2020) by [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\), ss. 3\(6\)\(7\)](#), 9(3)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(A1)-(A3) inserted by [2023 c. 28 s. 3\(1\)](#)
- s. 5(A4) inserted by [2023 c. 28 s. 4\(2\)\(a\)](#)
- s. 5(A2) words substituted by [2023 c. 28 Sch. 2 para. 8\(2\)](#)
- s. 5(8) inserted by [2023 c. 28 s. 3\(2\)](#)
- s. 5(8) words substituted by [2023 c. 28 Sch. 2 para. 8\(2\)](#)
- s. 6(4)-(5ZA) word substituted by [2023 c. 28 Sch. 2 para. 8\(3\)\(c\)](#)
- s. 6(5ZA) inserted by [2023 c. 28 s. 6\(5ZA\)](#)
- s. 6(6B) inserted by [2023 c. 28 s. 6\(6\)](#)
- s. 6A-6C inserted by [2023 c. 28 s. 6\(8\)](#)
- s. 6A word substituted by [2023 c. 28 Sch. 2 para. 8\(4\)](#)
- s. 6B word substituted by [2023 c. 28 Sch. 2 para. 8\(5\)](#)
- s. 6C word substituted by [2023 c. 28 Sch. 2 para. 8\(6\)](#)
- s. 6D inserted by [2023 c. 28 s. 8](#)
- s. 6D(1)(a) words substituted by [2023 c. 28 Sch. 2 para. 8\(7\)](#)
- s. 6D(1)(b) words substituted by [2023 c. 28 Sch. 2 para. 8\(7\)](#)
- s. 7(4A) words substituted by [2023 c. 28 Sch. 2 para. 8\(8\)\(b\)](#)
- Sch. 8 para. 11A(2) words substituted by [2023 c. 28 Sch. 2 para. 8\(15\)\(b\)](#)
- Sch. 8 para. 11B(2) words substituted by [2023 c. 28 Sch. 2 para. 8\(15\)\(b\)](#)
- Sch. 8 para. 11A(3) words substituted by [2023 c. 28 Sch. 2 para. 8\(15\)\(d\)\(i\)](#)
- Sch. 8 para. 11B(3) words substituted by [2023 c. 28 Sch. 2 para. 8\(15\)\(d\)\(i\)](#)
- Sch. 8 para. 11A(3) words substituted by [2023 c. 28 Sch. 2 para. 8\(15\)\(d\)\(ii\)](#)
- Sch. 8 para. 11B(3) words substituted by [2023 c. 28 Sch. 2 para. 8\(15\)\(d\)\(ii\)](#)