
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force various provisions of the European Union (Withdrawal) Act 2018 (c. 16) (“the Act”).

Regulation 3(a) brings into force the regulation making power contained in paragraph 1(2)(b) and (3) of Schedule 1 which allow regulations to be made to create exceptions from the general rule in paragraph 1(1) of that Schedule which prevents challenges to retained EU law post-exit on the grounds that an EU instrument was invalid.

Regulation 3(b) brings into force section 6(7) (interpretation of retained EU law) which defines certain EU-exit related terms like “retained EU law” for the purposes of the Act.

Regulation 3(c) brings into force section 12(9) to (11) and (13) (retaining EU restrictions in devolution legislation) of the Act which provide the power to repeal the retained EU law based restrictions on devolved competence that are introduced by section 12 of, and Schedule 3 to, the Act and create the duty to review whether it is appropriate to repeal those provisions or revoke any regulations made under those provisions.

Regulation 3(d) brings into force paragraph 2 of Schedule 5 to the Act which allows a Minister of the Crown to make directions as to which matters are to be exempted from the general duty on the Queen's Printer to publish the relevant EU instruments and Treaties that were in force immediately before exit day.

Regulation 3(e) brings into force paragraph 4 of Schedule 5 to the Act which allows a Minister of the Crown to make regulations about judicial notice and the admissibility of specified evidence of matters relating to retained EU law, EU law, the EEA agreement and to other instruments or documents issued by an EU entity.

Regulation 3(f) brings into force section 19 (future interaction with the law and agencies of the EU) of the Act which makes it clear that the Act does not (a) prevent the UK from mirroring EU law in domestic law after exit day or (b) prevent the UK from continuing to participate in (or have other types of ongoing relationship with) EU agencies after exit day.

Regulation 3(g) brings into force various consequential provisions contained in Schedule 8 of the Act. Those consequential provisions—

- (a) amend the Interpretation Act 1978 (c. 30) (“IA 1978”) to—
 - (i) include a new section 23ZA in the IA 1978 which provides that the IA 1978 will apply to retained direct EU legislation but only to the extent that it has been amended by domestic legislation;
 - (ii) update the definition of enactment in Schedule 1 of IA 1978 - but only for the purposes of the use of the term enactment in sections 15, 16 and 17 of IA 1978 which provide certain default rules that apply where legislation is repealed;
 - (iii) update the list of defined terms in Schedule 1 of IA 1978 to include some additional new terms relating to EU exit;
- (b) amend the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (“ILRA”) to—
 - (i) update section 1 of ILRA to provide that where Scottish Ministers make secondary legislation under a combination of powers contained in an Act of the Scottish Parliament and powers contained in retained direct EU legislation that the interpretation rules in ILRA (rather than the interpretation rules in the IA 1978) apply to the instrument;
 - (ii) create an exemption from the laying requirements in section 30 ILRA to make it clear that those rules do not apply to instruments made under the scrutiny procedure for

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urgent cases (the urgent procedure has its own specific laying requirements as set out in paragraph 6 of Schedule 7 to the Act);

- (iii) update section 37 of ILRA to amend the definition of “enactment” (to include retained direct EU legislation) and to insert new a definition of “subordinate legislation” (which includes instruments made under secondary legislation making powers in retained direct EU legislation) so that instruments made by Scottish Ministers under powers in retained direct EU legislation will fall under the normal rules for Scottish Statutory Instruments contained in Part 2 of ILRA;
- (c) amend section 30 of the Small Business, Enterprise and Employment Act 2015 (c. 28) (to remove the requirement in that Act for new secondary legislation that is being made to implement an EU obligation to include a requirement to review how other Member States have implemented the obligation).

Regulation 3(h) brings into force paragraph 40 (Main powers in connection with withdrawal) of Schedule 8 which makes clear that the sunset of the regulation making powers in sections 8, 9 and 23(1) of the Act does not affect the continuing validity of regulations made under those powers before that sunset.

Regulation 3(i) brings into force the repeal of certain Acts listed in Schedule 9 of the Bill to the extent specified in that regulation.

Regulation 4 brings into force the repeal of the European Union Act 2011 (c. 12) on exit day to the extent that the repeal has not already been commenced by regulation 3(i).

Part 3 of these Regulations makes transitional provisions.

Regulation 5 provides makes it clear that following the repeal of the reference to EU obligations in section 30 of the Small Business, Enterprise and Employment Act 2015 (c. 26) the remaining reference to international obligations is to be read as not including EU obligations.

Regulations 6 – 8 provide that the repeal of the requirements for Parliamentary approval contained in the 2008 and 2011 Acts and the repeal of a number of Acts containing approvals required by those Acts and by the European Parliamentary Elections Act 2002 (c. 24) have no effect on the continuing validity of anything done in relation to any matters approved by or in accordance with those Acts (or exempted from the requirements for approval in accordance with those Acts). The following Acts (the repeals of which are commenced in whole or in part in accordance with these regulations) contain relevant approvals: the 2008 Act, the 2011 Act, the European Union (Approval of Treaty Amendment Decision) Act 2012 (c. 15), the European Union (Approvals) Act 2013 (c. 9), the European Union (Approvals) Act 2014 (c. 3), the Serious Crime Act 2015 (c. 9), the European Union (Finance) Act 2015 (c. 32) and the European Union (Approvals) Act 2015 (c. 37).

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