



# European Union (Withdrawal Agreement) Act 2020

## 2020 CHAPTER 1

### PART 1

#### IMPLEMENTATION PERIOD

##### *Saved law for implementation period*

#### **1 Saving of ECA for implementation period**

After section 1 of the European Union (Withdrawal) Act 2018 (repeal of the European Communities Act 1972) insert—

##### *“Savings for implementation period*

#### **1A Saving for ECA for implementation period**

- (1) Subsections (2) to (4) have effect despite the repeal of the European Communities Act 1972 on exit day by section 1.
- (2) The European Communities Act 1972, as it has effect in domestic law or the law of a relevant territory immediately before exit day, continues to have effect in domestic law or the law of the relevant territory on and after exit day so far as provided by subsections (3) to (5).
- (3) The Act of 1972 has effect on and after exit day as if —
  - (a) the definitions of “the Treaties” and “the EU Treaties” given by section 1(2) to (4) (interpretation)—
    - (i) included Part 4 of the withdrawal agreement (implementation period), other than that Part so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy, but

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- (ii) were otherwise limited to anything which falls within those definitions as at immediately before exit day so far as it is not excluded by regulations made on or after exit day by a Minister of the Crown under this sub-paragraph,
  - (b) the reference in section 2(2) to the objects of the EU were a reference to those objects so far as they are applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,
  - (c) section 2(3) (payment of EU costs etc.) were omitted,
  - (d) in section 3 (decisions on, and proof of, EU Treaties and EU instruments etc.)—
    - (i) the references to the Treaties in subsections (1) and (2) included the withdrawal agreement, and
    - (ii) the words in brackets in subsection (1) only applied so far as they are in accordance with Part 4 of the withdrawal agreement,
  - (e) references in sections 5 and 6 (customs duties and common agricultural policy) to the common customs tariff of the EU, directly applicable EU provision, the exclusion of customs duties, EU arrangements and agricultural levies of the EU were to such things so far as they are applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement, and
  - (f) in Part 2 of Schedule 1 (general definitions in relation to the EU)—
    - (i) in the definition of “EU customs duty”, the reference to directly applicable EU provision were to such provision so far as it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement, and
    - (ii) in the definition of “Member” in the expression “member State”, after “EU” there were inserted “and for the purposes of this expression the United Kingdom is to be treated as if it were a member of the EU during the implementation period (within the meaning given by section 1A(6) of the European Union (Withdrawal) Act 2018)”.
- (4) In this section “relevant territory” means the Isle of Man, any of the Channel Islands or Gibraltar.
- (5) Subsections (1) to (4) are repealed on IP completion day.
- (6) In this Act—
- “the implementation period” means the transition or implementation period provided for by Part 4 of the withdrawal agreement and beginning with exit day and ending on IP completion day;
  - “IP completion day” (and related expressions) have the same meaning as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) to (5) of that Act);
  - “withdrawal agreement” has the same meaning as in that Act (see section 39(1) and (6) of that Act).
- (7) In this Act—
- (a) references to the European Communities Act 1972 are to be read, so far as the context permits or requires, as being or (as the case may be)

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- including references to that Act as it continues to have effect by virtue of subsections (2) to (4) above, and
- (b) references to any Part of the withdrawal agreement or the EEA EFTA separation agreement include references to any other provisions of that agreement so far as applying to that Part.”

## 2 Additional saving for implementation period

After section 1A of the European Union (Withdrawal) Act 2018 (saving for the European Communities Act 1972 for the implementation period) (for which see section 1 above) insert—

### “1B Saving for EU-derived domestic legislation for implementation period

- (1) Subsections (2) to (5) have effect despite the repeal of the European Communities Act 1972 on exit day by section 1.
- (2) 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, subject as follows.
- (3) Any enactment which continues to have effect by virtue of subsection (2) is to be read, on and after exit day and so far as the context permits or requires, as if—
- (a) any reference to an expression which is to be read in accordance with Schedule 1 to the Interpretation Act 1978 and is an expression defined by section 1 of, or Part 2 of Schedule 1 to, the European Communities Act 1972 were a reference to that expression as defined by that section or that Part of that Schedule as it continues to have effect by virtue of section 1A(2) to (4) of this Act,
- (b) any reference (however expressed and subject to paragraph (a) above) to—
- (i) EU law,
- (ii) any particular EU Treaty or any part of it,
- (iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document,
- (iv) any part of EU law not falling within sub-paragraph (ii) or (iii),
- (v) any tax, duty, levy or interests of the EU, or
- (vi) any arrangement involving, or otherwise relating to, the EU of a kind not falling within sub-paragraph (i), (ii), (iii), (iv) or (v),
- were a reference to any such thing so far as it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,
- (c) any reference (however expressed and subject to paragraph (a) above) to the European Communities Act 1972 were or (as the case may be) included a reference to the Act of 1972 as it continues to have effect by virtue of section 1A(2) to (4) of this Act,
- (d) any reference (however expressed) to the area of the EU or of the EEA included the United Kingdom,
- (e) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement), and

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- (f) such other modifications were made as—
  - (i) are provided for by regulations under section 8A or Part 1A of Schedule 2, or
  - (ii) so far as not so provided, are necessary for any purpose of Part 4 of the withdrawal agreement and are capable of being ascertained from any such purpose or otherwise from that Part of that agreement.
- (4) Any EU-derived domestic legislation which is an enactment passed or made on or after exit day and before IP completion day is, unless the contrary intention appears, to be read in accordance with subsection (3) (and anything done or omitted to be done in connection with any such enactment is to be understood, and has effect, accordingly).
- (5) Subsections (2) to (4) are subject to any regulations made under section 8A or 23 or Part 1A of Schedule 2 or otherwise under this Act or under the European Union (Withdrawal Agreement) Act 2020.
- (6) Subsections (1) to (5) are repealed on IP completion day.
- (7) In this Act “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—
    - (i) anything which falls within paragraph (a) or (b), or
    - (ii) any rights, powers, liabilities, obligations, restrictions, remedies or procedures which are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, or
  - (d) relating otherwise to the EU or the EEA,
 but does not include any enactment contained in the European Communities Act 1972 or any enactment contained in this Act or the European Union (Withdrawal Agreement) Act 2020 or in regulations made under this Act or the Act of 2020.”

### *Supplementary powers*

## **3 Supplementary power in connection with implementation period**

After section 8 of the European Union (Withdrawal) Act 2018 (dealing with deficiencies arising from withdrawal) insert—

### **“8A Supplementary power in connection with implementation period**

- (1) A Minister of the Crown may by regulations—
  - (a) provide for other modifications for the purposes of section 1B(3)(f) (i) (whether applying in all cases or particular cases or descriptions of case),

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- (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
  - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section,
  - (d) modify any enactment contained in this Act in consequence of any repeal made by section 1A(5) or 1B(6), or
  - (e) make such provision not falling within paragraph (a), (b), (c) or (d) as the Minister considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.
- (3) In subsection (2) “enactment” does not include primary legislation passed or made after IP completion day.
- (4) No regulations may be made under subsection (1) after the end of the period of two years beginning with IP completion day.”

#### **4 Powers corresponding to section 3 involving devolved authorities**

After Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (corresponding powers involving devolved authorities: dealing with deficiencies arising from withdrawal) insert—

### **“PART 1A**

#### **PROVISION IN CONNECTION WITH IMPLEMENTATION PERIOD**

##### **Supplementary power in connection with implementation period**

- 11A (1) A devolved authority may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f) (i) (whether applying in all cases or particular cases or descriptions of case),
  - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
  - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section, or
  - (d) make such provision not falling within paragraph (a), (b) or (c) as the devolved authority considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f) (i) (whether applying in all cases or particular cases or descriptions of case),
  - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,

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- (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section, or
  - (d) make such provision not falling within paragraph (a), (b) or (c) as they consider appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (3) The power to make regulations under this Part may (among other things) be exercised by modifying any provision made by or under an enactment.
  - (4) In sub-paragraph (3) “enactment” does not include primary legislation passed or made after IP completion day.
  - (5) No regulations may be made under this Part after the end of the period of two years beginning with IP completion day.
  - (6) Regulations under sub-paragraph (1) are also subject to paragraphs 11B and 11C.

#### **No power to make provision outside devolved competence**

- 11B (1) No provision may be made by a devolved authority acting alone in regulations under this Part unless the provision is within the devolved competence of the devolved authority.
- (2) See paragraphs 11D to 11F for the meaning of “devolved competence” for the purposes of this Part.

#### **Certain requirements for consent, joint exercise or consultation**

- 11C Paragraphs 5 to 7 apply for the purposes of this Part as they apply for the purposes of Part 1.

#### **Meaning of devolved competence: Part 1A**

- 11D A provision is within the devolved competence of the Scottish Ministers for the purposes of this Part if—
  - (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring, in the case of regulations made under this Part before exit day, section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law), or
  - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone (ignoring, in the case of regulations made under this Part before exit day, section 57(2) of the Scotland Act 1998 so far as relating to EU law).
- 11E A provision is within the devolved competence of the Welsh Ministers for the purposes of this Part if—
  - (a) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (ignoring, in the case of regulations made under this Part before exit day, section 108A(2)(e) of the Government of Wales Act 2006

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- so far as relating to EU law but including any provision that could be made only with the consent of a Minister of the Crown), or
- (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone (ignoring, in the case of regulations made under this Part before exit day, section 80(8) of the Government of Wales Act 2006 so far as relating to EU law).
- 11F A provision is within the devolved competence of a Northern Ireland department for the purposes of this Part if—
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly—
- (i) would be within the legislative competence of the Assembly (ignoring, in the case of regulations made under this Part before exit day, section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law), and
- (ii) would not require the consent of the Secretary of State,
- (b) the provision—
- (i) amends or repeals Northern Ireland legislation, and
- (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring, in the case of regulations made under this Part before exit day, section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law) and require the consent of the Secretary of State, or
- (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone (ignoring, in the case of regulations made under this Part before exit day, section 24(1)(b) of the Northern Ireland Act 1998).”