

[AS AMENDED SINCE INTRODUCTION]

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**B I L L**

TO

Repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the United Kingdom from the EU.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Repeal of the ECA*

**1 Repeal of the European Communities Act 1972**

The European Communities Act 1972 is repealed on exit day.

*Retention of existing EU law*

**2 Saving for EU-derived domestic legislation**

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(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, 10

(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 15

(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). 20

### 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 14(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).

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## 5 Exceptions to savings and incorporation

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- (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.

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## 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) A court or tribunal need not have regard to anything done on or after exit day by the European Court, another EU entity or the EU but may do so if it considers it appropriate to do so.
- (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 –

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- (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 5
- (ii) sitting on a reference under section 123(1) of the Criminal Procedure (Scotland) Act 1995, and 10
- (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. 15
- (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— 20
- “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— 25
- (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); 30
- “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, 35
- (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); 40
- “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— 45
- (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).

*Main powers in connection with withdrawal***7 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 5
  - (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 ~~include (but are not limited to)~~ 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, 10
  - (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, 15
  - (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, 20
 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 25
    - (ii) are otherwise dependent upon the United Kingdom’s membership of the EU,
 and which no longer exist or are no longer appropriate,
  - (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, 30
  - (f) does not contain any functions or restrictions which—
    - (i) were in an EU directive and in force immediately before exit day (including any power to make EU tertiary legislation), and 35
    - (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— 40
- (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 exit day. 45

- (5) Regulations under ~~this section~~ [subsection \(1\)](#) may make any provision that could be made by an Act of Parliament.
- (6) Regulations under ~~this section~~ [subsection \(1\)](#) may (among other things) –
- (a) 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 –
    - (i) exercisable instead by a public authority (whether or not newly established or established for the purpose) in the United Kingdom, or
    - (ii) replaced, abolished or otherwise modified, or
  - (b) provide for the establishment of public authorities in the United Kingdom to carry out functions provided for by regulations under ~~this section~~ [subsection \(1\)](#).
- (7) But regulations under ~~this section~~ [subsection \(1\)](#) may not –
- (a) impose or increase taxation,
  - (b) make retrospective provision,
  - (c) create a relevant criminal offence,
  - (d) be made to implement the withdrawal agreement,
  - (e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
  - (f) amend or repeal the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph ~~13~~[16](#)(b) of Schedule 7 to this Act or are amending or repealing paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 or any provision of that Act which modifies another enactment).
- (8) No regulations may be made under this section after the end of the period of two years beginning with exit day.
- (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 that withdrawal taken together with the operation of any provision, or the interaction between any provisions, made by or under this Act.

## 8 Complying with international obligations

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent or remedy any breach, arising from the withdrawal of the United Kingdom from the EU, of the international obligations of the United Kingdom.
- (2) Regulations under this section may make any provision that could be made by an Act of Parliament.
- (3) But regulations under this section may not –
- (a) make retrospective provision,
  - (b) create a relevant criminal offence,
  - (c) be made to implement the withdrawal agreement, or
  - (d) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it.

- (4) No regulations may be made under this section after the end of the period of two years beginning with exit day.

## 9 Implementing the withdrawal agreement

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purposes of implementing the withdrawal agreement if the Minister considers that such provision should be in force on or before exit day, subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the European Union. 5
- (2) Regulations under this section may make any provision that could be made by an Act of Parliament (including modifying this Act). 10
- (3) But regulations under this section may not—
- (a) impose or increase taxation,
  - (b) make retrospective provision,
  - (c) create a relevant criminal offence, or 15
  - (d) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it.
- (4) No regulations may be made under this section after exit day.

### *Devolution*

## 10 Corresponding powers involving devolved authorities 20

Schedule 2 (which confers powers to make regulations involving devolved authorities which correspond to the powers conferred by sections 7 to 9) has effect.

## 11 Retaining EU restrictions in devolution legislation etc.

- (1) In section 29 of the Scotland Act 1998 (legislative competence of the Scottish Parliament)— 25
- (a) in subsection (2)(d) (no competence for Scottish Parliament to legislate incompatibly with EU law) for “with EU law” substitute “in breach of the restriction in subsection (4A)”, and
  - (b) after subsection (4) insert— 30
- “(4A) Subject to subsections (4B) and (4C), an Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, retained EU law.
- (4B) Subsection (4A) does not apply so far as the modification would, immediately before exit day, have been within the legislative competence of the Scottish Parliament. 35
- (4C) Subsection (4A) also does not apply so far as Her Majesty may by Order in Council provide.”
- (2) In section 108A of the Government of Wales Act 2006 (legislative competence of the National Assembly for Wales)— 40

- (a) in subsection (2)(e) (no competence for Assembly to legislate incompatibly with EU law) for “with EU law” substitute “in breach of the restriction in subsection (8)”, and
- (b) after subsection (7) insert –
- “(8) Subject to subsections (9) and (10), an Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law. 5
- (9) Subsection (8) does not apply so far as the modification would, immediately before exit day, have been within the legislative competence of the Assembly. 10
- (10) Subsection (8) also does not apply so far as Her Majesty may by Order in Council provide.
- (11) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (10) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.” 15
- (3) In section 6 of the Northern Ireland Act 1998 (legislative competence of the Northern Ireland Assembly) –
- (a) in subsection (2)(d) (no competence for Assembly to legislate incompatibly with EU law) for “incompatible with EU law” substitute “in breach of the restriction in subsection (6)”, and 20
- (b) after subsection (5) insert –
- “(6) Subject to subsections (7) and (8), an Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law. 25
- (7) Subsection (6) does not apply so far as the modification would, immediately before exit day, have been within the legislative competence of the Assembly.
- (8) Subsection (6) also does not apply so far as Her Majesty may by Order in Council provide. 30
- (9) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (8) unless a draft of the Order –
- (a) has been laid before and approved by resolution of each House of Parliament, and 35
- (b) has been laid before and approved by resolution of the Assembly.”
- (4) Part 1 of Schedule 3 (which makes corresponding provision in relation to executive competence to that made by subsections (1) to (3) in relation to legislative competence) has effect. 40
- (5) Part 2 of Schedule 3 (which contains other amendments of devolution legislation) has effect.



*Financial and other matters***12 Financial provision**

- (1) Schedule 4 (which contains powers in connection with fees and charges) has effect.
- (2) A Minister of the Crown, government department or devolved authority may incur expenditure, for the purpose of, or in connection with, preparing for anything about which provision may be made under a power to make subordinate legislation conferred or modified by or under this Act, before any such provision is made. 5
- (3) There is to be paid out of money provided by Parliament – 10
- (a) any expenditure incurred by a Minister of the Crown, government department or other public authority by virtue of this Act, and
- (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.
- (4) Subsection (3) is subject to any other provision made by or under this Act or any other enactment. 15

**13 Publication and rules of evidence**

- (1) Part 1 of Schedule 5 (which makes provision for the publication by the Queen's printer of copies of retained direct EU legislation and related information) has effect. 20
- (2) Part 2 of Schedule 5 (which makes provision about rules of evidence) has effect.

*General and final provision***14 Interpretation**

- (1) In this Act –
- “Charter of Fundamental Rights” means the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007; 25
- “devolved authority” means –
- (a) the Scottish Ministers,
- (b) the Welsh Ministers, or 30
- (c) a Northern Ireland department;
- “domestic law” means –
- (a) in section 3, the law of England and Wales, Scotland and Northern Ireland, and
- (b) in any other case, the law of England and Wales, Scotland or Northern Ireland; 35
- “the EEA” means the European Economic Area;
- “enactment” means an enactment whenever passed or made and includes –
- (a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act, 40

- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (e) except in section 2 or where there is otherwise a contrary intention, any retained direct EU legislation;
- “EU decision” means –
- (a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
- (b) a decision under former Article 34(2)(c) of the Treaty on European Union;
- “EU directive” means a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union;
- “EU entity” means an EU institution or any office, body or agency of the EU;
- “EU reference” means –
- (a) any reference to the EU, an EU entity or a member State,
- (b) any reference to an EU directive or any other EU law, or
- (c) any other reference which relates to the EU;
- “EU regulation” means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union;
- “EU tertiary legislation” means –
- (a) any provision made under –
- (i) an EU regulation,
- (ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
- (iii) an EU directive,
- by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community, or
- (b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),
- but does not include any such provision or measure which is an EU directive;
- “exempt EU instrument” means anything which is an exempt EU instrument by virtue of Schedule 6;
- “exit day” means ~~such day as a Minister of the Crown may by regulations appoint~~ [29 March 2019 at 11.00 p.m.](#) (and see ~~subsection~~ [subsections \(2\) to \(5\)](#));
- “member State” (except in the definitions of “direct EU legislation” and “EU reference”) does not include the United Kingdom;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for Her Majesty’s Revenue and Customs;
- “modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);

- “Northern Ireland devolved authority” means the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;
- “primary legislation” means –
- (a) an Act of Parliament, 5
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or
  - (d) Northern Ireland legislation;
- “public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998; 10
- “relevant criminal offence” means an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions); 15
- “retained direct EU legislation” means any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after exit day);
- “retrospective provision”, in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made; 20
- “subordinate legislation” means –
- (a) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under any Act, or 25
  - (b) any instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales,
- and (except in Schedule 2 or where there is a contrary intention) includes any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made on or after exit day under any retained direct EU legislation; 30
- “tribunal” means any tribunal in which legal proceedings may be brought;
- “Wales” and “Welsh zone” have the same meaning as in the Government of Wales Act 2006 (see section 158 of that Act); 35
- “withdrawal agreement” means an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU. 40
- (2) ~~In this Act –~~
- (3) ~~where a Minister of the Crown appoints a time as well as a day as exit day (see paragraph 16 of Schedule 7), In this Act references to before, after or on that exit day, or to beginning with that exit day, are accordingly to be read as references to before, after or at that time 11.00 p.m. on that day 29 March 2019 or (as the case may be) to beginning with that time 11.00 p.m. on that day, and.~~ 45
- (a) ~~where a Minister of the Crown does not appoint a time as well as a day as exit day, the reference to exit day in section 1 is to be read as a reference to the beginning of that day.~~

- (4) Subsection (4) applies if the day or time on or at which the Treaties are to cease to apply to the United Kingdom in accordance with Article 50(3) of the Treaty on European Union is different from that specified in the definition of “exit day” in subsection (1).
- (5) A Minister of the Crown may by regulations – 5  
 (a) amend the definition of “exit day” in subsection (1) to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom, and  
 (b) amend subsection (2) in consequence of any such amendment.
- (6) In subsections (3) and (4) “the Treaties” means the Treaty on European Union and the Treaty on the Functioning of the European Union. 10
- (7) In this Act references to anything which continues to be domestic law by virtue of section 2 include references to anything to which subsection (1) of that section applies which continues to be domestic law on or after exit day (whether or not it would have done so irrespective of that section). 15
- (8) References in this Act (however expressed) to a public authority in the United Kingdom include references to a public authority in any part of the United Kingdom.
- (9) References in this Act to former Article 34(2)(c) of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon. 20
- (10) Any other reference in this Act to –  
 (a) an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union, or  
 (b) Article 10 of Title VII of Protocol 36 to those treaties,  
 includes a reference to that Article as applied by Article 106a of the Euratom Treaty.
- 15 Index of defined expressions** 25
- (1) In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
Anything which continues to be domestic law by virtue of section 2	Section 14( <del>36</del> )
Article (in relation to the Treaty on European Union or the Treaty on the Functioning of the European Union)	Section 14( <del>69</del> )
Charter of Fundamental Rights	Section 14(1)
Devolved authority	Section 14(1)
Direct EU legislation	Section 3(2)
Domestic law	Section 14(1)

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<i>Expression</i>	<i>Provision</i>	
The EEA	Section 14(1)	
EEA agreement	Schedule 1 to the Interpretation Act 1978	
Enactment	Section 14(1)	5
The EU	Schedule 1 to the Interpretation Act 1978	
EU decision	Section 14(1)	
EU directive	Section 14(1)	10
EU entity	Section 14(1)	
EU institution	Schedule 1 to the Interpretation Act 1978	
EU instrument	Schedule 1 to the Interpretation Act 1978	15
Euratom Treaty	Schedule 1 to the Interpretation Act 1978	
EU reference	Section 14(1)	
EU regulation	Section 14(1)	
European Court	Schedule 1 to the Interpretation Act 1978	20
EU tertiary legislation	Section 14(1)	
EU Treaties	Schedule 1 to the Interpretation Act 1978	
Exempt EU instrument	Section 14(1)	
Exit day (and related expressions)	Section 14(1) <del>and to</del> (25)	25
Former Article 34(2)(c) of Treaty on European Union	Section 14(58)	
Member State	Section 14(1) and Schedule 1 to the Interpretation Act 1978	
Minister of the Crown	Section 14(1)	30
Modify (and related expressions)	Section 14(1)	
Northern Ireland devolved authority	Section 14(1)	
Operative (in relation to direct EU legislation)	Section 3(3)	
Primary legislation	Section 14(1)	
Public authority	Section 14(1)	35
Public authority in the United Kingdom (however expressed)	Section 14(47)	
Relevant criminal offence	Section 14(1) (and paragraph 31 of Schedule 8)	

<i>Expression</i>	<i>Provision</i>	
Retained case law	Section 6(7)	
Retained direct EU legislation	Section 14(1)	
Retained domestic case law	Section 6(7)	
Retained EU case law	Section 6(7)	5
Retained EU law	Section 6(7)	
Retained general principles of EU law	Section 6(7)	
Retrospective provision	Section 14(1)	
Subordinate legislation	Section 14(1)	
Tribunal	Section 14(1)	
Wales	Section 14(1)	10
Welsh zone	Section 14(1)	
Withdrawal agreement	Section 14(1)	

- (2) See paragraph 11 of Schedule 8 for amendments made by this Act to Schedule 1 to the Interpretation Act 1978. 15

## 16 Regulations

Schedule 7 (which makes provision about the scrutiny by Parliament and the devolved legislatures of regulations under this Act and contains other general provision about such regulations) has effect. 20

## 17 Consequential and transitional provision

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act.
- (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. 25
- (3) In subsection (2) “enactment” does not include primary legislation passed or made after the end of the Session in which this Act is passed.
- (4) Parts 1 and 2 of Schedule 8 (which contain consequential provision) have effect.
- (5) A Minister of the Crown may by regulations make such transitional, transitory or saving provision as the Minister considers appropriate in connection with the coming into force of any provision of this Act ~~or the appointment of~~ [\(including its operation in connection with exit day\)](#). 30
- (6) Parts 3 and 4 of Schedule 8 (which contain transitional, transitory and saving provision) have effect.
- (7) The enactments mentioned in Schedule 9 (which contains repeals not made elsewhere in this Act) are repealed to the extent specified. 35

**18 Extent**

- (1) Subject to subsections (2) and (3), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any provision of this Act which amends or repeals an enactment has the same extent as the enactment amended or repealed. 5
- (3) Regulations under section ~~7~~[7\(1\)](#) or 17 may make provision which extends to Gibraltar –
- (a) modifying any enactment which –
- (i) extends to Gibraltar and relates to European Parliamentary elections, or 10
- (ii) extends to Gibraltar for any purpose which is connected with Gibraltar forming part of an electoral region, under the European Parliamentary Elections Act 2002, for the purposes of such elections, or
- (b) which is supplementary, incidental, consequential, transitional, transitory or saving provision in connection with a modification within paragraph (a). 15

**19 Commencement and short title**

- (1) The following provisions – 20
- (a) sections 7 to 10 (including Schedule 2),
- (b) section 12 (including Schedule 4),
- (c) sections 14 to 16 (including Schedules 6 and 7),
- (d) section 17(1) to (3) and (5),
- (e) section 18, and
- (f) this section,
- come into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act come into force on such day as a Minister of the Crown may by regulations appoint; and different days may be appointed for different purposes.
- (3) This Act may be cited as the European Union (Withdrawal) Act ~~2017~~[2018](#).

## SCHEDULES

## SCHEDULE 1

Section 5(6)

## FURTHER PROVISION ABOUT EXCEPTIONS TO SAVINGS AND INCORPORATION

*Challenges to validity of retained EU law*

- |   |   |    |
|---|---|----|
| 1 | (1) There is no right in domestic law on or after exit day to challenge any retained EU law on the basis that, immediately before exit day, an EU instrument was invalid.                                     | 5  |
|   | (2) Sub-paragraph (1) does not apply so far as –  |    |
|   | (a) the European Court has decided before exit day that the instrument is invalid, or   | 10 |
|   | (b) the challenge is of a kind described, or provided for, in regulations made by a Minister of the Crown.  |    |
|   | (3) Regulations under sub-paragraph (2)(b) may (among other things) provide for a challenge which would otherwise have been against an EU institution to be against a public authority in the United Kingdom. | 15 |

*General principles of EU law*

- |   |  |    |
|---|--|----|
| 2 | No general principle of EU law is part of domestic law on or after exit day if it was not recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case). | 20 |
| 3 | (1) There is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law.  |    |
|   | (2) No court or tribunal or other public authority may, on or after exit day –   |    |
|   | (a) disapply or quash any enactment or other rule of law, or   |    |
|   | (b) quash any conduct or otherwise decide that it is unlawful, because it is incompatible with any of the general principles of EU law.  | 25 |

*Rule in Francovich*

- |   |  |  |
|---|--|--|
| 4 | There is no right in domestic law on or after exit day to damages in accordance with the rule in <i>Francovich</i> . |  |
|---|--|--|

*Interpretation*

- |   |  |    |
|---|--|----|
| 5 | (1) References in section 5 and this Schedule to the principle of the supremacy of EU law, the Charter of Fundamental Rights, any general principle of EU law or the rule in <i>Francovich</i> are to be read as references to that principle, | 30 |
|---|--|----|



Charter or rule so far as it would otherwise continue to be, or form part of, domestic law on or after exit day in accordance with this Act.

- (2) Accordingly (among other things) the references to the principle of the supremacy of EU law in section 5(2) and (3) do not include anything which would bring into domestic law any modification of EU law which is adopted or notified, comes into force or only applies on or after exit day. 5

## SCHEDULE 2

Section 10

### CORRESPONDING POWERS INVOLVING DEVOLVED AUTHORITIES

#### PART 1

#### DEALING WITH DEFICIENCIES ARISING FROM WITHDRAWAL 10

##### *Power to deal with deficiencies*

- 1 (1) A devolved authority may by regulations make such provision as the devolved authority 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. 15
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider 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. 20
- (3) Section 7(2) to (89) apply for the purposes of this Part as they apply for the purposes of section 7 (including the ~~reference~~ references to the Minister in section 7(2) and (3) (but not the reference to a Minister of the Crown in section 7(3)(b) being read as ~~a reference~~ references to the devolved authority or (as the case may be) the Minister acting jointly with the devolved ~~authority~~ authority and the references to section 7(1) being read as references to sub-paragraph (1) or (2) above). 25
- (4) Regulations under this Part, so far as made by a devolved authority – 30
- (a) are subject to paragraphs 2 to 8, and
  - (b) may not confer a power to legislate (other than a power to make rules of procedure for a court or tribunal).
- (5) Sub-paragraph (4)(b) does not prevent any modification of a power to legislate which involves an extension of the power and does not go beyond the subject-matter of the power. 35

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

- 2 (1) No regulations may be made under this Part by a devolved authority unless every provision of them is within the devolved competence of the devolved authority.

- (2) See paragraphs 9 to 12 for the meaning of “devolved competence” for the purposes of this Part.

*No power to modify retained direct EU legislation etc.*

- 3 (1) No regulations may be made under this Part by a devolved authority which modify any retained direct EU legislation or anything which is retained EU law by virtue of section 4. 5
- (2) No regulations may be made under this Part by a devolved authority which, when made, are inconsistent with any modification (whether or not in force) made by this Act, or a Minister of the Crown under this Act, of – 10
- (a) any retained direct EU legislation, or
- (b) anything which is retained EU law by virtue of section 4.
- (3) This paragraph does not prevent the Scottish Ministers from making provision in regulations under this Part if –
- (a) the provision is made when there is an Order in Council under section 29(4C) of the Scotland Act 1998, and 15
- (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (4A) of section 29 of that Act if the provision were made in an Act of the Scottish Parliament when that subsection and the Order are in force.
- (4) This paragraph does not prevent the Welsh Ministers from making provision in regulations under this Part if – 20
- (a) the provision is made when there is an Order in Council under section 108A(10) of the Government of Wales Act 2006, and
- (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (8) of section 108A of that Act if the provision were made in an Act of the National Assembly for Wales when that subsection and the Order are in force. 25
- (5) This paragraph does not prevent a Northern Ireland department from making provision in regulations under this Part if –
- (a) the provision is made when there is an Order in Council under section 6(8) of the Northern Ireland Act 1998, and 30
- (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (6) of section 6 of that Act if the provision were made in an Act of the Northern Ireland Assembly when that subsection and the Order are in force. 35

*No power to confer certain functions relating to EU tertiary legislation*

- 4 No regulations may be made under this Part by a devolved authority which confer functions which correspond to functions to make EU tertiary legislation.

*Requirement for ~~consent~~ consultation in certain circumstances* 40

- 5 No regulations may be made under this Part ~~without the consent of a Minister of the Crown~~ by a devolved authority acting alone so far as the regulations –
- (a) are to come into force before exit day, or

- (b) remove (whether wholly or partly) reciprocal arrangements of the kind mentioned in section 7(2)(c) or (e).

unless the regulations are, to that extent, made after consulting with the Secretary of State.

*Requirement for consent where it would otherwise be required*

- 6 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers in regulations under this Part so far as that provision, if contained in an Act of the National Assembly for Wales, would require the consent of a Minister of the Crown. 5
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department in regulations under this Part so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State. 10
- (3) Sub-paragraph (1) or (2) does not apply if – 15
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and
- (b) no such consent would be required in that case.
- (4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority in regulations under this Part so far as that provision, if contained in – 20
- (a) subordinate legislation made otherwise than under this Act by the devolved authority, or
- (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by (in the case of Scotland) the First Minister or Lord Advocate acting alone or (in the case of Northern Ireland) a Northern Ireland devolved authority acting alone, 25
- would require the consent of a Minister of the Crown.
- (5) Sub-paragraph (4) does not apply if – 30
- (a) the provision could be contained in –
- (i) an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly, or
- (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b), and 35
- (b) no such consent would be required in that case.

*Requirement for joint exercise where it would otherwise be required*

- 7 (1) No regulations may be made under this Part by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by – 40
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or
- (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown, 45

- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations may be made under this Part by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown. 5
- (3) No regulations may be made under this Part by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by – 10
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
- (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown, 15
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in – 20
- (a) an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
- (b) different subordinate legislation made otherwise than under this Act by – 25
- (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
- (ii) the Welsh Ministers acting alone, or
- (iii) (as the case may be), a Northern Ireland devolved authority acting alone. 30

*Requirement for consultation where it would otherwise be required*

- 8 (1) No regulations may be made under this Part by the Welsh Ministers, so far as they contain provision which, if contained in an Act of the National Assembly for Wales, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 35
- (2) No regulations may be made under this Part by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 40
- (3) No regulations may be made under this Part by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers after consulting with a Minister of the 45

Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.

- (4) No regulations may be made under this Part by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 5
- (5) Sub-paragraph (2), (3) or (4) does not apply if – 10
- (a) the provision could be contained in an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly, and
  - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.
- (6) Sub-paragraph (2), (3) or (4) does not apply if – 15
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by – 20
    - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
    - (ii) the Welsh Ministers acting alone, or
    - (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and
  - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

*Meaning of devolved competence: Part 1* 25

- 9 (1) 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 section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law), or 30
  - (b) it meets the conditions in sub-paragraph (2).
- (2) The conditions are – 35
- (a) the provision –
    - (i) amends or revokes subordinate legislation made before exit day by the Scottish Ministers, the First Minister or the Lord Advocate, or
    - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation, 40
  - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
  - (c) the provision only forms part of the law of Scotland,
  - (d) the provision does not confer or remove functions exercisable otherwise than in or as regards Scotland, and 45
  - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of paragraph 1, 4 or 5 of Schedule 4 to the Scotland Act 1998, be modified by an Act of the Scottish Parliament.

- 
- 10 (1) 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 section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with the consent of a Minister of the Crown), or 5
  - (b) it meets the conditions in sub-paragraph (2).
- (2) The conditions are— 10
- (a) the provision—
    - (i) amends or revokes subordinate legislation made before exit day by the Welsh Ministers or the National Assembly for Wales constituted by the Government of Wales Act 1998, or
    - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation, 15
  - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
  - (c) the provision only forms part of the law of England and Wales, 20
  - (d) the provision does not confer or remove functions exercisable otherwise than in relation to Wales or the Welsh zone, and
  - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of paragraph 5, 6 or 7 of Schedule 7B to the Government of Wales Act 2006, be modified by an Act of the National Assembly for Wales. 25
- 11 (1) 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— 30
    - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
    - (ii) would not require the consent of the Secretary of State,
  - (b) the provision— 35
    - (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 section 6(2)(d) of the Northern Ireland Act 1998) and require the consent of the Secretary of State, or 40
  - (c) the provision meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
    - (i) amends or revokes subordinate legislation made before exit day by a Northern Ireland devolved authority, or 45
    - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
  - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,

- (c) the provision only forms part of the law of Northern Ireland,
  - (d) the provision does not confer or remove functions exercisable otherwise than in or as regards Northern Ireland,
  - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of section 7 of the Northern Ireland Act 1998, be modified by an Act of the Northern Ireland Assembly, and 5
  - (f) the provision does not deal with, or otherwise relate to, a matter to which paragraph 22 of Schedule 2, or paragraph 42 of Schedule 3, to the Northern Ireland Act 1998 applies.
- 12 References in paragraphs 9 to 11, in connection with the making of regulations under this Part, to the subject-matter of any provision or subordinate legislation are to be read as references to the subject-matter of the provision or subordinate legislation when the regulations concerned are made. 10

## PART 2

### COMPLYING WITH INTERNATIONAL OBLIGATIONS

#### *Power to comply with international obligations*

- 13 (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate to prevent or remedy any breach, arising from the withdrawal of the United Kingdom from the EU, of the international obligations of the United Kingdom. 20
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate to prevent or remedy any breach, arising from the withdrawal of the United Kingdom from the EU, of the international obligations of the United Kingdom. 25
- (3) Regulations under this Part may make any provision that could be made by an Act of Parliament.
- (4) But regulations under this Part may not—
- (a) make retrospective provision,
  - (b) create a relevant criminal offence, 30
  - (c) be made to implement the withdrawal agreement,
  - (d) confer a power to legislate (other than a power to make rules of procedure for a court or tribunal), or
  - (e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it. 35
- (5) Sub-paragraph (4)(d) does not prevent any modification of a power to legislate which involves an extension of the power and does not go beyond the subject-matter of the power.
- (6) No regulations may be made under this Part after the end of the period of two years beginning with exit day. 40
- (7) Regulations under this Part, so far as made by a devolved authority, are also subject to paragraphs 14 to 17.

*No power to make provision outside devolved competence*

- 14 (1) No regulations may be made under this Part by a devolved authority unless every provision of them is within the devolved competence of the devolved authority.
- (2) See paragraphs 18 to 20 for the meaning of “devolved competence” for the purposes of this Part. 5

*No power to modify retained direct EU legislation etc.*

- 15 (1) No regulations may be made under this Part by a devolved authority which modify any retained direct EU legislation or anything which is retained EU law by virtue of section 4. 10
- (2) No regulations may be made under this Part by a devolved authority which, when made, are inconsistent with any modification (whether or not in force) made by this Act, or a Minister of the Crown under this Act, of—
- (a) any retained direct EU legislation, or
- (b) anything which is retained EU law by virtue of section 4. 15
- (3) This paragraph does not prevent the Scottish Ministers from making provision in regulations under this Part if—
- (a) the provision is made when there is an Order in Council under section 29(4C) of the Scotland Act 1998, and
- (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (4A) of section 29 of that Act if the provision were made in an Act of the Scottish Parliament when that subsection and the Order are in force. 20
- (4) This paragraph does not prevent the Welsh Ministers from making provision in regulations under this Part if—
- (a) the provision is made when there is an Order in Council under section 108A(10) of the Government of Wales Act 2006, and
- (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (8) of section 108A of that Act if the provision were made in an Act of the National Assembly for Wales when that subsection and the Order are in force. 25 30
- (5) This paragraph does not prevent a Northern Ireland department from making provision in regulations under this Part if—
- (a) the provision is made when there is an Order in Council under section 6(8) of the Northern Ireland Act 1998, and
- (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (6) of section 6 of that Act if the provision were made in an Act of the Northern Ireland Assembly when that subsection and the Order are in force. 35

*Requirement for consent in certain circumstances* 40

- 16 (1) No regulations may be made under this Part without the consent of a Minister of the Crown by a devolved authority acting alone so far as the regulations—
- (a) are to come into force before exit day,



- (b) are for the purpose of preventing or remedying any breach of the WTO Agreement, or
  - (c) make provision about any quota arrangements or are incompatible with any such arrangements.
- (2) In sub-paragraph (1)(b) “the WTO Agreement” means the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994 (as modified from time to time). 5
- (3) In sub-paragraph (1)(c) “quota arrangements” means any arrangements for, or in connection with, the division of responsibility within the United Kingdom or an area including the United Kingdom for – 10
- (a) an international obligation, or
  - (b) any right or other benefit arising from such an obligation,
- where the obligation is to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise) or (as the case may be) the benefit is so defined. 15

*Certain requirements for consent, joint exercise or consultation*

- 17 Paragraphs 6 to 8 apply for the purposes of this Part as they apply for the purposes of Part 1.

*Meaning of devolved competence: Part 2*

- 18 A provision is within the devolved competence of the Scottish Ministers for the purposes of this Part if – 20
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law), or 25
  - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate (ignoring section 57(2) of the Scotland Act 1998 so far as relating to EU law and section 57(4) and (5) of that Act).
- 19 A provision is within the devolved competence of the Welsh Ministers for the purposes of this Part if – 30
- (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 section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with the consent of a Minister of the Crown), or 35
  - (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers (ignoring section 80(8) of the Government of Wales Act 2006). 40
- 20 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 – 45
    - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), 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 section 6(2)(d) of the Northern Ireland Act 1998) 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 (ignoring section 24(1)(b) and (3) and (4) of the Northern Ireland Act 1998).

### PART 3

#### IMPLEMENTING THE WITHDRAWAL AGREEMENT

##### *Power to implement withdrawal agreement*

- 21 (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate for the purposes of implementing the withdrawal agreement if the devolved authority considers that such provision should be in force on or before exit day. 15
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate for the purposes of implementing the withdrawal agreement if they consider that such provision should be in force on or before exit day. 20
- (3) Regulations under this Part may make any provision that could be made by an Act of Parliament.
- (4) But regulations under this Part may not – 25
- (a) impose or increase taxation,
  - (b) make retrospective provision,
  - (c) create a relevant criminal offence,
  - (d) confer a power to legislate (other than a power to make rules of procedure for a court or tribunal),
  - (e) modify this Act, 30
  - (f) modify any subordinate legislation made under this Act unless the regulations are modifying any subordinate legislation made by the devolved authority concerned or are made by a Minister of the Crown acting jointly with a devolved authority, or
  - (g) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it. 35
- (5) Sub-paragraph (4)(d) does not prevent any modification of a power to legislate which involves an extension of the power and does not go beyond the subject-matter of the power.
- (6) No regulations may be made under this Part after exit day. 40
- (7) Regulations under this Part, so far as made by a devolved authority, are also subject to paragraphs 22 to 26.

*No power to make provision outside devolved competence*

- 22 (1) No regulations may be made under this Part by a devolved authority unless every provision of them is within the devolved competence of the devolved authority.
- (2) In this Part “devolved competence” has the same meaning as in Part 2 (see paragraphs 18 to 20). 5

*No power to modify retained direct EU legislation etc.*

- 23 (1) No regulations may be made under this Part by a devolved authority which modify any retained direct EU legislation or anything which is retained EU law by virtue of section 4. 10
- (2) No regulations may be made under this Part by a devolved authority which, when made, are inconsistent with any modification (whether or not in force) made by this Act, or a Minister of the Crown under this Act, of—
- (a) any retained direct EU legislation, or
  - (b) anything which is retained EU law by virtue of section 4. 15
- (3) This paragraph does not prevent the Scottish Ministers from making provision in regulations under this Part if—
- (a) the provision is made when there is an Order in Council under section 29(4C) of the Scotland Act 1998, and
  - (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (4A) of section 29 of that Act if the provision were made in an Act of the Scottish Parliament when that subsection and the Order are in force. 20
- (4) This paragraph does not prevent the Welsh Ministers from making provision in regulations under this Part if—
- (a) the provision is made when there is an Order in Council under section 108A(10) of the Government of Wales Act 2006, and
  - (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (8) of section 108A of that Act if the provision were made in an Act of the National Assembly for Wales when that subsection and the Order are in force. 30
- (5) This paragraph does not prevent a Northern Ireland department from making provision in regulations under this Part if—
- (a) the provision is made when there is an Order in Council under section 6(8) of the Northern Ireland Act 1998, and
  - (b) the provision would, by virtue of the Order, not be in breach of the restriction in subsection (6) of section 6 of that Act if the provision were made in an Act of the Northern Ireland Assembly when that subsection and the Order are in force. 35

*No power to confer certain functions relating to EU tertiary legislation* 40

- 24 No regulations may be made under this Part by a devolved authority which confer functions which correspond to functions to make EU tertiary legislation.

*Requirement for consent in certain circumstances*

- 25 (1) No regulations may be made under this Part without the consent of a Minister of the Crown by a devolved authority acting alone so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements. 5
- (2) In sub-paragraph (1) “quota arrangements” means any arrangements for, or in connection with, the division of responsibility within the United Kingdom or an area including the United Kingdom for –
- (a) an international obligation, or
- (b) any right or other benefit arising from such an obligation, 10
- where the obligation is to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise) or (as the case may be) the benefit is so defined.

*Certain requirements for consent, joint exercise or consultation*

- 26 Paragraphs 6 to 8 apply for the purposes of this Part as they apply for the purposes of Part 1. 15

SCHEDULE 3

Section 11(4) and (5)

FURTHER AMENDMENTS OF DEVOLUTION LEGISLATION

PART 1

CORRESPONDING PROVISION IN RELATION TO EXECUTIVE COMPETENCE 20

*Scotland Act 1998*

- 1 In section 57 of the Scotland Act 1998 (EU law and Convention rights) –
- (a) in subsection (2) (no power for members of the Scottish Government to make subordinate legislation, or otherwise act, incompatibly with EU law) omit “or with EU law”, and 25
- (b) after subsection (3) insert –
- “(4) A member of the Scottish Government has no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.
- (5) Subsection (4) does not apply – 30
- (a) so far as the modification would be within the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament,
- (b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act ~~2017~~2018, or 35
- (c) so far as Her Majesty may by Order in Council provide.”

*Government of Wales Act 2006*

- 2 In section 80 of the Government of Wales Act 2006 (EU law) for subsection

(8) (no power for the First Minister, the Counsel General or the Welsh Ministers to make, confirm or approve subordinate legislation, or otherwise act, incompatibly with EU law etc.) substitute –

“(8) The Welsh Ministers have no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law. 5

(8A) Subsection (8) does not apply –

(a) so far as the modification would be within the legislative competence of the Assembly if it were included in an Act of the Assembly, 10

(b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act ~~2017~~2018, or

(c) so far as Her Majesty may by Order in Council provide.

(8B) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (8A) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.” 15

*Northern Ireland Act 1998*

3 In section 24 of the Northern Ireland Act 1998 (EU law, Convention rights etc.) – 20

(a) omit subsection (1)(b) (no power for the First Minister, the deputy First Minister, a Northern Ireland Minister or a Northern Ireland department to make, confirm or approve subordinate legislation, or otherwise act, incompatibly with EU law), and 25

(b) after subsection (2) insert –

“(3) A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.

(4) Subsection (3) does not apply – 30

(a) so far as the modification would be within the legislative competence of the Assembly if it were included in an Act of the Assembly,

(b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act ~~2017~~2018, or 35

(c) so far as Her Majesty may by Order in Council provide.

(5) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (4) unless a draft of the Order – 40

(a) has been laid before and approved by resolution of each House of Parliament, and

(b) has been laid before and approved by resolution of the Assembly.”

PART 2

OTHER AMENDMENTS OF DEVOLUTION LEGISLATION

*Scotland Act 1998*

- 4 The Scotland Act 1998 is amended as follows.
- 5 In section 2 (ordinary general elections), in subsection (2A), omit paragraph (b) and the “or” before it. 5
- 6 In section 12 (power of the Scottish Ministers to make provision about elections), in subsection (4)(a) –
- (a) omit “or the European Parliamentary Elections Act 2002”, and
- (b) omit “, European Parliamentary elections”. 10
- 7 (1) Section 12A (power of the Secretary of State to make provision about elections) is amended as follows.
- (2) In subsection (2) –
- (a) after paragraph (a) insert “and”, and
- (b) omit paragraph (c) and the “and” before it. 15
- (3) In subsection (3), omit paragraph (b) and the “and” before it.
- (4) In subsection (5)(a) –
- (a) omit “or the European Parliamentary Elections Act 2002”, and
- (b) omit “, European Parliamentary elections”.
- 8 In section 32 (submission of Bills for Royal Assent), in subsection (3), omit paragraph (b) and the “or” before it. 20
- 9 Omit section 34 (ECJ references).
- 10 (1) Section 36 (stages of Bills) is amended as follows.
- (2) In subsection (4), omit paragraph (b) but not the “or” at the end of it.
- (3) In subsection (5)(a), omit “, (b)”. 25
- 11 (1) Section 57 (EU law and Convention rights) is amended as follows.
- (2) In the heading –
- (a) omit “EU law and”, and
- (b) after “rights” insert “and retained EU law”.
- (3) Omit subsection (1). 30
- 12 (1) Section 80D (Scottish taxpayers) is amended as follows.
- (2) In subsection (4) –
- (a) insert “or” at the end of paragraph (a), and
- (b) omit paragraph (b) and the “or” at the end of it.
- (3) In subsection (4B), for “any of paragraphs (a) to (c)” substitute “paragraph (a) or (c)”. 35
- 13 In section 80DA (Scottish taxpayers: Welsh parliamentarians), in subsection (2)(a), for “any of paragraphs (a) to (c)” substitute “paragraph (a) or (c)”.

- 14 (1) Section 82 (limits on salaries of members of the Parliament) is amended as follows.
- (2) In subsection (1) –
- (a) insert “or” at the end of paragraph (za), and
  - (b) omit paragraph (b) and the “or” before it. 5
- (3) In subsection (2)(b), for “(1)(za), (a) or (b)” substitute “(1)(za) or (a)”.
- 15 (1) Section 106 (power to adapt functions) is amended as follows.
- (2) In subsection (5), for “an obligation under EU law” substitute “a retained EU obligation”.
- (3) Omit subsection (7). 10
- 16 In section 119 (Consolidated Fund etc.), omit subsection (4).
- 17 (1) Section 126 (interpretation) is amended as follows.
- (2) Omit subsection (9).
- (3) In subsection (10), omit “EU law or”.
- 18 In section 127 (index of defined expressions), omit the entry for EU law. 15
- 19 (1) Schedule 4 (enactments etc. protected from modification) is amended as follows.
- (2) In paragraph 1(2) –
- (a) omit paragraph (c), and
  - (b) after paragraph (f) insert “,
  - (g) the European Union (Withdrawal) Act ~~2017~~–2018 (other than paragraphs 20 to 23 of Schedule 8 to that Act and any regulations made under that Act)”. 20
- (3) Omit paragraph 13(1)(a).
- 20 (1) Paragraph 1 of Schedule 6 (devolution issues) is amended as follows. 25
- (2) In the first paragraph (d) for “with EU law” substitute “in breach of the restriction in section 57(4)”.
- (3) In paragraph (e), omit “or with EU law”.
- (4) In the second sentence for the words from “the compatibility” to the end substitute “a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995)”. 30
- 21 (1) The table in paragraph 1(2) of Schedule 7 (procedure for subordinate legislation) is amended as follows.
- (2) After the entry for section 18(5) insert –
- “Section 29(4C) | Type A”. 35

(3) After the entry for section 56(2) insert—

“Section 57(5)(c) | Type A”.

22 In Schedule 8 (modifications of enactments), omit paragraph 15 and the heading before it.

*Government of Wales Act 2006*

5

23 The Government of Wales Act 2006 is amended as follows.

24 In section 3 (ordinary general elections), in subsection (1A), omit paragraph (b) and the “or” before it.

25 (1) Section 13A (power of the Secretary of State to make provision about the combination of polls) is amended as follows. 10

(2) In subsection (2)—

- (a) insert “and” at the end of paragraph (a), and
- (b) omit paragraph (c) and the “and” before it.

(3) In subsection (3), omit paragraph (b) and the “and” before it.

26 (1) Section 21 (limit on salaries of Assembly members) is amended as follows. 15

(2) In subsection (1)—

- (a) insert “or” at the end of paragraph (za), and
- (b) omit paragraph (b) and the “or” before it.

(3) In subsection (2)(b), for “(1)(za), (a), or (b)” substitute “(1)(za) or (a)”.

27 In section 58A (executive ministerial functions), in subsection (4)(d), for “obligations under EU law” substitute “retained EU obligations”. 20

28 Omit section 58B (implementation of EU law: general).

29 (1) Section 59 (implementation of EU law: designation of Welsh Ministers etc.) is amended as follows.

(2) For the heading substitute “Fees and charges in relation to international law”. 25

(3) Omit subsections (1) to (4).

(4) In subsection (5), for “in pursuance of an EU obligation etc” substitute “in pursuance of an international obligation”.

30 In the heading before section 80 (EU law, human rights and international obligations etc.), before “EU” insert “Retained”. 30

31 (1) Section 80 (EU law) is amended as follows.

(2) In the heading, before “EU” insert “Retained”.

(3) In subsection (1), for “An EU obligation” substitute “A retained EU obligation”. 35

(4) In subsection (2), for “an EU obligation” substitute “a retained EU obligation”.



- (5) In subsection (3) –  
 (a) for “an EU obligation” substitute “a retained EU obligation”, and  
 (b) for “the EU obligation” substitute “the retained EU obligation”.
- (6) In subsection (7) –  
 (a) for “an EU obligation” substitute “a retained EU obligation”, and 5  
 (b) for “the EU obligation” substitute “the retained EU obligation”.
- (7) In subsection (9), after “(8)” insert “to (8B)”.
- 32 In section 111 (proceedings on Bills), in subsection (6), omit paragraph (b) but not the “or” at the end of it.
- 33 Omit section 113 (ECJ references). 10
- 34 In section 115 (Royal Assent), in subsection (3), omit paragraph (b) and the “or” before it.
- 35 (1) Section 116E (Welsh taxpayers) is amended as follows.  
 (2) In subsection (4) –  
 (a) insert “or” at the end of paragraph (a), and 15  
 (b) omit paragraph (b) and the “or” at the end of it.  
 (3) In subsection (6), for “any of paragraphs (a) to (c)” substitute “paragraph (a) or (c)”.
- 36 In section 116F (Welsh taxpayers: Scottish parliamentarians), in subsection (2)(a), for “any of paragraphs (a) to (c)” substitute “paragraph (a) or (c)”. 20
- 37 In section 158(1) (interpretation) –  
 (a) omit the definition of “EU law”, and  
 (b) in the definition of “international obligations” omit “EU law or”.
- 38 In section 159 (index of defined expressions), omit the entry for EU law.
- 39 In Schedule 3 (transfer etc. of functions: further provisions), omit paragraph 5 and the heading before it (EU obligations). 25
- 40 In paragraph 5(1) of Schedule 7B (protected enactments), in the table –  
 (a) omit the entry for the European Communities Act 1972, and  
 (b) after the entry for the Energy Act 2008 insert –
- |  |                    |    |
|--|--------------------|----|
| “The European Union<br>(Withdrawal)<br><del>2017</del> <u>2018</u><br>Act” | The whole<br>Act.” | 30 |
|--|--------------------|----|
- 41 In Schedule 11 (transitional provisions), omit paragraph 35A and the heading before it (instrument containing provisions under transferred power and provision under power in section 2(2) of the European Communities Act 1972: Assembly procedure). 35

*Northern Ireland Act 1998*

- 42 The Northern Ireland Act 1998 is amended as follows.  
 43 (1) Section 7 (entrenched enactments) is amended as follows.

- 
- (2) In subsection (1) –
- (a) for “subsection (2)” substitute “subsection (2A)”,
  - (b) omit paragraph (a),
  - (c) omit “and” at the end of paragraph (c), and
  - (d) after paragraph (d) insert “, and
  - (e) the European Union (Withdrawal) Act ~~2017~~2018”.
- (3) Omit subsection (2).
- (4) Before subsection (3) insert –
- “(2A) Subsection (1) does not prevent an Act of the Assembly or subordinate legislation modifying –
- (a) paragraph 1(~~8~~10) or (~~9~~11) or 2(12) or (13) of Schedule 7 to the European Union (Withdrawal) Act ~~2017~~2018,
  - (b) paragraph 10 of Schedule 8 to that Act, or
  - (c) any regulations made under that Act.”
- 44 Omit section 12 (reconsideration where reference made to ECJ). 15
- 45 In section 13 (stages of Bills), omit subsection (5)(b).
- 46 In section 14 (submission of Bills by the Secretary of State for Royal Assent), in subsection (3), omit paragraph (b) and the “or” before it.
- 47 In the heading of section 24 (EU law, Convention rights etc.) –
- (a) omit “EU law,”, and
  - (b) after “rights” insert “, retained EU law”.
- 48 (1) Section 27 (quotas for purposes of international etc. obligations) is amended as follows.
- (2) In subsection (1)(a), for “an obligation under EU law” substitute “a retained EU obligation”. 25
- (3) In subsection (2), for “obligation under EU law” substitute “retained EU obligation”.
- (4) In subsection (4), omit “or an obligation under EU law”.
- (5) After that subsection insert –
- “(4A) Where an order under subsection (1) is in force in relation to a retained EU obligation, the Minister or Northern Ireland department must (in the exercise of the Minister’s or the department’s functions) achieve so much of the result to be achieved under the obligation as is specified in the order by the time or times so specified.” 30
- 49 In section 98(1) (interpretation) – 35
- (a) omit the definition of “EU law”, and
  - (b) in the definition of “international obligations” omit “EU law or”.
- 50 (1) Schedule 2 (excepted matters) is amended as follows.
- (2) In paragraph 3(c), for “, obligations under the Human Rights Convention and obligations under EU law” substitute “and obligations under the Human Rights Convention”. 40
- (3) In paragraph 12(1), omit “, the European Parliament”.

- 51 In paragraph 1(c) of Schedule 10 (devolution issues) omit the words from “, any obligation” to “such an obligation”.

SCHEDULE 4

Section 12(1)

POWERS IN CONNECTION WITH FEES AND CHARGES

PART 1

5

CHARGING IN CONNECTION WITH CERTAIN NEW FUNCTIONS

*Power to provide for fees or charges*

- 1 (1) An appropriate authority may by regulations make provision for, or in connection with, the charging of fees or other charges in connection with the exercise of a function (“the relevant function”) which a public authority has by virtue of provision made under— 10
- (a) section 7 or Part 1 of Schedule 2 (powers to deal with deficiencies arising from withdrawal),
  - (b) section 8 or Part 2 of Schedule 2 (powers relating to compliance with international obligations), or 15
  - (c) section 9 or Part 3 of Schedule 2 (powers to implement the withdrawal agreement).
- (2) Where there is more than one appropriate authority in relation to the relevant function, two or more of the appropriate authorities may make regulations under this paragraph jointly. 20
- (3) Regulations under this paragraph may (among other things)—
- (a) prescribe the fees or charges or make provision as to how they are to be determined;
  - (b) provide for the recovery or disposal of any sums payable under the regulations; 25
  - (c) confer power on the public authority to make, by subordinate legislation, any provision that the appropriate authority may make under this paragraph in relation to the relevant function.

*Meaning of “appropriate authority”*

- 2 (1) A Minister of the Crown is an “appropriate authority” for the purposes of paragraph 1. 30
- (2) The Scottish Ministers are an “appropriate authority” for the purposes of paragraph 1—
- (a) if the Scottish Ministers (whether acting jointly or alone) made the provision, as mentioned in paragraph 1(1), by virtue of which the public authority has the relevant function, 35
  - (b) if the relevant function is a function of the Scottish Ministers, the First Minister or the Lord Advocate, or
  - (c) if the provision by virtue of which the public authority has the relevant function, if it were included in an Act of the Scottish Parliament, would be within the legislative competence of that 40

Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law).

- (3) The Welsh Ministers are an “appropriate authority” for the purposes of paragraph 1 –
- (a) if the Welsh Ministers (whether acting jointly or alone) made the provision, as mentioned in paragraph 1(1), by virtue of which the public authority has the relevant function, 5
  - (b) if the relevant function is a function of the Welsh Ministers, or
  - (c) if the provision by virtue of which the public authority has the relevant function, if it were included in an Act of the National Assembly for Wales, would be within the legislative competence of that Assembly (ignoring section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with consent of a Minister of the Crown). 10 15
- (4) A Northern Ireland department is an “appropriate authority” for the purposes of paragraph 1 –
- (a) if a Northern Ireland department (whether acting jointly or alone) made the provision, as mentioned in paragraph 1(1), by virtue of which the public authority has the relevant function, 20
  - (b) if the relevant function is a function of a Northern Ireland devolved authority, or
  - (c) if the provision by virtue of which the public authority has the relevant function, if it were included in an Act of the Northern Ireland Assembly – 25
    - (i) would be within the legislative competence of that Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
    - (ii) would not require the consent of the Secretary of State.
- Requirements for consent* 30
- 3 (1) A Minister of the Crown may only make regulations under paragraph 1 with the consent of the Treasury.
- (2) A devolved authority may only make regulations under paragraph 1 with the consent of a Minister of the Crown if – 35
- (a) the relevant function is a function of a Minister of the Crown, or
  - (b) the public authority that has the relevant function –
    - (i) in the case of the Scottish Ministers, has any functions that can be exercised otherwise than in or as regards Scotland,
    - (ii) in the case of the Welsh Ministers, has any functions that can be exercised otherwise than in relation to Wales or the Welsh zone, or 40
    - (iii) in the case of a Northern Ireland department, has any functions that can be exercised otherwise than in or as regards Northern Ireland and is not an implementation body.
- (3) In sub-paragraph (2)(b)(iii) “implementation body” has the same meaning as in section 55 of the Northern Ireland Act 1998 (see subsection (3) of that section). 45

*Minister of the Crown power in relation to devolved authorities*

- 4 A Minister of the Crown may by regulations –
- (a) prescribe circumstances in which, or functions in relation to which, a devolved authority is to be regarded as being an appropriate authority for the purposes of paragraph 1; 5
  - (b) provide that a devolved authority that is regarded as being an appropriate authority under regulations made under paragraph (a) may only make regulations under paragraph 1, by virtue of being so regarded, with the consent of a Minister of the Crown;
  - (c) prescribe circumstances in which, or functions in relation to which, a devolved authority may, despite paragraph 3(2), make regulations under paragraph 1 without the consent of a Minister of the Crown. 10

*Relationship to other powers*

- 5 This Part does not affect the powers under section 7, 8 or 9 or Schedule 2, or any other power exercisable apart from this Part, to require the payment of, or to make other provision in relation to, fees or other charges. 15

PART 2

MODIFYING PRE-EXIT FEES OR CHARGES

*Power to modify pre-exit fees or charges*

- 6 (1) Sub-paragraph (2) applies where any subordinate legislation contains provision (“the charging provision”) for, or in connection with, the charging of fees or other charges that – 20
- (a) was made under section 2(2) of the European Communities Act 1972, section 56 of the Finance Act 1973 or this Part, and
  - (b) forms part of retained EU law. 25
- (2) Any appropriate authority may by regulations make provision (“the proposed modification”) modifying the subordinate legislation for the purposes of –
- (a) revoking the charging provision,
  - (b) altering the amount of any of the fees or charges that are to be charged, 30
  - (c) altering how any of the fees or charges are to be determined, or
  - (d) otherwise altering the fees or charges that may be charged in relation to anything in respect of which fees or charges may be charged under the charging provision. 35

*Meaning of “appropriate authority”*

- 7 In this Part an “appropriate authority” means a Minister of the Crown, or devolved authority, that could have made the proposed modification –
- (a) under section 2(2) of the European Communities Act 1972 immediately before the repeal of that section by section 1, or 40
  - (b) under section 56 of the Finance Act 1973 immediately before the amendment of that section by paragraph 6 of Schedule 8.

*Restriction on exercise of power*

- 8 (1) Where the charging provision consists solely of 1972 Act provision, regulations under this Part may not impose or increase taxation.
- (2) In sub-paragraph (1) “1972 Act provision” means –
- (a) provision that is made under section 2(2) of the European Communities Act 1972 and not under section 56 of the Finance Act 1973, including such provision as modified under this Part, or
  - (b) provision that is made under this Part and is incidental to, or supplements or replaces, provision within paragraph (a).

*Requirement for consent* 10

- 9 If a Minister of the Crown –
- (a) is an appropriate authority, and
  - (b) immediately before the amendment of section 56 of the Finance Act 1973 by paragraph 6 of Schedule 8 could only have made the proposed modification under that section,
- the Minister may only make that modification under this Part with the consent of the Treasury. 15

*Relationship to other powers*

- 10 This Part does not affect the powers under section 7, 8 or 9 or Schedule 2, or any other power exercisable apart from this Part, to require the payment of, or to make other provision in relation to, fees or other charges. 20

SCHEDULE 5

Section 13(1) and (2)

PUBLICATION AND RULES OF EVIDENCE

PART 1

PUBLICATION OF RETAINED DIRECT EU LEGISLATION ETC. 25

*Copies that must or may be published*

- 1 (1) The Queen’s printer must make arrangements for the publication of –
- (a) each relevant instrument that has been published before exit day by an EU entity, and
  - (b) the relevant international agreements. 30
- (2) In this paragraph –
- “relevant instrument” means –
    - (a) an EU regulation,
    - (b) an EU decision, and
    - (c) EU tertiary legislation; and 35
  - “relevant international agreements” means –
    - (a) the Treaty on European Union,
    - (b) the Treaty on the Functioning of the European Union,

- (c) the Euratom Treaty, and
  - (d) the EEA agreement.
- (3) The Queen’s printer may make arrangements for the publication of—
- (a) any decision of, or expression of opinion by, the European Court, or
  - (b) any other document published by an EU entity. 5
- (4) The Queen’s printer may make arrangements for the publication of anything which the Queen’s printer considers may be useful in connection with anything published under this paragraph.
- (5) This paragraph does not require the publication of—
- (a) anything repealed before exit day, or
  - (b) any modifications made on or after exit day. 10

*Exceptions from duty to publish*

- 2 (1) A Minister of the Crown may create an exception from the duty under paragraph 1(1) in respect of a relevant instrument if satisfied that it has not become (or will not become, on exit day) retained direct EU legislation. 15
- (2) An exception is created by giving a direction to the Queen’s printer specifying the instrument or category of instruments that are excepted.
- (3) A Minister of the Crown must publish any direction under this paragraph.
- (4) In this paragraph—
- “instrument” includes part of an instrument; and
  - “relevant instrument” has the meaning given by paragraph 1(2). 20

PART 2

RULES OF EVIDENCE

*Questions as to meaning of EU ~~instruments~~law*

- 3 (1) Where it is necessary, for the purpose of interpreting retained EU law in legal proceedings, to decide a question as to—
- (a) the meaning or effect in EU law of any of the EU Treaties or any other treaty relating to the EU, or
  - (b) the validity, meaning or effect in EU law of any EU instrument,
- the question is to be treated for that purpose as a question of law. 30
- (2) In this ~~paragraph~~ paragraph—
- “interpreting retained EU law” means deciding any question as to the validity, meaning or effect of any retained EU law; and
  - “treaty” includes—
- (a) any international agreement, and
  - (b) any protocol or annex to a treaty or international agreement. 35

*Power to make provision about judicial notice and admissibility*

- 4 (1) A Minister of the Crown may by regulations—
- (a) make provision enabling or requiring judicial notice to be taken of a relevant matter, or
- 40

- 
- (b) provide for the admissibility in any legal proceedings of specified evidence of –
- (i) a relevant matter, or
  - (ii) instruments or documents issued by or in the custody of an EU entity. 5
- (2) Regulations under sub-paragraph (1)(b) may provide that evidence is admissible only where specified conditions are met (for example, conditions as to certification of documents).
- (3) Regulations under this paragraph may modify any provision made by or under an enactment. 10
- (4) In sub-paragraph (3) “enactment” does not include primary legislation passed or made after the end of the Session in which this Act is passed.
- (5) For the purposes of this paragraph each of the following is a “relevant matter” – 15
- (a) retained EU law,
  - (b) EU law,
  - (c) the EEA agreement, and
  - (d) anything which is specified in the regulations and which relates to a matter mentioned in paragraph (a), (b) or (c).

## SCHEDULE 6

Section 14(1) 20

### INSTRUMENTS WHICH ARE EXEMPT EU INSTRUMENTS

#### *EU decisions*

- 1 (1) An EU decision is “an exempt EU instrument” so far as it is, in accordance with a relevant Protocol, not applicable to the United Kingdom immediately before exit day. 25
- (2) If any decision under Title V or former Title V of the Treaty on European Union is a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union (and accordingly falls within the definition of “EU decision” in section 14(1)), it is “an exempt EU instrument”.
- (3) In sub-paragraph (2), the reference to former Title V of the Treaty on European Union is a reference to that Title as it had effect at any time before the coming into force of the Treaty of Lisbon. 30

#### *EU regulations*

- 2 An EU regulation is “an exempt EU instrument” so far as it is, in accordance with a relevant Protocol, not applicable to the United Kingdom immediately before exit day. 35

#### *EU tertiary legislation*

- 3 EU tertiary legislation is “an exempt EU instrument” so far as it is made under –



- (a) an EU decision or EU regulation which is an exempt EU instrument, or
- (b) an EU directive so far as it is, in accordance with a relevant Protocol, not applicable to the United Kingdom immediately before exit day.

*Interpretation*

5

- 4 The following are “relevant Protocols” for the purposes of this Schedule –
- (a) Protocol 15 to the Treaty on European Union and the Treaty on the Functioning of the European Union (protocol on certain provisions relating to the United Kingdom);
  - (b) Protocol 19 to the Treaty on European Union and the Treaty on the Functioning of the European Union (protocol on the Schengen acquis integrated into the framework of the European Union); 10
  - (c) the former Protocol integrating the Schengen acquis into the framework of the European Union annexed, in accordance with the Treaty of Amsterdam, to the Treaty on European Union and the Treaty establishing the European Community; 15
  - (d) Protocol 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union (protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice); 20
  - (e) the former Protocol on the position of the United Kingdom and Ireland annexed, in accordance with the Treaty of Amsterdam, to the Treaty on European Union and the Treaty establishing the European Community (protocol in respect of Title IV of Part 3 of the Treaty establishing the European Community); 25
  - (f) Article 10 of Title VII of Protocol 36 to the Treaty on European Union and the Treaty on the Functioning of the European Union (transitional provision with respect to acts of the Union in the field of police co-operation and judicial co-operation in criminal matters adopted before the coming into force of the Treaty of Lisbon). 30

SCHEDULE 7

Section 16

REGULATIONS

PART 1

SCRUTINY OF POWERS TO DEAL WITH DEFICIENCIES

*Scrutiny of regulations made by Minister of the Crown or devolved authority acting alone* 35

- 1 (1) A statutory instrument containing regulations under section ~~7~~[7\(1\)](#) which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Provision falls within this sub-paragraph if it – 40
- (a) establishes a public authority in the United Kingdom,
  - (b) provides for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the

- United Kingdom established by regulations under section 7, 8 or 9 or Schedule 2,
- (c) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom, 5
  - (d) imposes, or otherwise relates to, a fee in respect of a function exercisable by a public authority in the United Kingdom,
  - (e) creates, or widens the scope of, a criminal offence, or
  - (f) creates or amends a power to legislate.
- (3) Any other statutory instrument containing regulations under section ~~7~~7(1) is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (4) [See paragraph 3 for restrictions on the choice of procedure under sub-paragraph \(3\).](#) 15
- (5) [A statutory instrument containing regulations under section 7\(3\)\(b\) \(including as applied by paragraph 1\(3\) of Schedule 2\) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.](#)
- (6) Regulations under Part 1 of Schedule 2 of the Scottish Ministers which contain provision falling within sub-paragraph (2) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)). 20
- (7) Any other regulations under Part 1 of Schedule 2 of the Scottish Ministers are (if they have not been subject to the affirmative procedure) subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010). 25
- (8) A statutory instrument containing regulations under Part 1 of Schedule 2 of the Welsh Ministers which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. 30
- (9) Any other statutory instrument containing regulations under Part 1 of Schedule 2 of the Welsh Ministers is (if a draft of the instrument has not been laid before, and approved by a resolution of, the National Assembly for Wales) subject to annulment in pursuance of a resolution of the Assembly. 35
- (10) Regulations under Part 1 of Schedule 2 of a Northern Ireland department which contain provision falling within sub-paragraph (2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (11) Any other regulations under Part 1 of Schedule 2 of a Northern Ireland department are (if a draft of the regulations has not been laid before, and approved by a resolution of, the Northern Ireland Assembly) subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act. 40
- (12) This paragraph— 45
- (a) does not apply to regulations to which paragraph 2 applies, and

(b) is subject to paragraph 34.

*Scrutiny of regulations made by Minister of the Crown and devolved authority acting jointly*

- 2 (1) This paragraph applies to regulations under Part 1 of Schedule 2 of a Minister of the Crown acting jointly with a devolved authority.
- (2) The procedure provided for by sub-paragraph (3) or (4) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned. 5
- (3) A statutory instrument containing regulations to which this paragraph applies which contain provision falling within paragraph 1(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 10
- (4) Any other statutory instrument containing regulations to which this paragraph applies is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (5) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers and contain provision falling within paragraph 1(2) are subject to the affirmative procedure.
- (6) Any other regulations to which this paragraph applies which are made jointly with the Scottish Ministers are (if they have not been subject to the affirmative procedure) subject to the negative procedure. 20
- (7) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (affirmative procedure) applies in relation to regulations to which sub-paragraph (5) or (6) applies and which are subject to the affirmative procedure as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument). 25
- (8) Sections 28(2), (3) and (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (negative procedure etc.) apply in relation to regulations to which sub-paragraph (6) applies and which are subject to the negative procedure as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument). 30
- (9) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (5) or (6) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act). 40
- (10) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers and contain provision falling within paragraph 1(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. 45

- (11) Any other statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers is (if a draft of the instrument has not been laid before, and approved by a resolution of, the National Assembly for Wales) subject to annulment in pursuance of a resolution of the Assembly. 5
- (12) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department and contain provision falling within paragraph 1(2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. 10
- (13) Any other regulations to which this paragraph applies which are made jointly with a Northern Ireland department are (if a draft of the regulations has not been laid before, and approved by a resolution of, the Northern Ireland Assembly) subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act. 15
- (14) If in accordance with sub-paragraph (4), (6), (11) or (13) –
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument be annulled, or
  - (b) a relevant devolved legislature resolves that an instrument be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument. 20
- (15) In sub-paragraph (14) “relevant devolved legislature” means –
- (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament, 25
  - (b) in the case of regulations made jointly with the Welsh Ministers, the National Assembly for Wales, and
  - (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly. 30
- (16) Sub-paragraph (14) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (17) Sub-paragraphs (14) and (15) apply in place of provision made by any other enactment about the effect of such a resolution.

*Parliamentary committee to sift certain regulations involving Minister of the Crown* 35

- 3 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make a statutory instrument to which paragraph 1(3) applies is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) The Minister may not make the instrument so that it is subject to that procedure unless – 40
- (a) condition 1 is met, and
  - (b) either condition 2 or 3 is met.
- (3) Condition 1 is that a Minister of the Crown –

- (a) has made a statement in writing to the effect that in the Minister’s opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament, and
- (b) has laid before the House of Commons –
  - (i) a draft of the instrument, and 5
  - (ii) a memorandum setting out the statement and the reasons for the Minister’s opinion.
- (4) Condition 2 is that a committee of the House of Commons charged with doing so has made a recommendation as to the appropriate procedure for the instrument. 10
- (5) Condition 3 is that the period of 10 sitting days beginning with the first sitting day after the day on which the draft instrument was laid before the House of Commons as mentioned in sub-paragraph (3) has ended without any recommendation being made as mentioned in sub-paragraph (4).
- (6) In sub-paragraph (5) “sitting day” means a day on which the House of Commons sits. 15
- (7) Nothing in this paragraph prevents a Minister of the Crown from deciding at any time before a statutory instrument to which paragraph 1(3) applies is made that another procedure should apply in relation to the instrument (whether under paragraph 1(3) or 4). 20
- (8) Section 6(1) of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply in relation to any statutory instrument to which this paragraph applies.

*Scrutiny procedure in certain urgent cases*

- 4 (1) Sub-paragraph (2) applies to – 25
  - (a) a statutory instrument to which paragraph 1(1) applies, or
  - (b) a statutory instrument to which paragraph 1(3) applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament.
- (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved. 30
- (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before each House of Parliament. 35
- (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of one month beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. 40
- (5) In calculating the period of one month, no account is to be taken of any time during which –
  - (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days. 45

- (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not –
- (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations. 5
- (7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 1(3) applies where the Minister of the Crown who is to make the instrument is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (8) Paragraph 3 does not apply in relation to the instrument if the instrument contains a declaration that the Minister is of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.

## PART 2

15

### SCRUTINY OF OTHER POWERS UNDER ACT

#### *Power to enable challenges to validity of retained EU law*

- 5 (1) A statutory instrument containing regulations under paragraph 1(2)(b) of Schedule 1 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 20
- (2) This paragraph is subject to paragraph ~~11~~14.

#### *Power to implement international obligations*

- 6 (1) A statutory instrument containing regulations under section 8 which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 25
- (2) Provision falls within this sub-paragraph if it –
- (a) establishes a public authority in the United Kingdom,
  - (b) provides for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the United Kingdom established by regulations under section 7, 8 or 9 or Schedule 2, 30
  - (c) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom, 35
  - (d) imposes, or otherwise relates to, a fee or charge in respect of a function exercisable by a public authority in the United Kingdom,
  - (e) creates, or widens the scope of, a criminal offence, or
  - (f) creates or amends a power to legislate.
- (3) Any other statutory instrument containing regulations under section 8 is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament. 40

(4) [See paragraph 13 for restrictions on the choice of procedure under sub-paragraph \(3\).](#)

(5) Paragraphs 1(~~4~~6) to (~~10~~12)(a) and 2 apply to regulations under Part 2 of Schedule 2 as they apply to regulations under Part 1 of that Schedule except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision falling within sub-paragraph (2) above. 5

(6) This paragraph is subject to paragraph ~~11~~14.

*Power to implement withdrawal agreement*

7 (1) A statutory instrument containing regulations under section 9 which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 10

(2) Provision falls within this sub-paragraph if it—

(a) establishes a public authority in the United Kingdom,  
(b) provides for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the United Kingdom established by regulations under section 7, 8 or 9 or Schedule 2, 15

(c) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom, 20

(d) imposes, or otherwise relates to, a fee in respect of a function exercisable by a public authority in the United Kingdom,

(e) creates, or widens the scope of, a criminal offence, 25

(f) creates or amends a power to legislate, or

(g) amends this Act.

(3) Any other statutory instrument containing regulations under section 9 is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament. 30

(4) [See paragraph 13 for restrictions on the choice of procedure under sub-paragraph \(3\).](#)

(5) Paragraphs 1(~~4~~6) to (~~10~~12)(a) and 2 apply to regulations under Part 3 of Schedule 2 as they apply to regulations under Part 1 of that Schedule except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision falling within sub-paragraph (2) above. 35

(6) This paragraph is subject to paragraph ~~11~~14.

*Powers in connection with fees and charges*

8 (1) A statutory instrument containing regulations of a Minister of the Crown under paragraph 1 of Schedule 4 which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40

(2) Provision falls within this sub-paragraph if it—

- (a) imposes a fee or charge in respect of a function exercisable by a public authority (unless it is modifying a fee or charge already payable in respect of that function under regulations under paragraph 1 of Schedule 4), or
- (b) confers a power as mentioned in sub-paragraph (3)(c) of that paragraph. 5
- (3) Any other statutory instrument containing regulations under Schedule 4 of a Minister of the Crown is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (4) Paragraphs 1(46) to (1012)(a) and 2 apply to regulations under Schedule 4 as they apply to regulations under Part 1 of Schedule 2 except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision made under paragraph 1 of Schedule 4 falling within sub-paragraph (2) above. 15
- (5) This paragraph is subject to paragraph 1114. 15

*Power to make provision about publication and rules of evidence*

- 9 [A statutory instrument containing regulations under paragraph 4 of Schedule 5 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.](#) 20

[Power to amend the definition of “exit day”](#)

- 10 A statutory instrument containing regulations under ~~paragraph 4 of Schedule 5~~ [section 14\(4\)](#) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 25

*Power to make consequential provision*

- 11 A statutory instrument containing regulations under section 17(1) is subject to annulment in pursuance of a resolution of either House of Parliament.

*Power to make transitional, transitory or saving provision*

- 12 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make regulations under section 17(5) considers that – 30
- (a) it is not appropriate for the statutory instrument containing them to be subject to no parliamentary procedure, and
- (b) it is appropriate for that statutory instrument to be subject to the parliamentary procedure in sub-paragraph (2). 35
- (2) The statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Sub-paragraph (4) applies if a Minister of the Crown who is to make regulations under section 17(5) considers that – 40
- (a) it is not appropriate for the statutory instrument containing them to be subject to no parliamentary procedure, and



- (b) it is appropriate for that statutory instrument to be subject to the parliamentary procedure in sub-paragraph (4).
- (4) The statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

Parliamentary committee to sift certain regulations involving Minister of the Crown 5

- 13 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make a statutory instrument to which paragraph 6(3) or 7(3) applies is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (2) The Minister may not make the instrument so that it is subject to that procedure unless –
- (a) condition 1 is met, and
  - (b) either condition 2 or 3 is met.
- (3) Condition 1 is that a Minister of the Crown – 15
- (a) has made a statement in writing to the effect that in the Minister’s opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (b) has laid before the House of Commons –
    - (i) a draft of the instrument, and
    - (ii) a memorandum setting out the statement and the reasons for the Minister’s opinion. 20
- (4) Condition 2 is that a committee of the House of Commons charged with doing so has made a recommendation as to the appropriate procedure for the instrument. 25
- (5) Condition 3 is that the period of 10 sitting days beginning with the first sitting day after the day on which the draft instrument was laid before the House of Commons as mentioned in sub-paragraph (3) has ended without any recommendation being made as mentioned in sub-paragraph (4).
- (6) In sub-paragraph (5) “sitting day” means a day on which the House of Commons sits. 30
- (7) Nothing in this paragraph prevents a Minister of the Crown from deciding at any time before a statutory instrument to which paragraph 6(3) or 7(3) applies is made that another procedure should apply in relation to the instrument (whether under that paragraph or paragraph 14).
- (8) Section 6(1) of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply in relation to any statutory instrument to which this paragraph applies. 35

*Scrutiny procedure in certain urgent cases*

- 14 (1) Sub-paragraph (2) applies to – 40
- (a) a statutory instrument to which paragraph 45(1), 56(1), 67(1) or 78(1) applies, or
  - (b) a statutory instrument to which paragraph 56(3), 67(3) or 78(3) applies which would not otherwise be made without a draft of the

instrument being laid before, and approved by a resolution of, each House of Parliament.

- (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved. 5
- (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before each House of Parliament. 10
- (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of one month beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. 15
- (5) In calculating the period of one month, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
- (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations. 20
- (7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 6(3) or 7(3) applies where the Minister of the Crown who is to make the instrument is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (8) Paragraph 13 does not apply in relation to the instrument if the instrument contains a declaration that the Minister is of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph. 30

### PART 3

#### GENERAL PROVISION ABOUT POWERS UNDER ACT

- Scope and nature of powers: general* 35
- 15 (1) Any power to make regulations under this Act—
- (a) so far as exercisable by a Minister of the Crown or by a Minister of the Crown acting jointly with a devolved authority, is exercisable by statutory instrument, 40
  - (b) so far as exercisable by the Welsh Ministers or by the Welsh Ministers acting jointly with a Minister of the Crown, is exercisable by statutory instrument, and
  - (c) so far as exercisable by a Northern Ireland department (other than when acting jointly with a Minister of the Crown), is exercisable by statutory rule for the purposes of the Statutory Rules (Northern 45

- Ireland) Order 1979 (SI 1979/1573 (NI 12)) (and not by statutory instrument).
- (2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments). 5
- 16 Any power to make regulations under this Act –
- (a) may be exercised so as to –
    - (i) modify retained EU law, or
    - (ii) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and 10
  - (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision restating any retained EU law in a clearer or more accessible way).
- 17 The fact that a power to make regulations is conferred by this Act does not affect the extent of any other power to make regulations under this Act. 15

*Scope of consequential and transitional powers*

- 18 (1) The fact that anything continues to be, or forms part of, domestic law by virtue of any provision of sections 2 to 6 or Schedule 1 does not prevent it from being modified by regulations made under section 17(1) in consequence of any other provision made by or under this Act. 20
- (2) Accordingly, any retained EU law may, for example, be modified by regulations made under section 17(1) in consequence of the repeal of any enactment contained in the European Communities Act 1972. 25
- (3) The power to make regulations under section 17(5) includes the power to make transitional, transitory or saving provision in connection with – 25
- (a) the repeal of any enactment contained in the European Communities Act 1972, or
  - (b) the withdrawal of the United Kingdom from the EU,
- which is additional to that made by any provision of sections 2 to 6 or Schedule 1 or alters its effect in particular cases or descriptions of case. 30
- (4) The power to make regulations under section 17(1) includes the power to make transitional, transitory or saving provision which –
- (a) is in connection with any repeal or revocation made by any such regulations of an enactment in consequence of – 35
    - (i) the repeal of any enactment contained in the European Communities Act 1972, or
    - (ii) the withdrawal of the United Kingdom from the EU, and
  - (b) is additional to that made by any provision of sections 2 to 6 or Schedule 1 or alters its effect in particular cases or descriptions of case. 40
- (5) Provision of the kind mentioned in sub-paragraph (3) or (4) may (among other things) include further provision treating any provision of that kind as retained EU law for particular purposes or all purposes.

*Scope of appointed day powers*

- 19 Any power of a Minister of the Crown under this Act to appoint a day includes a power to appoint a time on that day if the Minister considers it appropriate to do so.

*Effect of certain provisions in Schedule 8 on scope of powers*

5

- 20 The modifications made by Part 1 of Schedule 8 and paragraphs 7 to 11 and 20 to 23 of that Schedule do not prevent or otherwise limit the making of different provision, in particular cases or descriptions of case, in regulations under section 17(1) or in any other regulations under this Act.

*Disapplication of certain review provisions*

10

- 21 Section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply in relation to any power to make regulations conferred by this Act.

*Explanatory statements for certain powers: appropriateness, equalities etc.*

- 22 (1) This paragraph applies where a statutory instrument containing regulations under section 7(1), 8 or 9, or a draft of such an instrument, is to be laid before each House of Parliament or before the House of Commons only. 15
- (2) Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that in the Minister’s opinion the instrument or draft does no more than is appropriate. 20
- (3) Before the instrument or draft is laid, the relevant Minister must make a statement –
- (a) as to whether the instrument or draft amends, repeals or revokes any provision of equalities legislation, and
- (b) if it does, explaining the effect of each such amendment, repeal or revocation. 25
- (4) Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that, in relation to the instrument or draft, the Minister has, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. 30
- (5) Before the instrument or draft is laid, the relevant Minister must make a statement otherwise explaining –
- (a) the instrument or draft,
- (b) the reasons for it,
- (c) the law before exit day which is relevant to it, and
- (d) its effect (if any) on retained EU law. 35
- (6) If the relevant Minister fails to make a statement required by sub-paragraph (2), (3), (4) or (5) before the instrument or draft is laid, a Minister of the Crown must make a statement explaining why the relevant Minister has failed to do so. 40

- (7) A statement under sub-paragraph (2), (3), (4), (5) or (6) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (8) For the purposes of this paragraph, where an instrument or draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses. 5
- (9) This paragraph does not apply in relation to any laying before each House of Parliament of an instrument or draft instrument where an equivalent draft instrument (ignoring any differences relating to procedure) has previously been laid before both Houses or before the House of Commons only. 10
- (10) In this paragraph –  
“equalities legislation” means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts;  
“the relevant Minister” means the Minister of the Crown who makes, or is to make, the instrument. 15

#### *Hybrid instruments*

- 23 If an instrument, or a draft of an instrument, containing regulations under this Act would, apart from this paragraph, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument. 20

#### *Procedure on re-exercise of certain powers*

- 24 (1) An instrument to which paragraph 1(1) or (3), 1(~~46~~) or (~~57~~), 1(~~68~~) or (~~79~~), 1(~~810~~) or (~~911~~), 2(3) or (4), 2(5) or (6), 2(10) or (11), 2(12) or (13), ~~34~~(2), ~~56~~(1) or (3), ~~67~~(1) or (3), ~~78~~(1) or (3), ~~1012~~(2) or (4) or ~~1114~~(2) applies which revokes, amends or re-enacts any such instrument may (in spite of section 14 of the Interpretation Act 1978) be subject to a different procedure under this Schedule from the procedure to which the instrument containing the original regulations was subject or, in the case of regulations under section 17(5), no procedure. 25
- (2) The references in sub-paragraph (1) to paragraph 1(~~46~~) or (~~57~~), 1(~~68~~) or (~~79~~), 1(~~810~~) or (~~911~~), 2(3) or (4), 2(5) or (6), 2(10) or (11) or 2(12) or (13) include references to those provisions as applied by paragraph ~~6~~(~~54~~), ~~67~~(~~45~~) or ~~78~~(4). 30

#### *Combinations of instruments*

- 25 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament that requires the approval of the instrument in draft before it is made or its approval after it is made. 35
- (2) The statutory instrument may also include regulations under this Act or another enactment which are made by statutory instrument which is subject to a procedure before Parliament that provides for the annulment of the instrument after it has been made. 40
- (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument is the procedure 45

- mentioned in sub-paragraph (1) and not the procedure mentioned in sub-paragraph (2).
- (4) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the National Assembly for Wales as they apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to the National Assembly for Wales. 5
- (5) Sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument but as if the references to Parliament were references to the Northern Ireland Assembly. 10
- (6) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as well as a procedure before Parliament as they apply to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to Parliament and the Scottish Parliament, the National Assembly for Wales or (as the case may be) the Northern Ireland Assembly. 15
- (7) This paragraph does not prevent the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act. 20

## SCHEDULE 8

Section 17(4) and (6)

### CONSEQUENTIAL, TRANSITIONAL, TRANSITORY AND SAVING PROVISION

#### PART 1

#### GENERAL CONSEQUENTIAL PROVISION

#### *Existing ambulatory references to retained direct EU legislation*

- 1 (1) Any reference which, immediately before exit day –
- (a) exists in –
- (i) any enactment, 30
- (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
- (iii) any document relating to anything falling within sub-paragraph (i) or (ii), and 35
- (b) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, 40
- is to be read, on or after exit day, as a reference to the EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement as it forms part of domestic law by virtue of section 3 and, unless the contrary intention appears, as modified by domestic law from time to time.

- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subordinate legislation so far as the power to make the subordinate legislation –
- (a) continues to be part of domestic law by virtue of section 2, and
  - (b) is subject to a procedure before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

*Other existing ambulatory references*

- 2 (1) Any reference which –
- (a) exists, immediately before exit day, in –
    - (i) any enactment,
    - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
    - (iii) any document relating to anything falling within sub-paragraph (i) or (ii),
  - (b) is not a reference to which paragraph 1(1) applies, and
  - (c) is, immediately before exit day, a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,
- is to be read, on or after exit day, as a reference to the EU Treaty, instrument or document as it has effect immediately before exit day.
- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subordinate legislation so far as the power to make the subordinate legislation –
- (a) continues to be part of domestic law by virtue of section 2, and
  - (b) is subject to a procedure before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

*Existing powers to make subordinate legislation*

- 3 (1) Any power to make, confirm or approve subordinate legislation which was conferred before exit day is to be read, on or after exit day and so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation.
- (2) Any subordinate legislation modifying any retained direct EU legislation which is, or is to be, made, confirmed or approved by virtue of sub-paragraph (1) is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would be the case for that legislation if it were modifying other subordinate legislation.
- (3) Any power to make, confirm or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on or after exit day

without that restriction or any corresponding restriction in relation to compatibility with retained EU law.

- (4) Sub-paragraphs (1) to (3) –
- (a) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies, and 5
- (b) are subject to any other provision made by or under this Act or any other enactment.

*Review provisions in existing subordinate legislation*

- 4 (1) In carrying out a review of a provision of subordinate legislation on or after exit day (whether under provision made in accordance with section 28 of the Small Business, Enterprise and Employment Act 2015 or otherwise), a person is not required, by any pre-exit enactment, to have regard to how any former EU obligation is implemented elsewhere than in the United Kingdom. 10 15
- (2) In this paragraph –
- “former EU obligation” means an obligation by which the United Kingdom is, as a result of the United Kingdom’s withdrawal from the EU, no longer bound at the time of the review,
- “pre-exit enactment” means an Act passed, or subordinate legislation made, before exit day, and 20
- “subordinate legislation” does not include an instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales.

*Future powers to make subordinate legislation* 25

- 5 (1) Any power to make, confirm or approve subordinate legislation which is conferred on or after exit day may, so far as applicable and unless the contrary intention appears, be exercised so as to modify (or, as the case may be, result in the modification of) any retained direct EU legislation.
- (2) Sub-paragraph (1) does not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies. 30

PART 2

SPECIFIC CONSEQUENTIAL PROVISION

*Finance Act 1973* 35

- 6 In section 56 of the Finance Act 1973 (charges for services etc. by Government departments), in subsection (1), omit “any EU obligation or”.

*Interpretation Act 1978*

- 7 The Interpretation Act 1978 is amended as follows.
- 8 In section 21(1) (meaning of “subordinate legislation”) after “any Act” insert “or made or to be made on or after exit day under any retained direct EU legislation”. 40



9 After section 23 (application to other instruments) insert –

**“23ZA Retained direct EU legislation**

- (1) The provisions of this Act (except sections 1 to 4, 13 and 19(2)) apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation so far as it – 5
- (a) is amended by an Act, subordinate legislation or devolution legislation, and
  - (b) is not subordinate legislation,
- as they apply to an Act passed at the corresponding time.
- (2) In their application by virtue of subsection (1) – 10
- (a) section 10 has effect as if the reference to the passing of the Act were a reference to the corresponding time,
  - (b) section 11 has effect as if the second reference to an Act included a reference to the retained direct EU legislation so far as unamended (as well as a reference to that legislation so far as amended), and 15
  - (c) section 16(1) has effect as if the reference to the repealing Act not being passed were a reference to the repeal not having been made.
- (3) References in this Act to the repeal of an enactment are to be read, in the case of an enactment which is retained direct EU legislation, as references to the revocation of the enactment. 20
- (4) In Schedule 1 –
- (a) in the definition of “Commencement”, the references to an enactment do not include any retained direct EU legislation other than – 25
    - (i) any such legislation to which subsection (1) applies or
    - (ii) any instrument made on or after exit day under any retained direct EU legislation, and
  - (b) in the definitions of “The Corporation Tax Acts” and “The Income Tax Acts”, the references to an enactment do not include any retained direct EU legislation. 30
- (5) For the application of this Act to retained direct EU legislation which is subordinate legislation, see section 23(1) and (2).
- (6) In this section – 35
- “corresponding time” means the time when the amending Act, subordinate legislation or devolution legislation was passed or (as the case may be) made, and
  - “devolution legislation” means –
    - (a) an Act of the Scottish Parliament, 40
    - (b) a Measure or Act of the National Assembly for Wales,
    - (c) Northern Ireland legislation (for the meaning of which see section 24(5)), or
    - (d) an instrument made under anything falling within paragraph (a), (b) or (c).” 45

10 In section 24 (application to Northern Ireland), in subsection (4) –

- (a) omit “and related expressions”,

- 
- (b) after “Corporation Tax Acts;” insert –  
     “E.C.S.C. Treaty;  
     E.E.C. Treaty;”,
- (c) after “state;” insert –  
     “Entry date; 5  
     The EU or the European Union;  
     EU institution;  
     EU instrument;  
     Euratom, Economic Community and Coal and Steel  
     Community; 10  
     Euratom Treaty;  
     European Court;”,
- (d) after “Income Tax Acts;” insert –  
     “Member (in the expression “member State”);”, and
- (e) after “The Tax Acts” insert “; 15  
     The Treaties or the EU Treaties”.
- 11 In Schedule 1 (words and expressions defined) –
- (a) omit ““The EU” or “the EU Treaties” and other expressions defined  
     by section 1 of and Schedule 1 to the European Communities Act  
     1972 have the meanings prescribed by that Act.”, 20
- (b) omit the definition of “EEA agreement”,
- (c) omit the definition of “EEA state”,
- (d) in the definition of “enactment”, before “does” insert “includes any  
     retained direct EU legislation but”, and
- (e) at the end insert – 25
- “Definitions relating to the EU and the United Kingdom’s withdrawal*
- “*The Communities*” means Euratom, the Economic  
     Community and the Coal and Steel Community, but a  
     reference to any or all of those Communities is to be treated  
     as being or including (as the context requires) a reference 30  
     to the EU.
- “*E.C.S.C. Treaty*” means the Treaty establishing the  
     European Coal and Steel Community, signed at Paris on 18  
     April 1951.
- “*EEA agreement*” means the agreement on the European 35  
     Economic Area signed at Oporto on 2 May 1992, together  
     with the Protocol adjusting that Agreement signed at  
     Brussels on 17 March 1993, as modified or supplemented  
     from time to time, but does not include any retained direct  
     EU legislation. [8 January 2007] 40
- “*EEA state*”, in relation to a time, means –
- (a) a state which at that time is a member State, or
- (b) any other state which at that time is a party to the  
         EEA agreement. [8 January 2007]

“E.E.C. Treaty” means the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957.

“Entry date” means the date on which the United Kingdom became a member of the Communities (which neither includes nor is a reference to the EU). 5

“The EU” or “the European Union” means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended by any later Treaty); and includes, so far as the context permits or requires, Euratom. 10

“EU institution” means any institution of the EU.

“EU instrument” means any instrument issued by an EU institution other than any retained direct EU legislation.

“Euratom”, “Economic Community” and “Coal and Steel Community” mean respectively the European Atomic Energy Community, the European Economic Community and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities). 15  
20

“Euratom Treaty” means the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957.

“European Court” means the Court of Justice of the European Union. 25

“Exit day” (and related expressions) have the same meaning as in the European Union (Withdrawal) Act ~~2017~~ 2018 (see section 14(1) ~~and to~~ (25) of that Act).

“Member”, in the expression “member State”, refers to membership of the EU. 30

“Retained EU law” and “retained direct EU legislation” have the same meaning as in the European Union (Withdrawal) Act ~~2017~~ 2018 (see sections 6(7) and 14(1) of that Act).

“Retained EU obligation” means an obligation that – 35  
(a) was created or arose by or under the EU Treaties before exit day, and  
(b) forms part of retained EU law,  
as modified from time to time.

“The Treaties” or “the EU Treaties” means the Treaties or EU Treaties, within the meaning given by section 1(2) of the European Communities Act 1972 as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act ~~2017~~ 2018, as at immediately before exit day.” 40  
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*European Economic Area Act 1993*

- 12 The European Economic Area Act 1993 is amended as follows.
- 13 Omit section 1 (EEA agreement to be an EU Treaty).
- 14 (1) Section 2 (consistent application of law to the whole of the EEA) is amended as follows. 5
- (2) In subsection (3) –
- (a) in paragraph (a), after “Act” insert “as at immediately before exit day”, and
- (b) omit paragraph (b), the “or” before that paragraph and the words after that paragraph. 10
- (3) After that subsection insert –
- “(3A) This section is subject to any amendment, repeal, revocation or other modification of retained EU law on or after exit day.”
- (4) Omit subsections (4) to (6).
- 15 (1) Section 3 (general implementation of the EEA agreement) is amended as follows. 15
- (2) In subsection (3) –
- (a) in paragraph (a), after “Act” insert “as at immediately before exit day”, and
- (b) omit paragraph (b), the “or” before that paragraph and the words after that paragraph. 20
- (3) After subsection (4) insert –
- “(4A) This section is subject to any amendment, repeal, revocation or other modification of retained EU law on or after exit day.”
- 16 Omit section 4 (modification of section 3 of the European Communities Act 1972). 25
- 17 In section 6 (interpretation), in subsection (1), in the definition of “the 1972 Act”, after “1972” insert (before its repeal by section 1 of the European Union (Withdrawal) Act ~~2017~~2018)”. 30

*Criminal Procedure (Scotland) Act 1995*

- 18 (1) Section 288ZA of the Criminal Procedure (Scotland) Act 1995 (right of Advocate General to take part in proceedings) is amended as follows. 30
- (2) In subsection (2) –
- (a) in paragraph (a)(ii), for “incompatible with EU law” substitute “made unlawful by section 57(4) of the Scotland Act 1998 (restriction on subordinate legislation modifying retained EU law)”, and 35
- (b) in paragraph (b), for “with EU law” substitute “in breach of the restriction in section 29(4A) of the Scotland Act 1998 (restriction on the modification of retained EU law)”.
- (3) In subsection (3), omit paragraph (c). 40

*Human Rights Act 1998*

- 19 (1) For the purposes of the Human Rights Act 1998, any retained direct EU legislation is to be treated as primary legislation and not subordinate legislation.
- (2) In sub-paragraph (1) “primary legislation” and “subordinate legislation” have the same meaning as in the Human Rights Act 1998. 5

*Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)*

- 20 The Interpretation and Legislative Reform (Scotland) Act 2010 is amended as follows.
- 21 (1) Section 1 (application of Part 1 of the Act) is amended as follows. 10
- (2) In subsection (1) –
- (a) in paragraph (b), after “day” insert “, in the case of Scottish instruments made as mentioned in paragraph (a) or (b) of the definition of “Scottish instrument” in subsection (4),”, and
- (b) after paragraph (b) (but before the “and” at the end of that paragraph) insert – 15
- “(ba) Scottish instruments made on or after exit day, in the case of Scottish instruments made as mentioned in paragraph (c) or (d) of the definition of “Scottish instrument” in subsection (4),”. 20
- (3) In subsection (4) –
- (a) omit the “or” at the end of paragraph (a), and
- (b) after paragraph (b) insert –
- “(c) an Act of the Scottish Parliament (whenever passed) and any retained direct EU legislation (whenever made), or 25
- (d) an Act of the Scottish Parliament and an Act of Parliament (in each case, whenever passed) and any retained direct EU legislation (whenever made).”
- (4) After subsection (9) insert – 30
- “(10) In this section “exit day” (and related expressions) and “retained direct EU legislation” have the same meaning as in the European Union (Withdrawal) Act ~~2017~~2018 (see section 14(1) ~~and to~~ (25) of that Act).”
- 22 In section 37 (interpretation of Part 2 of the Act) – 35
- (a) in the definition of “enactment”, at the end insert “and any retained direct EU legislation”,
- (b) after that definition insert –
- ““retained direct EU legislation” has the same meaning as in the European Union (Withdrawal) Act ~~2017~~2018 (see section 14(1) of that Act),”, and 40
- (c) at the end insert –
- ““subordinate legislation” includes an instrument made or to be made under any retained direct EU legislation on or after exit day (within the meaning of

the European Union (Withdrawal) Act ~~2017~~2018 (see section 14(1) ~~and to~~ (25) of that Act).”

- 23 In Schedule 1 (definitions of words and expressions) –
- (a) omit from “the EU” to “meanings given by that Act”, and
- (b) at the end insert – 5
- “Definitions relating to the EU*
- “The Communities” means Euratom, the Economic Community and the Coal and Steel Community, but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU. 10
- “E.C.S.C. Treaty” means the Treaty establishing the European Coal and Steel Community, signed at Paris on 18 April 1951.
- “E.E.C. Treaty” means the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957. 15
- “Entry date” means the date on which the United Kingdom became a member of the Communities (which neither includes nor is a reference to the EU). 20
- “The EU” or “the European Union” means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended by any later Treaty); and includes, so far as the context permits or requires, Euratom. 25
- “EU institution” means any institution of the EU.
- “EU instrument” means any instrument issued by an EU institution other than any retained direct EU legislation (within the meaning of the European Union (Withdrawal) Act ~~2017~~2018 (see section 14(1) of that Act)). 30
- “Euratom”, “Economic Community” and “Coal and Steel Community” mean respectively the European Atomic Energy Community, the European Economic Community and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities). 35
- “Euratom Treaty” means the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957.
- “European Court” means the Court of Justice of the European Union. 40
- “Member”, in the expression “member State”, refers to membership of the EU.
- “The Treaties” or “the EU Treaties” means the Treaties or EU Treaties, within the meaning given by section 1(2) of 45

the European Communities Act 1972 as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act ~~2017~~2018, as at immediately before exit day (within the meaning of that Act (see section 14(1) ~~and to~~ (25) of that Act).”

5

*Small Business, Enterprise and Employment Act 2015*

24 In section 30 of the Small Business, Enterprise and Employment Act 2015 (meaning of “provision for review”), in subsection (3) –

(a) omit “EU obligation or any other”, and

(b) omit “Member States or”.

10

PART 3

GENERAL TRANSITIONAL, TRANSITORY OR SAVING PROVISION

*Continuation of existing acts etc.*

25 (1) Anything done –

(a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 2, 3, 4 or 6(3) or (6), or

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(b) for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or otherwise related to the EU or the EEA,

if in force or effective immediately before exit day, continues to be in force or effective on and after exit day.

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(2) Anything done –

(a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 2, 3, 4 or 6(3) or (6), or

(b) for a purpose mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or otherwise related to the EU or the EEA,

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which, immediately before exit day, is in the process of being done continues to be done on and after exit day.

(3) Sub-paragraphs (1) and (2) are subject to –

(a) section 1 and the withdrawal of the United Kingdom from the EU,

(b) sections 2 to 6 and Schedule 1,

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(c) any provision made under section 17(5), and

(d) any other provision made by or under this Act or any other enactment.

(4) References in this paragraph to anything done include references to anything omitted to be done.

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PART 4

SPECIFIC TRANSITIONAL, TRANSITORY AND SAVING PROVISION

*Retention of existing EU law*

26 Section 4(2)(b) does not apply in relation to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they are of a kind recognised by a court or tribunal in the United Kingdom in a case decided

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	on or after exit day but begun before exit day (whether or not as an essential part of the decision in the case).	
27	(1) Subject as follows and subject to any provision made by regulations under section 17(5), section 5(4) and paragraphs 1 to 4 of Schedule 1 apply in relation to anything occurring before exit day (as well as anything occurring on or after exit day).	5
	(2) Section 5(4) and paragraphs 1 to 4 of Schedule 1 do not affect any decision of a court or tribunal made before exit day.	
	(3) Section 5(4) and paragraphs 3 and 4 of Schedule 1 do not apply in relation to any proceedings begun, but not finally decided, before a court or tribunal in the United Kingdom before exit day.	10
	(4) Paragraphs 1 to 4 of Schedule 1 do not apply in relation to any conduct which occurred before exit day which gives rise to any criminal liability.	
	(5) <u>Paragraph 3 of Schedule 1 does not apply in relation to any proceedings begun within the period of 3 months beginning with exit day so far as –</u>	15
	(a) <u>the proceedings involve a challenge to anything which occurred before exit day, and</u>	
	(b) <u>the challenge is not for the disaplication or quashing of –</u>	
	(i) <u>an Act of Parliament or a rule of law which is not an enactment, or</u>	20
	(ii) <u>any enactment, or anything else, not falling within sub-paragraph (i) which, as a result of anything falling within that sub-paragraph, could not have been different or which gives effect to, or enforces, anything falling within that sub-paragraph.</u>	25
	(6) Paragraph 3(2) of Schedule 1 does not apply in relation to any decision of a court or tribunal, or other public authority, on or after exit day which is a necessary consequence of any decision of a court or tribunal made before exit <del>day</del> <u>day or made on or after that day by virtue of this paragraph.</u>	
	<i>Main powers in connection with withdrawal</i>	30
28	The prohibition on making regulations under section 7, 8 or 9 or Schedule 2 after a particular time does not affect the continuation in force of regulations made at or before that time (including the exercise after that time of any power conferred by regulations made at or before that time).	
	<i>Devolution</i>	35
29	(1) The amendments made by section 11 and Part 1 of Schedule 3 do not affect the validity of –	
	(a) any provision of an Act of the Scottish Parliament, Act of the National Assembly for Wales or Act of the Northern Ireland Assembly made and in force before exit day, or	40
	(b) any subordinate legislation made, confirmed or approved and in force before exit day.	
	(2) Accordingly and subject to sub-paragraphs (3) to (5) and (9), the validity of anything falling within sub-paragraph (1)(a) or (b) is to be decided by reference to the law before exit day.	45



- (3) Section 29(2)(d) of the Scotland Act 1998, so far as relating to EU law, does not apply to any provision of an Act of the Scottish Parliament made before exit day if the provision –
- (a) comes into force on or after exit day or comes into force before that day and is a power to make, confirm or approve subordinate legislation, 5
  - (b) is made when there is an Order in Council under section 29(4C) of the Scotland Act 1998, and
  - (c) would, by virtue of the Order, not be in breach of the restriction in section 29(4A) of that Act when the provision comes into force (or, in the case of a provision which comes into force before exit day, on or after exit day) if the provision and the Order were made and in force at that time. 10
- (4) Section 108A(2)(e) of the Government of Wales Act 2006, so far as relating to EU law, does not apply to any provision of an Act of the National Assembly for Wales made before exit day if the provision –
- (a) comes into force on or after exit day or comes into force before that day and is a power to make, confirm or approve subordinate legislation,
  - (b) is made when there is an Order in Council under section 108A(10) of the Government of Wales Act 2006, and 20
  - (c) would, by virtue of the Order, not be in breach of the restriction in section 108A(8) of that Act when the provision comes into force (or, in the case of a provision which comes into force before exit day, on or after exit day) if the provision and the Order were made and in force at that time. 25
- (5) Section 6(2)(d) of the Northern Ireland Act 1998, so far as relating to EU law, does not apply to any provision of an Act of the Northern Ireland Assembly made before exit day if the provision –
- (a) comes into force on or after exit day or comes into force before that day and is a power to make, confirm or approve subordinate legislation, 30
  - (b) is made when there is an Order in Council under section 6(8) of the Northern Ireland Act 1998, and
  - (c) would, by virtue of the Order, not be in breach of the restriction in section 6(6) of that Act when the provision comes into force (or, in the case of a provision which comes into force before exit day, on or after exit day) if the provision and the Order were made and in force at that time. 35
- (6) Section 57(2) of the Scotland Act 1998, so far as relating to EU law, does not apply to the making, confirming or approving before exit day of any subordinate legislation if the legislation –
- (a) comes into force on or after exit day,
  - (b) is made, confirmed or approved when there is an Order in Council under section 57(5)(c) of the Scotland Act 1998, and 45
  - (c) the making, confirming or approving would, by virtue of the Order, not be in breach of the restriction in section 57(4) of that Act when the legislation comes into force if –
    - (i) the making, confirming or approving had occurred at that time, 50

- 
- (ii) in the case of legislation confirmed or approved, the legislation was made at that time, and
- (iii) the Order was made and in force at that time.
- (7) Section 80(8) of the Government of Wales Act 2006, so far as relating to EU law, does not apply to the making, confirming or approving before exit day of any subordinate legislation if the legislation— 5
- (a) comes into force on or after exit day,
- (b) is made, confirmed or approved when there is an Order in Council under section 80(8A)(c) of the Government of Wales Act 2006, and
- (c) the making, confirming or approving would, by virtue of the Order, not be in breach of the restriction in section 80(8) of that Act, so far as relating to retained EU law, when the legislation comes into force if— 10
- (i) the making, confirming or approving had occurred at that time, 15
- (ii) in the case of legislation confirmed or approved, the legislation was made at that time, and
- (iii) the Order was made and in force at that time.
- (8) Section 24(1)(b) of the Northern Ireland Act 1998, so far as relating to EU law, does not apply to the making, confirming or approving before exit day of any subordinate legislation if the legislation— 20
- (a) comes into force on or after exit day,
- (b) is made, confirmed or approved when there is an Order in Council under section 24(4)(c) of the Northern Ireland Act 1998, and
- (c) the making, confirming or approving would, by virtue of the Order, not be in breach of the restriction in section 24(3) of that Act when the legislation comes into force if— 25
- (i) the making, confirming or approving had occurred at that time,
- (ii) in the case of legislation confirmed or approved, the legislation was made at that time, and 30
- (iii) the Order was made and in force at that time.
- (9) Section 57(2) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 and section 24(1)(b) of the Northern Ireland Act 1998, so far as relating to EU law, do not apply to the making of regulations under Schedule 2 or 4. 35
- 30 The amendments made by Part 1 of Schedule 3 do not affect the validity of any act (other than the making, confirming or approving of subordinate legislation) done before exit day by a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government, a Northern Ireland Minister, the First Minister in Northern Ireland, the deputy First Minister in Northern Ireland or a Northern Ireland department. 40
- Other provision*
- 31 (1) The definition of “relevant criminal offence” in section 14(1) is to be read, until the appointed day, as if for the words “the age of 18 (or, in relation to Scotland or Northern Ireland, 21)” there were substituted “the age of 21”. 45

- (2) In sub-paragraph (1), “the appointed day” means the day on which the amendment made to section 81(3)(a) of the Regulation of Investigatory Powers Act 2000 by paragraph 211 of Schedule 7 to the Criminal Justice and Court Services Act 2000 comes into force.
- 32 (1) The amendment made by paragraph 6 does not affect whether the payment of any fees or other charges may be required under section 56 of the Finance Act 1973 in connection with a service or facilities provided, or an authorisation, certificate or other document issued, before that amendment comes into force. 5
- (2) Sub-paragraph (3) applies where – 10
- (a) immediately before the amendment made by paragraph 6 comes into force, the payment of fees or other charges could be required, under section 56 of the Finance Act 1973, in connection with the provision of a service or facilities, or issuing an authorisation, certificate or other document, in pursuance of an EU obligation, and 15
- (b) after the amendment made by paragraph 6 comes into force –
- (i) regulations made under that section (whether or not modified under Part 2 of Schedule 4 or otherwise) prescribing the fees or charges, or under which the fees or charges are to be determined, form part of retained EU law, and 20
- (ii) the service or facilities are provided, or the authorisation, certificate or other document is issued, under or in connection with retained EU law.
- (3) Despite the amendment made by paragraph 6, the payment of fees or other charges may be required, under that section and in accordance with the regulations, in connection with the provision of the service or facilities, or the issuing of the authorisation, certificate or other document. 25

SCHEDULE 9

Section 17(7)

ADDITIONAL REPEALS 30

<i>Short title</i>	<i>Extent of repeal</i>	
European Parliamentary Elections Act 2002	The whole Act.	
European Parliament (Representation) Act 2003	The whole Act.	35
European Union (Amendment) Act 2008	The whole Act.	
European Union Act 2011	The whole Act.	
European Union (Approval of Treaty Amendment Decision) Act 2012	The whole Act.	40
European Union (Approvals) Act 2013	The whole Act.	

<i>Short title</i>	<i>Extent of repeal</i>
European Union (Approvals) Act 2014	The whole Act.
Serious Crime Act 2015	Section 82. Section 88(5)(c).
European Union (Finance) Act 2015	The whole Act.
European Union (Approvals) Act 2015	The whole Act.