
STATUTORY INSTRUMENTS

2018 No. 808 (C. 63)

EXITING THE EUROPEAN UNION

The European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018

Made - - - - *3rd July 2018*

The Secretary of State, in exercise of the powers conferred by sections 23(6) and 25(4) of the European Union (Withdrawal) Act 2018⁽¹⁾, makes the following Regulations:

PART 1

Citation and Interpretation

Citation

1. These Regulations may be cited as the European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018.

Interpretation

2. In these Regulations—

“the Act” means the European Union (Withdrawal) Act 2018;

“the 2008 Act” means the European Union (Amendment) Act 2008⁽²⁾;

“the 2011 Act” means the European Union Act 2011⁽³⁾;

“the First Appointed Day” means 4 July 2018.

⁽¹⁾ 2018 c. 16.
⁽²⁾ 2008 c. 7.
⁽³⁾ 2011 c. 12.

PART 2

Provisions coming into force

Provisions coming into force on the First Appointed Day

3. The day appointed for the coming into force of the following provisions of the Act is the First Appointed Day—

- (a) section 5(6) (exceptions to savings and incorporation)—
 - (i) for the purposes of making regulations under paragraph 1(2)(b) (challenges to validity of retained EU law) of Schedule 1 (further provision about exceptions to savings and incorporation); and
 - (ii) insofar as it relates to paragraph 1(3) (challenges to validity of retained EU law) of Schedule 1,

and accordingly paragraph 1(2)(b) of Schedule 1 for the purposes of making regulations and paragraph 1(3) of Schedule 1;
- (b) section 6(7) (interpretation of retained EU law);
- (c) section 12(9) to (11) and (13) (retaining EU restrictions in devolution legislation etc.);
- (d) section 15(1) (publication and rules of evidence) insofar as it relates to paragraph 2 (exceptions from duty to publish) of Schedule 5 (publication and rules of evidence) and accordingly paragraph 2 of Schedule 5;
- (e) section 15(2) (publication and rules of evidence) insofar as it relates to paragraph 4 (power to make provision about judicial notice and admissibility) of Schedule 5 (publication and rules of evidence) and accordingly paragraph 4 of Schedule 5;
- (f) section 19 (future interaction with the law and agencies of the EU);
- (g) section 23(5) (consequential and transitional provision) insofar as it relates to the following paragraphs of Schedule 8 (consequential, transitional, transitory and saving provision), and accordingly those paragraphs of Schedule 8—
 - (i) paragraph 18 (Interpretation Act 1978);
 - (ii) paragraph 20;
 - (iii) paragraph 22(d) for the purposes of the use of the term “enactment” in sections 15, 16 and 17 of the Interpretation Act 1978⁽⁴⁾;
 - (iv) paragraph 22(e) insofar as it relates to the following definitions—
 - (aa) ““exit day” (and related expressions)”;
 - (bb) “retained EU law”;
 - (cc) “retained direct minor EU legislation”;
 - (dd) “retained direct principal EU legislation”;
 - (ee) “retained direct EU legislation”;
 - (ff) “retained EU obligation”;
 - (v) paragraphs 31 to 34 (Interpretation and Legislative Reform (Scotland) Act 2010 [\(asp 10\)](#));
 - (vi) paragraph 36 (Small Business, Enterprise and Employment Act 2015);

(4) 1978 c. 30.

- (h) section 23(7) (consequential and transitional provision) insofar as it relates to paragraph 40 (main powers in connection with withdrawal) of Schedule 8 (consequential, transitional, transitory and saving provision) and accordingly paragraph 40 of Schedule 8;
- (i) section 23(8) (consequential and transitional provision) insofar as it relates to the repeal of the following enactments, and accordingly Schedule 9 (additional repeals) insofar as it relates to the repeal of those enactments—
 - (i) section 1A of, and Schedule 1A to, the European Parliamentary Elections Act 2002(5);
 - (ii) sections 4 and 5 of the European Union (Amendment) Act 2008;
 - (iii) sections 1 to 13, 14(1) and 15(1) of, and Schedule 1 to, the European Union Act 2011;
 - (iv) the European Union (Approval of Treaty Amendment Decision) Act 2012(6);
 - (v) the European Union (Approvals) Act 2013(7);
 - (vi) the European Union (Approvals) Act 2014(8);
 - (vii) sections 82 and 88(5)(c) of the Serious Crime Act 2015(9);
 - (viii) section 1(1) of the European Union (Finance) Act 2015(10);
 - (ix) the European Union (Approvals) Act 2015(11).

Provisions coming into force on exit day

- 4. The day appointed for the coming into force of—
 - (a) section 23(8) (consequential and transitional provision) insofar as it relates to the repeal of the European Union Act 2011 (to the extent not already commenced); and
 - (b) accordingly Schedule 9 (additional repeals) insofar as it relates to the repeal of that Act (to the extent not already commenced),

is exit day.

PART 3

Transitional Provisions

Transitional Provision in relation to the Small Business, Enterprise and Employment Act 2015

5. The reference to “international obligation” in section 30(3) (section 28(2)(a): “provision for review”) of the Small Business, Enterprise and Employment Act 2015(12) is to be read, in its application in relation to any provision made for review, in the period beginning with the First Appointed Day and ending on exit day, as a reference to an “international obligation which is not an EU obligation”.

(5) 2002 c. 24; section 1A was inserted by section 7(1) of the European Parliament (Representation) Act 2003 (c. 7) and Schedule 1A was inserted by section 7(2) of, and the Schedule to, that Act.

(6) 2012 c. 15.

(7) 2013 c. 9.

(8) 2014 c. 3.

(9) 2015 c. 9.

(10) 2015 c. 32.

(11) 2015 c. 37.

(12) 2015 c. 26.

Approval for the purposes of section 12 of the European Parliamentary Elections Act 2002

6. The repeal of section 4 (increase of powers of European Parliament) of the 2008 Act, which approved matters in accordance with the requirements of section 12 (ratification of treaties) of the European Parliamentary Elections Act 2002⁽¹³⁾, has no effect on the validity of anything done in relation to the matters approved.

Approvals under the 2008 Act

7. The repeal of section 5 (amendment of Euratom Treaty) of the 2008 Act⁽¹⁴⁾ and of the Acts or provisions of Acts approving matters in accordance with the requirements of the 2008 Act, has no effect on the validity of anything done or omitted to be done in relation to the matters approved.

Approvals and exemptions under the 2011 Act

8. The repeal of the 2011 Act and of the Acts, or provisions of Acts, approving matters in accordance with the requirements of the 2011 Act have no effect on the validity of anything done or omitted to be done in relation to matters approved by Parliament in accordance with the 2011 Act (whether those matters were approved of by an Act or otherwise approved) or anything done or omitted to be done in relation to matters subject to an exemption under the 2011 Act.

Signed by authority of the Secretary of State for Exiting the European Union.

3rd July 2018

Steve Baker
Parliamentary Under Secretary of State,
Department for Exiting the European Union

⁽¹³⁾ Section 12 was repealed by section 14 of the European Union Act 2011.

⁽¹⁴⁾ Section 5 was amended by section 14 of the European Union Act 2011.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

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

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

- (a) amend the Interpretation Act 1978 (c. 30) (“IA 1978”) to—
 - (i) include a new section 23ZA in the IA 1978 which provides that the IA 1978 will apply to retained direct EU legislation but only to the extent that it has been amended by domestic legislation;
 - (ii) update the definition of enactment in Schedule 1 of IA 1978 - but only for the purposes of the use of the term enactment in sections 15, 16 and 17 of IA 1978 which provide certain default rules that apply where legislation is repealed;
 - (iii) update the list of defined terms in Schedule 1 of IA 1978 to include some additional new terms relating to EU exit;
- (b) amend the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (“ILRA”) to—
 - (i) update section 1 of ILRA to provide that where Scottish Ministers make secondary legislation under a combination of powers contained in an Act of the Scottish

Parliament and powers contained in retained direct EU legislation that the interpretation rules in ILRA (rather than the interpretation rules in the IA 1978) apply to the instrument;

- (ii) create an exemption from the laying requirements in section 30 ILRA to make it clear that those rules do not apply to instruments made under the scrutiny procedure for urgent cases (the urgent procedure has its own specific laying requirements as set out in paragraph 6 of Schedule 7 to the Act);
 - (iii) update section 37 of ILRA to amend the definition of “enactment” (to include retained direct EU legislation) and to insert new a definition of “subordinate legislation” (which includes instruments made under secondary legislation making powers in retained direct EU legislation) so that instruments made by Scottish Ministers under powers in retained direct EU legislation will fall under the normal rules for Scottish Statutory Instruments contained in Part 2 of ILRA;
- (c) amend section 30 of the Small Business, Enterprise and Employment Act 2015 (c. 28) (to remove the requirement in that Act for new secondary legislation that is being made to implement an EU obligation to include a requirement to review how other Member States have implemented the obligation).

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

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

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

Part 3 of these Regulations makes transitional provisions.

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

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