

# **Retained EU Law (Revocation and Reform) Bill**

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Energy and Industrial Strategy, have been ordered to be published as HL Bill 89—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Callanan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Retained EU Law (Revocation and Reform) Bill are compatible with the Convention rights.



# Retained EU Law (Revocation and Reform) Bill

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[AS BROUGHT FROM THE COMMONS]

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## [AS BROUGHT FROM THE COMMONS]

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**B I L L**

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Revoke certain retained EU law; to make provision relating to the interpretation of retained EU law and to its relationship with other law; to make provision relating to powers to modify retained EU law; to enable the restatement, replacement or updating of certain retained EU law; to enable the updating of restatements and replacement provision; to abolish the business impact target; and for connected purposes.

**B**E IT ENACTED by the King'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:—

*Sunsets of retained EU law***1 Sunset of EU-derived subordinate legislation and retained direct EU legislation**

- (1) The following are revoked at the end of 2023—
  - (a) EU-derived subordinate legislation; 5
  - (b) retained direct EU legislation.
- (2) Subsection (1) does not apply to an instrument, or a provision of an instrument, that is specified in regulations made by a relevant national authority.
- (3) The revocation of an instrument, or a provision of an instrument, by subsection (1) does not affect an amendment made by the instrument or provision to any other enactment. 10
- (4) In this section “EU-derived subordinate legislation” means any domestic subordinate legislation so far as—
  - (a) it was made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972, or 15
  - (b) it was made, or operated immediately before IP completion day, for a purpose mentioned in section 2(2)(a) of that Act (implementation of EU obligations etc),and as modified by any enactment. 20

- (5) In subsection (4) “domestic subordinate legislation” means any instrument (other than an instrument that is Northern Ireland legislation) that is made under primary legislation.
- (6) Any reference in regulations under subsection (2) to an instrument or a provision of an instrument is, unless otherwise stated, to the instrument or provision as it subsists immediately before the time when the revocation under subsection (1) would otherwise apply in relation to it. 5

## 2 Extension of sunset under section 1

- (1) A Minister of the Crown may by regulations provide that section 1, as it applies in relation to a specified instrument or a specified description of legislation within section 1(1)(a) or (b), has effect as if the reference in section 1(1) to the end of 2023 were a reference to a later specified time. 10
- (2) In subsection (1) “specified” means specified in the regulations.
- (3) Any reference in regulations under subsection (1) to an instrument or description of legislation is, unless otherwise stated, to the instrument or description of legislation as it subsists immediately before the time when the revocation under section 1(1) would otherwise apply in relation to it. 15
- (4) Regulations under subsection (1) may not specify a time later than the end of 23 June 2026.

## 3 Sunset of retained EU rights, powers, liabilities etc 20

- (1) Section 4 of the European Union (Withdrawal) Act 2018 (saving for rights, powers, liabilities etc under section 2(1) of the European Communities Act 1972) is repealed at the end of 2023.
- (2) Accordingly, anything which, immediately before the end of 2023, is retained EU law by virtue of that section is not recognised or available in domestic law at or after that time (and, accordingly, is not to be enforced, allowed or followed). 25

### *Assimilation of retained EU law*

## 4 Abolition of supremacy of EU law

- (1) In section 5 of the European Union (Withdrawal) Act 2018 (exceptions to savings and incorporation), before subsection (1) insert— 30
- “(A1) The principle of the supremacy of EU law is not part of domestic law. This applies after the end of 2023, in relation to any enactment or rule of law (whenever passed or made).
- (A2) Any provision of retained direct EU legislation— 35
- (a) must, so far as possible, be read and given effect in a way which is compatible with all domestic enactments, and
- (b) is subject to all domestic enactments, so far as it is incompatible with them.

- (A3) Subsection (A2) is subject to—
- (a) sections 183A and 186 of the Data Protection Act 2018 (protection of prohibitions and restrictions on processing personal data, and of data subject’s rights);
  - (b) regulations under section 8(1) of the Retained EU Law (Revocation and Reform) Act 2023.” 5
- (2) In that section, at the end insert—
- “(8) In this section “domestic enactment” means an enactment other than one consisting of retained direct EU legislation.”
- (3) In consequence of subsection (1), the European Union (Withdrawal) Act 2018 is amended as follows— 10
- (a) in section 5—
    - (i) omit subsections (1) to (3);
    - (ii) in subsection (7), for “(1)” substitute “(A1)”;
  - (b) in section 7(5)(a), for “(1) to (3)” substitute “(A1) to (A3)”;
  - (c) in Schedule 1 omit paragraph 5(2). 15

## 5 Abolition of general principles of EU law

- (1) The European Union (Withdrawal) Act 2018 is amended as follows.
- (2) In section 5 (exceptions to savings and incorporation)—
- (a) after subsection (A3) (inserted by section 4(1)) insert— 20
 

“(A4) No general principle of EU law is part of domestic law after the end of 2023.”;
  - (b) omit subsection (5).
- (3) In section 6 (interpretation)—
- (a) in subsection (3)(a) omit “and any retained general principles of EU law”;
  - (b) in subsection (7) omit the definition of “retained general principles of EU law”. 25
- (4) In section 7(5)(b) (status of retained EU law) omit “and retained general principles of EU law”. 30
- (5) In section 21(1) (index of defined expressions), in the table, omit the entry for “Retained general principles of EU law”.
- (6) In Schedule 1 (further provision about exceptions to savings and incorporation) omit paragraphs 2 and 3 (general principles of EU law) and the italic heading before them. 35
- (7) In paragraph 39 of Schedule 8 (transitional provision relating to certain exceptions to savings and incorporation)—
- (a) in sub-paragraph (1) for “1 to 4” substitute “1 and 4”;
  - (b) in sub-paragraph (2) for “1 to 4” substitute “1 and 4”;
  - (c) in sub-paragraph (3) for “paragraphs 3 and” substitute “paragraph”; 40

- (d) in sub-paragraph (4) for “1 to 4” substitute “1 and 4”;
- (e) omit sub-paragraphs (5) and (6).

## 6 “Assimilated law”

- (1) As regards all times after the end of 2023, the things listed in the left-hand column are to be known by the names in the right-hand column. 5

<i>At or before the end of 2023</i>	<i>After the end of 2023</i>	
Retained EU law	Assimilated law	
Retained case law	Assimilated case law	
Retained direct EU legislation	Assimilated direct legislation	
Retained direct minor EU legislation	Assimilated direct minor legislation	10
Retained direct principal EU legislation	Assimilated direct principal legislation	
Retained domestic case law	Assimilated domestic case law	
Retained EU case law	Assimilated EU case law	
Retained EU obligation	Assimilated obligation	15

- (2) Accordingly, as regards all times at or before the end of 2023, the things listed in the right-hand column continue to be known by the names in the left-hand column.

- (3) Schedule 1 contains amendments consequential on subsection (1).

- (4) A reference in an enactment to a thing in the left-hand column of the table in subsection (1) is to be read, as regards all times after the end of 2023, as a reference to the thing by its name in the right-hand column. 20

- (5) Subsection (4) does not apply to any title of an enactment (including any provision about how an enactment may be cited) or any reference to a title of an enactment. 25

- (6) The provision that may be made by regulations under section 19 (power to make consequential provision) in consequence of subsection (1) of this section includes, in particular—

- (a) provision adding entries to the table in subsection (1) for things which relate to the things for which there are entries in the table (and adding definitions for those things to subsection (7)); 30
- (b) provision amending an enactment in consequence of the name of a thing being changed by subsection (1) (including by virtue of regulations under section 19).

- (7) In this section— 35  
 “retained case law”, “retained domestic case law” and “retained EU case law” have the meaning given by section 6(7) of the European Union

(Withdrawal) Act 2018 (as it has effect on the day on which this Act is passed);

“retained EU law”, “retained direct EU legislation”, “retained direct minor EU legislation”, “retained direct principal EU legislation” and “retained EU obligation” have the meaning given by Schedule 1 to the Interpretation Act 1978 (as it has effect on the day on which this Act is passed).

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*Interpretation and effect of retained EU law*

## 7 Role of courts

(1) Section 6 of the European Union (Withdrawal) Act 2018 (interpretation of retained EU law) is amended as specified in subsections (2) to (7). 10

(2) In subsection (4) (courts not bound by retained case law) –

(a) in paragraph (b) –

(i) in sub-paragraph (i) omit the words from “otherwise” to “1998”;

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(ii) after sub-paragraph (ii) (and on a new line) insert “(except, when sitting as a court of appeal in relation to a compatibility issue or devolution issue, so far as there is relevant domestic case law which modifies or applies the retained EU case law and is binding on the court);”;

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(b) for paragraph (ba) substitute –

“(ba) a relevant appeal court is not bound by any retained EU case law (except so far as there is relevant domestic case law which modifies or applies the retained EU case law and is binding on the relevant appeal court), and”;

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(c) after paragraph (c) (and on a new line) insert “and see also subsection (5ZA) below and sections 6A to 6C.”

(3) For subsection (5) substitute –

“(5) In deciding whether to depart from any retained EU case law by virtue of subsection (4)(a), (b) or (ba), the higher court concerned must (among other things) have regard to –

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(a) the fact that decisions of a foreign court are not (unless otherwise provided) binding;

(b) any changes of circumstances which are relevant to the retained EU case law;

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(c) the extent to which the retained EU case law restricts the proper development of domestic law.”

(4) After that subsection insert –

“(5ZA) A higher court may depart from its own retained domestic case law if it considers it right to do so having regard (among other things) to –

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- (a) the extent to which the retained domestic case law is determined or influenced by retained EU case law from which the court has departed or would depart;
- (b) any changes of circumstances which are relevant to the retained domestic case law; 5
- (c) the extent to which the retained domestic case law restricts the proper development of domestic law.”
- (5) Omit subsections (5A) to (5D) (power to make regulations about which courts or tribunals are bound by retained EU case law).
- (6) After subsection (6A) insert— 10
- “(6B) In this section—
- “compatibility issue” has the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995;
- “devolution issue” has the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998; 15
- “relevant appeal court” means—
- (a) the Court Martial Appeal Court,
- (b) the Court of Appeal in England and Wales,
- (c) the Inner House of the Court of Session,
- (d) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983, 20
- (e) the Lands Valuation Appeal Court, or
- (f) the Court of Appeal in Northern Ireland;
- “relevant 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 on or after IP completion day.” 25
- (7) In subsection (7) before the definition of “retained case law” insert—
- ““higher court” means—
- (a) the Supreme Court,
- (b) the High Court of Justiciary when sitting as mentioned in subsection (4)(b)(i) or (ii), or 30
- (c) a relevant appeal court;”.
- (8) After section 6 of that Act insert—
- “6A References on retained case law by lower courts or tribunals**
- (1) A court or tribunal (other than a higher court) may refer one or more points of law which arise on retained case law and are relevant to proceedings before it if— 35
- (a) it is bound by the retained case law, and
- (b) it considers that the point or points of law are of general public importance. 40
- (2) A court or tribunal may make a reference—
- (a) of its own motion, or

- (b) pursuant to an application made by a party to the proceedings.
- (3) A reference is to be made –
- (a) in the case of a reference concerning (wholly or in part) retained case law of the Supreme Court, to that court;
  - (b) in any other case, to the appropriate appeal court. 5
- (4) Where a single point of law is referred to a court, the court must accept the reference if it considers that the point of law –
- (a) is relevant to the proceedings, and
  - (b) is of general public importance,
- and must otherwise refuse the reference. 10
- (5) Where two or more points of law are referred to a court, the court –
- (a) must accept the reference so far as relating to a point of law which the court considers meets the conditions in subsection (4)(a) and (b), and
  - (b) must otherwise refuse the reference. 15
- (6) A court which has accepted a reference must decide the point or points of law concerned; and the court or tribunal which made the reference must apply that decision so far as relevant to the proceedings before it.
- (7) No appeal may be made from a decision of a court or tribunal – 20
- (a) to make, or not to make, a reference, or
  - (b) to accept or refuse a reference.
- (8) An appeal from a decision of the appropriate appeal court under subsection (6) may, with permission, be made to the Supreme Court.
- (9) In this section – 25
- “the appropriate appeal court” means, in relation to proceedings before a court or tribunal, the court mentioned in subsection (10) to which an appeal from the court or tribunal in those proceedings on the point of law (or an appeal at any remove from that appeal) would lie; 30
  - “permission” means permission granted by the court making the decision or by the Supreme Court.
- (10) The courts referred to in subsection (9) are –
- (a) the Court Martial Appeal Court;
  - (b) the Court of Appeal in England and Wales; 35
  - (c) the Inner House of the Court of Session;
  - (d) the High Court of Justiciary when sitting as a court of appeal or on a reference under section 123(1) of the Criminal Procedure (Scotland) Act 1995;
  - (e) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983; 40
  - (f) the Lands Valuation Appeal Court;
  - (g) the Court of Appeal in Northern Ireland.

**6B References on retained case law by law officers**

- (1) This section applies where—
- (a) proceedings before a court or tribunal (other than a higher court) have concluded,
  - (b) no reference was made under section 6A in relation to the proceedings, and 5
  - (c) either—
    - (i) there has been no appeal, or
    - (ii) any appeal has been finally dealt with otherwise than by a higher court. 10
- (2) The following may refer a point of law which was relevant to the proceedings and arises on retained case law—
- (a) any UK law officer;
  - (b) the Lord Advocate, if the point of law relates to the meaning or effect of relevant Scotland legislation; 15
  - (c) the Counsel General for Wales, if the point of law relates to the meaning or effect of relevant Wales legislation;
  - (d) the Attorney General for Northern Ireland, if the point of law relates to the meaning or effect of relevant Northern Ireland legislation. 20
- (3) A reference must be made within the period of 6 months beginning with—
- (a) if there has been no appeal, the last day on which an appeal could have been made;
  - (b) otherwise, the day on which the appeal was finally dealt with. 25
- (4) A reference is to be made—
- (a) in the case of a reference concerning (wholly or in part) retained case law of the Supreme Court, to that court;
  - (b) in any other case, to the appropriate appeal court (as defined by section 6A). 30
- (5) The court to which the reference is made must accept the reference, and decide the point or points of law concerned.
- (6) Any such decision does not affect the outcome of the proceedings mentioned in subsection (1).
- (7) An appeal from a decision of the appropriate appeal court under subsection (5) may, with permission, be made to the Supreme Court. 35
- (8) In this section—
- “permission” means permission granted by the court making the decision or by the Supreme Court;
  - “relevant Northern Ireland legislation” means— 40
    - (a) Northern Ireland legislation,
    - (b) subordinate legislation made by a Northern Ireland devolved authority acting alone,

- (c) anything inserted into an enactment by legislation within paragraph (a) or (b), or
  - (d) any other provision of an enactment if—
    - (i) the provision would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly and the provision would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, or
    - (ii) it is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone;
- “relevant Scotland legislation” means—
- (a) an Act of the Scottish Parliament,
  - (b) subordinate legislation made by the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
  - (c) anything inserted into an enactment by legislation within paragraph (a) or (b), or
  - (d) any other provision of an enactment if—
    - (i) the provision would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
    - (ii) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone;
- “relevant Wales legislation” means—
- (a) an Act or Measure of Senedd Cymru,
  - (b) subordinate legislation made by the Welsh Ministers acting alone or the National Assembly for Wales constituted by the Government of Wales Act 1998,
  - (c) anything inserted into an enactment by legislation within paragraph (a) or (b), or
  - (d) any other provision of an enactment if—
    - (i) the provision would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006), or
    - (ii) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone;

“UK law officer” means the Attorney General for England and Wales, the Advocate General for Scotland or the Advocate General for Northern Ireland.

- (9) For the purposes of subsections (1)(c)(i) and (3), ignore the possibility of an appeal out of time. 5

## 6C Interventions on retained case law by law officers

- (1) This section applies where a higher court is considering any argument made by a party to proceedings that the court should depart from retained case law.
- (2) The following are entitled to notice of the proceedings— 10
- (a) each UK law officer;
  - (b) the Lord Advocate;
  - (c) the Counsel General for Wales;
  - (d) the Attorney General for Northern Ireland.
- (3) The following are entitled to be joined as a party to the proceedings on giving notice to the court— 15
- (a) any UK law officer;
  - (b) the Lord Advocate, if the argument relates to the meaning or effect of relevant Scotland legislation;
  - (c) the Counsel General for Wales, if the argument relates to the meaning or effect of relevant Wales legislation; 20
  - (d) the Attorney General for Northern Ireland, if the argument relates to the meaning or effect of relevant Northern Ireland legislation.
- (4) Notice under subsection (3) may be given at any time during the proceedings. 25
- (5) In this section, “relevant Northern Ireland legislation”, “relevant Scotland legislation”, “relevant Wales legislation” and “UK law officer” have the meaning given by section 6B.”
- (9) In section 21(1) of that Act (index of defined expressions), in the Table after the entry for “Future relationship agreement” insert— 30
- |               |                |
|---------------|----------------|
| “Higher court | Section 6(7)”. |
|---------------|----------------|
- (10) In section 60A of the Competition Act 1998 (principles etc to be applied in relation to competition decisions) after subsection (9) insert— 35
- “(10) Section 6(2) to (6) of the European Union (Withdrawal) Act 2018 (which make provision similar to that made by this section) do not apply.”

## 8 Compatibility

- (1) A relevant national authority may by regulations provide that subsection (2) applies (and section 5(A2) of the European Union (Withdrawal) Act 2018 does not apply) to the relationship between—
- (a) any domestic enactment specified in the regulations, and 5
  - (b) any provision of retained direct EU legislation so specified.
- (2) Where this subsection applies, the domestic enactment specified under subsection (1)(a)—
- (a) must, so far as possible, be read and given effect in a way which is compatible with the provision of retained direct EU legislation specified under subsection (1)(b), and 10
  - (b) is subject to that provision of retained direct EU legislation so far as it is incompatible with it.
- (3) Regulations under subsection (1) may make provision by modifying any enactment. 15
- (4) No regulations may be made under subsection (1) after 23 June 2026.
- (5) In this section “domestic enactment” has the same meaning as in section 5 of the European Union (Withdrawal) Act 2018.

## 9 Incompatibility orders

After section 6C of the European Union (Withdrawal) Act 2018 (inserted by section 7 of this Act) insert— 20

### “6D Incompatibility orders

- (1) This section applies if a court or tribunal decides, in the course of any proceedings—
- (a) that a provision of retained direct EU legislation is incompatible with, and by virtue of section 5(A2)(b) subject to, any domestic enactment, or 25
  - (b) that a domestic enactment is incompatible with, and by virtue of section 8(1) of the Retained EU Law (Revocation and Reform) Act 2023 subject to, a provision of retained direct EU legislation. 30
- (2) The court or tribunal must make an order (an “incompatibility order”) to that effect (in addition to any exercise of other powers that it may have in relation to the proceedings).
- (3) An incompatibility order may (among other things)—
- (a) set out the effect of the relevant provision in its operation in relation to that particular case; 35
  - (b) delay the coming into force of the order;
  - (c) remove or limit any effect of the operation of the relevant provision before the coming into force of the order.
- (4) Provision included in an incompatibility order may be made subject to conditions. 40

- (5) In this section—
- “domestic enactment” has the same meaning as in section 5 of this Act;
- “the relevant provision” means section 5(A2)(b) of this Act or section 8(1) of the Retained EU Law (Revocation and Reform) Act 2023 (as the case may be).” 5

*Modification of retained EU law*

**10 Scope of powers**

- (1) Part 1 of Schedule 8 to the European Union (Withdrawal) Act 2018 (general consequential provision) is amended as specified in subsections (2) to (7). 10
- (2) In paragraph 3 (existing powers to make subordinate legislation etc: modifications)—
- (a) in sub-paragraph (1) omit paragraph (b) (and the “and” immediately before it);
- (b) omit sub-paragraph (2). 15
- (3) In paragraph 4 (procedure for existing powers to make subordinate legislation etc)—
- (a) omit sub-paragraphs (1) to (5);
- (b) before sub-paragraph (6) insert—
- “(5A) Any subordinate legislation which is (or is to be) made, confirmed or approved by virtue of paragraph 3 is subject to the same procedure (if any) before Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.”; 20
- (c) in sub-paragraph (9) omit “amending or repealing an enactment contained in primary legislation or” and “amending or repealing or (as the case may be)”;
- (d) omit sub-paragraph (10). 30
- (4) Omit paragraphs 5 and 6.
- (5) Omit paragraphs 10 and 11 (but not the italic heading before paragraph 10).
- (6) Before paragraph 12 insert—
- “11A (1) This paragraph applies to a power to make, confirm or approve subordinate legislation which is conferred— 35
- (a) on or after the day on which this Act is passed, and
- (b) before the day on which section 10 of the Retained EU Law (Revocation and Reform) Act 2023 comes into force.
- (2) The power is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may 40

- be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.
- (3) But sub-paragraph (2) enables a power in retained direct minor EU legislation to be exercised to modify (or result in the modification of) any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4 only if—
- (a) the modification is—
    - (i) consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
    - (ii) supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation, or
  - (b) the power is a power to make, confirm or approve transitional, transitory or saving provision.
- 11B (1) This paragraph applies to a power to make, confirm or approve subordinate legislation which is conferred on or after the day on which section 10 of the Retained EU Law (Revocation and Reform) Act 2023 comes into force.
- (2) The power is to be read, so far as applicable and unless the contrary intention appears, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.
- (3) But sub-paragraph (2) enables a power in retained direct minor EU legislation to be exercised to modify (or result in the modification of) any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4 only if—
- (a) the modification is—
    - (i) consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
    - (ii) supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation, or
  - (b) the power is a power to make, confirm or approve transitional, transitory or saving provision.
- (4) For the purposes of sub-paragraph (2), there is no contrary intention merely because a power is expressed as being capable of being exercised—
- (a) to modify all enactments or a particular category of enactments, or
  - (b) to make a particular category of modifications to all enactments or to a particular category of enactments.”
- (7) In paragraph 12—

- (a) in sub-paragraphs (1) and (2) for “10 and 11” substitute “11A and 11B”;
- (b) after sub-paragraph (3) insert—

“(4) Sub-paragraph (5) applies in relation to a power if—

- (a) paragraph 11A applies in relation to the power, and 5
- (b) immediately before the coming into force of section 10 of the Retained EU Law (Revocation and Reform) Act 2023, and by virtue of a combination of provision in the power and paragraph 10 or 11 as it then had effect, the power was capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4. 10

- (5) The continued existence of the provision in the power does not prevent the context from permitting or requiring the power to be read in accordance with paragraph 11A so far as the reading provided for by that paragraph is not provided for by the provision concerned (and, accordingly, the power continues to be capable of being exercised as mentioned in sub-paragraph (4) on and after the coming into force of section 10 of the Retained EU Law (Revocation and Reform) Act 2023).” 15

- (8) Part 1 of Schedule 2 contains amendments altering the parliamentary procedure applicable to certain powers when they modify retained direct EU legislation. 25
- (9) Part 2 of that Schedule contains amendments consequential on the amendments made by this section.

## 11 Procedural requirements

- (1) In Schedule 8 to the European Union (Withdrawal) Act 2018 omit— 30
  - (a) paragraph 13 (affirmative procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the European Communities Act 1972);
  - (b) paragraph 14 (enhanced scrutiny procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the European Communities Act 1972); 35
  - (c) paragraph 15 (explanatory statements for instruments which amend or revoke subordinate legislation made under section 2(2) of that Act); including the italic headings before paragraphs 13 and 14 (but not the italic heading before paragraph 15). 40
- (2) In consequence of the amendments made by subsection (1)—

- (a) in section 7(5) of the European Union (Withdrawal) Act 2018 for paragraph (d) substitute—
- “(d) paragraph 16 of Schedule 8 (information about Scottish instruments which amend or revoke subordinate legislation under section 2(2) of the European Communities Act 1972),”;
- (b) in paragraph 16 of Schedule 8 to that Act, for sub-paragraph (7) substitute—
- “(7) The references in this paragraph to subordinate legislation made under section 2(2) of the European Communities Act 1972—
- (a) do not include references to any provision of such legislation which is made (whether or not by way of amendment) otherwise than under section 2(2) of that Act, and
- (b) do include references to subordinate legislation made otherwise than under section 2(2) of that Act so far as that legislation is amended by provision made under that section (but do not include references to any primary legislation so far as so amended).”;
- (c) in Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 omit paragraph 54(8) to (10).
- (3) The amendments made by this section—
- (a) so far as relating to paragraph 13 of Schedule 8 to the European Union (Withdrawal) Act 2018, do not apply to any statutory instrument where a draft of the instrument has been laid before each House of Parliament (or, as the case may be, the House of Commons only) before the day on which this Act is passed;
- (b) so far as relating to paragraph 14 of that Schedule, do not apply to any statutory instrument or draft statutory instrument where a draft of the instrument has been published under sub-paragraph (2) of that paragraph before the day on which this Act is passed;
- (c) so far as relating to paragraph 15 of that Schedule, do not apply to any statutory instrument or draft statutory instrument where—
- (i) a statement has been made under sub-paragraph (2) or (3) of that paragraph before the day on which this Act is passed, or
- (ii) the instrument or draft has been laid before each House of Parliament (or, as the case may be, the House of Commons only) before the day on which this Act is passed and no statement has been made under sub-paragraph (2) or (3) of that paragraph.

*Powers relating to retained EU law and assimilated law***12 Power to restate retained EU law**

- (1) A relevant national authority may by regulations restate, to any extent, any secondary retained EU law.
- (2) In this Act “secondary retained EU law” means – 5
- (a) any retained EU law that is not primary legislation;
  - (b) any retained EU law that is primary legislation the text of which was inserted by subordinate legislation.
- (3) A restatement is not retained EU law.
- (4) Any effect which is produced in relation to the thing being restated by virtue of the retained EU law mentioned in subsection (5) does not apply in relation to the restatement. 10
- (5) The retained EU law referred to in subsection (4) is –
- (a) the principle of the supremacy of EU law,
  - (b) retained general principles of EU law, and 15
  - (c) anything which is retained EU law by virtue of section 4 or 6(3) or (6) of the European Union (Withdrawal) Act 2018.
- (6) But a restatement may, if the relevant authority considers it appropriate, itself produce an effect that is equivalent to an effect referred to in subsection (4).
- (7) No regulations may be made under this section after the end of 2023. 20
- (8) In this section –
- “restatement”: references to restatement, in relation to anything which is retained EU law by virtue of section 4 or 6(3) or (6) of the European Union (Withdrawal) Act 2018, include codification;
- “retained general principles of EU law” has the meaning given by section 25
- 6(7) of the European Union (Withdrawal) Act 2018.

**13 Power to restate assimilated law or reproduce sunsetted retained EU rights, powers, liabilities etc**

- (1) A relevant national authority may by regulations restate, to any extent, any secondary assimilated law. 30
- (2) In this Act “secondary assimilated law” means –
- (a) any assimilated law that is not primary legislation;
  - (b) any assimilated law that is primary legislation the text of which was inserted by subordinate legislation.
- (3) A restatement is not assimilated law. 35
- (4) Any effect which is produced in relation to the thing being restated by virtue of anything that is assimilated law by virtue of section 6(3) or (6) of the European Union (Withdrawal) Act 2018 does not apply in relation to the restatement.

- (5) But a restatement may, if the relevant national authority considers it appropriate, itself produce an effect that is equivalent to an effect referred to in subsection (4).
- (6) A restatement may also, if the relevant national authority considers it appropriate, produce an effect that is equivalent to an effect within subsection (7). 5
- (7) An effect is within this subsection if it would, but for sections 3 to 5, be produced in relation to the thing being restated by virtue of—
- (a) the principle of the supremacy of EU law,
  - (b) retained general principles of EU law, or 10
  - (c) anything which was retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018.
- (8) A relevant national authority may by regulations reproduce, to any extent, the effect that anything which was retained EU law by virtue of section 4 or 6(3) or (6) of European Union (Withdrawal) Act 2018 would have, but for sections 3 to 5 of this Act. 15
- (9) No regulations may be made under this section after 23 June 2026.
- (10) In this section—
- “restatement”: references to restatement, in relation to anything which is assimilated law by virtue of section 6(3) or (6) of the European Union (Withdrawal) Act 2018, include codification; 20
  - “retained general principles of EU law” has the meaning that was given by section 6(7) of the European Union (Withdrawal) Act 2018 immediately before the end of 2023.
- 14 Powers to restate or reproduce: general** 25
- (1) This section applies for the purposes of sections 12 and 13.
- (2) A restatement may use words or concepts that are different from those used in the law being restated.
- (3) A restatement may make any change which the relevant national authority considers appropriate for one or more of the following purposes— 30
- (a) resolving ambiguities;
  - (b) removing doubts or anomalies;
  - (c) facilitating improvement in the clarity or accessibility of the law (including by omitting anything which is legally unnecessary).
- (4) Regulations under section 12 or 13— 35
- (a) may make provision about the relationship between what is restated and a relevant enactment specified in the regulations, but
  - (b) subject to that, may not make express provision about the relationship between what is restated and other enactments.
- (5) Regulations under section 12 or 13 may not codify or reproduce the principle of the supremacy of EU law or a retained general principle of EU law. 40

- (6) Nothing in subsection (5)–
- (a) prevents regulations under section 12 or 13 from codifying or reproducing, in relation to a particular enactment, an effect equivalent to an effect which is produced, or would but for sections 3 to 5 be produced, in relation to the enactment by virtue of the principle of supremacy of EU law or retained general principles of EU law, or 5
  - (b) prevents regulations under section 12 or 13 which codify or reproduce anything which is or was retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 from producing an effect equivalent to an effect which is produced, or would but for sections 3 to 5 be produced, in relation to that thing by virtue of the principle of supremacy of EU law or retained general principles of EU law. 10
- (7) The provision that may be made by regulations under section 12 or 13 may be made by modifying any enactment.
- (8) In sections 12 and 13, references to producing an effect that is equivalent to another effect are to doing so by express provision or otherwise. 15
- (9) In subsection (4)(a) “relevant enactment” means –
- (a) if the provision made by the regulations is made by modifying retained direct EU legislation, any retained direct EU legislation;
  - (b) otherwise, any domestic enactment (as defined by section 5 of the European Union (Withdrawal) Act 2018). 20
- (10) In subsections (5) and (6) “retained general principles of EU law” has the same meaning as in section 12 or 13 (as the case may be).
- (11) In this section “restatement” –
- (a) in relation to section 12, has the same meaning as in that section; 25
  - (b) in relation to section 13, has the same meaning as in that section but also includes reproduction;
- and similar references are to be read accordingly.

## 15 Powers to revoke or replace

- (1) A relevant national authority may by regulations revoke any secondary retained EU law without replacing it. 30
- (2) A relevant national authority may by regulations revoke any secondary retained EU law and replace it with such provision as the relevant national authority considers to be appropriate and to achieve the same or similar objectives. 35
- (3) A relevant national authority may by regulations revoke any secondary retained EU law and make such alternative provision as the relevant national authority considers appropriate.
- (4) Regulations under subsection (2) or (3)–
- (a) may confer a power to make subordinate legislation that corresponds or is similar to a power to make subordinate legislation conferred by 40

- secondary retained EU law revoked by the regulations (and may not otherwise confer a power to make subordinate legislation);
- (b) subject to that, may confer functions (including discretions) on any person;
- (c) may create a criminal offence that corresponds or is similar to a criminal offence created by secondary retained EU law revoked by the regulations (and may not otherwise create a criminal offence); 5
- (d) may provide for the imposition of monetary penalties in cases that correspond or are similar to cases in which secondary retained EU law revoked by the regulations enables monetary penalties to be imposed (and may not otherwise provide for the imposition of monetary penalties); 10
- (e) may provide for the charging of fees;
- (f) may not—
- (i) impose taxation; 15
- (ii) establish a public authority.
- (5) No provision may be made by a relevant national authority under this section in relation to a particular subject area unless the relevant national authority considers that the overall effect of the changes made by it under this section (including changes made previously) in relation to that subject area does not increase the regulatory burden. 20
- (6) For the purposes of subsection (5), the creation of a voluntary scheme is not to be regarded as increasing the regulatory burden.
- (7) The provision that may be made by regulations under this section may be made by modifying any secondary retained EU law. 25
- (8) Any provision made by virtue of this section is not retained EU law.
- (9) No regulations may be made under this section after 23 June 2026.
- (10) In this section—
- “burden” includes (among other things)—
- (a) a financial cost; 30
- (b) an administrative inconvenience;
- (c) an obstacle to trade or innovation;
- (d) an obstacle to efficiency, productivity or profitability;
- (e) a sanction (criminal or otherwise) which affects the carrying on of any lawful activity; 35
- “revoke”—
- (a) includes repeal, and
- (b) in relation to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, means provide that it is not recognised or available in domestic law (and, accordingly, not to be enforced, allowed or followed); 40
- “secondary retained EU law”: references to secondary retained EU law are to be read after the end of 2023 as references to secondary assimilated law.

- (11) In subsection (8) the reference to retained EU law is to be read after the end of 2023 as a reference to assimilated law.

## 16 Power to update

- (1) A relevant national authority may by regulations make such modifications of any secondary retained EU law, or of any provision made by virtue of section 12, 13 or 15, as the relevant national authority considers appropriate to take account of— 5
- (a) changes in technology, or
  - (b) developments in scientific understanding.
- (2) In subsection (1), the reference to secondary retained EU law is to be read after the end of 2023 as a reference to secondary assimilated law. 10

## 17 Power to remove or reduce burdens

- (1) Part 1 of the Legislative and Regulatory Reform Act 2006 (order-making powers) is amended as follows.
- (2) In section 1(6) (power to remove or reduce burdens: definition of “legislation”) after paragraph (aa) (and before the “or” at the end of the paragraph) insert— 15
- “(ab) any retained direct EU legislation.”
- (3) In section 12 (procedure: introductory) after subsection (2) insert—
- “(3) Paragraph 4 of Schedule 8 to the European Union (Withdrawal) Act 2018 (procedure for certain modifications of retained direct EU legislation or anything which is retained EU law by virtue of section 4 of that Act) does not apply in relation to orders under this Part.” 20

### *Business impact target*

## 18 Abolition of business impact target

- (1) In the Small Business, Enterprise and Employment Act 2015, omit sections 21 to 27 (business impact target) including the italic heading before section 21. 25
- (2) In consequence of subsection (1), that Act is amended as specified in subsections (3) and (4).
- (3) In section 29(5) (definition of “voluntary or community body”) for “has the meaning given in section 27.” substitute “means any of the following— 30
- (a) a trade union (within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5))); 35
  - (b) an unincorporated body which does not distribute any surplus it makes to its members;
  - (c) a charity;

- (d) a company limited by guarantee which does not distribute any surplus it makes to its members;
  - (e) a registered society within the meaning given by section 1 of the Co-operative and Community Benefit Societies Act 2014;
  - (f) a registered society within the meaning given by section 1A of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)) or a credit union within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));
  - (g) a community interest company;
  - (h) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or of the Charities Act (Northern Ireland) 2008 (c. 12 (N.I.));
  - (i) a Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10)."
- (4) In section 33(6), in paragraph (b) of the definition of “undertaking” for “section 27” substitute “section 29(5)”.
- (5) In consequence of subsection (1), also omit the following—
- (a) in the Enterprise Act 2016, section 14 (and the italic heading before it) and Schedule 2;
  - (b) in Schedule 6 to the Wales Act 2017, paragraph 107;
  - (c) in Schedule 3 to the Advanced Research and Invention Agency Act 2022, paragraphs 9 and 10;
  - (d) in the Schedule to the Dissolution and Calling of Parliament Act 2022, paragraphs 27 to 31 (including the italic heading before paragraph 27).

### *Final provisions*

## **19 Consequential 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 provision referred to in subsection (1) includes provision modifying any enactment, including this Act.

## **20 Regulations: general**

- (1) A power to make regulations under the preceding provisions of this Act includes power to make—
  - (a) different provision for different purposes or areas;
  - (b) supplementary, incidental, consequential, transitional, transitory or saving provision (including provision modifying any enactment, including this Act).

- (2) Schedule 3 contains restrictions on the powers of devolved authorities to make regulations under the preceding provisions of this Act.
- (3) Schedule 4 contains provision about the procedure for making regulations under the preceding provisions of this Act.
- (4) A prohibition in this Act on making regulations after any particular time does not affect the continuation in force of regulations made before that time. 5
- (5) 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 under this Act.

## 21 Interpretation 10

- (1) In this Act—
- “assimilated law” has the meaning given by section 6(1);
- “devolved authority” means—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers, or 15
  - (c) a Northern Ireland department;
- “domestic law” means the law of England and Wales, Scotland or Northern Ireland;
- “enactment” means—
- (a) an enactment (whenever passed or made) contained in, or in an instrument made under, any primary legislation, or 20
  - (b) any retained direct EU legislation;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for His Majesty's Revenue and Customs; 25
- “modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);
- “Northern Ireland devolved authority” means—
- (a) the First Minister and deputy First Minister acting jointly,
  - (b) a Northern Ireland Minister, or 30
  - (c) a Northern Ireland department;
- “primary legislation” means—
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) an Act or Measure of Senedd Cymru, or 35
  - (d) Northern Ireland legislation;
- “relevant national authority” means—
- (a) a Minister of the Crown,
  - (b) a devolved authority, or
  - (c) a Minister of the Crown acting jointly with one or more devolved authorities; 40
- “secondary assimilated law” has the meaning given by section 13(2);

“secondary retained EU law” has the meaning given by section 12(2);  
“subordinate legislation” means –

- (a) an instrument (other than an instrument that is Northern Ireland legislation) made under any primary legislation, or
  - (b) an instrument made on or after IP completion day under any retained direct EU legislation. 5
- (2) In this Act –
- (a) references to an instrument made under an Act include in particular any Order in Council, order, rules, regulations, scheme, warrant or byelaw made under an Act; 10
  - (b) references to an instrument made under any retained direct EU legislation include in particular any Order in Council, order, rules, regulations, scheme, warrant or byelaw made under any retained direct EU legislation.
- (3) In this Act references to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 include references to any modifications, made on or after IP completion day, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned. 15

## 22 Commencement, transitional and savings

- (1) The following provisions come into force on the day on which this Act is passed – 20
- (a) sections 1 to 3;
  - (b) section 6(1), (2) and (4) to (7);
  - (c) section 8;
  - (d) sections 10 to 17 and Schedule 2; 25
  - (e) sections 19 to 21, this section, section 23 and Schedules 3 and 4.
- (2) Section 18 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The other provisions of this Act come into force on such day as a Minister of the Crown may by regulations made by statutory instrument appoint; and different days may be appointed for different purposes. 30
- (4) A Minister of the Crown may by regulations made by statutory instrument make such transitional, transitory or saving provision as the Minister considers appropriate in connection with –
- (a) the coming into force of any provision of this Act, 35
  - (b) the revocation of anything by section 1, or
  - (c) anything ceasing to be recognised or available in domestic law (and, accordingly, ceasing to be enforced, allowed or followed) as a result of section 3.
- (5) Section 1 does not apply in relation to any of the following (so far as subsisting immediately before the time when it would otherwise apply) – 40

- (a) anything referred to in Schedule 1 to the Financial Services and Markets Act 2022, ignoring any regulations made under section 1(5) of that Act;
  - (b) any rules made by the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England; 5
  - (c) any generally applicable requirements (within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013), or directions of general application, imposed by the Payment Systems Regulator.
- (6) Sections 3, 4 and 5 do not apply in relation to anything occurring before the end of 2023. 10
- (7) The amendments made by Schedule 1 do not apply as regards any time at or before the end of 2023.

### **23 Extent and short title**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act may be cited as the Retained EU Law (Revocation and Reform) Act 2023. 15

## SCHEDULES

### SCHEDULE 1

Section 6

#### “ASSIMILATED LAW”: CONSEQUENTIAL AMENDMENTS

##### *European Union (Withdrawal) Act 2018*

- 1 (1) The European Union (Withdrawal) Act 2018 (as amended by this Act) is amended as follows. 5
- (2) In section 5 (exceptions to savings and incorporation), in subsections (A2) and (8), for “retained direct EU” substitute “assimilated direct”.
- (3) In section 6 (interpretation of retained EU law) –
- (a) in the heading for “retained EU” substitute “assimilated”; 10
- (b) in subsection (3) –
- (i) for “retained EU” substitute “assimilated”;
- (ii) in paragraph (a) for “retained” (in the first place it appears) substitute “assimilated”;
- (c) in subsections (4) to (5ZA), for “retained” (in each place it appears) substitute “assimilated”; 15
- (d) in subsection (6), for “retained EU” substitute “assimilated”;
- (e) in subsection (7) –
- (i) before the definition of “higher court” insert –
- ““assimilated case law” means – 20
- (a) assimilated domestic case law, and
- (b) assimilated EU case law;
- “assimilated 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 IP completion day and so far as they – 25
- (a) relate to anything to which section 2 or 3 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
- “assimilated 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 IP completion day and so far as they – 35
- (a) relate to anything to which section 2 or 3 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);
- “assimilated law” means anything which, on or after IP completion day, continues to be, or forms part of, domestic law by virtue of section 2 or 3 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);”;
- (ii) omit the definitions of “retained case law”, “retained domestic case law”, “retained EU case law” and “retained EU law”.
- (4) In section 6A (references on retained case law by lower courts or tribunals), for “retained” (in each place it appears, including the heading) substitute “assimilated”.
- (5) In section 6B (references on retained case law by UK or devolved law officers), for “retained” (in each place it appears, including the heading) substitute “assimilated”.
- (6) In section 6C (interventions on retained case law by UK or devolved law officers), for “retained” (in each place it appears, including the heading) substitute “assimilated”.
- (7) In section 6D (incompatibility orders), in subsection (1)(a) and (b), for “retained direct EU” substitute “assimilated direct”.
- (8) In section 7 (status of retained EU law)—
- (a) in the heading for “retained EU” substitute “assimilated”;
- (b) in subsection (4A) for “Retained direct EU” substitute “Assimilated direct”;
- (c) in subsection (5)—
- (i) for “retained EU” (in each place it appears) substitute “assimilated”;
- (ii) in paragraph (b), for “retained” (in the first place it appears) substitute “assimilated”;
- (iii) in paragraphs (e) and (f), for “retained direct EU” substitute “assimilated direct”.
- (d) omit subsection (6).
- (9) In section 20(1) (interpretation)—
- (a) before the definition of “Charter of Fundamental Rights” insert—
- ““assimilated direct 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 IP completion day);

- “assimilated direct minor legislation” means any assimilated direct legislation which is not assimilated direct principal legislation;
- “assimilated direct principal legislation” means –
- (a) any EU regulation so far as it – 5
    - (i) forms part of domestic law on and after IP completion day by virtue of section 3, and
    - (ii) was not EU tertiary legislation immediately before IP completion day, or
  - (b) any Annex to the EEA agreement so far as it – 10
    - (i) forms part of domestic law on and after IP completion day by virtue of section 3, and
    - (ii) refers to, or contains adaptations of, any EU regulation so far as it falls within paragraph (a), 15  
(as modified by or under this Act or by other domestic law from time to time);”;
  - (b) in the definition of “enactment”, in paragraph (h), for “retained direct EU” substitute “assimilated direct”;
  - (c) omit the definition of “retained direct EU legislation”; 20
  - (d) in the definition of “subordinate legislation” for “retained direct EU” substitute “assimilated direct”.
- (10) In section 21(1) (index of defined expressions), in the table –
- (a) after the entry for “Article (in relation the Treaty on European Union or the Treaty on the Functioning of the European Union)”, insert – 25

“Assimilated case law	Section 6(7)	
Assimilated direct legislation	Section 20(1)	
Assimilated direct minor legislation	Section 20(1)	
Assimilated direct principal legislation	Section 20(1)	
Assimilated domestic case law	Section 6(7)	30
Assimilated EU case law	Section 6(7)	
Assimilated law	Section 6(7)”	
  - (b) omit the entries for “Retained case law”, “Retained direct EU legislation”, “Retained direct minor EU legislation”, “Retained direct principal EU legislation”, “Retained domestic case law”, “Retained EU case law” and “Retained EU law”. 35
- (11) In Schedule 1 (further provision about exceptions to savings and incorporation), for “retained EU” (in each place it appears) substitute “assimilated”.

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- (12) In Schedule 4 (powers in connection with fees and charges), in paragraph 7(1)(b) (power to modify pre-exit fees or charges), for “retained EU” substitute “assimilated”.
- (13) In Schedule 5 (publication and rules of evidence), in paragraph 4(5) (definition of “relevant matter” for power to make provision about judicial notice and admissibility), for paragraph (a) substitute –
- “(a) assimilated law,”.
- (14) In Schedule 7 (regulations) –
- (a) in the italic heading before paragraph 9, for “retained EU” substitute “assimilated”;
- (b) in paragraphs 21, 23 and 28, for “retained EU” (in each place it appears) substitute “assimilated”.
- (15) In Schedule 8 (consequential etc provision) –
- (a) in the italic heading before paragraph 1, for “retained direct EU” substitute “assimilated direct”;
- (b) in paragraphs 3(1), 8(2), 11A(2), 11B(2) and 12(2)(b), for “retained direct EU” (in each place it appears) substitute “assimilated direct”;
- (c) in paragraphs 7, 16(3)(b) and 45(2)(b)(i) and (ii), for “retained EU” substitute “assimilated”;
- (d) in paragraphs 11A(3), 11B(3) and 30 –
- (i) for “retained direct minor EU” (in each place it appears) substitute “assimilated direct minor”;
- (ii) for “retained direct principal EU” (in each place it appears) substitute “assimilated direct principal”.
- This Act*
- 2 (1) This Act is amended as follows.
- (2) In section 8 (compatibility), for “retained direct EU” (in each place it appears) substitute “assimilated direct”.
- (3) In section 14 (general provision about powers to restate or reproduce), in subsection (9)(a) for “retained direct EU” (in each place it appears) substitute “assimilated direct”.
- (4) In section 21 (interpretation) –
- (a) in subsection (1), in the definitions of “enactment” and “subordinate legislation”, for “retained direct EU” substitute “assimilated direct”;
- (b) in subsection (2), for “retained direct EU” (in each place it appears) substitute “assimilated direct”.

SCHEDULE 2

Section 10

AMENDMENT OF CERTAIN RETAINED EU LAW

**PART 1**

CHANGE OF PARLIAMENTARY PROCEDURE

- Environmental Protection Act 1990 (c. 43)* 5
- 1 In section 160A(2) of the Environmental Protection Act 1990 (regulations and orders subject to affirmative procedure), in the Table—
- (a) in the second column of the entry for section 34CA, in paragraph (e) omit “or retained direct principal EU legislation”;
  - (b) in the second column of the entry for section 141, in paragraph (f) omit “or retained direct principal EU legislation”. 10
- Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19))*
- 2 In Article 82(1B) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (regulations subject to affirmative procedure)—
- (a) insert “or” at the end of sub-paragraph (d); 15
  - (b) omit sub-paragraph (f) and the “or” before it.
- European Union (Withdrawal) Act 2018 (c. 16)*
- 3 (1) Schedule 7 to the European Union (Withdrawal) Act 2018 (regulations) is amended as follows.
- (2) In the following provisions omit paragraph (b) and the “or” before it— 20
- (a) paragraph 8B(1), (3), (5) and (7) (affirmative procedure for certain sole regulations in connection with Part 4 of the EU withdrawal agreement);
  - (b) paragraph 8C(3), (5), (10) and (12) (affirmative procedure for certain joint regulations in connection with Part 4 of the EU withdrawal agreement); 25
  - (c) paragraph 8D(1), (3), (5) and (7) (affirmative procedure for certain sole regulations in connection with other separation issues in the EU withdrawal agreement etc.);
  - (d) paragraph 8E(3), (5), (10) and (12) (affirmative procedure for certain joint regulations in connection with other separation issues in the EU withdrawal agreement etc.). 30
- (3) In paragraph 8F(2)(a) (affirmative procedure for powers in connection with the Northern Ireland Protocol) omit “or retained direct principal EU legislation”. 35

*European Union (Withdrawal Agreement) Act 2020 (c. 1)*

- 4 (1) Schedule 4 to the European Union (Withdrawal Agreement) Act 2020 (regulations under that Act) is amended as follows.
- (2) In paragraph 1(1)(b) (affirmative procedure for certain regulations under sections 7, 8 or 9 of the Act of 2020) omit “or retained direct principal EU legislation”.
- (3) In the following provisions omit paragraph (b) and the “or” before it—
- (a) paragraph 2(2) (affirmative procedure for certain regulations under section 11 of the Act of 2020);
  - (b) paragraph 3(1), (3), (5) and (7) (affirmative procedure for certain sole regulations under section 12, 13 or 14 of the Act of 2020);
  - (c) paragraph 4(3), (5), (10) and (12) (affirmative procedure for certain joint regulations under section 12, 13 or 14 of the Act of 2020).

*European Union (Future Relationship) Act 2020 (c. 29)*

- 5 (1) Schedule 5 to the European Union (Future Relationship) Act 2020 (regulations under that Act) is amended as follows.
- (2) In paragraph 6(2)(a) (affirmative procedure for certain implementation regulations) omit “or retained direct principal EU legislation”.
- (3) In paragraph 12(2) (affirmative procedure for certain regulations relating to the functioning of agreements) omit paragraph (b) and the “or” before it.

*Financial Services Act 2021 (c. 22)*

- 6 In section 45(4) of the Financial Services Act 2021 (consequential regulations subject to affirmative procedure) omit paragraph (b).

*Environment Act 2021 (c. 30)*

- 7 In section 142(7) of the Environment Act 2021 (consequential regulations subject to affirmative procedure)—
- (a) at the end of paragraph (c) insert “or”;
  - (b) omit paragraph (e) and the “or” before it.

*Public Service Pensions and Judicial Offices Act 2022 (c. 7)*

- 8 (1) The Public Service Pensions and Judicial Offices Act 2022 is amended as follows.
- (2) In section 108(6) (power to make consequential provision) omit paragraph (b).
- (3) In section 128(7) (consequential etc provision) in the definition of “primary legislation” omit paragraph (b).

*Professional Qualifications Act 2022 (c. 20)*

- 9 In section 18(1) of the Professional Qualifications Act 2022 (regulations subject to affirmative procedure) omit “or retained direct principal EU legislation”.

*Subsidy Control Act 2022 (c. 23)*

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- 10 In section 86(3) of the Subsidy Control Act 2022 (consequential provision: regulations subject to affirmative procedure) omit “or retained direct principal EU legislation”.

*Building Safety Act 2022 (c. 30)*

- 11 In Schedule 11 to the Building Safety Act 2022 (construction products regulations), in paragraph 23(3) (regulations requiring affirmative procedure) omit paragraph (d).

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*Nationality and Borders Act 2022 (c. 36)*

- 12 In section 84(5) of the Nationality and Borders Act 2022 (consequential provision: regulations subject to affirmative procedure) omit paragraph (b).

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**PART 2**

CONSEQUENTIAL AMENDMENTS

*European Union (Withdrawal) Act 2018*

- 13 In section 7 of the European Union (Withdrawal) Act 2018 (status of retained EU law) for subsections (2) to (4) substitute –
- 20
- “(4A) Retained direct EU legislation, and anything which is retained EU law by virtue of section 4, may only be modified by –
- (a) primary legislation, or
- (b) subordinate legislation so far as it is made under a power which permits such a modification by virtue of –
- 25
- (i) paragraph 3, 8(3), 11A, 11B or 12(3) of Schedule 8,
- (ii) any other provision made by or under this Act,
- (iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act,
- or
- 30
- (iv) any provision made on or after the passing of this Act by or under primary legislation.”

*Direct Payments to Farmers (Legislative Continuity) Act 2020*

- 14 In section 2(3)(b) of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (interpretation and status) for “10” substitute “11A”.

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## SCHEDULE 3

Section 20

## REGULATIONS: RESTRICTIONS ON POWERS OF DEVOLVED AUTHORITIES

*Introductory*

- 1 This Schedule applies to regulations under this Act where the power to make the regulations is conferred on a relevant national authority. 5

*No power to make provision outside devolved competence*

- 2 (1) Provision may be made in regulations to which this Schedule applies by a devolved authority acting alone only if the provision is within the devolved competence of the devolved authority.
- (2) A provision is within the devolved competence of the Scottish Ministers for the purposes of this paragraph if— 10
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
  - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone. 15
- (3) A provision is within the devolved competence of the Welsh Ministers for the purposes of this paragraph if—
- (a) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006), or 20
  - (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone.
- (4) A provision is within the devolved competence of a Northern Ireland department for the purposes of this paragraph if— 25
- (a) it would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly and it would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, or 30
  - (b) it is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone.

*Requirement for consent where it would otherwise be required*

- 3 (1) The consent of a Minister of the Crown is required before any provision is made in regulations to which this Schedule applies by the Welsh Ministers acting alone so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown. 35
- (2) The consent of the Secretary of State is required before any provision is made in regulations to which this Schedule applies by a Northern Ireland 40

department acting alone so far as that provision, if contained in a Bill in the Northern Ireland Assembly, would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

- (3) Sub-paragraph (1) or (2) does not apply if—
- (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 5
  - (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 in regulations to which this Schedule applies by a devolved authority acting alone so far as that provision would require the consent of a Minister of the Crown if contained in— 10
- (a) subordinate legislation made otherwise than under this Act by the devolved authority, or 15
  - (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.
- (5) Sub-paragraph (4) does not apply if— 20
- (a) the provision could be contained in—
    - (i) an Act of the Scottish Parliament, an Act of Senedd Cymru 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 of a devolved authority acting alone or (as the case may be) other person acting alone, and 25
  - (b) no such consent would be required in that case.

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

- 4 (1) No regulations to which this Schedule applies may be made 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— 30
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or 35
  - (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations to which this Schedule applies may be made 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
- 40

- Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (3) No regulations to which this Schedule applies may be made 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 – 5
- (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, 10
- 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 –
- (a) an Act of the Scottish Parliament, an Act of Senedd Cymru 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 15
  - (b) different subordinate legislation made otherwise than under this Act by –
    - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone, 20
    - (ii) the Welsh Ministers acting alone, or (as the case may be)
    - (iii) a Northern Ireland devolved authority acting alone.

*Requirement for consultation where it would otherwise be required*

- 5 (1) No regulations to which this Schedule applies may be made by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of Senedd Cymru, 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. 25
- (2) No regulations to which this Schedule applies may be made by the Scottish Ministers acting alone, 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. 30 35
- (3) No regulations to which this Schedule applies may be made by the Welsh Ministers acting alone, 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 Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 40

- (4) No regulations to which this Schedule applies may be made by a Northern Ireland department acting alone, 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 –
- (a) the provision could be contained in an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, and 10
  - (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 –
    - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
    - (ii) the Welsh Ministers acting alone, or (as the case may be) 20
    - (iii) 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.

## SCHEDULE 4

Section 20 25

### REGULATIONS: PROCEDURE

#### PART 1

#### GENERAL

#### *Making of regulations by statutory instrument etc*

- 1 (1) A power to make regulations under any of sections 1 to 19 – 30
- (a) so far as exercisable by a Minister of the Crown acting alone, the Welsh Ministers acting alone, or by a Minister of the Crown and a devolved authority acting jointly, is exercisable by statutory instrument;
  - (b) 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 Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)). 35

- (2) For regulations made under this Act by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (Scottish statutory instruments).

### *Combining provision*

- 2 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made. 5
- (2) The statutory instrument may also include regulations under this Act or another enactment which are made by statutory instrument which is not subject to the procedure mentioned in sub-paragraph (1) (whether or not it is subject to any other procedure before Parliament). 10
- (3) Where regulations are included as mentioned in sub-paragraph (2), the statutory instrument is subject to the procedure mentioned in sub-paragraph (1) (and is not subject to any other procedure before Parliament).
- (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 Senedd Cymru 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 references to Parliament were references to the Senedd. 15
- (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 references to Parliament were references to the Northern Ireland Assembly. 20
- (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 a devolved legislature as well as a procedure before Parliament 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 references to Parliament were references to Parliament and the devolved legislature. 25
- (7) In sub-paragraph (6) "devolved legislature" means the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly. 30
- (8) Nothing in this paragraph prevents the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act.

### *Hybrid instruments*

- 3 If an instrument, or a draft of an instrument, containing regulations under this Act would otherwise 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. 35

## PART 2

### POWERS OF MINISTER OF THE CROWN ALONE

- 4 This Part of this Schedule applies to regulations under section 2 or 19.
- 5 (1) A statutory instrument containing regulations under section 19 which amend, repeal or revoke primary legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 5
- (2) Any other statutory instrument containing regulations to which this Part of this Schedule applies is subject to annulment in pursuance of a resolution of either House of Parliament. 10

## PART 3

### POWERS OF RELEVANT NATIONAL AUTHORITY: SEPARATE EXERCISE

#### *Introductory*

- 6 This Part of this Schedule applies to regulations under this Act where—
- (a) the power to make the regulations is conferred on a “relevant national authority”, and 15
  - (b) the power is exercised by one relevant national authority acting alone.

#### *Separate exercise by a Minister of the Crown*

- 7 (1) A Minister of the Crown may not make a statutory instrument containing regulations to which this Part of this Schedule applies and which are within sub-paragraph (2) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 20
- (2) The following regulations are within this sub-paragraph—
- (a) regulations under section 8 which amend, repeal or revoke primary legislation; 25
  - (b) regulations under section 12 or 13 which amend, repeal or revoke primary legislation;
  - (c) regulations under section 15(2) which confer a power to make subordinate legislation or create a criminal offence; 30
  - (d) regulations under section 15(3).
- (3) A statutory instrument made by a Minister of the Crown containing regulations to which this Part of this Schedule applies and which are within sub-paragraph (4) is subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (4) The following regulations are within this sub-paragraph—
- (a) regulations under section 1;

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- (b) regulations under section 8 which are not within sub-paragraph (2)(a);
  - (c) regulations under section 16.
- (5) A statutory instrument made by a Minister of the Crown containing regulations to which this Part of this Schedule applies and to which neither sub-paragraph (1) nor sub-paragraph (3) 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. 5
- 8 (1) Sub-paragraph (2) applies where – 10
- (a) a Minister of the Crown, acting alone, is to make a statutory instrument containing regulations under section 12, 13 or 15,
  - (b) paragraph 7(5) applies to the regulations, and
  - (c) the Minister 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. 15
- (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. 20
- (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 each House of Parliament – 25
    - (i) a draft of the instrument, and
    - (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 and a committee of the House of Lords charged with doing so have, within the relevant period, each made a recommendation as to the appropriate procedure for the instrument. 30
- (5) Condition 3 is that the relevant period has ended without condition 2 being met.
- (6) Sub-paragraph (7) applies if – 35
- (a) a committee makes a recommendation as mentioned in sub-paragraph (4) within the relevant period,
  - (b) the recommendation is that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made, and 40
  - (c) the Minister who is to make the instrument is nevertheless 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.
- (7) Before the instrument is made, the Minister must make a statement explaining why the Minister does not agree with the recommendation of the committee. 5
- (8) If the Minister fails to make a statement required by sub-paragraph (7) before the instrument is made, a Minister of the Crown must make a statement explaining why the Minister has failed to do so.
- (9) A statement under sub-paragraph (7) or (8) must be made in writing and be published in such manner as the Minister making it considers appropriate. 10
- (10) In this paragraph “the relevant period” means the period –
- (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft instrument was laid before each House as mentioned in sub-paragraph (3)(b)(i), and 15
  - (b) ending with whichever of the following is the later –
    - (i) the end of the period of 10 Commons sitting days beginning with that first day, and
    - (ii) the end of the period of 10 Lords sitting days beginning with that first day. 20
- (11) For the purposes of sub-paragraph (10) –
- (a) where a draft of an instrument is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
  - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and 25
  - (c) “Lords sitting day” means a day on which the House of Lords is sitting,
- and, for the purposes of sub-paragraph (10) and this sub-paragraph, a day is only a day on which the House of Commons or the House of Lords is sitting if the House concerned begins to sit on that day. 30
- (12) Nothing in this paragraph prevents a Minister of the Crown from deciding at any time before a statutory instrument containing regulations under section 12, 13 or 15 is made that another procedure should apply in relation to the instrument. 35
- (13) 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.

*Separate exercise by Scottish Ministers*

- 9 (1) Regulations of the Scottish Ministers to which this Part of this Schedule applies and which are within paragraph 7(2) are subject to the affirmative procedure. 40

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- (2) Regulations made by the Scottish Ministers to which this Part of this Schedule applies and which are within paragraph 7(4) are subject to the negative procedure.
- (3) Regulations made by the Scottish Ministers to which this Part of this Schedule applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies are (if they have not been subject to the affirmative procedure) subject to the negative procedure. 5
- (4) For the negative procedure and the affirmative procedure, see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) respectively. 10

*Separate exercise by Welsh Ministers*

- 10 (1) The Welsh Ministers may not make a statutory instrument containing regulations to which this Part of this Schedule applies and which fall within paragraph 7(2) unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru. 15
- (2) A statutory instrument made by the Welsh Ministers containing regulations to which this Part of this Schedule applies and which are within paragraph 7(4) is subject to annulment in pursuance of a resolution of the Senedd.
- (3) A statutory instrument made by the Welsh Ministers containing regulations to which this Part of this Schedule applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies is (if a draft of the instrument has not been laid before, and approved by a resolution of, Senedd Cymru) subject to annulment in pursuance of a resolution of the Senedd. 20
- 11 (1) Sub-paragraph (2) applies if – 25
- (a) the Welsh Ministers, acting alone, are to make a statutory instrument containing regulations under section 12, 13 or 15,
- (b) paragraph 10(3) applies to the instrument, and
- (c) the Welsh Ministers are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of Senedd Cymru. 30
- (2) The Welsh Ministers 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. 35
- (3) Condition 1 is that the Welsh Ministers –
- (a) have made a statement in writing to the effect that in their opinion the instrument should be subject to annulment in pursuance of a resolution of the Senedd, and
- (b) have laid before the Senedd – 40
- (i) a draft of the instrument, and

- (ii) a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.
- (4) Condition 2 is that a committee of the Senedd charged with doing so have made a recommendation as to the appropriate procedure for the instrument.
- (5) Condition 3 is that the period of 14 days beginning with the first day after the day on which the draft instrument was laid before the Senedd as mentioned in sub-paragraph (3)(b)(i) has ended without any recommendation being made as mentioned in sub-paragraph (4). 5
- (6) In calculating the period of 14 days, no account is to be taken of any time during which the Senedd is – 10
- (a) dissolved, or
- (b) in recess for more than four days.
- (7) Nothing in this paragraph prevents the Welsh Ministers from deciding at any time before a statutory instrument containing regulations under section 12, 13 or 15 is made that another procedure should apply in relation to the instrument. 15
- (8) Section 6(1) of the Statutory Instruments Act 1946 as applied by section 11A of that Act (alternative procedure for certain instruments laid in draft before Senedd Cymru) does not apply in relation to any statutory instrument to which this paragraph applies. 20

*Separate exercise by Northern Ireland department*

- 12 (1) A Northern Ireland department may not make regulations to which this Part of this Schedule applies and which fall within paragraph 7(2) unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. 25
- (2) Regulations made by a Northern Ireland department to which this Part of this Schedule applies and which are within paragraph 7(4) are subject to negative resolution.
- (3) Regulations made by a Northern Ireland department to which this Part of this Schedule applies and to which neither sub-paragraph (1) nor sub-paragraph (2) applies 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. 30
- (4) In this paragraph “subject to negative resolution” means 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. 35

## PART 4

### POWERS OF RELEVANT NATIONAL AUTHORITY: JOINT EXERCISE

#### *Parliamentary procedure*

- 13 (1) A statutory instrument containing regulations within paragraph 7(2) may not be made by a Minister of the Crown jointly with a devolved authority unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 5
- (2) A statutory instrument containing regulations within paragraph 7(4) made by a Minister of the Crown jointly with a devolved authority is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (3) A statutory instrument containing regulations under this Act that are made by a Minister of the Crown jointly with a devolved authority and to which neither sub-paragraph (1) nor sub-paragraph (2) 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
- (4) The procedure provided for by this paragraph is in addition to any other procedure provided for by this Part of this Schedule.

#### *Joint exercise with Scottish Ministers*

- 14 (1) Regulations within paragraph 7(2) of a Minister of the Crown acting jointly with the Scottish Ministers are subject to the affirmative procedure. 20
- (2) Regulations within paragraph 7(4) made by a Minister of the Crown jointly with the Scottish Ministers are subject to the negative procedure.
- (3) Regulations under this Act made by a Minister of the Crown jointly with the Scottish Ministers and to which neither sub-paragraph (1) nor sub-paragraph (2) applies are (if they have not been subject to the affirmative procedure) subject to the negative procedure. 25
- 15 (1) This paragraph applies in relation to regulations under this Act to which any provision of paragraph 14 applies.
- (2) If the regulations are subject to the affirmative procedure, section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (affirmative procedure) applies in relation to the regulations 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). 30
- (3) If the regulations are subject to the negative procedure, sections 28(2), (3) and (8) and 31 of that Act apply in relation to the regulations 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). 35
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- (4) Section 32 of that Act (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing the regulations 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).

*Joint exercise with Welsh Ministers*

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- 16 (1) A statutory instrument containing regulations within paragraph 7(2) may not be made by a Minister of the Crown jointly with the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (2) A statutory instrument containing regulations within paragraph 7(4) made by a Minister of the Crown jointly with the Welsh Ministers is subject to annulment in pursuance of a resolution of the Senedd. 10
- (3) A statutory instrument containing regulations under this Act that are made by a Minister of the Crown jointly with the Welsh Ministers and to which neither sub-paragraph (1) nor sub-paragraph (2) applies is (if a draft of the instrument has not been laid before, and approved by a resolution of, Senedd Cymru) subject to annulment in pursuance of a resolution of the Senedd. 15

*Joint exercise with Northern Ireland department*

- 17 (1) Regulations within paragraph 7(2) may not be made by a Minister of the Crown jointly with a Northern Ireland department unless a draft of the regulations been laid before, and approved by a resolution of, the Northern Ireland Assembly. 20
- (2) Regulations within paragraph 7(4) made by a Minister of the Crown jointly with a Northern Ireland department are subject to negative resolution. 25
- (3) Regulations under this Act made by a Minister of the Crown jointly with a Northern Ireland department and to which neither sub-paragraph (1) nor sub-paragraph (2) applies 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. 30
- (4) In this paragraph “subject to negative resolution” means 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.

*Effect of annulment resolution*

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- 18 (1) If in accordance with this Part of this Schedule—
- (a) either House of Parliament resolves that an address be presented to His Majesty praying that an instrument be annulled, or
- (b) a relevant devolved legislature resolves that an instrument be annulled,

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nothing further is to be done under the instrument after the date of the resolution and His Majesty may by Order in Council revoke the instrument.

- (2) In sub-paragraph (1) “relevant devolved legislature” means –
- (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament; 5
  - (b) in the case of regulations made jointly with the Welsh Ministers, Senedd Cymru;
  - (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly.
- (3) Sub-paragraph (1) does not – 10
- (a) affect the validity of anything previously done under the instrument, or
  - (b) prevent the making of a new instrument.
- (4) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution. 15



# Retained EU Law (Revocation and Reform) Bill

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[AS BROUGHT FROM THE COMMONS]

A

## B I L L

TO

Revoke certain retained EU law; to make provision relating to the interpretation of retained EU law and to its relationship with other law; to make provision relating to powers to modify retained EU law; to enable the restatement, replacement or updating of certain retained EU law; to enable the updating of restatements and replacement provision; to abolish the business impact target; and for connected purposes.

*Brought from the Commons on 19th January 2023*

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