

**EUROPEAN UNION (WITHDRAWAL) ACT 2019****Principal Act****Act. No. 2019-01***Commencement* 31.1.2019*Assent* 31.1.2019

Amending enactments	Relevant current provisions	Commencement date
LN. 2019/073	s. 3(1), (2)	28.3.2019
2019/092	s. 3(1), (2)	11.4.2019
2019/218	s. 3(1), (2)	30.10.2019
Act. 2020-01	ss. 3(6A), 11A, 12, 16, Sch. 3, 4	21.1.2020
LN. 2020/051	s. 4 ( <i>Notice of Commencement</i> )	23.1.2020
“	s. 15(3), (5), Sch.4 (para 11(e), 11(f), 16-18) ( <i>Notice of Commencement</i> )	31.1.2020
Act. 2020-01	ss.3(1)(c), (7), (11), 4A-4B, 8(7), 9, 10(1)(b), (6), 10A-10C, 11(2)(d)(ii), (e), (ea), (f)(i), (4), (7), 11C, 15(4), Sch. 1, 2, 3, 4	31.1.2020
LN. 2020/064	ss. 10(1), (6), 15(3), Sch. 4 (para 5-6, 8-10)( <i>Notice of Commencement</i> )	31.1.2020
Act. 2020-01	ss. 9(5A)-(5C), 11B	12.11.2020
2020/533	s. 15(6) ( <i>Notice of Commencement</i> )	31.12.2020

**EU Legislation/International Agreements involved:**

European Council Decision (EU) 2019/584

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CONSEQUENTIAL, TRANSITIONAL, TRANSITORY  
AND SAVING PROVISION

AN ACT TO PROVIDE FOR THE REPEAL OF THE EUROPEAN COMMUNITIES ACT, TO REPEAL SECTION 23(G) OF THE INTERPRETATION AND GENERAL CLAUSES ACT, TO PROVIDE FOR THE CONTINUING VALIDITY OF LEGISLATION PASSED OR MADE FOR THE PURPOSES OF COMPLYING WITH ANY OBLIGATION ARISING OUT OF GIBRALTAR'S MEMBERSHIP OF THE EUROPEAN UNION, TO REPEAL THE EUROPEAN PARLIAMENTARY ELECTIONS ACT; TO PROVIDE FOR THE CONTINUATION AND VALIDITY OF ANY ADMINISTRATIVE ACT OR DECISION MADE PURSUANT TO ANY SUCH OBLIGATION, AND TO PROVIDE, BY WAY OF SUBSIDIARY LEGISLATION, POWERS TO AMEND, REPEAL OR REPLACE ANY ENACTMENT WHICH WAS MADE, WHETHER PRIMARILY OR OTHERWISE FOR OR IN CONNECTION WITH ANY SUCH EUROPEAN UNION OBLIGATIONS, TO MAKE SUCH CONSEQUENTIAL AMENDMENTS RELATING TO MEMBERSHIP OF THE EUROPEAN ECONOMIC AREA; TO PROVIDE SUCH TRANSITIONAL OR OTHER PROVISIONS AS ARE DEEMED NECESSARY, AND FOR CONNECTED PURPOSES.

*General provisions*

**Short title.**

1. This Act may be cited as the European Union (Withdrawal) Act 2019.

**Commencement.**

- 2.(1) The following provisions-

- (a) section 1;
- (b) this section;
- (c) sections 3 and 14 (including Schedule 3);
- (d) section 8(6) –
  - (i) for the purposes of making regulations under paragraph 1(2)(b) of Schedule 1; and
  - (ii) insofar as it relates to paragraph 1(3) of Schedule 1, and accordingly paragraph 1(2)(b) of Schedule 1 for the purposes of making regulations and paragraph 1(3) of Schedule 1;

- (e) section 9(7);
- (f) section 13 insofar as it relates to paragraph 2 of Schedule 2 and accordingly paragraph 2 of Schedule 2;
- (g) section 16;
- (h) section 15(3) insofar as it relates to the following paragraphs of Schedule 4-
  - (i) paragraph 11(c);
  - (ii) paragraph 11(b) insofar as it relates to the following definitions-
    - ““exit day” (and related expressions)”;
    - “retained EU law”;
    - “retained direct minor EU legislation”;
    - “retained direct principal EU legislation”;
    - “retained direct EU legislation”;
    - “retained EU obligation”;
- (i) sections 11 and 12; and
- (j) section 15(1), (2) and (4),

come into operation on the day of publication.

(2) The remaining provisions of this Act come into operation on such day as the Chief Minister may appoint by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

## **Interpretation.**

3.(1) In this Act, unless the context otherwise requires-

“Charter of Fundamental Rights” means the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007;

“domestic law” means the law of Gibraltar;

“EEA” means the European Economic Area;

“enactment” means an enactment whenever passed or made and includes-

- (a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act;
- (b) an enactment contained in any Order in Council made in exercise of Her Majesty’s Prerogative; and
- (c) except in sections 4B and 10 or where there is otherwise a contrary intention, any retained direct EU legislation;

“European Union” and “EU” mean the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7th February 1992 (as amended by any later Treaty);

“EU decision” means-

- (a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union; or
- (b) a decision under former Article 34(2)(c) of the Treaty on European Union;

“EU directive” means a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU entity” means an EU institution or any office, body or agency of the EU;

“EU reference” means-

- (a) any reference to the EU, an EU entity or a member State;
- (b) any reference to an EU directive or any other EU law; or
- (c) any other reference which relates to the EU;

“EU regulation” means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU tertiary legislation” means-

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- (a) any provision made under-
  - (i) an EU regulation,
  - (ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
  - (iii) an EU directive,
    - by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community; or
- (b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),

but does not include any such provision or measure which is an EU directive;

“exit day” means midnight on 31 January 2020 (and see subsections (2) to (5));

“member State” (except in the definitions of “direct EU legislation” and “EU reference”) does not include the United Kingdom or Gibraltar;

“modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);

“primary legislation” means an Act of Parliament;

“public authority” includes-

- (a) a court or tribunal; and
- (b) any person certain of whose functions are functions of a public nature,

but does not include the Gibraltar Parliament or a person exercising functions in connection with proceedings in Parliament;

“relevant criminal offence” means an offence for which an individual who has reached the age of 18 is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions);

“retained direct EU legislation” means any direct EU legislation which forms part of domestic law by virtue of section 6 (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);

“retrospective provision”, in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made;

“subsidiary legislation” means any proclamation, order, rules, regulations, bye-law or other instrument made under any Act, and (except in section 10 or where there is a contrary intention) includes any proclamation, order, rules, regulations, or other instrument made on or after IP completion day under any retained direct EU legislation;

“tribunal” means any tribunal in which legal proceedings may be brought.

(2) In this Act references to before, after or on exit day, or to beginning with exit day, are to be read as references to before, after or at midnight on 31 January 2020 or (as the case may be) to beginning with midnight on that day.

(3) Subsection (4) applies if the day or time on or at which the Treaties are to cease to apply to the United Kingdom and Gibraltar in accordance with Article 50(3) of the Treaty on European Union is different from that specified in the definition of “exit day” in subsection (1).

(4) The Chief Minister may by regulations-

- (a) amend the definition of “exit day” in subsection (1) to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to Gibraltar; and
- (b) amend subsection (2) in consequence of any such amendment.

(5) In subsections (3) and (4) “the Treaties” means the Treaty on European Union and the Treaty on the Functioning of the European Union.

(6) In this Act a reference to either Gibraltar’s membership of the EU or Gibraltar’s withdrawal from the EU is to be construed in the context of the United Kingdom’s membership of the European Union and Gibraltar’s status as a European territory for whose external relations the United Kingdom is responsible within the meaning of Article 355(3) TFEU and to



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which the provisions of the EU Treaties apply, subject to the exceptions specified in the 1972 Act of Accession.

(6A) In this Act references to anything which continues to be domestic law by virtue of section 4B(2) include-

- (a) references to anything to which section 4B(2) applies which continues to be domestic law on or after exit day (whether or not it would have done so irrespective of that provision); and
- (b) references to anything which continues to be domestic law on or after exit day by virtue of section 4B(2) (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).

(7) In this Act references to anything which continues to be domestic law by virtue of section 5 include references to anything to which subsection (1) of that section applies which continues to be domestic law on or after IP completion day (whether or not it would have done so irrespective of that section).

(8) In this Act references to anything which is retained EU law by virtue of section 7 include references to any modifications, made by or under this Act or by domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.

(9) References in this Act to former Article 34(2)(c) of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon.

(10) Any other reference in this Act to-

- (a) an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union; or
- (b) Article 10 of Title VII of Protocol 36 to those treaties,

includes a reference to that Article as applied by Article 106a of the Euratom Treaty.

(11) In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

Expression	Provision
Anything which continues to be domestic law	Section 3(6A)

by virtue of section 4B(2)	
Anything which continues to be domestic law by virtue of section 5	Section 3(7)
Anything which is retained EU law by virtue of section 7	Section 3(8)
Article (in relation to the Treaty on European Union or the Treaty on the Functioning of the European Union)	Section 3(10)
Charter of Fundamental Rights	Section 3(1)
Direct EU legislation	Section 6(2)
Domestic law	Section 3(1)
The EEA	Section 3(1)
EEA agreement	Interpretation and General Clauses Act
EEA EFTA separation agreement	Section 10B(6)
Enactment	Section 3(1)
The EU	Interpretation and General Clauses Act
EU decision	Section 3(1)
EU-derived domestic legislation	Section 4B(7)
EU directive	Section 3(1)
EU entity	Section 3(1)
EU institution	Interpretation and General Clauses Act
EU instrument	Interpretation and General Clauses Act
Euratom Treaty	Interpretation and General Clauses Act
EU reference	Section 3(1)
EU regulation	Section 3(1)

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European Communities Act	Section 4A(8)(a)
European Court	Interpretation and General Clauses Act
EU tertiary legislation	Section 3(1)
EU Treaties	Interpretation and General Clauses Act
Exit day (and related expressions)	Section 3(1) to (5)
Former Article 34(2)(c) of Treaty on European Union	Section 3(9)
Implementation period	Section 4A(7)
IP completion day (and related expressions)	Section 4A(7)
Member State	Section 3(1) and Interpretation and General Clauses Act
Modify (and related expressions)	Section 3(1)
Operative (in relation to direct EU legislation)	Section 6(3)
Part (of withdrawal agreement or EEA EFTA separation agreement)	Section 4A(8)(b)
Primary legislation	Section 3(1)
Public authority	Section 3(1)
Relevant criminal offence	Section 3(1)
Relevant separation agreement law	Section 10C(3)
Retained case law	Section 9(7)
Retained direct EU legislation	Section 3(1)
Retained direct minor EU legislation	Section 10(6)
Retained direct principal EU legislation	Section 10(6)
Retained domestic case law	Section 9(7)
Retained EU case law	Section 9(7)
Retained EU law	Section 9(7)

Retained general principles of EU law	Section 9(7)
Retrospective provision	Section 3(1)
Subsidiary legislation	Section 3(1)
Swiss citizens' rights agreement	Section 10B(6)
Tribunal	Section 3(1)
Withdrawal agreement	Section 4A(7)

(12) See paragraph 11 of Schedule 4 for amendments made by this Act to the Interpretation and General Clauses Act.

### *Repeals*

#### **Repeals.**

4. The following enactments are repealed on exit day-

- (a) the European Communities Act;
- (b) section 23(g) of the Interpretation and General Clauses Act.

### *Savings for implementation period*

#### **Saving for ECA for implementation period.**

4A.(1) Subsections (2) to (5) have effect despite the repeal of the European Communities Act and section 23(g) of the Interpretation and General Clauses Act on exit day by section 4.

(2) Section 23(g) of the Interpretation and General Clauses Act, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day so far as provided by subsections (3) and (6).

(3) Section 23(g) of the Interpretation and General Clauses Act has effect on and after exit day as if references in that section to the Treaties were references to the Treaties as defined in the European Communities Act as it has effect by virtue of subsections (4) and (5)(a).

(4) The European Communities Act, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day so far as provided by subsections (5) and (6).

(5) The European Communities Act has effect on and after exit day as if-

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- (a) the definitions of “the Treaties” and “the EU Treaties” in section 2-
  - (i) included Part 4 of the withdrawal agreement (implementation period), other than that Part so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy, but
  - (ii) were otherwise limited to anything which falls within those definitions as at immediately before exit day so far as it is not excluded by regulations made on or after exit day by a Minister under this subparagraph;
- (b) section 2(4) were omitted;
- (c) the proviso to section 3(1) were omitted;
- (d) the reference in section 4(1) to the objects of the EU were a reference to those objects so far as they are applicable to and in Gibraltar by virtue of Part 4 of the withdrawal agreement;
- (e) section 4(4) to (10) were omitted;
- (f) section 5 were omitted;
- (g) in section 6-
  - (i) the references to the Treaties in subsections (1) and (2) included the withdrawal agreement,
  - (ii) the words in brackets in subsection (1) only applied so far as they are in accordance with Part 4 of the withdrawal agreement, and
  - (iii) subsection (5) were omitted;
- (h) in Part 2 of Schedule 1-
  - (i) in the definition of “EU customs duty”, the reference to directly applicable EU provision were to such provision so far as it is applicable to and in Gibraltar by virtue of Part 4 of the withdrawal agreement, and
  - (ii) in the definition of “Member” in the expression “member State”, after “EU” there were inserted “and for the purposes of this expression the United Kingdom is to be

treated as if it were a member of the EU during the implementation period (within the meaning given by section 4A(7) of the European Union (Withdrawal) Act 2019);

- (i) in Schedule 3, after “The United Kingdom of Great Britain and Northern Ireland” there were inserted “and for the purposes of this expression the United Kingdom is to be treated as if it were a European Union State during the implementation period (within the meaning given by section 4A(7) of the European Union (Withdrawal) Act 2019).”.

(6) Subsections (1) to (5) are repealed on IP completion day.

(7) In this Act-

“the implementation period” means the transition or implementation period provided for by Part 4 of the withdrawal agreement and beginning with exit day and ending on IP completion day;

“IP completion day” (and related expressions) have the same meaning as in the European Union (Withdrawal Agreement) Act 2020;

“withdrawal agreement” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020.

(8) In this Act-

- (a) references to the European Communities Act are to be read, so far as the context permits or requires, as being or (as the case may be) including references to that Act as it continues to have effect by virtue of subsections (4) and (5) above; and
- (b) references to any Part of the withdrawal agreement or the EEA EFTA separation agreement include references to any other provisions of that agreement so far as applying to that Part.”.

#### **Saving for EU-derived domestic legislation for implementation period.**

4B.(1) Subsections (2) to (5) have effect despite the repeal of the European Communities Act and section 23(g) of the Interpretation and General Clauses Act on exit day by section 4.

(2) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day, subject as follows.

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(3) Any enactment which continues to have effect by virtue of subsection (2) is to be read, on and after exit day and so far as the context permits or requires, as if-

- (a) any reference to an expression which is to be read in accordance with section 2 of the Interpretation and General Clauses Act and is an expression defined by section 2 of, or Part 2 of Schedule 1 to, the European Communities Act were a reference to that expression as defined by that section or that Part of that Schedule as it continues to have effect by virtue of section 4A(4) and (5) of this Act;
- (b) any reference (however expressed and subject to paragraph (a) above) to-
  - (i) EU law,
  - (ii) any particular EU Treaty or any part of it,
  - (iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document,
  - (iv) any part of EU law not falling within subparagraph (ii) or (iii),
  - (v) any tax, duty, levy or interests of the EU, or
  - (vi) any arrangement involving, or otherwise relating to, the EU of a kind not falling within subparagraph (i), (ii), (iii), (iv) or (v),

were a reference to any such thing so far as it is applicable to and in Gibraltar by virtue of Part 4 of the withdrawal agreement;

- (c) any reference (however expressed and subject to paragraph (a) above) to the European Communities Act were or (as the case may be) included a reference to that Act as it continues to have effect by virtue of section 4A(4) and (5) of this Act;
- (d) any reference (however expressed) to section 23(g) of the Interpretation and General Clauses Act were or (as the case may be) included a reference to that section as it continues to have effect by virtue of section 4A(2) and (3) of this Act;
- (e) any reference (however expressed) to the area of the EU or of the EEA included Gibraltar;

- (f) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement); and
- (g) such other modifications were made as-
  - (i) are provided for by regulations under section 11A, or
  - (ii) so far as not so provided, are necessary for any purpose of Part 4 of the withdrawal agreement and are capable of being ascertained from any such purpose or otherwise from that Part of that agreement.

(4) Any EU-derived domestic legislation which is an enactment passed or made on or after exit day and before IP completion day is, unless the contrary intention appears, to be read in accordance with subsection (3) (and anything done or omitted to be done in connection with any such enactment is to be understood, and has effect, accordingly).

(5) Subsections (2) to (4) are subject to any regulations made under section 11A or 15 or otherwise under this Act or under the European Union (Withdrawal Agreement) Act 2020.

(6) Subsections (1) to (5) are repealed on IP completion day.

(7) In this Act “EU-derived domestic legislation” means any enactment so far as-

- (a) made under section 4(1) of the European Communities Act;
- (b) passed or made, or operating, for a purpose mentioned in section 4(1)(a) or (b) of that Act;
- (c) made pursuant to section 23(g)(i) or (ii) of the Interpretation and General Clauses Act;
- (d) relating to -
  - (i) anything which falls within paragraph (a), (b) or (c), or
  - (ii) any rights, powers, liabilities, obligations, restrictions, remedies or procedures which are recognised and available in domestic law by virtue of section 3(1) of the European Communities Act; or
- (e) relating otherwise to the EU or the EEA,



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but does not include any enactment contained in the European Communities Act or any enactment contained in this Act or the European Union (Withdrawal Agreement) Act 2020 or in regulations made under this Act or the European Union (Withdrawal Agreement) Act 2020.

### *Retention of existing EU law*

#### **Saving for EU-derived domestic legislation.**

5.(1) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.

(2) In this section “EU-derived domestic legislation” means any enactment so far as-

- (a) made under section 4(1) of the European Communities Act;
- (b) passed or made, or operating, for a purpose mentioned in section 4(1)(a) or (b) of that Act;
- (c) made pursuant to section 23(g)(i) or (ii) of the Interpretation and General Clauses Act;
- (d) relating to anything-
  - (i) which falls within paragraph (a), (b) or (c), or
  - (ii) to which section 6(1) or 7(1) applies, or
- (e) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act.

(3) This section is subject to section 8 and Schedule 1 (exceptions to savings and incorporation).

#### **Incorporation of direct EU legislation.**

6.(1) Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day.

(2) In this Act “direct EU legislation” means-

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- (a) any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as—
  - (i) it applied to Gibraltar immediately before exit day, and
  - (ii) its effect is not reproduced in an enactment to which section 5(1) applies;
- (b) any Annex to the EEA agreement, as it has effect in EU law immediately before exit day and so far as—
  - (i) it refers to, or contains adaptations of, anything falling within paragraph (a), and
  - (ii) its effect is not reproduced in an enactment to which section 5(1) applies, or
- (c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before exit day.

(3) For the purposes of this Act, any direct EU legislation is operative immediately before exit day if—

- (a) in the case of anything which comes into force at a particular time and is stated to apply from a later time, it is in force and applies immediately before exit day;
- (b) in the case of a decision which specifies to whom it is addressed, it has been notified to that person before exit day; and
- (c) in any other case, it is in force immediately before exit day.

(4) This section—

- (a) brings into domestic law any direct EU legislation only in the form of the English language version of that legislation; and
- (b) does not apply to any such legislation for which there is no such version,

but paragraph (a) does not affect the use of the other language versions of that legislation for the purposes of interpreting it.

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(5) This section is subject to section 8 and Schedule 1 (exceptions to savings and incorporation).

## **Saving for rights etc. under section 3(1) of the ECA.**

7.(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day-

- (a) are recognised and available in domestic law by virtue of section 3(1) of the European Communities Act; and
- (b) are enforced, allowed and followed accordingly,

continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

(2) Subsection (1) does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they-

- (a) form part of domestic law by virtue of section 6; or
- (b) arise under an EU directive (including as applied by the EEA agreement) and are not of a kind recognised by the European Court, the Judicial Committee of the Privy Council or any court or tribunal in Gibraltar in a case decided before exit day (whether or not as an essential part of the decision in the case).

(3) This section is subject to section 8 and Schedule 1 (exceptions to savings and incorporation).

## **Exceptions to savings and incorporation.**

8.(1) The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit day.

(2) Accordingly, the principle of the supremacy of EU law continues to apply on or after exit day so far as relevant to the interpretation, disapplication or quashing of any enactment or rule of law passed or made before exit day.

(3) Subsection (1) does not prevent the principle of the supremacy of EU law from applying to a modification made on or after exit day of any enactment or rule of law passed or made before exit day if the application of the principle is consistent with the intention of the modification.

(4) The Charter of Fundamental Rights is not part of domestic law on or after exit day.

(5) Subsection (4) does not affect the retention in domestic law on or after exit day in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles).

(6) Schedule 1 (which makes further provision about exceptions to savings and incorporation) has effect.

(7) Subsections (1) to (6) and Schedule 1 are subject to relevant separation agreement law (for which see section 10C).

### **Interpretation of retained EU law.**

#### 9.(1) A court or tribunal-

- (a) is not bound by any principles laid down, or any decisions made, on or after IP completion day by the European Court; and
- (b) cannot refer any matter to the European Court on or after IP completion day.

(2) Subject to this and subsections (3) to (6) a court or tribunal may have regard to anything done on or after IP completion day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after IP completion day and so far as they are relevant to it-

- (a) in accordance with any retained case law and any retained general principles of EU law; and
- (b) having regard (among other things) to the limits, immediately before IP completion day, of EU competences.

#### (4) But-

- (a) the Judicial Committee of the Privy Council is not bound by any retained EU case law;
- (b) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.

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(5) In deciding whether to depart from any retained EU case law, the Judicial Committee of the Privy Council must apply the same test as it would apply in deciding whether to depart from its own case law.

- (5A) A Minister may by regulations provide for-
- (a) a court or tribunal to be a relevant court or (as the case may be) a relevant tribunal for the purposes of this section;
  - (b) the extent to which, or circumstances in which, a relevant court or relevant tribunal is not to be bound by retained EU case law;
  - (c) the test which a relevant court or relevant tribunal must apply in deciding whether to depart from any retained EU case law; or
  - (d) considerations which are to be relevant to-
    - (i) the Judicial Committee of the Privy Council in applying the test mentioned in subsection (5), or
    - (ii) the relevant court or relevant tribunal in applying any test provided for by virtue of paragraph (c) above.
- (5B) Regulations under subsection (5A) may (among other things) provide for-
- (a) the Supreme Court to be a relevant court;
  - (b) the extent to which, or circumstances in which, a relevant court or relevant tribunal not being bound by retained EU case law includes (or does not include) that court or tribunal not being bound by retained domestic case law which relates to retained EU case law;
  - (c) other matters arising in relation to retained domestic case law which relates to retained EU case law (including by making provision of a kind which could be made in relation to retained EU case law); or
  - (d) the test mentioned in paragraph (c) of subsection (5A) or the considerations mentioned in paragraph (d) of that subsection be determined (whether with or without the consent of a Minister) by a person mentioned in subsection (5C)(a) or (b) or by more than one of those persons acting jointly.

(5C) Before making regulations under subsection (5A), a Minister must consult-

- (a) the Chief Justice; and
- (b) such other persons as the Minister considers appropriate.

(6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after IP completion day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.

(7) In this Act-

“retained case law” means-

- (a) retained domestic case law; and
- (b) retained EU case law;

“retained domestic case law” means any principles laid down by, and any decisions of, a court or tribunal in Gibraltar or the Judicial Committee of the Privy Council, as they have effect immediately before IP completion day and so far as they-

- (a) relate to anything to which section 5, 6 or 7 applies; and
- (b) are not excluded by section 8 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

“retained EU case law” means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before IP completion day and so far as they-

- (a) relate to anything to which section 5, 6 or 7 applies; and
- (b) are not excluded by section 8 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

“retained EU law” means anything which, on or after IP completion day, continues to be, or forms part of, domestic law by virtue of section 5, 6 or 7 or subsection (3) or (6) above (as that body of law is

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added to or otherwise modified by or under this Act or by other domestic law from time to time);

“retained general principles of EU law” means the general principles of EU law, as they have effect in EU law immediately before IP completion day and so far as they-

- (a) relate to anything to which section 5, 6 or 7 applies; and
- (b) are not excluded by section 8 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time).

## Status of retained EU law.

10.(1) Anything which-

- (a) was, immediately before exit day, primary legislation of a particular kind, subsidiary legislation of a particular kind or another enactment of a particular kind; and
- (b) continues to be domestic law on and after exit day by virtue of section 4A(2) or (4) or 4B(2),

continues to be domestic law as an enactment of the same kind.

(2) Retained direct principal EU legislation cannot be modified by any primary or subsidiary legislation other than-

- (a) an Act of Parliament;
- (b) any other primary legislation (so far as it has the power to make such a modification); or
- (c) any subsidiary legislation so far as it is made under a power which permits such a modification by virtue of-
  - (i) paragraph 3, 4(3)(a) or (4)(a), 6(3), 8(3)(a) or (4)(a), 9(2)(a) or 10(3) of Schedule 4,
  - (ii) any other provision made by or under this Act, or
  - (iii) any provision made on or after the passing of this Act by or under primary legislation.

(3) Retained direct minor EU legislation cannot be modified by any primary or subsidiary legislation other than-

- (a) an Act of Parliament;
- (b) any other primary legislation (so far as it has the power to make such a modification); or
- (c) any subsidiary legislation so far as it is made under a power which permits such a modification by virtue of-
  - (i) paragraph 3, 4(2) or (4)(a), 6(3), 8(2) or (4)(a) or 10(3) of Schedule 4,
  - (ii) any other provision made by or under this Act, or
  - (iii) any provision made on or after the passing of this Act by or under primary legislation.

(4) Anything which is retained EU law by virtue of section 7 cannot be modified by any primary or subsidiary legislation other than-

- (a) an Act of Parliament;
- (b) any other primary legislation (so far as it has the power to make such a modification); or
- (c) any subsidiary legislation so far as it is made under a power which permits such a modification by virtue of-
  - (i) paragraph 3, 4(3)(b) or (4)(b), 6(3), 8(3)(b) or (4)(b), 9(2)(b) or 10(3) of Schedule 4,
  - (ii) any other provision made by or under this Act, or
  - (iii) any provision made on or after the passing of this Act by or under primary legislation.

(5) For other provisions about the status of retained EU law, see-

- (a) section 8(1) to (3) (status of retained EU law in relation to other enactments or rules of law);
- (b) section 9 (status of retained case law and retained general principles of EU law);



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- (c) section 13 and Schedule 2 (status of retained EU law for the purposes of the rules of evidence); and
- (d) paragraph 11(c) of Schedule 4 (status of certain retained direct EU legislation for the purposes of the Interpretation and General Clauses Act).

(6) In this Act-

“retained direct minor EU legislation” means any retained direct EU legislation which is not retained direct principal EU legislation;

“retained direct principal EU legislation” means-

- (a) any EU regulation so far as it-
  - (i) forms part of domestic law on and after IP completion day by virtue of section 6, and
  - (ii) was not EU tertiary legislation immediately before IP completion day, or
- (b) any Annex to the EEA agreement so far as it-
  - (i) forms part of domestic law on and after IP completion day by virtue of section 6, and
  - (ii) refers to, or contains adaptations of, any EU regulation so far as it falls within paragraph (a),

(as modified by or under this Act or by other domestic law from time to time).

### *Further aspects of withdrawal*

#### **General implementation of remainder of withdrawal agreement.**

10A.(1) Subsection (2) applies to-

- (a) all such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the withdrawal agreement; and
- (b) all such remedies and procedures from time to time provided for by or under the withdrawal agreement,

as in accordance with the withdrawal agreement are without further enactment to be given legal effect or used in Gibraltar.

(2) The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be-

- (a) recognised and available in domestic law; and
- (b) enforced, allowed and followed accordingly.

(3) Every enactment (including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4) This section does not apply in relation to Part 4 of the withdrawal agreement so far as section 3(1) of the European Communities Act applies in relation to that Part.

(5) See also (among other things)-

- (a) Part 4 of the European Union (Withdrawal Agreement) Act 2020;
- (b) section 10C of this Act;
- (c) section 11B of this Act;
- (d) section 11C of this Act.

**General implementation of EEA EFTA and Swiss agreements.**

10B.(1) Subsection (2) applies to all such rights, powers, liabilities, obligations, restrictions, remedies and procedures as-

- (a) would from time to time be created or arise, or (in the case of remedies or procedures) be provided for, by or under the EEA EFTA separation agreement or the Swiss citizens' rights agreement; and
- (b) would, in accordance with Article 4(1) of the withdrawal agreement, be required to be given legal effect or used in Gibraltar without further enactment,

if that Article were to apply in relation to the EEA EFTA separation agreement and the Swiss citizens' rights agreement, those agreements were part of EU law and the relevant EEA states and Switzerland were member States.

(2) The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be-

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(a) recognised and available in domestic law; and

(a) enforced, allowed and followed accordingly.

(3) Every enactment (other than section 10A but otherwise including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4) See also (among other things)-

(a) Part 4 of the European Union (Withdrawal Agreement) Act 2020;

(b) section 10C of this Act; and

(c) section 11B of this Act.

(5) In this section “the relevant EEA states” means Norway, Iceland and Liechtenstein.

(6) In this Act “EEA EFTA separation agreement” and “Swiss citizens’ rights agreement” have the same meanings as in the European Union (Withdrawal Agreement) Act 2020.

## **Interpretation of relevant separation agreement law.**

10C.(1) Any question as to the validity, meaning or effect of any relevant separation agreement law is to be decided, so far as they are applicable-

(a) in accordance with the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens’ rights agreement; and

(b) having regard (among other things) to the desirability of ensuring that, where one of those agreements makes provision which corresponds to provision made by another of those agreements, the effect of relevant separation agreement law in relation to the matters dealt with by the corresponding provision in each agreement is consistent.

(2) See (among other things)-

(a) Article 4 of the withdrawal agreement;

(b) Articles 158 and 160 of the withdrawal agreement;

- (c) Article 4 of the EEA EFTA separation agreement; and
  - (d) Article 4 of the Swiss citizens' rights agreement.
- (3) In this Act “relevant separation agreement law” means-
- (a) any of the following provisions or anything which is domestic law by virtue of any of them-
    - (i) section 10A, 10B, 11B or 11C or this section, or
    - (ii) Part 4 of the European Union (Withdrawal Agreement) Act 2020; or
  - (b) anything not falling within paragraph (a) so far as it is domestic law for the purposes of, or otherwise within the scope of-
    - (i) the withdrawal agreement (other than Part 4 of that agreement),
    - (ii) the EEA EFTA separation agreement, or
    - (iii) the Swiss citizens' rights agreement,
- 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.

**Dealing with deficiencies arising from withdrawal.**

11.(1) A Minister may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate-

- (a) any failure of retained EU law to operate effectively; or
- (b) any other deficiency in retained EU law,

arising from the withdrawal of the United Kingdom and Gibraltar from the EU.

(2) Deficiencies in retained EU law are where the Minister considers that retained EU law-

- (a) contains anything which has no practical application in relation to Gibraltar or is otherwise redundant or substantially redundant;

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- (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to Gibraltar;
- (c) makes provision for, or in connection with, reciprocal arrangements between-
  - (i) Gibraltar or a public authority in Gibraltar, and
  - (ii) the EU, an EU entity, a member State or a public authority in a member State,

which no longer exist or are no longer appropriate;

- (d) makes provision for, or in connection with, other arrangements which-
  - (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
  - (ii) are otherwise dependent upon Gibraltar's membership of the EU or Part 4 of the withdrawal agreement,

and which no longer exist or are no longer appropriate;

- (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties or as a result of either the end of the implementation period or any other effect of the withdrawal agreement;
- (ea) is not clear in its effect as a result of the operation of any provisions of sections 5 to 9 or Schedule 1;
- (f) does not contain any functions or restrictions which-
  - (i) were in an EU directive and in force immediately before IP completion day (including any power to make EU tertiary legislation), and
  - (ii) it is appropriate to retain; or
- (g) contains EU references which are no longer appropriate.

(3) There is also a deficiency in retained EU law where the Minister considers that there is-

- (a) anything in retained EU law which is of a similar kind to any deficiency which falls within subsection (2); or
- (b) a deficiency in retained EU law of a kind described, or provided for, in regulations made by a Minister.

(4) But retained EU law is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into force or only applies on or after IP completion day.

(5) Regulations under this subsection (1) may make any provision that could be made by an Act of Parliament.

(6) Regulations under subsection (1) may (among other things) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be-

- (a) exercisable instead by a public authority (whether or not established for the purpose) in Gibraltar; or
- (b) replaced, abolished or otherwise modified.

(7) The reference in subsection (1) to a failure or other deficiency arising from Gibraltar's withdrawal from the EU includes a reference to any failure or other deficiency arising from-

- (a) any aspect of that withdrawal, including (among other things)-
  - (i) the end of the implementation period, or
  - (ii) any other effect of the withdrawal agreement; or
- (b) that withdrawal, or any such aspect of it, taken together;

with the operation of any provision, or the interaction between any provisions, made by or under this Act or the European Union (Withdrawal Agreement) Act 2020.

#### **Supplementary powers in connection with implementation period.**

11A.(1) A Minister may by regulations-

- (a) provide for other modifications for the purposes of section 4B(3)(g)(i) (whether applying in all cases or particular cases or descriptions of case);

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- (b) provide for subsection (3) or (4) of section 4B not to apply to any extent in particular cases or descriptions of case;
- (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section;
- (d) modify any enactment contained in this Act in consequence of any repeal made by section 4A(6) or 4B(6); or
- (e) make such provision not falling within paragraph (a), (b), (c) or (d) as the Minister considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.

(2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.

### **Power in connection with certain other separation issues.**

11B.(1) A Minister may by regulations make such provision as the Minister considers appropriate-

- (a) to implement Part 3 of the withdrawal agreement;
- (b) to supplement the effect of section 10A in relation to that Part;  
or
- (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 10A and that Part).

(2) A Minister may by regulations make such provision as the Minister considers appropriate-

- (a) to implement Part 3 of the EEA EFTA separation agreement;
- (b) to supplement the effect of section 10B in relation to that Part;  
or
- (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 10B and that Part).

(3) Regulations under this section may make any provision that could be made by an Act of Parliament.

(4) Regulations under this section may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of-

- (a) section 10A and Part 3 of the withdrawal agreement; or
- (b) section 10B and Part 3 of the EEA EFTA separation agreement.

(5) In this section references to Part 3 of the withdrawal agreement or of the EEA EFTA separation agreement include references to any provision of EU law which is applied by, or referred to in, that Part (to the extent of the application or reference).

**Power in connection with Gibraltar Protocol in withdrawal agreement.**

11C.(1) A Minister may by regulations make such provision as the Minister considers appropriate-

- (a) to implement the Protocol on Gibraltar in the withdrawal agreement;
- (b) to supplement the effect of section 10A in relation to the Protocol; or
- (c) otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 10A and the Protocol).

(2) Regulations under this section may make any provision that could be made by an Act of Parliament (including modifying this Act).

(3) Regulations under this section may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of section 10A and the Protocol.

(4) In this section, any reference to the Protocol on Gibraltar includes a reference to-

- (a) any other provision of the withdrawal agreement so far as applying to the Protocol; and
- (b) any provision of EU law, an international convention or multilateral agreement which is applied by, or referred to in, the Protocol (to the extent of the application or reference).



12. *Repealed.*

**Rules of evidence.**

13. Schedule 2 (which makes provision about rules of evidence) has effect.

**Regulations.**

14. Schedule 3 (which makes general provision about powers under Act) has effect.

**Consequential and transitional provision.**

15.(1) A Minister may by regulations make such provision as the Minister considers appropriate in consequence of this Act.

(2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.

(3) Parts 1 and 2 of Schedule 4 (which contain consequential provision) have effect.

(4) A Minister may by regulations make such transitional, transitory or saving provision as the Minister considers appropriate in connection with the coming into force of any provision of this Act (including its operation in connection with exit day or IP completion day).

(5) Parts 3 and 4 of Schedule 4 (which contain transitional, transitory and saving provision) have effect.

(6) The European Parliamentary Elections Act 2004 is repealed.

16. *Repealed.*

## SCHEDULE 1

*Section 8(6)***FURTHER PROVISION ABOUT EXCEPTIONS TO SAVINGS AND INCORPORATION****Challenges to validity of retained EU law.**

1.(1) There is no right in domestic law on or after IP completion day to challenge any retained EU law on the basis that, immediately before IP completion day, an EU instrument was invalid.

(2) Subparagraph (1) does not apply so far as-

- (a) the European Court has decided before IP completion day that the instrument is invalid; or
- (b) the challenge is of a kind described, or provided for, in regulations made by a Minister.

(3) Regulations under subparagraph (2)(b) may (among other things) provide for a challenge which would otherwise have been against an EU institution to be against a public authority in Gibraltar.

**General principles of EU law.**

2. No general principle of EU law is part of domestic law on or after IP completion day if it was not recognised as a general principle of EU law by the European Court in a case decided before IP completion day (whether or not as an essential part of the decision in the case).

3.(1) There is no right of action in domestic law on or after IP completion day based on a failure to comply with any of the general principles of EU law.

(2) No court or tribunal or other public authority may, on or after IP completion day -

- (a) disapply or quash any enactment or other rule of law; or
- (b) quash any conduct or otherwise decide that it is unlawful,

because it is incompatible with any of the general principles of EU law.

**Rule in *Francovich*.**

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4. There is no right in domestic law on or after IP completion day to damages in accordance with the rule in *Francovich*.

## **Interpretation.**

5.(1) References in section 8 and this Schedule to the principle of the supremacy of EU law, the Charter of Fundamental Rights, any general principle of EU law or the rule in *Francovich* are to be read as references to that principle, Charter or rule so far as it would otherwise continue to be, or form part of, domestic law on or after IP completion day in accordance with this Act.

(2) Accordingly (among other things) the references to the principle of the supremacy of EU law in section 8(2) and (3) do not include anything which would bring into domestic law any modification of EU law which is adopted or notified, comes into force or only applies on or after IP completion day.

**SCHEDULE 2**

*Section 13*

**RULES OF EVIDENCE**

**Questions as to meaning of EU law.**

1.(1) Where it is necessary, for the purpose of interpreting retained EU law in legal proceedings, to decide a question as to-

- (a) the meaning or effect in EU law of any of the EU Treaties or any other treaty relating to the EU; or
- (b) the validity, meaning or effect in EU law of any EU instrument,

the question is to be treated for that purpose as a question of law.

(2) In this paragraph-

“interpreting retained EU law” means deciding any question as to the validity, meaning or effect of any retained EU law;

“treaty” includes-

- (a) any international agreement; and
- (b) any protocol or annex to a treaty or international agreement.

**Power to make provision about judicial notice and admissibility.**

2.(1) A Minister may by regulations-

- (a) make provision enabling or requiring judicial notice to be taken of a relevant matter; or
- (b) provide for the admissibility in any legal proceedings of specified evidence of-
  - (i) a relevant matter, or
  - (ii) instruments or documents issued by or in the custody of an EU entity.

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(2) Regulations under subparagraph (1)(b) may provide that evidence is admissible only where specified conditions are met (for example, conditions as to certification of documents).

(3) Regulations under this paragraph may modify any provision made by or under an enactment.

(4) In subparagraph (3) “enactment” does not include primary legislation passed or made after IP completion day.

(5) For the purposes of this paragraph each of the following is a “relevant matter”-

- (a) retained EU law;
- (b) EU law;
- (c) the EEA agreement;
- (ca) the EEA EFTA separation agreement;
- (cb) the Swiss citizens’ rights agreement;
- (cc) the withdrawal agreement; and
- (d) anything which is specified in the regulations and which relates to a matter mentioned in paragraph (a), (b), (c), (ca), (cb) or (cc).

**SCHEDULE 3***Section 14***REGULATIONS****Scope and nature of powers: general.**

1. Any power to make regulations under this Act-
  - (a) may be exercised so as to-
    - (i) modify anything which continues to be domestic law by virtue of 4B(2) or any retained EU law; or
    - (ii) make different provision for different cases or descriptions of case, different circumstances, or different purposes; and
  - (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating anything which continues to be domestic law by virtue of section 4B(2), or any retained EU law, in a clearer or more accessible way).
2. The fact that a power to make regulations is conferred by this Act does not affect the extent of any other power to make regulations under this Act.

**Scope of consequential and transitional powers.**

3.(1) The fact that anything continues to be, or forms part of, domestic law by virtue of any provision of sections 4A to 9 or Schedule 1 does not prevent it from being modified by regulations made under section 15(1) in consequence of any other provision made by or under this Act.

(2) Accordingly, anything which continues to be domestic law by virtue of section 4B(2) or any retained EU law may, for example, be modified by regulations made under section 15(1) in consequence of the repeal of any enactment contained in the European Communities Act or section 23(g) of the Interpretation and General Clauses Act.

(3) The power to make regulations under section 15(4) includes the power to make transitional, transitory or saving provision in connection with-

- (a) the repeal of any enactment contained in the European Communities Act;

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- (b) the repeal of section 23(g) of the Interpretation and General Clauses Act; or
- (c) the withdrawal of Gibraltar from the EU,

which is additional to that made by any provision of sections 4A to 9 or Schedule 1 or alters its effect in particular cases or descriptions of case.

(4) The power to make regulations under section 15(1) includes the power to make transitional, transitory or saving provision which-

- (a) is in connection with any repeal or revocation made by any such regulations of an enactment in consequence of-
  - (i) the repeal of any enactment contained in the European Communities Act;
  - (ii) the repeal of section 23(g) of the Interpretation and General Clauses Act;
  - (iii) the withdrawal of Gibraltar from the EU; and
- (b) is additional to that made by any provision of sections 4A to 9 or Schedule 1 or alters its effect in particular cases or descriptions of case.

(5) Provision of the kind mentioned in subparagraph (3) or (4) may (among other things) include further provision treating any provision of that kind as anything which continues to be domestic law by virtue of section 4B(2), or as retained EU law, for particular purposes or all purposes.

## **Anticipatory exercise of powers in relation to section 4B(2) saved law.**

3A. Any power to make regulations under this Act which modify anything which continues to be domestic law by virtue of section 4B(2) is capable of being exercised before exit day so that the regulations come into force on or after exit day.

## **Anticipatory exercise of powers in relation to retained EU law.**

4. Any power to make regulations under this Act which modify retained direct EU legislation, anything which is retained EU law by virtue of section 7 or any other retained EU law is capable of being exercised before IP completion day so that the regulations come into force on or after IP completion day.

**Anticipatory exercise of powers in relation to the withdrawal agreement etc.**

4A. Any power to make regulations under this Act in relation to the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement, or any modification of any of them which requires ratification, is capable of being exercised before the agreement or (as the case may be) modification concerned is ratified.

**Scope of appointed day powers.**

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

**Effect of certain provisions in Schedule 4 on scope of powers.**

6. The modifications made by Part 1 of Schedule 4 and paragraph 11 of that Schedule do not prevent or otherwise limit the making of different provision, in particular cases or descriptions of case, in regulations under section 15(1) or in any other regulations under this Act.



**SCHEDULE 4**

*Section 15(3) and (5)*

**CONSEQUENTIAL, TRANSITIONAL, TRANSITORY  
AND SAVING PROVISION**

**PART 1**

**GENERAL CONSEQUENTIAL PROVISION**

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

1.(1) Any reference which, immediately before exit day-

- (a) exists in-
  - (i) any enactment,
  - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 6, or
  - (iii) any document relating to anything falling within subparagraph (i) or (ii); and
- (b) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 6,

is to be read, on or after exit day, as a reference to the EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement as it forms part of domestic law by virtue of section 6 and, unless the contrary intention appears, as modified by domestic law from time to time.

(2) Subparagraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subsidiary legislation so far as the power to make the subsidiary legislation continues to be part of domestic law by virtue of section 5.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

**Other existing ambulatory references.**

2.(1) Any reference which-

- (a) exists, immediately before exit day, in-
  - (i) any enactment,
  - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 6, or
  - (iii) any document relating to anything falling within subparagraph (i) or (ii);
- (b) is not a reference to which paragraph 1(1) applies; and
- (c) is, immediately before exit day, a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,

is to be read, on or after exit day, as a reference to the EU Treaty, instrument or document as it has effect immediately before exit day.

(2) Subparagraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subsidiary legislation so far as the power to make the subsidiary legislation continues to be part of domestic law by virtue of section 5.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

#### **Existing powers to make subsidiary legislation etc.**

3.(1) Any power to make, confirm or approve subsidiary legislation which-

- (a) was conferred before the day on which this Act is passed; and
- (b) is capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in primary legislation,

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 be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 7.

(2) Any provision which may be made, confirmed or approved by virtue of subparagraph (1) may be included in the same instrument as any other provision which may be so made, confirmed or approved.

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4.(1) This paragraph applies to any power to make, confirm or approve subsidiary legislation-

- (a) which was conferred before the day on which this Act is passed; and
- (b) is not capable of being exercised as mentioned in paragraph 3(1)(b).

(2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) is to be read-

- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 7; and
- (b) so far as the context permits or requires,

as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

(3) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) 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 be, result in the modification of)-

- (a) any retained direct principal EU legislation; or
- (b) anything which is retained EU law by virtue of section 7,

so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of subparagraph (2).

(4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision 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 be, result in the modification of)-

- (a) any retained direct EU legislation; or
- (b) anything which is retained EU law by virtue of section 7.

5. Any power to make, confirm or approve subsidiary legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read-

- (a) on or after exit day, without that restriction; and
- (b) on or after IP completion day, without any corresponding restriction in relation to compatibility with retained EU law,

so far as the restriction concerned is not applicable to and in Gibraltar by virtue of the withdrawal agreement..

6.(1) Paragraphs 3 to 5 and this paragraph-

- (a) do not prevent the conferral of wider powers; and
- (b) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraph 3 and 4-

- (a) a power is conferred whether or not it is in force; and
- (b) a power in retained direct EU legislation is not conferred before the day on which this Act is passed.

(3) A power which, by virtue of paragraph 3 or 4 or any Act of Parliament passed before this Act, is capable of being exercised to modify any retained EU law is capable of being exercised before IP completion day so as to come into force on or after IP completion day.

### **Review provisions in existing subsidiary legislation.**

7.(1) In carrying out a review of a provision of subsidiary legislation on or after exit day a person is not required, by any pre-exit enactment, to have regard to how any former EU obligation is implemented elsewhere than in Gibraltar.

(2) In this paragraph-

“former EU obligation” means an obligation by which Gibraltar is, as a result of the United Kingdom’s withdrawal from the EU, no longer bound at the time of the review;

“pre-exit enactment” means an Act passed, or subsidiary legislation made, before exit day.

### **Future powers to make subsidiary legislation.**

This version is out of date

8.(1) This paragraph applies to any power to make, confirm or approve subsidiary legislation which is conferred on or after the day on which the Act is passed.

(2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may-

- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 7; and
- (b) so far as applicable and unless the contrary intention appears,

be exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

(3) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)-

- (a) any retained direct principal EU legislation; or
- (b) anything which is retained EU law by virtue of section 7,

so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of subparagraph (2).

(4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)-

- (a) any retained direct EU legislation; or
- (b) anything which is retained EU law by virtue of section 7.

9.(1) Subparagraph (2) applies to any power to make, confirm or approve subsidiary legislation which-

- (a) is conferred on or after the day on which this Act is passed; and
- (b) is capable of being exercised to amend or revoke (or, as the case may be, result in the amendment or revocation of) any retained direct principal EU legislation.

(2) The power may, so far as applicable and unless the contrary intention appears, be exercised-

- (a) to modify otherwise than by way of amendment or revocation (or, as the case may be, result in such modification of) any retained direct principal EU legislation; or
- (b) to modify (or, as the case may be, result in the modification of) anything which is retained EU law by virtue of section 7.

10.(1) Paragraphs 8 and 9 and this paragraph-

- (a) do not prevent the conferral of wider powers; and
- (b) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraphs 8 and 9-

- (a) a power is conferred whether or not it is in force;
- (b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed; and
- (c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).

(3) A power which, by virtue of paragraph 8 or 9 or any Act passed after this Act and before IP completion day, is capable of being exercised to modify any retained EU law is capable of being so exercised before IP completion day so as to come into force on or after IP completion day.

## PART 2

### SPECIFIC CONSEQUENTIAL PROVISION

#### Interpretation and General Clauses Act.

11. The Interpretation and General Clauses Act is amended as follows-

- (a) in section 2 in the definition of “subsidiary legislation” after “legislative effect” insert “or made on or after exit day under any retained direct EU legislation”;
- (b) at the end of section 2 insert the following-

This version is out of date

## **“Definitions relating to the EU and Gibraltar’s withdrawal.**

“The Communities” means Euratom, the Economic Community and the Coal and Steel Community, but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU;

“E.C.S.C. Treaty” means the Treaty establishing the European Coal and Steel Community, signed at Paris on 18 April 1951;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time, but does not include any retained direct EU legislation;

“EEA state”, in relation to a time, means-

- (a) a state which at that time is a member State, or
- (b) any other state which at that time is a party to the EEA agreement;

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

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

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

“EU institution” means any institution of the EU;

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

“Euratom”, “Economic Community” and “Coal and Steel Community” mean respectively the European Atomic Energy Community, the European Economic Community

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and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities);

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

“European Court” means the Court of Justice of the European Union;

“exit day” (and related expressions) have the same meaning as in the European Union (Withdrawal) Act 2018 (see section 3(1) of that Act);

“member”, in the expression “member State”, refers to membership of the EU;

“retained EU law”, “retained direct minor EU legislation”, “retained direct principal EU legislation” and “retained direct EU legislation” have the same meaning as in the European Union (Withdrawal) Act 2018 (see sections 3(1), 9(7) and 10(6) of that Act);

“retained EU obligation” means an obligation that-

- (a) was created or arose by or under the EU Treaties before exit day; and
- (b) forms part of retained EU law, as modified from time to time;

“the Treaties” or “the EU Treaties” means the Treaties or EU Treaties, within the meaning given by section 2(1) of the European Communities Act as that Act had effect immediately before its repeal by section 4 of the European Union (Withdrawal) Act 2018, as at immediately before exit day.”;

- (c) after section 2 insert the following section-

**“Retained direct EU legislation.**

2A.(1) The provisions of this Act (except sections 9, 10, 22 and 29) apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation so far as it-



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- (a) is amended by an Act or subsidiary legislation;  
and
- (b) is not subsidiary legislation,

as they apply to an Act passed at the corresponding time.

(2) In their application by virtue of subsection (1)-

- (a) section 21 has effect as if the reference to an Act included a reference to the retained direct EU legislation so far as unamended (as well as a reference to that legislation so far as amended);
- (b) section 33(2) has effect as if the reference to the repealing Act not being passed were a reference to the repeal not having been made; and
- (c) section 68 has effect as if the reference to the passing of the Act were a reference to the corresponding time.

(3) In this section “corresponding time” means the time when the amending Act or subsidiary legislation was passed or (as the case may be) made.”;

(d) delete sections 5 and 5A;

(e) in section 23(h) after “paragraph (g)(i)” insert “before its repeal by section 4 of the European Union (Withdrawal) Act 2018”;

(f) after section 23(h) insert the following-

“(i) paragraph (h) is subject to any amendments, repeal, revocation or other modification of retained EU law on or after exit day.

(j) In paragraph (h)-

- (i) a reference to the EEA Agreement means the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992 as adjusted by the Protocol signed at Brussels on 17<sup>th</sup> March 1993; and

- (ii) a reference to the date on which the EEA Agreement comes into force is a reference to the date on which (in accordance with the Protocol signed at Brussels on 17<sup>th</sup> March 1993) it comes into force otherwise than as regards Liechtenstein.”.

### **PART 3**

#### **GENERAL TRANSITIONAL, TRANSITORY OR SAVING PROVISION**

##### **Continuation of existing acts etc.**

###### **11A.(1) Anything done-**

- (a) in connection with anything which continues to be domestic law by virtue of section 4A(2) or (4) or 4B(2); or
- (b) for a purpose mentioned in section 4(1) of the European Communities Act or section 23(g) of the Interpretation and General Clauses Act or otherwise related to the EU or the EEA,

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

###### **(2) Anything done-**

- (a) in connection with anything which continues to be domestic law by virtue of section 4A(2) or (4) or 4B(2); or
- (b) for a purpose mentioned in section 4(1) of the European Communities Act or section 23(g) of the Interpretation and General Clauses Act or otherwise related to the EU or the EEA,

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

###### **(3) Subparagraphs (1) and (2) are subject to-**

- (a) sections 4 to 4B and the withdrawal of Gibraltar from the EU;

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- (b) any provision made under section 15(4) of this Act or section 25(4) of the European Union (Withdrawal Agreement) Act 2020; and
- (c) any other provision made by or under this Act, the European Union (Withdrawal Agreement) Act 2020 or any other enactment.

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

12.(1) Anything done-

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 5, 6, 7 or 9(3) or (6); or
- (b) for a purpose mentioned in section 4(1) of the European Communities Act or section 23(g) of the Interpretation and General Clauses Act or otherwise related to the EU or the EEA,

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

(2) Anything done-

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 5, 6, 7 or 9(3) or (6); or
- (b) for a purpose mentioned in section 4(1) of the European Communities Act, section 23(g) of the Interpretation and General Clauses Act or otherwise related to the EU or the EEA,

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

(3) Subparagraphs (1) and (2) are subject to-

- (a) section 4 and the withdrawal of the United Kingdom and Gibraltar from the EU;
- (b) sections 5 to 9 and Schedule 1,
- (c) any provision made under section 15(4); and

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

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

#### **PART 4**

#### **SPECIFIC TRANSITIONAL, TRANSITORY AND SAVING PROVISION**

##### **Retention of existing EU law.**

13. Section 7(2)(b) does not apply in relation to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they are of a kind recognised by a court or tribunal in Gibraltar in a case decided on or after exit day but begun before exit day (whether or not as an essential part of the decision in the case).

14.(1) Subject as follows and subject to any provision made by regulations under section 15(4), section 8(4) and paragraphs 1 to 4 of Schedule 1 apply in relation to anything occurring before exit day (as well as anything occurring on or after exit day).

(2) Section 8(4) and paragraphs 1 to 4 of Schedule 1 do not affect any decision of a court or tribunal made before exit day.

(3) Section 8(4) and paragraphs 3 and 4 of Schedule 1 do not apply in relation to any proceedings begun, but not finally decided, before a court or tribunal in Gibraltar before exit day.

(4) Paragraphs 1 to 4 of Schedule 1 do not apply in relation to any conduct which occurred before exit day which gives rise to any criminal liability.

(5) Paragraph 3 of Schedule 1 does not apply in relation to any proceedings begun within the period of 3 years beginning with exit day so far as-

- (a) the proceedings involve a challenge to anything which occurred before exit day; and
- (b) the challenge is not for the disapplication or quashing of-

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- (i) an Act of Parliament or a rule of law which is not an enactment; or
- (ii) any enactment, or anything else, not falling within subparagraph (i) which, as a result of anything falling within that subparagraph, could not have been different or which gives effect to, or enforces, anything falling within that subparagraph.

(6) Paragraph 3(2) of Schedule 1 does not apply in relation to any decision of a court or tribunal, or other public authority, on or after exit day which is a necessary consequence of any decision of a court or tribunal made before exit day or made on or after that day by virtue of this paragraph.

(7) Paragraph 4 of Schedule 1 does not apply in relation to any proceedings begun within the period of 2 years beginning with exit day so far as the proceedings relate to anything which occurred before exit day.

## **Main powers in connection with withdrawal.**

15. The prohibition on making regulations under section 12 after a particular time does not affect the continuation in force of regulations made at or before that time (including the exercise after that time of any power conferred by regulations made at or before that time).

### *Maintenance of modifications to enactments.*

## **Consistent application of law to whole of EEA.**

16.(1) Where-

- (a) the operation of any relevant enactment is limited (expressly or by implication) by reference to the European Union or by reference to some connection with the European Union; and
- (b) the enactment relates to a matter to which the EEA Agreement (as it has effect on the date on which it comes into force) relates,

then, unless the context otherwise requires, the enactment shall have effect on and after that date in relation to that matter with the substitution of a corresponding limitation relating to the EEA (or, where appropriate, to both the European Union and the EEA).

(2) Subparagraph (1) shall not be regarded as having an effect which is inconsistent with the operation, by virtue of the EEA Agreement, of section 3(1) of the European Communities Act as at immediately before IP completion day.

(3) This paragraph is subject to any amendment, repeal, revocation or other modification of retained EU law on or after IP completion day.

(4) In this paragraph “relevant enactment” means a provision of an Act passed, or of any subsidiary legislation made, before the date on which the EEA Agreement came into force.

### **General implementation of Agreement.**

17.(1) Subject to paragraph 16, where by virtue of the EEA Agreement (as it has effect on the date on which it comes into force), it is necessary for a purpose mentioned in section 4(1) of the European Communities Act that any relevant provision should have effect with modifications which can be ascertained from that Agreement, then on and after that date the provision shall have effect with those modifications.

(2) Subparagraph (1) shall not be regarded as providing for modifications the effect of which is achieved through the operation, by virtue of the EEA Agreement, of section 3(1) of the European Communities Act as at immediately before IP completion day.

(3) Subparagraph (1) shall not apply so as to require a modification if that modification, or a corresponding modification limited so as to relate only to the European Union-

(a) could have been made, by Act passed before the date on which the EEA Agreement comes into force, for a purpose mentioned in section 4(1) of the European Communities Act; but

(b) was not made (by that or other means).

(4) This paragraph is subject to any amendment, repeal, revocation or other modification of retained EU law on or after IP completion day.

(5) In this paragraph, “relevant provision” means-

(a) a provision of an Act passed, or of any subsidiary legislation made, before the date on which the EEA Agreement comes into force;

(b) a provision of any other instrument made before that date by a person as against whom the effect of a directive issued by an EU institution (if such a directive were relevant) might be relied upon in proceedings to which he was a party.

### **Interpretation.**

18. References in paragraphs 16 and 17-

- (a) to the date on which the EEA Agreement comes into force are references to the date on which (in accordance with the Protocol signed at Brussels on 17<sup>th</sup> March 1993) it comes into force otherwise than as regards Liechtenstein;
- (b) to the European Communities Act are to that Act before it ceases to have effect by virtue of section 4A(6);
- (c) to the EEA Agreement means, except where the context otherwise requires, the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17<sup>th</sup> March 1993, as modified or supplemented from time to time.