

EUROPEAN UNION (WITHDRAWAL) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the European Union (Withdrawal) Bill as introduced in the House of Commons on 13 July 2017 (Bill 5).

- These Explanatory Notes have been prepared by the Department for Exiting the European Union in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The European Union (Withdrawal) Bill repeals the [European Communities Act 1972](#) (ECA) on the day the United Kingdom leaves the European Union.
- 2 The Bill ends the supremacy of European Union (EU) law in UK law and converts EU law as it stands at the moment of exit into domestic law. It also creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left, so that the domestic legal system continues to function correctly outside the EU. The Bill also enables domestic law to reflect the content of a withdrawal agreement under Article 50 of the Treaty on European Union once the UK leaves the EU.

Policy background

- 3 On 1 January 1973 the UK joined the European Economic Community, which has since evolved to become today's European Union. A condition of EU membership is that community law, which is now EU law, be given effect in domestic law. The ECA is the principal piece of domestic legislation passed by the UK Parliament that gives effect to EU law in the UK, and gives EU law supremacy over UK domestic law.
- 4 On 23 January 2013 the then Prime Minister announced his intention to negotiate a new settlement on the terms of the UK's membership of the EU, followed by a pledge to subsequently hold an in-out referendum on the UK's membership of the EU.
- 5 On 17 December 2015 the [European Union Referendum Act 2015](#) received Royal Assent. The Act made provision for holding a referendum in the UK and Gibraltar on whether the UK should remain a member of the EU. The referendum was then held on 23 June 2016 and resulted in a 52% vote to leave the European Union.
- 6 [The European Union \(Notification of Withdrawal\) Act 2017](#) was passed into law on 16 March. This gave the Prime Minister the power to notify the European Council of the UK's intention to withdraw from the European Union under Article 50(2) of the Treaty on European Union. This notification was then given on 29 March 2017. At the same time, the UK notified its withdrawal from the European Atomic Energy Community ('Euratom'), in accordance with the same Article 50(2) as applied by Article 106a of the Treaty Establishing the European Atomic Energy Community.
- 7 Withdrawing from the EU means the UK will also cease to participate in the European Economic Area (EEA) Agreement as the UK will fall outside the geographic scope of the Agreement and will therefore no longer be a member of the EEA.

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- 8 On 2 February 2017 the Government published a White Paper entitled [*The United Kingdom's exit from and new partnership with the European Union White Paper*](#) (Cm 9417) which set out the Government's vision of what it is seeking to achieve in negotiating the exit from, and new partnership with, the European Union. It set out the twelve principles guiding how the Government will approach the negotiations on the UK's withdrawal from the EU.
- 9 The Government then published a White Paper on the 30 March 2017 entitled [*Legislating for the United Kingdom's withdrawal from the European Union*](#) (Cm 9446). The White Paper set out the approach to the European Union (Withdrawal) Bill and how the domestic legal system will work once the UK leaves the EU.

Approach of the European Union (Withdrawal) Bill

- 10 The principal purpose of the Bill is to provide a functioning statute book on the day the UK leaves the EU. As a general rule, the same rules and laws will apply on the day after exit as on the day before. It will then be for Parliament and, where appropriate, the devolved legislatures to make any future changes.
- 11 The Bill performs four main functions. It:
 - repeals the ECA;
 - converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU;
 - creates powers to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU and to implement a withdrawal agreement; and
 - maintains the current scope of devolved decision making powers in areas currently governed by EU law.
- 12 In determining this approach, the Government considered whether there were alternative viable legislative models available to deliver the changes required to ensure a functioning statute book on exit from the EU. These included using a single Bill to repeal the ECA and setting out in schedules the necessary consequential changes required to ensure a functioning statute book. However, given that the two year time period to conclude negotiations provided for by Article 50 will be running in parallel with this legislation, there may not be time to make all the necessary legislative changes in a single piece of legislation (as in some cases the content of that legislation could not be known until after the negotiations had concluded).
- 13 For that reason, the approach of taking delegated powers to make the necessary changes by secondary legislation was agreed by the Government as being the only appropriate solution. This was acknowledged by the Lords Constitution Committee in its report into [*The 'Great*](#)

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Repeal Bill' and delegated powers:

“The degree of uncertainty as to what exactly the process of converting EU law into UK law will involve—and, in particular, the need to take account of the UK’s ongoing Article 50 negotiations with the EU—will almost certainly necessitate granting the Government relatively wide delegated powers under the ‘Great Repeal Bill’, both to amend existing EU law in preparation for the day of Brexit and to legislate for new arrangements following Brexit where necessary.”¹

- 14 The Bill does not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are necessary to ensure the law continues to function properly from day one. The Government will introduce separate primary legislation to make such policy changes which will establish new legal frameworks.

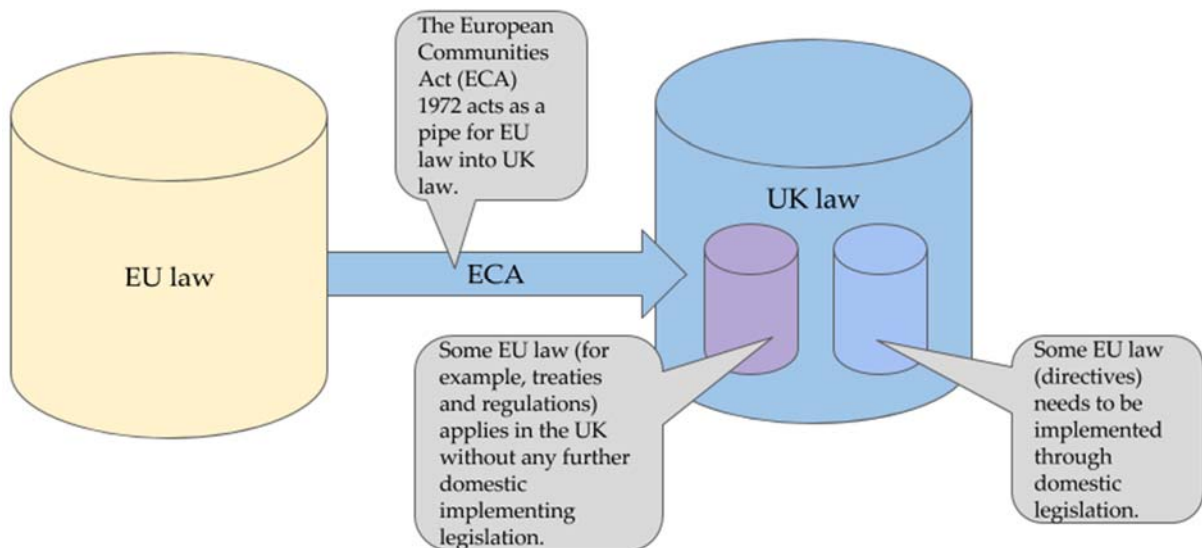
Repeal of the European Communities Act 1972

- 15 The UK is a 'dualist' state, meaning that a treaty ratified by the Government does not alter the laws of the state unless and until it is incorporated into domestic law by legislation. This means that the UK Parliament has to pass legislation before the rights and obligations in the treaty can have effect domestically.²
- 16 The ECA effectively confirmed the UK’s membership of the European Economic Community (as then was) and gave EU law supremacy over UK domestic law. Without it, EU law could not become part of national law. The *legal background* section of these notes provides a detailed explanation of how EU law currently operates in the UK legal system.
- 17 The two main provisions in the ECA are:
- Section 2(1), which ensures that rights and obligations in some types of EU law, such as the EU treaties and regulations, are directly applicable in the UK legal system. This means that they apply directly without the need for the UK Parliament to pass specific domestic implementing legislation.
 - By contrast, section 2(2) provides a delegated power to allow for the implementation of EU obligations, for example obligations in directives, by way of secondary legislation (through statutory instrument).³

¹ House of Lords Select Committee on the Constitution, 9th Report of Session 2016–17

² In some cases, it may be that domestic legislation is already sufficient to ensure compliance with the international agreement or that compliance can be delivered without legislation.

³ EU obligations can also be implemented domestically by primary legislation or using powers in other Acts.



(The relationship between EU law and UK law is subject to the principle of supremacy - see paragraph 53)

- 18 The European Union (Withdrawal) Bill repeals the ECA on the day the UK leaves the EU. This will have the effect of removing the mechanism for the automatic flow of EU law into UK law (through section 2(1) of the ECA) and removing the power to implement EU obligations (under section 2(2) ECA). This reflects the fact that the UK will no longer be a member of the EU and will therefore cease to have obligations under EU law.

Preserving and converting EU law

- 19 By only repealing the ECA, some EU law that currently applies in UK law by virtue of the ECA would cease to have effect. As outlined by the Supreme Court in *Miller*⁴, the ECA is not itself an originating source of EU law, but is rather the 'conduit pipe' through which EU law flows into UK domestic law.
- 20 As set out in paragraph 17 of these notes, section 2(1) ECA provides that directly applicable law (such as EU regulations) has effect in UK law without the need to pass specific UK implementing legislation. If the ECA were repealed and no further action was taken, this directly applicable EU law would cease to apply in UK law, leaving gaps on the statute book.
- 21 Other types of EU law (such as EU directives) have to be given effect in the UK through domestic laws. As set out above, this has frequently been done using section 2(2) of the ECA, which provides ministers, including in the devolved administrations, with powers to make secondary legislation to implement EU obligations. If the ECA were repealed and no further action was taken, all of the secondary legislation which has been made under it would fall

⁴ R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant), [2017] UKSC 5

away and cease to be part of the UK statute book, leaving significant gaps.

- 22 To avoid such gaps, the Bill converts the body of existing EU law into domestic law and preserves⁵ the laws we have made in the UK to implement our EU obligations. After this, because the supremacy of EU law will have ended, Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once the UK has left the EU. This body of converted EU law and preserved domestic law is referred to in the Bill and these notes collectively as ‘retained EU law’.

Retained EU law (includes both categories below)	
<p>Preserved legislation</p> <ul style="list-style-type: none"> ● Regulations made under section 2(2) or paragraph 1A of Schedule 2 to the ECA ● Other primary and secondary legislation with the same purpose as regulations under section 2(2) ECA ● Other domestic legislation which relates to the above, or to converted legislation, or otherwise relates to the EU or EEA <p>The Bill will preserve this legislation as it exists immediately before exit day. This is referred to in these notes as ‘preserved legislation’.</p>	<p>Converted legislation</p> <ul style="list-style-type: none"> ● Direct EU legislation: <ul style="list-style-type: none"> ○ EU regulations ○ EU decisions ○ EU tertiary legislation ● Direct EU legislation as it applies with adaptations to the EEA ● Any other rights which are recognised and available in domestic law through section 2(1) ECA (for example, directly effective rights contained in EU treaties) <p>The Bill will convert and incorporate this law as it exists immediately before exit day into domestic law.</p>

- 23 This approach means that, as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before:

- the Bill converts directly applicable EU law (e.g. EU regulations) into UK law;
- it preserves all the laws which have been made in the UK to implement EU obligations (e.g. in EU directives);
- it incorporates any other rights which are available in domestic law by virtue of section 2(1) of the ECA, including the rights contained in the EU treaties, that can

⁵ It should be noted that the term ‘preserved legislation’ does not suggest that everything which falls within the scope of clause 2 would be subject to implied repeal as a result of the repeal of the ECA or the repeal of that Act taken together with the UK’s exit from the EU. For example, some EU related legislation which falls within the scope of clause 2 is not dependent for its existence on the ECA (for example an Act which relates or refers to the EU). For this category of legislation, clause 2 is operating so as to enable the powers in the Bill to be used to modify it, or for the purposes of devolution or future legislation.

currently be relied on directly in national law without the need for specific implementing measures; and

- the Bill provides that pre-exit case law of the Court of Justice of the European Union (CJEU) be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court or the High Court of Justiciary in Scotland.

Delegated powers

- 24 A large amount of EU law currently applies in the UK by virtue of the ECA. A proportion of this will continue to operate properly once the UK leaves the EU simply by converting it into UK law. However, a significant proportion of retained EU law for which Government departments and devolved administrations are responsible contains some provisions that will not function effectively once the UK leaves the EU.
- 25 There are a variety of reasons why some areas of retained EU law will be unable to operate because the UK is no longer a member of the EU. There will also be cases where retained EU law will cease to operate as intended or will be redundant once the UK leaves the EU. For this reason, the Bill includes **a power to enable ministers to correct problems arising from withdrawal** by way of making regulations by statutory instruments. Some examples are in the text box below, while further examples can be found in the delegated powers memorandum which is published alongside the Bill. The memorandum sets out that UK ministers will need to publish explanatory memoranda alongside statutory instruments.

Possible uses of the power to correct problems arising from withdrawal

Throughout the statute book, there are references which will no longer be accurate once the UK leaves the EU, such as references to “member states other than the United Kingdom”, to “EU law”, or to providing for the UK’s “EU obligations”. Such references will need to be repealed or amended to ensure the UK has a functioning statute book post-exit.

For example, the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 require an environmental impact assessment of certain applications for planning permission. They refer to “other EEA States” in a number of places, mainly in the context of development likely to have significant transboundary environmental effects. A correction amending the references to “other EEA States” to “EEA States”, would allow the requirement on transboundary consultation to continue to function on exit as it does now, reflecting the fact that the UK will have left the EEA. This would enable an important piece of environmental protection law to continue to operate effectively.

In addition to this, there will be law which will, upon leaving the EU, no longer work properly and which will need to be corrected to continue to work; for example, where law requires the UK to obtain an opinion from the European Commission on a given issue. Upon exit, the Commission

will no longer provide such opinions to the UK. Such requirements in existing law would prevent certain projects from taking place unless corrective action was taken. In this instance the power to correct the law would allow the Government to amend UK domestic legislation to either replace the reference to the Commission with a UK body or remove this requirement completely.

There are many important functions carried out at EU level, such as the evaluation and authorisation of chemicals, air safety regulation and genetically modified food and feed regulation. Depending on what is agreed with the EU, many functions may need to be transferred to appropriate bodies in the UK for them to continue and the power to deal with deficiencies would enable this.

Once the UK leaves the EU, there will be areas of law where policy no longer operates as intended. One element of EU law is reciprocal arrangements between states including reciprocal rights of citizens. As a matter of international law, those obligations will fall away for the UK at the point where the UK leaves the EU. At the same point, EU states' obligations to the UK and its citizens will also fall away. Any such obligations beyond that time would only exist if they were agreed between the EU and the UK as part of the negotiations that have recently commenced. However, without a correction, the UK's law would still include recognition of the EU citizens' rights. The power to deal with deficiencies can therefore modify, limit or remove the rights which domestic law presently grants to EU nationals, in circumstances where there has been no agreement and EU member states are providing no such rights to UK nationals.

- 26 Similar issues also exist in legislation that is the responsibility of the devolved administrations, such as that made under the ECA. The Bill therefore also, where appropriate, gives devolved ministers a **power to amend devolved legislation to correct any problems in their law**, in line with the power held by UK ministers.
- 27 The power to correct problems arising from withdrawal is capable of transferring the functions of EU authorities to UK public authorities and of creating new UK public authorities to take on those functions. These powers will be available from Royal Assent for two years after exit day.
- 28 To enable UK public authorities to exercise inherited EU functions effectively, the Bill also contains **powers enabling the UK authority to charge fees for services** that have been transferred from the EU to an authority in the UK or otherwise created as a result of the UK leaving the EU. This could include a fee for issuing a licence or approving a product. The Bill also provides for modification of existing fees or charges which were created pre-exit using powers in the ECA or the [Finance Act 1973](#).
- 29 The Bill enables the UK to continue to comply with its international obligations by giving a **power to make regulations that remedy any unintended breaches of international**

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obligations arising from withdrawal from the EU.

- 30 Finally, the Bill provides the Government with a **limited power to implement the contents of a withdrawal agreement** reached with the EU into UK law in preparation for that agreement coming into force on the day the UK leaves the EU. This is a separate process from that by which the Government will bring forward a motion on the final agreement to be voted on by both Houses of Parliament before it is concluded. This power will expire on exit day and is therefore restricted to implementation of things required for day one. For example, if there was relevant provision in the withdrawal agreement, the power could be used to clarify the situation in relation to UK cases at the CJEU that started before exit but were not yet concluded by exit day, or regulatory approvals for UK products that were pending at the point of exit.
- 31 The powers outlined in paragraphs 28 to 30 of these notes are also available to the devolved administrations, subject to the detailed provisions set out in the commentary below. The Government can use these powers to amend domestic legislation in devolved areas, as well as retained directly applicable EU law which relates to areas that are otherwise devolved. The Government will not use these powers to amend such legislation without first consulting the relevant devolved administration(s).
- 32 Further delegated powers contained in the Bill are set out in the *commentary on provisions of the Bill* section of these notes.

Devolution

- 33 The current devolution settlements were agreed after the UK became a member of what is now the EU and reflect that context. In areas where powers have been devolved, each of the current settlements specifies that the relevant devolved institution cannot legislate or otherwise act in a way that is incompatible with EU law.
- 34 The Bill amends each of the devolution statutes (the [Scotland Act 1998](#), the [Northern Ireland Act 1998](#), and the [Government of Wales Act 2006](#)) so as to maintain the current parameters of devolved competence as regards retained EU law. This is intended to be a transitional arrangement while decisions are taken on where common policy approaches are or are not needed. It provides that the devolved legislatures or administrations may only modify retained EU law to the extent that they had the competence to do so immediately before exit. This means that devolved institutions will still be able to act after exit as they could prior to exit in relation to retained EU law. For example, where they currently have discretion over how to implement an EU directive, after exit they will have the ability to modify retained EU law in ways that remain consistent with the underlying directive, rather than being constrained by their existing implementing legislation. By contrast, for example, devolved legislation which would amend or otherwise be incompatible with retained direct EU

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legislation (such as EU regulations) would, as now, remain outside competence.

- 35 The Bill provides exceptions to the limit on modifying retained EU law in order to allow the devolved administrations, where appropriate, to use the **power to correct problems in domestic legislation within their devolved competence**.
- 36 The Bill further provides a **power to release areas from the limit on modifying retained EU law** where it is agreed that a common approach established by EU law does not need to be maintained and can be changed. This power is exercisable by Order in Council and the Order must be approved by both Houses of Parliament and the relevant devolved legislature (i.e. the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly). The UK Government hopes to rapidly identify, working closely with devolved administrations, areas that do not need a common framework and which could therefore be released from the transitional arrangement by this power. This process will be led by the First Secretary of State and supported by the relevant territorial Secretary of State and will begin immediately following the Bill's introduction.
- 37 The procedure for lifting the limit adopts broadly the same approach taken by the powers for devolving responsibilities in the devolution statutes, for example, section 30 of the Scotland Act 1998. Although the power in this Bill operates in areas that are already otherwise devolved, it achieves a similar effect to the powers in those Acts. It is important that when providing for decision making responsibilities that were previously held at an EU level to now be held at a devolved level, this should be agreed by both the UK Parliament and the devolved legislature, which is reflected in this procedure.
- 38 The approach in the Bill allows for the UK Government to hold discussions with the devolved administrations to establish areas where a common approach is or is not required, to help determine where UK frameworks might need to be kept after exit.

Legal background

- 39 The approach in the Bill to preserving EU law is to ensure that all EU laws which are directly applicable in the UK and all laws which have been made in the UK in order to implement our obligations as a member of the EU are converted into domestic law on the day the UK leaves the EU, subject to some limited exceptions. The paragraphs below set out the different aspects of EU law in the UK which operate currently. The *commentary on the provisions of the Bill* set out where changes to this will occur.

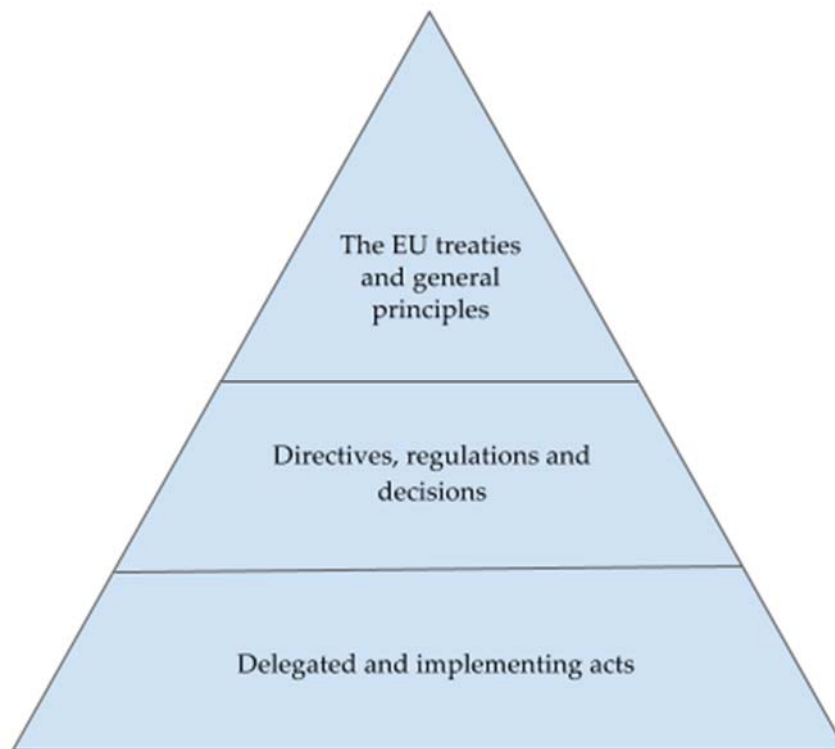
EU laws and legislation

- 40 The EU treaties are the highest level of EU law. They set out where the EU is permitted to act, to what extent and how. They contain a mixture of procedural rules for how the EU operates and substantive rules, such as free movement rights for EU citizens. The EU treaties also set

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out subject areas in which the EU can make more specific laws. This is known as the EU's *competence*.

- 41 The two main treaties are the [Treaty on European Union \(TEU\)](#) and the [Treaty on the Functioning of the European Union \(TFEU\)](#). Some provisions of the TFEU have been found to be sufficiently clear, precise and unconditional to confer rights directly on individuals. These are referred to as 'directly applicable' or 'directly effective' treaty provisions. Other treaty provisions do not confer directly applicable rights but simply give the EU the power to adopt legislation to give effect to the treaties' provisions.
- 42 Below the treaties, the EU adopts directives, regulations and decisions using the powers, and following the procedures provided for, in the EU treaties.



- 43 EU regulations contain detailed legal rules. Regulations have the force of law in the UK and throughout the EU. It is therefore not necessary in principle for member states to create their own legal rules in order to ensure the regulation has the desired legal effect.⁶
- 44 Directives set out a legal framework which member states have to follow, but leave discretion as to how the member state chooses to make it part of their law. So, once an EU directive has

⁶ Examples of exceptions to this general rule include Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species and Regulation (EC) No 726/2004 laying down procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency.

been agreed, all member states have an obligation to make domestic laws that give it effect, but they have a choice as to precisely how to do so.

- 45 The EU can also adopt binding decisions. Decisions may be addressed to a particular party or parties, which could be individuals (including companies) or member states. For example, the Commission has powers to issue decisions that are binding in order to enforce competition rules.⁷ Where a decision is addressed to a member state, implementation in domestic law may be necessary to give effect to the decision.⁸ Some decisions are generally and directly applicable and are available in domestic law without the need for specific implementing legislation.⁹
- 46 Below regulations, decisions and directives which are made using one of the EU legislative procedures, the EU also adopts measures in order to supplement and amend, or to implement, the rules set out in directives, regulations or decisions. Such measures are referred to respectively as ‘delegated’ and ‘implementing’ acts, and are sometimes referred to as ‘tertiary’ legislation.¹⁰ For example, under [Article 4 of Regulation \(EU\) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species](#), the European Commission adopts implementing acts in order to list plant species which are assessed as invasive alien species for the purposes of the regulation.
- 47 The EU institutions can also adopt recommendations and opinions. These are not legally binding. However, recommendations can have legal effects, in that national courts are under a duty to take them into account in interpreting domestic legislation designed to implement them or where they are designed to supplement binding Union provisions.¹¹ There are various forms of ‘soft law’ which are not strictly legally binding but may have legal effects in the interpretation of legally binding instruments. They include resolutions, conclusions, communications, codes of conduct, guidelines and notices.
- 48 The TFEU distinguishes between legislative and non-legislative acts. This is a reference to the procedure used for the adoption of an act, rather than whether an act is legally binding or not.

⁷ See, for example, decisions adopted by the Commission in 2007 in relation to certain car manufacturers – <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0788&from=EN>.

⁸ For example the case of *Hansa Fleisch V Landrat des Kreises Schleswig-Holstein* (ECLI:EU:C:1992:423, C - 156/191) concerned provisions of a decision which had been implemented in national law.

⁹ For example Commission Decision 2011/753/EU, establishing the rules and methods for calculating targets for re-use and recycling set out in the Waste Framework Directive, has not been implemented via specific UK legislation, but is available in domestic law via section 2(1) ECA.

¹⁰ EU tertiary legislation consists of delegated acts and implementing acts made under powers contained in EU legislation (such as regulations or directives). It can be used to supplement or amend certain elements of the parent legislation. It is also used where uniform conditions are needed to implement a legally binding act. Powers to make tertiary legislation are conferred on the Commission (and in certain limited cases the Council).

¹¹ See for example *Grimaldi v Fonds de Maladies Professionnelles*, Case 322/88, EU:C:1989:646, paragraph 18

Legislative acts are defined in Article 289(3) TFEU as those adopted by legislative procedure, that is the ordinary legislative procedure or the special legislative procedure. They may take the form of regulations, directives or decisions. Non-legislative acts are adopted other than by the ordinary or special legislative procedures and may also take the form of regulations, directives or decisions.

- 49 EU legislation of general application (such as EU regulations, or directives which are addressed to all member states) will come into force on the date stated within it; however, if the legislation does not state such a date, it will come into force on the twentieth day following its publication in the Official Journal. EU legislation can also provide for ‘staggered application’ where, although the instrument is in force, parts of it only apply from a specified date. Legislation of narrower application (such as decisions addressed to particular member states) will come into effect when they are notified to the relevant parties.

The general principles of EU law

- 50 The general principles are the fundamental legal principles governing the way in which the EU operates. They are part of the EU law with which the EU institutions and member states are bound to comply. General principles are applied by the CJEU and domestic courts when determining the lawfulness of legislative and administrative measures within the scope of EU law, and are also an aid to interpretation of EU law. Examples of general principles include proportionality¹², non-retroactivity (i.e. that the retroactive effect of EU law is, in principle, prohibited), fundamental rights¹³ and equivalence¹⁴ and effectiveness.¹⁵
- 51 UK laws that are within the scope of EU law and EU legislation (such as directives) that do not comply with the general principles can be challenged and disapplied. Administrative actions taken under EU law must also comply with the general principles.

The Charter of Fundamental Rights

- 52 The Charter of Fundamental Rights sets out ‘EU fundamental rights’, which are general principles of EU law that have been recognised over time through the case law of the CJEU and which have been codified in the Charter. In 2009 the Charter was given the same legal status as the EU Treaties. The Charter sets out fifty rights and principles, many of which replicate guarantees in the European Convention on Human Rights and other international

¹² Whether the proposed action exceeds what is appropriate and necessary to achieve its objective. See for example cases ABNA C-453/03, C-11/04, C-12/04 and C-194/04 EU:C:2005:741, paragraphs 76-85.

¹³ See for example Hauer case 44/79, EU:C:1979:290 paragraph 15

¹⁴ Under this principle, Union law based claims must be treated in an equivalent way to claims based solely on domestic law. They cannot be treated less favourably. This principle is essentially a prohibition against discrimination (see Starjakob, C-417/13, EU:C:2015:38, paragraphs 70 to 75, the Court confirmed that the principle of equivalence is not relevant to a situation which concerns only Union law based claims.

¹⁵ Under the principle of effectiveness, it must be neither practically impossible nor excessively difficult to enforce a Union law based claim. See Van Schijndel, Cases C-430/93 and C-431/93, EU:C:1995:441, paragraph 19.

treaties.

The principle of supremacy of EU law

- 53 A key principle of EU law is that EU law is supreme, which means that it has the status of a superior source of law within the EU's member states. Domestic laws must give way and be disapplied by domestic courts if they are found to be inconsistent with EU law. Sometimes referred to as the principle of the primacy of EU law, this core rule of EU law was established in the case law of the CJEU before the accession of the UK to the European Communities. This is made clear, for example, in the judgment of the CJEU in [Costa](#)¹⁶:

“By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply.

By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.”

The interpretation of EU law

- 54 When interpreting EU legislation, the starting point, as with domestic law, is the meaning of the words used. If the legislation is clearly drafted it is usually not necessary to look beyond its wording. If the legislation is ambiguous then other methods of interpretation are used. These include establishing the purpose of the legislation by looking at its recitals¹⁷, looking at the legal basis of secondary legislation to understand its aim and content¹⁸, or considering other language versions of the text.¹⁹

EU law in the UK legal system

¹⁶ *Costa v ENEL* [1964] ECR 585 (Case 6/64)

¹⁷ EU legislation, unlike domestic legislation, includes recitals at the beginning that explain the reasons why the legislation is being made, but which are not themselves substantive provisions of law. In *Ziolkowski and others v Land Berlin*, Case C-424/10 and C-425/10, EU:C:2011:866, paragraphs 37, 42 and 43, the Court relied on recitals to ascertain the purpose of the Citizenship Directive, and the structured nature of the rights contained in it.

¹⁸ See for example the case of *BECTU* Case C-173/99, paragraph 36-38, where the Court said that it was necessary to have regard to the context and purpose of the Working Time Directive in order to interpret the provision relating to annual leave entitlement. The Court had regard amongst other matters to the legal basis to conclude that the purpose of the Directive was to lay down minimum requirements to improve the living and working conditions of workers and that harmonisation was intended to guarantee better protection of the health and safety of workers.

¹⁹ See for example *X*, Case 228/87, EU:C:1988:442, paragraph 14

55 The ECA is the main legislation which gives effect to EU law in the UK and is the legislation which makes EU law supreme over UK law. This reflects the dualist nature of the UK's constitutional model under which no special status is accorded to treaties, such as the EU treaties; the rights and obligations created by them take effect in domestic law through the legislation enacted to give effect to them. Although EU treaties and judgments of the EU courts provide that certain provisions of the treaties, legal instruments made under them, and judgments of the EU courts have direct application or effect in the domestic law of all of the member states (see above), such EU law is enforceable in the UK only because domestic legislation, and in particular the ECA, makes express provision for this. Thus, the ECA gives effect to the primacy of EU law and Parliament accepted this principle in approving the Act.

56 This has been recognised by the courts of the UK. As Lord Bridge noted in his judgment in [Factortame](#)²⁰:

“Under the terms of the Act of 1972 it has always been clear that it was the duty of the United Kingdom court, when delivering final judgment, to override any rule of domestic law found to be in conflict with any directly enforceable rule of Community law.”

57 The ECA has been recognised by our courts as being a ‘constitutional statute’ that cannot be repealed by implication (see most recently, paragraph 67 of the Supreme Court’s decision in *Miller*). Express provision is required to repeal it.

58 In addition to section 2(1) and section 2(2) mentioned above, the key provisions of the ECA are:

Section 1	Provides that certain treaties are ‘EU treaties’, which means that the later provisions of the Act (such as section 2(1) and (2)) apply to the rights and obligations in them. Such treaties include those establishing the EU itself, instruments amending those treaties (such as the Lisbon Treaty in 2007), and accession instruments. The Euratom Treaty is also a treaty which has effect in this way through the provisions of the ECA.
Section 2(3)	Provides that expenditure to meet an obligation to make payments to the EU or to member states under such a treaty can be charged on public funds. Money received under such a treaty must be paid into public funds.
Section 2(4)	Section 2(4) contains two significant elements. Firstly, that the power under section 2(2) includes the power to make such provision as might be made by Act of Parliament. Secondly it also sets out that any enactment passed or to be passed is to be construed and has effect subject to the foregoing provisions of section 2, including section 2(1). This reflects the fact that EU law takes precedence over the laws of member states, as explained in paragraph 53 of these notes.

²⁰ R v. Secretary of State for Transport, ex p. Factortame (No. 2) [1991] 1 All ER 70

Section 3(1)	Provides that for the purposes of all UK legal proceedings, the meaning or effect of any of the EU Treaties, or the validity, meaning or effect of EU instruments are to be interpreted in accordance with the principles laid down by, and any relevant decisions of the CJEU.
Section 5	Provides for the charging, etc. of EU customs duty, which is also now the subject of a directly applicable EU Regulation (the Union Customs Code).
Section 6	Concerns the Common Agricultural Policy (CAP) developed under EU law to support the creation of a common market for agricultural products.
Part 2 of Schedule 1	Provides for several defined terms, which by virtue of the Interpretation Act 1978 apply, unless the contrary intention appears, to all domestic legislation, and not just to the ECA.
Paragraph 1A of Schedule 2²¹	Allows secondary legislation to be made that makes ambulatory cross-references to EU instruments - that is, a reference to that instrument as it may be amended from time to time in the future.

- 59 Since 1973 the UK has passed various other pieces of legislation to give effect to the UK's relationship with the EU. This included primary legislation amending the definition of EU treaties in section 1(2) of the ECA (for example, the [European Communities \(Amendment\) Act 2002](#) and the [European Union \(Amendment\) Act 2008](#)). It also included various Acts of Accession, further amending the definition of EU treaties in section 1(2) of the ECA (for example, the [European Union \(Croatian Accession and Irish Protocol\) Act 2013](#)).
- 60 The UK is a member of the EEA by virtue of its membership of the EU. Therefore on exit day the UK ceases to participate in the EEA Agreement. The [European Economic Area Act 1993](#) makes the EEA Agreement one of the "EU treaties" for the purposes of the ECA, which implements the EEA Agreement in UK legislation. Therefore the provisions of the ECA apply to the rights and obligations in the EEA Agreement, so long as the UK is a member of the EU. The EEA Agreement is also implemented domestically through the EEA Act 1993 and other secondary legislation.
- 61 The [European Union Act 2011](#) required that a referendum be held on certain amendments of the TEU or the TFEU . In short, a referendum would be triggered by amendments if these would transfer power or competence from the UK to the EU. The EU Act 2011 also provides that an Act of Parliament would be required before the UK could agree to a number of other specified decisions provided for in TEU and TFEU. The Act was introduced following the [European Union \(Amendment\) Act 2008](#), which had instituted the Treaty of Lisbon in the UK and Gibraltar without a referendum.

²¹ Which came into effect on 8 January 2007.

- 62 The EU Act 2011 also contains provisions relating to the approval of the transitional protocol on Members of the European Parliament. As the UK withdraws from the EU, this and other legislation governing participation in European Parliamentary elections (namely the [European Parliamentary Elections Act 2002](#) and the [European Parliament \(Representation\) Act 2003](#)) will be redundant and will be repealed, in line with the overall repeal of these Acts (see Schedule 9). Further provision for participation in European parliamentary elections (contained in other legal sources) will be repealed through secondary legislation made using the delegated powers in the Bill.
- 63 The [European Union Referendum Act 2015](#) is the legislation that made provision for holding a referendum in the UK and Gibraltar on whether the UK should remain a member of the EU.
- 64 The [European Union \(Notification of Withdrawal\) Act 2017](#) gave the Prime Minister the legal authority to notify under Article 50 of the TEU.

Territorial extent and application

- 65 Clause 18 sets out the territorial extent of the Bill, that is, the legal jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Territorial application is about where a Bill produces a practical effect rather than where it forms part of the law.
- 66 The Bill extends and applies to the whole of the UK. In addition, repeals and amendments made by the Bill have the same territorial extent as the legislation that they are repealing or amending. For example, the ECA extends to and applies in Gibraltar and the three Crown Dependencies in a limited way. This means its repeal extends to those jurisdictions to the same extent. Regulations made under powers in the Bill may have extraterritorial effect where they are being used to amend legislation which already produces a practical effect outside the UK.
- 67 The Bill also repeals other Acts which extend to Gibraltar, namely the [European Union Act 2011](#), the [European Parliamentary Elections Act 2002](#) and the [European Parliament \(Representation\) Act 2003](#). These Acts will be repealed in respect of Gibraltar as well as the UK, and the powers in clauses 7 and 17 will be capable of making provision for Gibraltar as a consequence of those main repeals.
- 68 The UK Parliament does not normally legislate within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the Government to seek the consent of the devolved legislatures for provisions which would alter the competence of those legislatures or of the devolved administrations in Scotland and Northern Ireland.
- 69 The Government will therefore seek legislative consent for the following provisions of the Bill:

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- The preservation and conversion of EU law, because some areas in which laws are being preserved and converted would be within devolved competence.
- The replication of the EU law limit on the devolved institutions and the power to vary that limit, because this will alter the competence of the devolved institutions.
- The conferral on the devolved administrations of the power to make corrections to the law, the power to implement a withdrawal agreement, the power to implement international obligations, as well as the power to incur preparatory expenditure and the powers to impose and modify fees and charges as this will also alter the competence of the devolved administrations or give them the power to act in relation to devolved matters.
- The repeal of the ECA, as the devolution statutes refer to the ECA (via the Interpretation Act 1978) to impose an EU law limit on devolved competence, a limit that the repeal of the ECA will alter.

70 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Repeal of the European Communities Act 1972

71 Clause 1 repeals the ECA on exit day. As set out above, this Act is the principal piece of domestic legislation passed by the UK Parliament which gives effect to EU law in the UK and gives EU law supremacy over UK domestic law. The main effects of repealing the Act are to reflect the end of supremacy of EU law in domestic law and to remove the mechanism which enabled the flow of new EU law into UK law.

Clause 2: Saving for EU-derived domestic legislation

72 Clause 2 provides that existing domestic legislation which implements EU law obligations (EU-derived domestic legislation, also referred to in these notes as ‘preserved legislation’) remains on the domestic statute book after the UK leaves the EU. Generally, secondary legislation lapses automatically when the primary legislation under which it is made (for instance, section 2(2) ECA) ceases to have effect, unless saved expressly. More widely, there would be doubt as to whether legislation which presupposes membership of the EU would work if the UK is not a member of the EU. The same applies for legislation which relates or refers to the EU. This clause makes it clear that these categories of legislation fall within the category of retained EU law, so that the powers in the Bill can be used to ensure that they still

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function properly after EU exit.

- 73 Subsection (1) provides that EU-derived domestic legislation will remain in place and continue to have effect on and after exit day, as it has effect before exit day.
- 74 Subsection (2) describes the types of legislation which form part of this 'EU-derived domestic legislation', or preserved legislation.
- Subsection (2)(a) preserves secondary legislation made under the dedicated power in section 2(2) of the ECA to implement the UK's obligations under EU law, including under paragraph 1A of Schedule 2 ECA (this allows for ambulatory cross-references to EU instruments "as amended from time to time", which means the references to the EU instruments will automatically update when that EU instrument is amended). Paragraph 1 of Schedule 8 makes further provision about these ambulatory references.
 - Subsection (2)(b) is designed to cover legislation which, while not made under section 2(2) of the ECA, was either specifically passed (e.g. by an Act of Parliament) or made under other secondary legislation making powers for the purpose of implementing EU obligations.²² For example, domestic health and safety law is often made to implement EU obligations but is normally made under the powers in the [Health and Safety at Work etc. Act 1974](#) rather than the ECA. The reference to 'operates' is designed to include legislation which was not specifically passed or made to implement our EU obligations (for example, because the EU had not legislated in that area at the time the legislation was made) but has since become part of the way in which we demonstrate compliance with EU requirements.
 - Subsection (2)(c) covers enactments which are connected to, but do not fall within, the definitions of domestic legislation preserved by subsection (2)(a) or (2)(b) or converted EU law. It is designed to ensure that provisions which are tied in some way to EU law, or to domestic law which implements EU law, can continue to operate properly post exit. For example, it will ensure that a provision which goes beyond the minimum needed to comply with requirements under EU law (a so-called 'gold-plated' provision) is not considered to be excluded from scope of 'EU derived domestic legislation'. This will allow such a provision to be amended by the powers in the Bill, so that it still works effectively once the UK has left the EU.
 - Subsection (2)(d) is a residual category designed to cover provisions which relate in some way to the EU or EEA. For example, if an Act of Parliament contained cross-

²² Section 2(2)(a) of the ECA is used for the purposes of implementing (or enabling the implementation of) any EU obligation of the UK or enabling rights to be enjoyed under the EU treaties. Section 2(2)(b) is used for dealing with matters which arise out of or are related to those obligations or rights.

references to a definition contained in an EU instrument, those provisions would fall within the definition and would be preserved.

○ The definition of preserved legislation does not include the ECA itself.

- 75 The category of legislation that is preserved is widely drawn. However, under this clause, domestic legislation is only preserved so far as it is operating for any of the purposes set out at subsections (2)(a) to (d). If it is not operating for those purposes, it will not fall within the ambit of this section. For example, where an Act of Parliament contains cross-references to an EU instrument this does not mean that the Act as a whole becomes EU-derived domestic legislation (and by extension retained EU law) rather than only those parts of the Act which operate for any of the purposes set out above would. In the same way, only those parts of domestic legislation which implement EU rules (or fall within the other limbs of the definition) will form part of retained EU law (whichever power or powers the instrument was made under). See also subsection (3) of clause 14.
- 76 Any domestic legislation which falls within this clause will be preserved subject to the effect of relevant existing case law (see clause 6 for further details).
- 77 Subsection (3) provides that the preservation of retained EU legislation is subject to the exceptions in clause 5 and Schedule 1 (see below).

Clause 3: Incorporation of direct EU legislation

- 78 EU legislation does not form part of our legal system in the same way as domestic legislation - it is given legal effect in the UK via section 2(1) of the ECA, which describes how such legislation is to have effect "in accordance with the EU Treaties". It is this which ensures that, for example, EU regulations are directly applicable and fully binding in all member states.²³
- 79 This legal order is possible because the UK is a member of the EU and subject to the treaties. Upon exit, the UK will no longer be bound by the treaties and so EU legislation can no longer have effect in accordance with them. The Bill ensures that, where appropriate, EU legislation continues to have effect in our legal system post-exit. Clause 3 addresses this, by converting 'direct EU legislation' into domestic legislation at the point of exit.
- 80 Subsection (1) therefore provides for the conversion into domestic law of this direct EU legislation. Where legislation is converted under this clause, it is the text of the legislation itself which will form part of domestic legislation. This will include the full text of any EU instrument (including its recitals²⁴). Subsection (2) describes the types of legislation which

²³ See Article 288 TFEU

²⁴ Recitals will continue to be interpreted as they were prior to the UK's exit from the EU. They will, as before, be capable of casting light on the interpretation to be given to a legal rule, but they will not themselves have the status of a legal rule. See *Casa Fleischhandels*, Case 215/88, paragraph 31.

form part of this 'direct EU legislation' (see also paragraph 22 of these notes).

- 81 Subsection (2)(a) converts EU regulations, certain EU decisions and EU tertiary legislation (now known as delegated and implementing acts), as they have effect immediately before exit day. These terms are defined at clause 14. Clause 14 and Schedule 6 provide that certain instruments are exempt EU instruments. These exemptions reflect that certain EU instruments did not apply to the UK because the UK did not adopt the Euro, or because the UK did not participate in certain aspects of the EU *acquis*, in the area of freedom, security and justice. EU decisions which are addressed only to a member state other than the UK are not converted into domestic law. Additionally, so far as EU-derived domestic legislation under clause 2 reproduces the effect of an EU regulation, decision or tertiary legislation, these instruments are not converted under this clause. This is to avoid duplication on the statute book after exit.
- 82 Subsection (2)(b) and 2(c) ensure the conversion into domestic law of any relevant EU regulations, decisions and tertiary legislation as they apply to the EEA. As set out in the *legal background* of these notes, the European Economic Area Act 1993 makes the EEA Agreement one of the 'EU treaties' for the purposes of the ECA. Because of this, section 2(1) and (2) of the ECA applies to provisions of the EEA Agreement. In essence, direct EU legislation applies to the EEA by virtue of its inclusion in the Annexes to the EEA Agreement, with any adaptations that are necessary for it to apply in the EEA context. This direct legislation, as adapted, then flows into UK domestic legislation as a result of section 2(1) of the ECA. Protocol 1 to the EEA Agreement contains horizontal adaptations which set out general interpretative provisions that apply throughout the Annexes to the Agreement. For instance, whenever EU acts refer to nationals of an EU member state, the references shall, for the purposes of the EEA Agreement, also be understood as references to nationals of EFTA states.
- 83 Subsection (2)(b) therefore converts any Annex to the EEA Agreement to the extent that it relates to those EU instruments which are converted by subsection (2)(a). The effect of this is to bring into domestic law EU regulations, decisions and tertiary legislation as they apply, and are adapted for, the EEA context. As with the EU version of instruments, where domestic enactments saved under clause 2 reproduce the effect of an EU instrument (as adapted for the EEA) those adapted instruments are not converted under this clause. Again, this is to avoid duplication on the statute book after exit. Subsection 2(c) converts Protocol 1 to the EEA agreement as it was immediately before exit.
- 84 Under this clause, direct EU legislation is only converted and incorporated into domestic law "so far as operative immediately before exit day". Subsection (3) clarifies what this means. As discussed in paragraph 49 of these notes, some EU legislation applies in a staggered way over time, and the Bill ensures that, so far as a relevant instrument has entered into force and applies before exit day, it will be converted into domestic legislation. Where the date of application falls after exit day, the provision is not converted. In the case of EU decisions, if

the date of notification to the addressee (for example the UK or a person in the UK) falls before exit day then that decision is converted.

85 Subsection (4) clarifies that clause 3 will only convert the English language version of existing direct EU legislation into domestic legislation. However, other language versions can continue to be considered as aids to interpretation by the courts.

86 Subsection (5) provides that the saving of direct EU legislation is subject to the exceptions in clause 5 and Schedule 1.

Clause 4: Saving for rights etc. under section 2(1) of the ECA

87 Clause 4 ensures that any remaining EU rights and obligations which do not fall within clauses 2 and 3 continue to be recognised and available in domestic law after exit. This includes, for example, directly effective rights contained within EU treaties.

88 Directly effective rights are those provisions of EU treaties which are sufficiently clear, precise and unconditional to confer rights directly on individuals which can be relied on in national law without the need for implementing measures. Where directly effective rights are converted under this clause, it is the right which is converted, not the text of the article itself.

89 For example, the Government considers that the following TFEU articles contain directly effective rights which would be converted into domestic law as a result of this clause (this is an illustrative list and is not intended to be exhaustive).

Article 18	Non-discrimination on ground of nationality
Article 20 (except article 20(2)(c))	Citizenship rights
Article 21(1)	Rights of movement and residence deriving from EU citizenship
Article 28	Establishes customs union, prohibition of customs duties, common external tariff
Article 30	Prohibition on customs duties
Article 34	Prohibition on quantitative restrictions on imports
Article 35	Prohibition on quantitative restrictions on exports
Article 36	Exception to quantitative restrictions
Article 37(1) and (2)	Prohibition on discrimination regarding the

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	conditions under which goods are procured
Article 45(1), (2) and (3)	Free movement of workers
Article 49	Freedom of establishment
Article 56	Freedom to provide services
Article 57	Services
Article 63	Free movement of capital
Article 101(1)	Competition
Article 102	Abuse of a dominant position
Article 106(1) and (2)	Public undertakings
Article 107(1)	State aid
Article 108(3)	Commission consideration of plans re: state aid
Article 110	Internal taxation
Articles 111 to 113	Non-discrimination in indirect taxes
Articles 120 to 126	Economic co-operation
Article 157	Equal pay
Article 308 (first and second sub-paragraphs)	European Investment Bank (EIB)
Article 325(1) and (2)	Combatting fraud on the EU
Article 346	Disclosure of information and national security
Protocol 5 - Articles 3, 4, 5, 7(1), 13, 15, 18(4), 19(1) and (2), 20(2), 23(1) and (4), 26, 27 (second and third sub-paragraphs)	EIB
Protocol 7 - Article 21	Privileges and immunities of the EIB

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- 90 In addition, directly effective rights may also arise under other treaties which are brought into domestic law by virtue of the ECA, including the EEA Agreement and Euratom. These include international agreements made by the EU with third countries, as well as certain multilateral agreements to which either or both of the EU and UK are a party. For example, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children contains a number of directly effective provisions in relation to cross-border children cases, such as jurisdiction rules and rules for cross-border recognition and enforcement of children judgements.
- 91 Any directly effective rights converted into domestic law as a result of this clause would be subject to amendment or repeal via statutory instrument made under clause 7. For example, where the resulting provision has no practical application, or makes provision for reciprocal arrangements or rights which no longer exist or are no longer appropriate once the UK has left the EU, statutory instruments can be brought forward to repeal or amend the provisions.
- 92 Subsection (2) sets out exceptions to the conversion under subsection (1). First, it provides that the clause does not bring in any rights, powers etc. if they already form part of domestic law by virtue of clause 3. Secondly, the clause excludes directly effective rights arising under an EU directive (including as extended to the EEA by the EEA agreement). In particular, the CJEU has held that in certain circumstances, when a member state has not properly implemented a directive, that directive can confer rights on individuals that the national courts must protect. Where directly effective provisions of directives have been recognised by a court or tribunal before exit day, these will be converted into domestic law. However, any directly effective provisions of directives that have not been recognised prior to exit day (to the extent these might exist) will not be converted by this clause (subject to the transitional etc. provision in Schedule 8, paragraph 26).
- 93 Subsection (3) clarifies that this clause is also subject to the exceptions in clause 5 and Schedule 1.

Clause 5: Exceptions to savings and incorporation

- 94 Clause 5 sets out two exceptions to the saving and incorporation (referred to as preservation and conversion in these notes) of EU law provided for under clauses 2, 3 and 4.
- 95 The first exception is the principle of supremacy of EU law (see paragraph 53 of these notes). The principle of supremacy means that domestic law must give way if it is inconsistent with EU law. In the UK this can mean that a court must disapply an Act of Parliament, or a rule of the common law, or strike down UK secondary legislation even if the domestic law was made after the relevant EU law.
- 96 The effect of subsections (1) and (2) is that this principle will not apply to legislation which is

passed or made on or after exit day (an Act is passed when it receives Royal Assent). So, for example, if an Act of Parliament is passed on or after exit day which is inconsistent with EU law which is preserved or converted by the Bill (for example, a retained EU regulation), that new Act of Parliament will take precedence. Where, however, a conflict arises between pre-exit domestic legislation and retained EU law, subsection (2) provides that the principle of the supremacy of EU law will, where relevant, continue to apply as it did before exit. So, for example, a retained EU regulation would take precedence over pre-exit domestic legislation that is inconsistent with it. The principle would not, however, be relevant to provisions made by or under this Bill or to other legislation which is made in preparation for the UK's exit from the EU.

- 97 The principle of supremacy also means that domestic law must be interpreted, as far as possible, in accordance with EU law. So, for example, domestic law must be interpreted, as far as possible, in light of the wording and purpose of relevant directives. Whilst this duty will not apply to domestic legislation passed or made on or after exit day, subsection (2) preserves this duty in relation to domestic legislation passed or made before exit.
- 98 Finally, subsection (3) sets out that the principle of supremacy can continue to apply to pre-exit law which is amended on or after exit day where that accords with the intention of the modifications.
- 99 The second exception is the Charter of Fundamental Rights. The Charter did not create new rights, but rather codified rights and principles which already existed in EU law. By converting the EU *acquis* into UK law, those underlying rights and principles will also be converted into UK law, as provided for in this Bill. References to the Charter in the domestic and CJEU case law which is being retained, are to be read as if they referred to the corresponding fundamental rights.
- 100 Given that the Charter did not create any new rights, subsection (5) makes clear that, whilst the Charter will not form part of domestic law after exit, this does not remove any underlying fundamental rights or principles which exist, and EU law which is converted will continue to be interpreted in light of those underlying rights and principles.
- 101 Subsection (6) provides that further limited exceptions to the preservation and conversion of EU law have effect, as set out in Schedule 1.

Clause 6: Interpretation of retained EU law

- 102 Clause 6 sets out how retained EU law is to be read and interpreted on and after exit day.
- 103 Subsections (1) and (2) set out the relationship between the CJEU and domestic courts and tribunals after exit. These subsections provide that:

- decisions of the CJEU made after exit day will not be binding on domestic (UK) courts

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and tribunals;

- domestic courts cannot refer cases to the CJEU on or after exit day; and
- domestic courts are not required to have regard to anything done by the EU or an EU entity on or after exit day.

104 When interpreting retained EU law domestic courts will, however, be able to consider post-exit EU actions including CJEU case law if they consider it appropriate.

105 Subsection (3) provides that any question as to the meaning of retained EU law will be determined in UK courts in accordance with relevant pre-exit CJEU case law and general principles. This includes, amongst other matters, taking a purposive approach to interpretation where the meaning of the measure is unclear (i.e. considering the purpose of the law from looking at other relevant documents such as the treaty legal base for a measure and where relevant the 'travaux préparatoires' (the working papers) leading to the adoption of the measure, applying the interpretation that renders the provision of EU law compatible with the treaties and general principles of EU law). The general principles (such as proportionality, fundamental rights and non-retroactivity) are applied by the CJEU and domestic courts when determining the lawfulness of legislative and administrative measures within the scope of EU law, and are also an aid to interpretation of EU law. Where retained EU law has not been amended on or after exit day then it will be interpreted in accordance with pre-exit CJEU case law and the retained general principles of EU law (insofar as relevant). Non-binding instruments, such as recommendations and opinions, are still available to a court to assist with interpretation of retained EU law.

106 UK courts will also be required to interpret retained EU law by reference to (among other things) the limits of EU competence, as it exists on the day the UK leaves the EU. A matter could not fall within retained EU law if the EU had no competence in that area. Article 5(2) TEU confirms that the Union could only act within the limits of the competences conferred upon it by the member states. Competences not conferred upon the Union remain with the member states. For example, article 4(2) TEU provides that, amongst other matters, the maintenance of law and order and safeguarding national security matters have not been conferred on the EU and remain with member states.²⁵

107 Subsections (4) and (5) set out that unlike other courts the UK Supreme Court (UKSC) and the High Court of Justiciary (HCJ) are not bound by either retained general principles or retained CJEU case law. The HCJ is the highest criminal court in Scotland from which there is no right of further appeal to the UKSC, except in respect of certain matters set out in subsection (4)(b)(i). After exit day, retained CJEU case law will have the same binding, or precedent, status in domestic courts and tribunals as existing decisions of the UKSC or HCJ. This means

²⁵ See for example the case of *Redmondis* Case C-51/15 ECLI:EU:C:2016:985 at paragraphs 40 - 41.

that the UKSC (and except where there is a further appeal to the UKSC, the HCJ) will be able to choose to depart from previous CJEU case law. In doing so, the UKSC and the HCJ are required to apply the same tests as they would when considering whether to depart from their own previous decisions. The test the UKSC uses is set out in an existing practice statement which sets out that it may depart from previous decisions ‘where it appears right to do so’. The HCJ will apply its own tests in deciding whether or not to depart from inherited CJEU case law.

108 Subsection (6) sets out that retained EU law which has been amended on or after exit day can be determined in accordance with CJEU case law and the general principles where that accords with the intention of the amendments.

109 Subsection (7) provides definitions of the terminology relevant to this clause.

Clause 7: Dealing with deficiencies arising from withdrawal

110 Clause 7 gives ministers of the Crown a power to make secondary legislation to deal with problems that would arise on exit in retained EU law. This includes the law which is preserved and converted by clauses 2 to 5 (i.e. both domestic law and directly applicable EU law). These problems, or deficiencies, must arise from the UK’s withdrawal from the EU (which includes the consequence that the UK will cease to participate in the EEA Agreement). The law is not deficient merely because a minister considers that EU law was flawed prior to exit. A minister is able to take action before exit in order to prevent the deficiency from arising. For the purposes of clause 7, a failure of retained EU law is a type of deficiency: a *failure* means the law doesn’t operate effectively whereas *deficiency* covers a wider range of cases where it does not function appropriately or sensibly.

111 Subsection (2) explains the sorts of deficiencies that the power might need to deal with. These may include:

- provisions that have no practical application after the UK has left the EU;
- provisions on functions that are currently being carried out in the EU on the UK’s behalf, for example by an EU agency;
- provisions on reciprocal arrangements or rights between the UK and other EU member states that are no longer in place or are no longer appropriate;
- any other arrangements or rights, including through EU treaties, that are no longer in place or no longer appropriate;
- EU references that are no longer appropriate.

There are illustrative examples of possible deficiencies and corrections in the Government White Paper [Legislating for the United Kingdom’s Withdrawal from the European Union](#) (pages 20 -

21) and a further example in the *policy background* section of these notes.

- 112 Subsection (2) also provides that if a function or restriction is contained in a directive and therefore not retained, and has not been transposed into domestic law, this can be a deficiency. For example, if the UK has implemented a directive but has not implemented the provisions in the directive which provide for the Commission or EU agency to carry out a function, the absence of this function in retained EU law could be a deficiency in the implementing legislation after the UK leaves the EU. The power could be used to recreate the function. The list in subsection (2) is not exhaustive.
- 113 Subsection (3) provides that the retained EU law in the UK is not deficient just because the EU subsequently makes changes to the law in the EU after the UK has left, or planned changes come into effect after exit. The law is being preserved and converted as it was immediately before exit day. The EU might go on to make changes to its law but those subsequent changes and the consequent divergence between UK and EU law do not by themselves automatically make the UK law deficient.
- 114 Subsection (4) provides that secondary legislation made under the power in this clause can do anything an Act of Parliament might deal with deficiencies. This could include altering Acts of Parliament where appropriate and sub-delegating the power to a public authority where they are best placed to deal with the deficiencies. However, the power is subject to the restrictions set out in subsection (6). For example, the power cannot be used to impose or increase taxation, to make retrospective provision, or for the purposes of implementing the withdrawal agreement (separate provision is made for implementation of the withdrawal agreement in clause 9).
- 115 Subsection (5) provides, non-exhaustively, for what the secondary legislation made under this power can do. For example, it can transfer the functions of EU authorities to UK public authorities or create new UK public authorities to take on those functions. These functions might include the ability to set rules or create standards, which are currently made by the EU as non-legislative acts (delegated and implementing acts). The power can be used to repeal, amend or replace parts of the retained law. There will be other uses of the power necessary to correct deficiencies. The power could be used to amend law which is not retained EU law where that is an appropriate way of dealing with a deficiency in retained EU law.
- 116 Subsection (7) makes clear that the temporary power in this clause can only be used for up to two years after exit day, as it expires at that point. Paragraph 28 of Schedule 8 provides that it is the power and not the regulations which expires.
- 117 Subsection (8) provides that the meaning of deficiency can cover a deficiency that arises out of withdrawal taken together with the operation of, or interaction between, provisions of the Bill or provisions made under the Bill.

118 The parliamentary scrutiny procedures for this power are set out in Part 1 of Schedule 7.

Clause 8: Complying with international obligations

119 Clause 8 gives ministers of the Crown the power to make secondary legislation to enable continued compliance with the UK's international obligations by preventing or remedying any breaches that might otherwise arise as a result of withdrawal.

120 Subsection (2) provides that secondary legislation made under the power in this clause can do anything an Act of Parliament might for the purpose set out in subsection (1), but this is subject to restrictions set out in subsection (3).

121 Subsection (4) makes clear that the temporary power in this clause can only be used for up to two years after exit day, as it expires at that point. Paragraph 28 of Schedule 8 provides that it is the power and not the regulations that expires.

122 The scrutiny procedures for this power are set out in Part 2 of Schedule 7.

Clause 9: Implementing the withdrawal agreement

123 Clause 9 gives ministers of the Crown a power to make secondary legislation to implement a withdrawal agreement concluded between the UK and the EU under Article 50(2) of the TEU (or that Article as applied by the Euratom Treaty).

124 Subsection (1) provides ministers with the power to make legislative changes which they consider appropriate for the purposes of implementing the withdrawal agreement. Regulations made using this power are restricted to implementing only those measures that should be in place for exit day and this power is not intended to be used for post-exit modifications.

125 Subsection (2) provides that secondary legislation made under the power in this clause is capable of doing anything an Act of Parliament can do, including modifying the Bill itself, subject to the restrictions specified in subsection (3). As set out in paragraph 13 of Schedule 7, regulations made under powers in the Bill can modify retained EU law and the definition of "modify" in clause 14 provides that it includes amending, repealing or revoking legislation.

126 Subsection (3) places a series of restrictions on the power stating what it cannot do. The power cannot be used to impose or increase taxation, make retrospective provision, create a relevant criminal offence or amend or repeal the Human Rights Act 1998.

127 The power expires on exit day meaning that no regulations can be made after this time. Paragraph 28 of Schedule 8 provides that it is the power and not the regulations made under it which expires.

128 The scrutiny procedures for this power are set out in Part 2 of Schedule 7.

Clause 10: Corresponding powers involving devolved authorities

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129 This clause provides that devolved authorities can exercise the power to deal with deficiencies arising from withdrawal, the power to comply with international obligations and the power to implement the withdrawal agreement as defined in Schedule 2.

Clause 11: Retaining EU restrictions in devolution legislation etc.

130 The Scotland Act 1998 currently requires the Scottish Parliament to legislate in a way that is compatible with EU law. Subsection (1) amends the Scotland Act 1998 to define the competence of the Scottish Parliament by reference to retained EU law. The amendments will replace the former requirement with a provision which means that it is outside the competence of the Scottish Parliament to modify retained EU law in a way which would not have been compatible with EU law immediately before exit. This legislative competence test is subject to any exceptions which may be prescribed by Order in Council.

131 Subsections (2) and (3) make equivalent provision in respect of the Government of Wales Act 2006 and Northern Ireland Act 1998 and apply the same legislative competence test to the National Assembly for Wales and the Northern Ireland Assembly. As above, exceptions can be prescribed by Order in Council.

132 Subsection (4) provides for Part 1 of Schedule 3 to have effect, which establishes the new test for executive competence. Subsection (5) provides for Part 2 of Schedule 3 to have effect, which makes other amendments to the devolution legislation.

Clause 12: Financial provision

133 Subsection (1) gives effect to Schedule 4 which provides powers in connection with fees and charges.

134 Subsection (2) provides that ministers of the Crown, government departments and devolved authorities may incur expenditure in preparation for the making of statutory instruments under this Bill (or under existing powers to make subordinate legislation as modified by or under the Bill) from Royal Assent.

135 Subsections (3) and (4) deal with the further financial provision necessary as a result of the Bill.

Clause 13: Publication and rules of evidence

136 Clause 13 gives effect to Schedule 5 on the publication of, and rules of evidence for, retained EU law and other relevant documents and instruments.

Clause 14: Interpretation

137 Subsection (1) defines certain terms used throughout the Bill.

138 Subsection (2) makes further provision about the meaning of references to exit day. In general, a reference to exit day will be the beginning of the day on which the UK leaves the EU and references to before, on or after that day are to be read accordingly. This subsection notes

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however that where a minister appoints a time as well as a day (as provided for by paragraph 16 of Schedule 7), any references to before, on or after exit day are to be read as references to before, on or after that appointed time.

139 Subsection (3) provides that references in the Bill to things which continue to be domestic law, include things which would have continued to exist regardless of the saving in clause 2. This makes clear that it is not necessary to consider whether an enactment might have been subject to implied repeal as a result of repeal of the ECA, in order to bring it within the ambit of clause 2 and therefore the definition of “retained EU law”.

140 Subsection (5) provides that any reference in the Bill to the former Article 34(2)(c) of the TEU (which concerned decisions in the field of police and judicial cooperation in criminal matters) is a reference to that Article as it applied before the Lisbon Treaty. It is necessary to include these references in the Bill to ensure that it accurately reflects the legal basis for these measures.

141 Subsection (6) provides that references in the Bill to certain provisions of the TEU and TFEU include references to those provisions as they apply to the Euratom Treaty.

Clause 15: Index of defined expressions

142 Clause 15 lists various expressions used throughout the Bill and the corresponding provision at which their meaning is located. For ease of reference, the index also includes pointers to certain provisions in the Interpretation Act 1978 (i.e. those which are restated by the Bill); the Interpretation Act 1978 contains other definitions which are also relevant to the Bill.

Clause 16: Regulations

143 Clause 16 gives effect to Schedule 7 on how the powers to make regulations in the Bill are exercisable.

Clause 17: Consequential and transitional provision

144 Subsection (1) allows a minister of the Crown to make regulations which are appropriate as a consequence of the Bill. Subsection (3) provides that ministers cannot make consequential provision which amends Acts passed after the end of the parliamentary session in which this Bill is passed. Subsection (4) gives effect to Parts 1 and 2 of Schedule 8, containing further consequential provisions.

145 Subsection (5) allows a minister of the Crown to make transitional, transitory or saving provision by regulations. For example, this power could be used to save section 2(3) of the ECA (which authorises payments to the European Union) in respect of liabilities incurred whilst the UK was a member state. This could include outstanding transfers of customs duties and sugar levy payments collected by the UK on behalf of the EU. Subsection (6) gives effect to Parts 3 and 4 of Schedule 8, which contains transitional, transitory and saving provisions. Subsection (7) gives effect to Schedule 9, which sets out repeals of certain enactments under

the Bill.

Clause 18: Extent

146 This clause provides that the Bill extends to the legal jurisdictions of England and Wales, Scotland and Northern Ireland, except that any repeal or amendment of an enactment has the same extent as the enactment being amended or repealed.

147 The Bill repeals some Acts that extend beyond the UK. The ECA has limited application to Gibraltar and the Crown Dependencies so its repeal in clause 1 will also extend to them. The European Union Act 2011, the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003 also extend to Gibraltar. These Acts will be repealed in respect of Gibraltar as well as the UK, and the powers in clauses 7 and 17 will be capable of making provision for Gibraltar as a consequence of those main repeals.

Clause 19: Commencement and short title

148 Subsection (1) sets out the provisions of the Bill that will commence on Royal Assent.

149 Subsection (2) sets out that the remaining provisions will come into force on the day or days appointed by regulations, and different days may be appointed for different purposes.

150 Subsection (3) establishes that the short title of the Bill is the European Union (Withdrawal) Act 2017.

Schedule 1: Further provision about exceptions to savings and incorporation

151 This Schedule sets out some further exceptions to the preservation and conversion of EU law provided for under clauses 2, 3 and 4. This Schedule should be read together with Part 4 of Schedule 8, which makes specific transitional, transitory and saving provision.

Challenges to validity of retained EU law

152 Paragraph 1 provides that, post-exit, no challenge can be brought in the UK courts to retained EU law on the basis that immediately before exit day, an EU instrument (for example, an EU regulation or decision) was invalid. This restriction is, however, subject to the exceptions at sub-paragraphs (2) and (3). First, any decisions of the CJEU which pre-date exit day about the validity of the instrument will not be affected. Secondly, a minister of the Crown has the power to describe in regulations types of challenge to validity which will be capable of being brought on or after exit day. Sub-paragraph (3) provides that any such regulations may enable challenges which, prior to exit, would have proceeded against an EU institution to proceed against a UK public authority following exit.

General principles of EU law

153 Paragraph 2 provides that only EU general principles which have been recognised in CJEU cases decided before exit, will form part of domestic law after exit. These include, for example,

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fundamental rights, non-retroactivity, and proportionality. More detail on general principles is set out at paragraph 50 of these notes.

154 Paragraph 3 provides that there is no right of action in domestic law post-exit based on failure to comply with EU general principles. Courts cannot disapply domestic laws post-exit on the basis that they are incompatible with EU general principles. Further, domestic courts will not be able to rule that a particular act was unlawful or quash any action taken on the basis that it was not compatible with the general principles. Courts will, however, be required under clause 6 to interpret retained EU law in accordance with retained general principles.

Rule in Francovich

155 In *Francovich*²⁶ the CJEU established that in some circumstances states have to compensate individuals for damage that they suffer as a result of the State's breach of EU law. EU law confers a right to reparation where 'the rule of law infringed is intended to confer rights on individuals, the breach is 'sufficiently serious', which means that the member state has manifestly and gravely disregarded the limits of its discretion and where there is a direct causal link between the breach and the damage.

156 Paragraph 4 provides that the right to claim damages against the state for breaches of EU law (*Francovich* damages) will not be available after exit. This provision does not affect any specific statutory rights to claim damages in respect of breaches of retained EU law (for example, under the [Public Contracts Regulations 2015](#)) or the case law which applies to the interpretation of any such provisions.

Interpretation

157 Paragraph 5 clarifies that references in clause 5 and this Schedule to the principle of 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 as they stand at exit day, not as they will operate in EU law in the future.

Schedule 2: Corresponding powers involving devolved authorities

Part 1: Dealing with deficiencies arising from withdrawal

158 Part 1 describes the circumstances in which devolved authorities (defined in clause 14 as Scottish ministers, Welsh ministers and Northern Ireland departments) can use the power to deal with deficiencies arising from withdrawal.

Power to deal with deficiencies

159 Paragraph 1 provides that the power to deal with deficiencies arising from withdrawal can be used by devolved authorities, or by ministers of the Crown and devolved authorities acting

²⁶ Cases C-6/90 and C-9/90 *Francovich* [1991] ECR I-5357

jointly. The same restrictions on the use of the power which apply to UK ministers also apply to devolved authorities. It also provides that the devolved authorities cannot use the power to sub-delegate law making powers.

No power to make provision outside devolved competence

160 Paragraph 2 provides that the power to deal with deficiencies arising from withdrawal cannot be used outside of the devolved competence of the devolved authorities as set out in paragraphs 9 to 12 of this Schedule 2.

No power to modify retained direct EU legislation etc.

161 Sub-paragraph (1) of paragraph 3 provides that the devolved authorities can only use the power to deal with deficiencies to amend EU-derived domestic legislation. Sub-paragraph (2) prohibits the devolved authorities from using the power in ways that would create inconsistencies with any corrections to retained direct EU law which the UK Government has made. For example, where the UK Government is correcting an EU regulation and a devolved authority is correcting the domestic legislation which creates the enforcement provisions for that EU regulation, the domestic legislation will need to be corrected in a way that makes sense with the corrected EU regulation.

No power to confer certain functions relating to EU tertiary legislation

162 Paragraph 4 provides that devolved authorities cannot use this power to confer the function to make what is currently known in the EU as tertiary legislation or non-legislative acts (delegated and implementing acts).

Requirement for consent in certain circumstances

163 Paragraph 5 sets out the requirement for the devolved authorities to seek consent from the UK Government prior to legislating in certain circumstances. These circumstances are where either the legislation is being commenced prior to exit day, or where the legislation relates to the unwinding of reciprocal arrangements.

Requirement for consent where it would otherwise be required

164 Paragraph 6 sets out that if a devolved authority is making a provision using the power to deal with deficiencies arising from withdrawal that would require consent if it were a provision in legislation of the relevant devolved legislature or where the devolved administration would normally require consent to make such a provision via secondary legislation, then that consent will still be required. This will not apply if the devolved authority already has power to make such provision using secondary legislation without needing the consent of the minister of the Crown.

Requirement for joint exercise where it would otherwise be required

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165 Paragraph 7 sets out that where a devolved authority would normally only be able to make legislation jointly with the UK Government, the devolved authority will still have to make such legislation jointly when exercising the power to deal with deficiencies.

Requirement for consultation where it would otherwise be required

166 Paragraph 8 requires consultation with the UK Government on legislation made by a devolved authority in the exercise of the power to deal with deficiencies, where the devolved authority would normally be required to consult with the UK Government when making those kind of changes in legislation.

Meaning of devolved competence: Part 1

167 Paragraphs 9 to 12 clarify the extent of devolved competence in relation to the exercise of the power to deal with deficiencies arising from withdrawal.

168 Paragraph 9 relates to the competence of the Scottish ministers. Sub-paragraph (1) relates to legislative competence, and sets out that a Scottish minister may exercise the power to deal with deficiencies where the Scottish Parliament has legislative competence. The definition of 'legislative competence' for the purposes of exercising this power disapplies the normal restriction on the Scottish Parliament's competence which prevents the Scottish Parliament from legislating in a way that is incompatible with EU law. This disapplication is necessary to enable Scottish ministers to make all necessary regulations under this power to correct deficiencies in devolved areas. This is because correcting deficiencies in retained EU law will inevitably require some changes that would be incompatible with EU law and therefore would be outside the normal legislative competence of the Scottish Parliament.

169 Sub-paragraph (2) relates to those secondary legislation making powers which are not within legislative competence but are within executive competence of a Scottish minister (these would include, for example, secondary legislation making functions transferred to Scottish ministers under section 63 of the Scotland Act 1998). This sets out that Scottish ministers may act to correct secondary legislation which has been made under their executive competence, even where those corrections would not be within the legislative competence as described in sub-paragraph (1). This is subject to certain restrictions described in sub-paragraph (2) around application, extent and subject matter of those corrections.

170 Paragraph 10 relates to the competence of Welsh ministers and makes the same provision for Welsh ministers as for Scottish ministers as set out in paragraph 9. Welsh ministers will be able to exercise the power to deal with deficiencies in areas within the Welsh Assembly's legislative competence (disapplying the normal restrictions preventing the Welsh Assembly from legislating in a way that is incompatible with EU law) and to correct deficiencies in legislation which has been made under their executive competence.

171 Paragraph 11 relates to the competence of Northern Ireland departments. Sub-paragraph

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(1)(a) deals with transferred matters, providing that Northern Ireland devolved authorities may make regulations using the power to deal with deficiencies in any areas which would be within the Northern Ireland Assembly's legislative competence, and which would not require consent of the Secretary of State for Northern Ireland. Sub-paragraph (1)(b) deals with reserved matters, providing that where Northern Ireland legislation has previously been made in relation to reserved matters, Northern Ireland departments and ministers will be able to use the power to deal with deficiencies to amend this legislation.

172 In both sub-paragraphs (1)(a) and (1)(b) the existing restriction on legislative competence that would make it outside of legislative competence to act in a way that is incompatible with EU law is disapplied for the purposes of defining legislative competence for the purpose of this power. Sub-paragraph (2) makes the same provision as for Scottish and Welsh ministers so that Northern Ireland departments can exercise the power to deal with deficiencies to correct legislation which has been made under their executive competence.

Part 2: Complying with international obligations

173 Part 2 describes the circumstances in which devolved authorities can use the power to comply with international obligations.

Power to comply with international obligations

174 Paragraph 13 provides that the power to comply with international obligations can be used by devolved authorities, or by ministers of the Crown and devolved authorities acting jointly. It sets out that the same restrictions on the use of the power that apply to UK ministers also apply to devolved ministers, along with an additional restriction preventing the power from being used to sub-delegate law-making powers.

No power to make provision outside devolved competence

175 Paragraph 14 provides that the international obligations power cannot be used outside of the devolved competence of the devolved authorities as set out in paragraphs 18 to 20 of this Schedule 2.

No power to modify retained direct EU legislation etc.

176 Paragraph 15 provides that the devolved authorities cannot use the power to amend retained direct EU legislation or in a way which is inconsistent with amendments made by ministers of the Crown to retained direct EU legislation.

Requirement for consent in certain circumstances

177 Paragraph 16 sets out circumstances in which the devolved authorities would need to seek the consent of the UK Government before legislating. This is where proposed regulations would come into force before exit day, relate to World Trade Organisation obligations, or relate to the modification or allocation of quota.

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Certain requirement for consent, joint exercise or consultation

178 Paragraph 17 applies the rules set out in paragraphs 6 to 8 (requirement for consent, joint exercise and consultation) to the use of the international obligations power so that where a devolved authority would normally only be able to make legislation with UK Government consent, after consulting with the UK Government or jointly with the UK Government, the devolved authority will still have to obtain consent, consult or make such legislation jointly (as applicable) when exercising the international obligation power to make such a provision.

Meaning of devolved competence: Part 2

179 Paragraphs 18 to 20 define devolved competence for the purposes of exercising the power.

180 Paragraph 18 provides that something is within the devolved competence of Scottish ministers for the purposes of this power if it is either within the legislative competence of the Scottish Parliament (if the EU law restriction on legislative competence was disapplied) or is otherwise an area in which Scottish ministers could have made the relevant provision by secondary legislation (if there was not a general restriction on making secondary legislation that contravened EU law). The disapplication of the EU law restrictions for the purposes of defining the Scottish ministers' ability to use this power is necessary to enable Scottish ministers to make all necessary changes under this power in devolved areas. This is because any changes needed under this power are likely to involve a change that would be incompatible with EU law prior to exit.

181 Paragraph 19 makes the same provision for the devolved competence of Welsh ministers as for Scottish ministers. Welsh ministers have competence if something is within the legislative competence of the Welsh Assembly or is otherwise an area in which Welsh ministers could make the relevant provision by secondary legislation (disapplying the normal restrictions that would otherwise prevent the Welsh Assembly or Welsh ministers from legislating incompatibly with EU law).

182 Paragraph 20 makes provision for the competence of a Northern Ireland department. Sub-paragraph (a) deals with transferred matters, providing that Northern Ireland departments may make regulations in any areas which would be within the Assembly's legislative competence and that would not require the consent of the Secretary of State. Sub-paragraph (b) deals with reserved matters, providing that where the Northern Ireland legislation has previously been made in relation to reserved matters that legislation can be amended using the international obligations power. Sub-paragraph (c) provides that Northern Ireland departments can also use the power in areas where they would otherwise have been able to make secondary legislation. As with Scotland and Wales, the normal restrictions on making legislation which contravenes EU law are disapplied for the purposes of defining devolved competence to use this power.

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Part 3: Implementing the withdrawal agreement

183 Part 3 describes the circumstances in which devolved authorities can use the power to implement the withdrawal agreement.

Power to implement withdrawal agreement

184 Paragraph 21 provides that the power to implement the withdrawal agreement can be used by devolved authorities, or by ministers of the Crown and devolved authorities acting jointly. It sets out that the same restrictions on the use of the power that apply to UK ministers also apply to devolved ministers, along with additional restrictions preventing the power from being used to sub-delegate any law-making powers, from modifying secondary legislation made under the Bill (except where that legislation was made by the devolved authority or the power is being exercised jointly with a minister of the Crown), or from modifying the Bill.

No power to make provision outside devolved competence

185 Paragraph 22 provides that the power to implement the withdrawal agreement cannot be used outside of the devolved competence of the devolved authorities, as defined in paragraphs 18 to 20.

No power to modify retained direct EU legislation etc.

186 Sub-paragraph (1) of paragraph 23 provides that the devolved authorities cannot use the power to implement the withdrawal agreement by amending direct EU legislation. Sub-paragraph (2) provides that devolved authorities cannot use the power to make any provision that is inconsistent with amendments made by ministers of the Crown to retained direct EU legislation.

No power to confer certain functions relating to EU tertiary legislation

187 Paragraph 24 provides that this power for devolved authorities to implement the withdrawal agreement cannot be used to confer functions that correspond to powers to make EU tertiary legislation (also known as non-legislative acts or delegated and implementing acts).

Requirement for consent in certain circumstances

188 Paragraph 25 sets out that if the proposed regulations relate to the allocation of a quota, devolved authorities would need to seek the consent of the UK Government before legislating.

Certain requirements for consent, joint exercise or consultation

189 Paragraph 26 applies the rules set out in paragraphs 6 to 8 of Schedule 2 to the use of the withdrawal agreement power so that, where a devolved authority would normally only be able to make a particular provision in legislation with the UK Government's consent, after consulting with the UK Government or jointly with the UK Government, the devolved

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authority will still have to obtain consent, consult or make such legislation jointly (as applicable) when exercising the withdrawal agreement power to make such a provision.

Schedule 3: Further amendments of devolution legislation

Part 1: Corresponding provision in relation to executive competence

190 Part 1 establishes the new test for executive competence, which accompanies the legislative competence test provided for in clause 11.

Scotland Act 1998

191 Paragraph 1 makes provision in relation to the existing limit in section 57(2) Scotland Act 1998 on a member of the Scottish Government making secondary legislation or otherwise acting incompatibly with EU law. Paragraph 1 amends this limit so that it applies to the power of a member of the Scottish Government to make, confirm or approve any secondary legislation modifying retained EU law. Paragraph 1(b) provides that a member of the Scottish Government may not make such a modification unless it would be within the legislative competence of the Scottish Parliament. This limit on executive competence is subject to the exception that a member of the Scottish Government may exercise the powers to make regulations under Schedule 2 or 4. This new executive competence test is also subject to any exceptions which may be prescribed by Order in Council.

Government of Wales Act 2006, Northern Ireland Act 1998

192 Paragraphs 2 and 3 make equivalent provision in respect of the Government of Wales Act 2006 and the Northern Ireland Act 1998 to give effect to the new test for executive competence.

Part 2: Other amendments of devolution legislation

193 Part 2 (paragraphs 4 to 51) contains a series of amendments to the devolution legislation resulting from the UK leaving the EU. Specifically, it amends the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006.

194 The amendments deal with a variety of issues and how these need to be reflected in the devolution legislation, including the repeal of the ECA by clause 1, the preservation and conversion of existing EU law into UK domestic law on and after exit day by clause 2 and the approach to legislative and executive competence taken by clause 11. For example, the specific mechanism under section 106(7) Scotland Act 1998 for enforcement of certain EU obligations has been removed on the basis that EU obligations forming part of retained EU law will continue to bind devolved ministers as a matter of domestic law. Provision is also made in respect of the cessation of European Parliamentary elections in the UK, the protection of this Bill from modification (but not secondary legislation made under the Bill), and to deal with other deficiencies arising in the devolution legislation which result from the UK leaving the

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EU.

195 Not all changes to the devolution legislation have been included in the Bill on introduction. For example, changes to the list of reserved matters in Part 2 of Schedule 5 to the Scotland Act 1998 and in Schedule 7A to the Government of Wales Act 2006 are not included. Similarly, paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 is not amended by the Bill (this is the only remaining correction to that Act not addressed on the face of the Bill). This is because the UK Government intends to discuss these changes with the devolved administrations before finalising the amendments.

Schedule 4: Powers in connection with fees and charges

Part 1: Charging in connection with certain new functions

196 Part 1 of Schedule 4 gives ministers of the Crown and devolved authorities a power to make secondary legislation to enable public authorities to charge fees and other charges, such as levies.

Power to provide for fees or charges

197 Paragraph 1 provides that where a public authority has a new function under the powers in clauses 7, 8 or 9 or the equivalent powers in Schedule 2, an appropriate authority may make regulations enabling the public authority to charge fees or other charges, such as levies, in connection with carrying out that function. Sub-paragraph (3) mentions some of the things that this power may do. In particular it may set the amounts of fees or charges or say how they are to be determined, for example by a formula. It may also provide for how the money is collected and spent. Sub-paragraph (3)(c) provides that regulations made under this power can sub-delegate this power to the public authority that has the function. Any regulations that sub-delegate the power will be subject to the affirmative scrutiny procedure.

Meaning of “appropriate authority”

198 Paragraph 2 sets out the meaning of ‘appropriate authority’ for the use of this power. This includes ministers of the Crown. It also includes devolved authorities in circumstances where the function has been conferred by them, the function has been conferred on them, or the provision to confer the function would have been within the competence of the relevant devolved legislature (ignoring the requirements not to act incompatibly with EU law or modify retained EU law).

Requirements for consent

199 Paragraph 3 provides that a minister of the Crown can only set fees or charges under this power with the consent of the Treasury. A devolved authority can only set fees or charges for functions of a minister of the Crown or a body with cross-border functions with the consent of a minister of the Crown.

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Minister of the Crown power in relation to devolved authorities

200 Paragraph 4 gives a minister of the Crown the power to establish additional circumstances where a devolved authority can use the power and to disapply consent requirements for a devolved authority to use the power where it is appropriate to do so.

Relationship to other powers

201 Paragraph 5 clarifies that this power does not affect any other power in the Bill or elsewhere that might make provision for fees or other charges.

Part 2: Modifying pre-exit fees or charges

Power to modify pre-exit fees or charges

202 Paragraph 6 gives a power to modify secondary legislation about fees or other charges which was created pre-exit using powers in the ECA or section 56 of the Finance Act 1973. Pre-exit, section 56 of the Finance Act 1973 provided a specific power for fees or other charges, such as levies, connected to EU obligations.

203 Sub-paragraph (2) explains what may be done with the power, for example altering the amount of the fees or charges.

Meaning of “appropriate authority”

204 Paragraph 7 explains who may use the power; the devolved authorities will be able to use this power insofar as they could have used the ECA power or the Finance Act 1973 power prior to exit day.

Restriction on exercise of power and requirement for consent

205 This power is modelled on these two pre-exit powers. So where it is used to modify legislation created through the ECA, it cannot impose or increase taxation, in line with the constraint at paragraph 1(1)(a) of Schedule 2 to the ECA. And a minister of the Crown needs Treasury consent to make certain kinds of provision, in line with section 56 of the Finance Act.

Relationship to other powers

206 Paragraph 10 clarifies that this power does not affect the other power in the Bill or elsewhere that might make provision for fees or charges.

Schedule 5: Publication and rules of evidence

Part 1: Publication of retained direct EU legislation etc.

Copies that must or may be published

207 To ensure that retained EU law is accessible after exit day, the Bill makes express provision on the publication of, amongst other things, retained direct EU legislation. This will be done by

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the Queen's Printer (within The National Archives).

- 208 Sub-paragraph (1) of paragraph 1 provides that the Queen's Printer is required to make arrangements to ensure each 'relevant instrument' which has been published before exit day, and the 'relevant international agreements', are published in the UK.
- 209 Sub-paragraph (2) defines which instruments and international agreements are classified as 'relevant'. This covers the EU instruments which could (subject to the application of the Bill) have effect in our law after exit day as retained direct EU legislation, and four of the main EU treaties.
- 210 Sub-paragraph (3) allows, but does not require, the Queen's Printer to publish any decision of or expression of opinion by the European Court, and any other document published by an EU entity.
- 211 Sub-paragraph (4) provides that the Queen's Printer may publish anything else that the Queen's Printer considers useful in relation to the other documents published under this clause, for example 'as amended' versions of retained direct EU legislation which reflect changes made using the deficiencies powers in the Bill, or guidance documents.
- 212 Sub-paragraph (5) provides that the Queen's Printer is not required to publish anything which has been repealed before exit day, or to publish any modifications made on or after exit day.

Exceptions from duty to publish

- 213 Paragraph 2 provides that the Queen's Printer does not have to publish instruments (including categories or specific parts of instruments) in respect of which they have received a direction from a minister of the Crown stating that, in the opinion of that minister, the instrument has not become (or will not become on exit day) retained direct EU legislation. Any direction must be published.

Part 2: Rules of evidence

Questions as to meaning of EU instruments

- 214 Generally, the meaning or effect of the law in other jurisdictions is treated as a question of fact, to be proved in legal proceedings by evidence, rather than determined by a judge as a question of law. Section 3 of the ECA clarified that, when the UK joined the EU, UK judges were to determine the meaning or effect of the EU Treaties, or the validity, meaning or effect of any EU instrument, as a question of law, in accordance with the principles laid down by and relevant decisions of the CJEU. The EU law which is being retained by the Bill will become domestic law, and so fall to be interpreted by judges in this country. Some EU law will not become retained EU law, but may still be relevant to the interpretation of the retained EU law (for example, a court may have to consider the meaning of an EU directive when interpreting domestic regulations made to implement that directive). Paragraph 3 therefore

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provides that, to the extent that determining the meaning or effect of EU law is necessary for a court to interpret retained EU law, judges will continue to determine that meaning or effect themselves as a question of law, rather than treat it as a question of fact.

Power to make provision about judicial notice and admissibility

215 Matters which are ‘judicially noticed’ are deemed to already be within the knowledge of the court, and so are not required to be ‘proved’ to the court. For example, public Acts of Parliament and the EU Treaties are judicially noticed.²⁷ Paragraph 4 provides that a minister of the Crown can make regulations which provide for judicial notice to be taken of a relevant matter, and for the admissibility in legal proceedings of evidence of both a relevant matter and instruments and documents issued by or in the custody of an EU entity, to ensure that appropriate evidential rules can be put in place to reflect the new legal landscape after exit.

216 Sub-paragraph (2) of paragraph 4 provides that regulations made under sub-paragraph (1) may require that certain conditions must be fulfilled (such as conditions regarding certification) before any evidential rules are satisfied.

217 Sub-paragraphs (3) and (4) enable regulations providing for evidential rules to modify legislation which is passed or made before the end of the Session in which this Bill is passed. This is to ensure that any new rules can properly sit alongside existing evidential provisions in other enactments.

218 Sub-paragraph (5) defines what the ‘relevant matters’ are in respect of which regulations can be made under this paragraph, being retained EU law, EU law, the EEA Agreement, or anything specified in the regulations which relates to those matters.

Schedule 6: Instruments which are exempt EU instruments

219 Schedule 6 sets out which EU instruments are to be regarded as ‘exempt’ and therefore excluded under clause 3 from the saving and incorporation of direct EU legislation prior to exit day.

EU decisions

220 Paragraph 1 provides that “exempt EU instruments” includes a number of categories of EU decision which do not apply to the UK. These include:

- Existing EU decisions which do not apply to the UK under relevant Protocols; and
- Decisions relating to common foreign and security policy under Title V of the pre-Lisbon TEU and under the current Title V of the TEU (post-Lisbon).

EU regulations

221 Paragraph 2 provides that “exempt EU instruments” includes those EU regulations which do

²⁷ See section 3 of the Interpretation Act 1978 and section 3(2) of the European Communities Act 1972.

not apply under relevant Protocols, as detailed in paragraph 4.

EU tertiary legislation

222 Paragraph 3 provides that “exempt EU instruments” includes EU tertiary legislation which has been made under an exempt EU decision, regulation or a directive which does not apply to the UK under relevant Protocols, as detailed in paragraph 4.

Interpretation

223 Paragraph 4 defines the “relevant Protocols” with reference to a list.

Schedule 7: Regulations

Part 1: Scrutiny of powers to deal with deficiencies

224 Paragraphs 1 to 3 set out the three parliamentary scrutiny procedures by which regulations can be made under the power to deal with deficiencies arising from withdrawal in clause 7 and the circumstances in which each will apply. The main procedures are the draft affirmative, the negative and, for urgent cases, the made affirmative.

225 Draft affirmative resolution procedure (paragraph 1(1) of Schedule 7): These instruments cannot be made unless a draft has been laid before and approved by both Houses.

226 Negative resolution procedure (paragraph 1(3) of Schedule 7): These instruments become law when they are made (they may come into force on a later date) and remain law unless there is an objection from either House. The instrument is laid after making, subject to annulment if a motion to annul (known as a ‘prayer’) is passed within forty days.

227 Made affirmative resolution procedure (paragraph 3 of Schedule 7): These instruments can be made and come into force before they are debated, but cannot remain in force unless approved by both Houses within one month. This procedure can only be used by ministers of the Crown. The Government believes that the exceptional circumstances of withdrawing from the EU *might* necessitate the use of the made affirmative procedure so the Bill allows for this as a contingency.

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

228 Paragraph 1 provides that the draft affirmative must be used if the instrument does one or more of the things listed at sub-paragraph (2):

- establishes a new public authority
- transfers an EU function to a newly created public authority
- transfers an EU legislative function (i.e. a power to make delegated or implementing acts) to a UK body
- relates to fees
- creates or widens the scope of a criminal offence (although the power cannot be used

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- to create certain criminal offences)
- creates or amends a power to legislate

229 Sub-paragraph (3) provides that the negative procedure can be used in other cases.

230 Sub-paragraphs (4) to (9) provide for equivalent affirmative and negative procedures in each of the devolved legislatures.

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

231 Paragraph 2 deals with scrutiny by the UK Parliament and the devolved legislatures for instruments made jointly by a minister of the Crown and a devolved authority.

Scrutiny procedure in certain urgent cases

232 Paragraph 3 allows the made affirmative procedure to be used for regulations made by a minister of the Crown in urgent cases.

Part 2: Scrutiny of other powers under Act

Power to enable challenges to validity of retained EU law

233 Paragraph 4 provides that the draft affirmative (or made affirmative, see paragraph 11 of Schedule 7) procedure must be used for an instrument under paragraph 1(2)(b) of Schedule 1 (**power to enable challenges to validity of retained EU law**).

Power to implement international obligations

234 Paragraph 5 sets out the parliamentary scrutiny procedures for the **power to comply with international obligations** in clause 8, which mirror, as appropriate, the scrutiny procedures for the power to deal with deficiencies in paragraphs 1 to 3.

Power to implement withdrawal agreement

235 Paragraph 6 sets out the scrutiny procedures that apply to secondary legislation made under the **power to implement the withdrawal agreement** in clause 9 which mirror, as appropriate, the scrutiny procedures for the power to deal with deficiencies, with an additional rule that the draft affirmative (or made affirmative, see paragraph 11 of Schedule 7) must be used where this power is used to amend this Act.

Powers in connection with fees and charges

236 Paragraph 7 sets out the scrutiny procedures that apply to secondary legislation made under the powers in connection with fees and charges in Schedule 4.

237 The draft affirmative procedure (or the made affirmative, see paragraph 11 of Schedule 7) must be used for regulations made under paragraph 1 of Schedule 4 which sub-delegate the power or which impose a fee or charge, except for re-exercising the power to make

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modifications, for example for changing the amount of the fee or charge, which can be done under the negative procedure. The negative procedure can be used for regulations made under paragraph 4 or 7 of Schedule 4.

Power to make provision about publication and rules of evidence

238 Paragraph 8 provides that regulations under the power in Schedule 5 to make provision about publication and rules of evidence are subject to the affirmative procedure.

Power to make consequential provision

239 Paragraph 9 provides that regulations under the power to make consequential provision at clause 17(1) are subject to the negative procedure.

Power to make transitional, transitory or saving provision

240 Paragraph 10 provides that the draft affirmative or negative procedure can be used for regulations made under subsection (5) of clause 17.

Scrutiny procedure in certain urgent cases

241 Paragraph 11 allows the made affirmative procedure to be used for regulations made by a minister of the Crown under the power to enable challenges to validity of retained EU law, power to comply with international obligations, power to implement the withdrawal agreement or power to provide for fees or charges, in urgent cases.

Part 3: General provision about powers under Act

Scope and nature of powers: general

242 Paragraph 12 sets out how the powers to make regulations in the Bill are exercisable by statutory instrument (where exercised by a minister of the Crown, by a Welsh minister or by a minister of the Crown acting jointly with a devolved authority) and by statutory rule (where the powers are exercised by a Northern Ireland department). As provided for by section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010, regulations made by Scottish ministers acting alone will be made by Scottish statutory instrument.

243 Paragraph 13 sets out the scope of all powers in the Bill, including providing that all the powers in the Bill can be used to modify retained EU law and can make provisions in different ways for different cases or descriptions of case, in different circumstances, areas or for different purposes and include the power to make supplementary etc provision and to restate retained EU law.

244 Paragraph 14 provides that powers in the Bill may overlap without that overlap impacting on the scope of each of the powers.

Scope of consequential and transitional powers

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245 Sub-paragraph (1) of paragraph 15 provides that the law preserved and converted by clauses 2 to 6 may be modified by the power to make consequential provision.

246 Sub-paragraph (2) therefore clarifies that the consequential power in the Bill can, for example, be used to modify retained EU law if the changes are consequential on repeal of the ECA.

247 Sub-paragraph (3) clarifies that the power to make transitional, transitory and savings provisions can be used to do things in connection with the repeal of the ECA and generally in connection with withdrawal of the UK from the EU. The power can be used for these purposes in a way which is additional to the changes made by the clauses in the Bill that deal with the preservation, conversion and interpretation of EU law, or to produce different effects for particular cases.

248 Sub-paragraph (4) clarifies that the consequential power can do things in connection with repeals made by the Bill, or which are additional to the provisions covered in the clauses of the Bill that deal with the preservation, conversion and interpretation of EU law, including in a way that might alter their effect for particular cases. Provisions of this kind can be treated as retained EU law, as sub-paragraph (5) provides.

Scope of appointed day powers

249 Paragraph 16 provides that a minister of the Crown can specify the time of day when specifying a day under any of the powers in the Bill.

Effect of certain provisions in Schedule 8 on scope of powers

250 Paragraph 17 provides that the powers in the Bill may be used to make different provision, in particular cases, from the changes made by Part 1 of Schedule 8 and amendments to the Interpretation Act 1978 made by paragraphs 7 to 11. For example, although the Bill amends the definition of 'enactment' in the Interpretation Act so as to include retained direct EU legislation, the powers in the Bill could, where appropriate, be used to amend references to 'enactment' in other legislation so as to exclude some or all retained direct EU legislation from the definition.

Disapplication of certain review provisions

251 Paragraph 18 disapplies the requirement in the Small Business, Enterprise and Employment Act 2015 to conduct and publish a post-implementation review for any secondary legislation made under any of the powers in the Act. Post-implementation reviews assess the impact of new legislation on business.

Hybrid instruments

252 Paragraph 19 sets out that regulations brought forward under the powers in this Bill are never

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to be treated as hybrid instruments.²⁸

Procedure on re-exercise of certain powers

253 Paragraph 20 provides that where an instrument modifies certain earlier regulations made under the Bill, the rules for choosing the scrutiny procedure apply afresh.

Combinations of instruments

254 Regulations under the powers in this Bill can be combined with regulations under most other powers in other Acts; “levelling up” the whole instrument to the more onerous scrutiny procedure where relevant. Paragraph 21 allows affirmative regulations under this Bill to be combined with negative regulations under other powers. Other provisions (see for example paragraph 1(3) of Schedule 7) would enable other combinations.

Schedule 8: Consequential, transitional, transitory and saving provision

Part 1: General consequential provision

Existing ambulatory references to retained direct EU legislation

255 Paragraphs 1 and 2 of Schedule 8 set out what happens with existing ambulatory references after exit. As described above, these are cross-references to EU instruments as they may be amended from time to time in the future. Paragraph 1A of Schedule 2 to the ECA provided a power to make such references, and some have also been made in primary legislation and using other powers.

256 The effect of paragraph 1(1) is that existing ambulatory references to EU regulations, decisions, tertiary legislation or provisions of the EEA agreement will stop updating on or after exit day, and will instead become references to the retained versions of those instruments. Therefore existing ambulatory references to direct EU legislation are to be read as references to the version of the EU instrument as it was in force immediately before exit day (and hence to the retained instrument as it forms part of domestic law), as modified from time to time by domestic law (unless the contrary intention appears). This approach ensures that modifications of EU law made by the EU on or after exit day do not form part of UK domestic law. As set out in paragraph 1(2), however, this does not affect powers in other domestic legislation (i.e. other than the power contained in the ECA) which will be preserved under clause 2 of the Bill. Nor does it affect powers which are subject to a procedure in the devolved legislatures. Paragraph 1(3) provides that paragraph 1(1) is also subject to other provision made by or under this Act, including the powers in clauses 7 to 9.

²⁸ Some statutory instruments which need to be approved by both Houses (affirmative instruments) are ruled to be hybrid instruments because they affect some members of a group (be it individuals or bodies) in a manner different from others in the same group. This question might otherwise arise in relation to regulations amending converted EU decisions addressed to individuals in an affirmative instrument.

Other existing ambulatory references

257 Paragraph 2 provides that any other existing ambulatory references (which are not dealt with by paragraph 1) to any of the EU treaties, other EU instruments (such as directives) or any other document of an EU entity do not continue to update after exit day. So, for example, where there is a reference in domestic legislation to an 'EU Directive as amended from time to time', this paragraph ensures that the reference to the directive should be read as the version that had effect immediately before exit day. Any updates to that directive which occur after exit day would not be brought into domestic law. Regulations made under clause 7 will be capable of correcting any deficiencies which arise as a result. As set out in paragraph 2(2), however, paragraph 2(1) does not affect powers in other domestic legislation (i.e. other than the power contained in the ECA) which will be preserved under clause 2 of the Bill. Nor does it affect powers which are subject to a procedure in the devolved legislatures. Paragraph 2(3) provides that paragraph 2(1) is also subject to other provision made by or under this Act, including the powers in clauses 7 to 9.

Existing powers to make subordinate legislation

258 Sub-paragraph (1) of paragraph 3 provides that any existing powers to make subordinate legislation in pre-exit legislation are capable of amending retained direct EU legislation such as converted EU regulations (and sub-paragraph (2) provides that it is treated as secondary legislation for the purposes of scrutiny procedures under those pre-exit powers).

259 Sub-paragraph (3) provides that pre-exit powers do not have any implied EU law restriction (meaning they can be used to legislate in a way that would not have been compatible with EU law pre-exit, as long as the power would be capable of being used in that way on a plain reading).

260 The provisions of paragraph 3 apply to the pre-existing secondary legislation making powers of the devolved administrations as well as to the secondary legislation making powers of ministers of the Crown. However in relation to the devolved administrations these pre-existing powers are subject to the devolution provisions described in paragraph 33 of these notes, meaning powers in pre-exit legislation cannot be used to modify retained EU law in a way that would be incompatible with EU law as it existed on exit day until the relevant subject matters are released from the interim limit on their competence.

Review provisions in existing subordinate legislation

261 Paragraph 4 deals with duties to conduct post-implementation reviews of regulations made before exit, such as under section 28 of the Small Business, Enterprise and Employment Act 2015. In conducting those reviews, ministers will not now need to have regard to how EU member states have implemented former EU obligations.

Future powers to make subordinate legislation

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262 Paragraph 5 provides that powers to make secondary legislation in Acts passed after the UK's withdrawal from the EU are capable of amending retained direct EU legislation, unless otherwise provided.

Part 2: Specific consequential provision

Finance Act 1973

263 Paragraph 6 amends section 56 of the Finance Act 1973 (charges for services by Government departments) to remove the reference to "EU obligations", which is no longer relevant.

Interpretation Act 1978

264 Paragraphs 7 to 11 make amendments to the Interpretation Act 1978, which is the legislation which sets out some general rules of interpretation of legislation, including in relation to the construction of certain words and phrases, the effect of repeals and the interpretation of statutory powers and duties.

265 Paragraph 8 provides that the definition of subordinate legislation contained in the Interpretation Act 1978 includes instruments of the same nature made on or after exit day under any retained direct EU legislation. This means that the provisions of the Interpretation Act will apply to instruments which are made under retained direct EU legislation, (for example under powers in a retained EU regulation which have been turned into domestic powers), as they apply to other subordinate legislation. It also means that where other legislation relies on the Interpretation Act definition of subordinate legislation, it will include subordinate legislation made under retained direct EU legislation.

266 Paragraph 9 amends the Interpretation Act 1978 to provide that certain provisions within it will apply (so far as applicable and unless contrary intention is made) to any amendments which are made to converted direct EU legislation. So, for example, where amendments are made to EU regulations which include terms that are defined in Schedule 1 to the Interpretation Act, the Interpretation Act definition will apply to them, unless a contrary intention is shown (though if the same terms were used in an unamended part of the instrument, the Interpretation Act definition would not apply to those instances).

267 Paragraph 10 amends the provisions of the Interpretation Act 1978 as it applies to Northern Ireland so that the old ECA definitions saved by paragraph 11 (below) continue to apply to Northern Ireland legislation.

268 Paragraph 11 adds a number of words and expressions to Schedule 1 to the Interpretation Act 1978. The ECA contains a number of important definitions in section 1 and Part 2 of Schedule 1. These definitions apply to all legislation made by Parliament and by the Northern Ireland Assembly and Welsh Assembly (and not just to the ECA), by virtue of section 5 of, and Schedule 1 to, the Interpretation Act. The latter provides that "the EU" or "the EU Treaties" and other expressions defined by section 1 of, or Schedule 1 to, the ECA have the meanings

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prescribed by that Act. Paragraph 11 moves most of these old ECA definitions across to the Interpretation Act, as otherwise they would no longer exist as a result of repeal of the ECA. However, the definition of “EU customs duty”, “EU obligation” and “enforceable EU right” have not been retained in the Interpretation Act as such references will be broken on exit and will need to be amended or repealed using powers under the Bill. There are also some changes to some definitions, and some new definitions, to reflect the new context post exit and the relationship between domestic and retained EU law. For example, paragraph 11 inserts into Schedule 1 to the Interpretation Act new definitions of “exit day”, “retained EU law”, and “retained direct EU legislation” and “retained EU obligation”, to ensure those concepts recognised under the Bill apply to all legislation.

European Economic Area Act 1993

269 Paragraphs 12 to 17 amend the European Economic Area Act 1993. As explained in the *legal background* of these notes, on exit day the UK ceases to participate in the EEA Agreement. Paragraph 13 therefore repeals section 1 of the EEA Act 1993, which was the basic provision implementing the EEA Agreement in UK law and is therefore redundant. Paragraphs 14 and 15 amend sections 2 and 3 of the EEA Act 1993. These sections ensure that domestic legislation which was in force prior to the entry into force of the EEA Agreement in 1993 is read consistently with the provisions of that Agreement. Paragraphs 14 and 15 ensure that the modifications made by clauses 2 and 3 will continue to operate appropriately in respect of legislation that pre-dates the EEA Agreement. Paragraphs 16 and 17 make consequential amendments to the EEA Act 1993.

Criminal Procedure (Scotland) Act 1995

270 Paragraph 18 amends section 288ZA Criminal Procedure (Scotland) Act 1995 so that it refers to the new limit on modifying retained EU law rather than compatibility with EU law.

Human Rights Act 1998

271 Paragraph 19 provides that retained direct EU legislation (see the definition in clause 14(1)) is to be treated as ‘primary legislation’ for the purposes of the Human Rights Act 1998. These changes mean that, for the purposes of the Human Rights Act 1998, any retained direct EU legislation is to be treated as primary legislation for the purposes of challenges under the 1998 Act.

Interpretation and Legislative Reform (Scotland) Act 2010

272 Paragraph 21 amends the definition of ‘Scottish instruments’ in Part 1 of the Interpretation and Legislative Reform Act (Scotland) 2010 (ILRA). This means that where an instrument is made by Scottish ministers under a combination of powers in an Act of the Scottish Parliament and powers in retained direct EU legislation the provisions in Part 1 of ILRA (which deal with various rules of interpretation) will apply to that instrument.

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273 Paragraph 22 amends the definition of ‘enactment’ for Part 2 of that Act to include retained direct EU legislation and defines subordinate legislation for the purposes of Part 2 of that Act as including secondary legislation made under retained direct EU legislation. The effect of these changes is to make the normal rules on Scottish statutory instrument procedure contained in ILRA (which deal with scrutiny in the Scottish Parliament) apply to Scottish statutory instruments made by Scottish Ministers under new powers in retained direct EU legislation.

274 Paragraph 23 adds a number of words and expressions to Schedule 1 of that Act to bring over definitions from the ECA which would otherwise no longer exist as a result of repeal of the ECA.

Small Business, Enterprise and Employment Act 2015

275 Paragraph 24 amends section 30 of the Small Business, Enterprise and Employment Act 2015 in relation to EU obligations. In legislation that implements the UK’s international obligations the requirement to review how other countries have implemented the obligation remains.

Part 3: General transitional, transitory or saving provision

Continuation of existing acts etc.

276 Paragraph 25 provides that anything done or in force before exit day (or in the process of being done), and which relates to any element of retained EU law is preserved. For example, licences lawfully issued before exit day would continue to have effect after exit day.

Part 4: Specific transitional, transitory and saving provision

Retention of existing EU law

277 Paragraph 26 provides that rights etc which arise under EU directives and are recognised by courts or tribunals in the UK in cases which have begun before exit but are decided on or after exit day are preserved by clause 4 and are not excluded by subsection (2) of that clause.

278 Paragraph 27 makes further provision about the exceptions to the saving and incorporation of EU law set out in clause 5 and Schedule 1. The starting point is that these exceptions apply in relation to anything occurring before exit day as well as anything occurring after exit day. However, this is subject to the following specific transitional and saving provision and any specific saving and transitional provision made in regulations under clause 17(5). First, none of the exceptions apply in relation to cases which have already been decided before exit day (see sub-paragraph (2)). Secondly, the exceptions to preserved and converted law set out in clause 5(1) to (4) and paragraphs 3 and 4 of Schedule 1 will not apply in respect of proceedings which have begun before exit but are not decided until after exit (see sub-paragraph (3)). So, for example, a *Francovich* claim commenced before exit can be decided by a court after exit. Thirdly, the exceptions in clause 5(1) to (3) and Schedule 1 will not apply in

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relation to any criminal conduct which occurred prior to exit day (see sub-paragraph (4)).

279 Finally, sub-paragraph (5) provides that where a court or tribunal takes a decision on or after exit day which is a necessary consequence of a decision made before exit day, it will be able to disapply any enactment or rule of law, or quash any conduct on the basis of incompatibility with the general principles. This saves the effect of pre-exit case law in which the courts have disapplied a provision of pre-exit legislation on the grounds that it is incompatible with one of the general principles of EU law.

Main powers in connection with withdrawal

280 Paragraph 28 clarifies that although certain powers in the Bill expire, the regulations made under them do not expire.

Devolution

281 Sub-paragraph (1) of paragraph 29 provides that the amendments made to the devolution legislation by clause 11 and Part 1 of Schedule 3 do not affect the validity of devolved primary legislation that has been made and is in force before exit day, or secondary legislation that has been made, confirmed or approved and is in force before exit day. Paragraph 30 makes equivalent provision in respect of administrative acts done before exit day.

282 Sub-paragraphs (3) to (5) of paragraph 29 disapply the current EU law limits on competence so that primary legislation can be passed validly before exit day in relation to an area that has been released from the interim competence arrangement by Order in Council, provided the legislation comes into force on or after exit and is passed at a time when the relevant Order in Council has been made. Sub-paragraphs (6) to (8) make similar provision in relation to the making, confirming or approving of secondary legislation before exit day.

283 Sub-paragraph (9) disapplies – for the purposes of the exercise of the powers in Schedules 2 and 4 – the provisions in the devolution Acts that would otherwise prevent the devolved administrations from making secondary legislation that would be incompatible with EU law. If this restriction was not lifted the devolved administrations would be unable to start making regulations to fix all the deficiencies in devolved law and making other provisions to prepare for EU withdrawal until after the UK left the EU (as some of the necessary changes would inevitably be incompatible with EU law). Therefore the restriction needs to be lifted so that the devolved administrations are able to start making the necessary legislation before exit day so that those changes are ready to come into force on exit day.

Other provision

284 Paragraph 31 is a transitional provision related to the definition of ‘relevant criminal offence’ and reflects a pending amendment to the Regulation of Investigatory Powers Act 2011.

285 Paragraph 32 makes transitional provision for the amendment to section 56 Finance Act 1973.

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It deals with payment after exit for services etc received before exit. It also saves the effect of section 56 where regulations made under it are preserved and the service is still being provided post exit.

Schedule 9: Additional repeals

286 Schedule 9 lists further legislation which is repealed, either in whole or in part, by the European Union (Withdrawal) Bill.

Commencement

287 Clause 19(1) sets out the provisions of the Bill that will commence on Royal Assent. Clause 19(2) sets out that the remaining provisions will commence on the day or days appointed by regulations.

Financial implications of the Bill

288 The only provisions of the European Union (Withdrawal) Bill that have immediate financial implications are clause 13 and Schedule 5. However, exercise of the delegated powers contained in the Bill are likely to result in associated expenditure being incurred. Indeed, the powers in clauses 7 to 9 and Schedule 2 all contain the power to make any provision that can be made by an Act of Parliament, so the potential for provision to be made that involves expenditure is significant.

289 For example, the power in clause 7 enables the transfer of functions from an EU body to a UK body. In order for that UK body to be sufficiently prepared to assume these functions on exit day, preparatory spending could be necessary. There could then be significant ongoing expenditure connected with the exercise of the functions.

290 The way in which these powers in the Bill will be used will depend on the outcome of negotiations with the European Union and on policy decisions yet to be taken, meaning it is not possible at this stage to provide an estimate of the amount which may need to be issued out of either the Consolidated Fund or the National Loans Fund. However, the explanatory memorandum accompanying each statutory instrument made by a minister of the Crown under a power in this Bill will include details of the financial implications of the instrument, providing ongoing transparency of the financial implications of the use of the powers in the Bill.

291 Typically, it is entirely proper for persons and bodies affected by an Act to incur all expenditure necessary to prepare for the coming into force of the Act from Royal Assent. However, in certain limited cases, for example, where a body will be established by secondary legislation made under an Act, it may not be proper for departments to incur certain types of

expenditure before the making of the relevant secondary legislation. To ensure that preparatory expenditure can be properly incurred in cases such as these, clause 12 states that a minister of the Crown, government department or relevant devolved authority may incur expenditure for the purposes of, or in connection with, preparing for anything that may be done under exercise of the delegated powers in the Bill, before such provision is made. This ensures that all necessary preparatory expenditure can be properly incurred from Royal Assent.

292 Expenditure incurred by ministers of the Crown, government departments and other public authorities will be funded out of money provided by Parliament. The Bill also provides that where provisions in the Bill result in an increase in the sums payable under other legislation out of money provided by Parliament, those sums will also be funded by Parliament. Spending on the part of the devolved authorities will require budget from their respective legislature.

293 Additionally, Schedule 4 provides ministers with the power to impose fees or charges where public authorities are taking on functions previously exercised by the EU. The way in which departments will use this power will not be known until negotiations are further progressed and policy decisions are taken about where EU functions are vested. It is therefore not possible to estimate any sums associated with charging in connection with these functions. This power is capable of being used to confer a power on public authorities to create their own fees and charges schemes. Some public authorities already have this ability in connection with their existing domestic functions, for example the Financial Conduct Authority and the Prudential Regulation Authority. The procedural requirements that are set out in the regulations conferring that power would allow it to be used in a restricted way. The minister's regulations conferring such a power on a public authority would themselves be subject to Treasury consent and the affirmative procedure.

294 The devolved administrations can also use this power in accordance with their own procedures for managing public money.

Parliamentary approval for financial costs or for charges imposed

295 A money resolution and a ways and means resolution are required for the Bill. A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). A ways and means resolution is required where a Bill creates or confers power to create new charges on the people (broadly speaking, new taxation or similar charges).

296 In terms of expenditure, the powers in clauses 7 to 9 and Schedule 2 all contain the power to

do anything that an Act of Parliament can do and an Act can authorise any type of expenditure, charges on the Consolidated Fund or National Loans Fund or other charges on the public revenue. There may also be potential expenditure by ministers of the Crown, government departments or relevant devolved authorities for the purpose of, or in connection with, preparing for anything about which provision may be made under the delegated powers in the Bill (see clause 12). For example, regulations made under clause 7 could cause the Government to incur expenditure in taking on public functions currently exercised at the EU level or regulations made under clause 17 could authorise the transfer of funds from the UK Government to the EU (subject to parliamentary approval). In addition, clause 13 and Schedule 5 require the Queen's Printer to publish certain treaties and EU instruments, which will involve expenditure out of money provided by Parliament.

297 On taxation or similar charges, the powers in clauses 7 and 9 and Parts 1 and 3 of Schedule 2 all contain prohibitions on the imposition or increase of taxation. But clause 8 and Part 2 of Schedule 2 (which enable provision to be made to ensure the UK continues to meet its international obligations) do not contain such a restriction and so could be used to impose or increase taxation, as they can be used to make any provision that can be made by an Act of Parliament. Clause 12(1) and Schedule 4 confer powers to charge fees or other charges that, in some cases, can go beyond cost recovery. Those powers are explained in the section of these notes on the financial implications of the Bill. Paragraph 3 of Schedule 8 allows any power to make, confirm or approve secondary legislation (including one that could impose or increase fees or charges) that exists before exit day to be used to modify retained direct EU legislation.

Compatibility with the European Convention on Human Rights

298 The Secretary of State for Exiting the European Union has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

299 The Government has published a separate ECHR memorandum which explains its assessment of the compatibility of the Bill's provisions with the Convention rights. The memorandum is available on the Department for Exiting the European Union website.

Related documents

300 The following documents are relevant to the Bill and can be read at the stated locations:

- *The United Kingdom's exit from and new partnership with the European Union*, HM Government, February 2017 <https://www.gov.uk/government/publications/the->

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[united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper](#)

- *Prime Minister's letter to Donald Tusk triggering Article 50*, HM Government, March 2017 <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>
- *Legislating for the United Kingdom's withdrawal from the European Union*, HM Government, March 2017 <https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper>
- A range of documents will be available at <https://www.gov.uk/government/organisations/department-for-exiting-the-european-union>

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Annex A - Territorial extent and application in the United Kingdom

The Bill extends and applies to the whole of the UK. In addition, repeals and amendments made by the Bill have the same territorial extent and application as the legislation that they are repealing or amending. For example, the ECA extends to and applies in Gibraltar and the three Crown Dependencies in a limited way. This means its repeal extends to those jurisdictions to the same extent.

The Bill also repeals other Acts which extend to Gibraltar, namely the European Union Act 2011, the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003. These Acts will be repealed in respect of Gibraltar as well as the UK, and the powers in clauses 7 and 17 will be capable of making provision for Gibraltar as a consequence of those main repeals.

Regulations made under powers in the Bill may have extraterritorial effect where they are being used to amend legislation which already produces a practical effect outside the UK.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 2 & Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 7	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 8	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 10 & Schedule 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 11 & Schedule 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)

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Clause 12 & Schedule 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 13 & Schedule 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 14 & Schedule 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 16 & Schedule 7	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 17, Schedule 8 & Schedule 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 18	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 19	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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Annex B - Glossary

Term	Definition
Act of Parliament	An Act of Parliament is a law that both Houses of Parliament have agreed to, and which is enforced in all the areas of the UK where it is applicable.
Affirmative procedure	Under the affirmative procedure a statutory instrument must be approved by both the House of Commons and the House of Lords to become law. There are two sub-categories of the affirmative procedure in this Bill. Under the <i>draft affirmative</i> procedure, the statutory instrument cannot be made unless a draft has been laid before and approved by both Houses. Under the <i>made affirmative</i> procedure, the statutory instrument can be made and come into force before it is debated, but cannot remain in force unless approved by both Houses within one month.
Bill	A proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration. Once agreed and made into law, it becomes an Act.
Charter of Fundamental Rights	The Charter of Fundamental Rights sets out 'EU fundamental rights' which is a term used to describe human rights as they are recognised in EU law. EU fundamental rights are general principles of EU law which have been recognised over time through the case law of the CJEU and which have been codified in the Charter which came into force in 2009. The Charter sets out 50 rights and principles, many of which replicate guarantees in the European Convention on Human Rights and other international treaties. See Article 6 TEU.
Coming into force	The process by which an Act of Parliament, secondary legislation or other legal instrument comes to have legal effect. The law can be relied upon from the date on which it comes into force but not any sooner. Also known as commencement.
Competence	Competence means all the areas where the treaties give the EU the ability to act, including the provisions in the treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. It also means areas where the treaties apply directly to the member states without needing any further action by the EU institutions. The EU's competences are set out in the EU treaties, which

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	provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the treaties, and where the treaties do not confer competences on the EU they remain with the member states. See Article 5(2) TEU.
Converted legislation	EU laws that applied in the UK the moment before the UK left the EU, which are converted into domestic law through the European Union (Withdrawal) Bill.
Court of Justice of the European Union (CJEU)	The CJEU has jurisdiction to rule on the interpretation and application of the treaties. In particular, the Court has jurisdiction to rule on challenges to the validity of EU acts, in infraction proceedings brought by the Commission against member states and on references from national courts concerning the interpretation of EU acts. The Court is made up of two sub-courts: the General Court and the Court of Justice (which is sometimes called the ECJ). See Article 19 TEU and Articles 251 to 281 TFEU.
Decision	A legislative act of the EU which is binding upon those to whom it is addressed. If a decision has no addressees, it binds everyone. See Article 288 TFEU.
Delegated Act	A form of EU instrument which is similar to UK secondary legislation. A EU legislative act, such as a directive or a regulation, can delegate power to the Commission to adopt delegated acts to supplement or amend non-essential elements of the legislative act. See Article 290 TFEU.
Devolution settlements	The constitutional arrangements governing which decision making responsibilities and legislation making powers have been devolved and the mechanisms through which these operate.
Devolution statutes (or Acts/legislation)	The principal Acts of Parliament that set out the terms of the devolution settlements. These are the Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 2006. 'Devolution legislation' may refer either to the devolution statutes or to the statutes together with the secondary legislation made under them.
Devolved administrations	The governments of the devolved nations of the UK. These are the Scottish Government, the Welsh Government and the Northern Ireland Executive.
Devolved competence	The areas in which the devolved legislatures are responsible for

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	making laws ('legislative competence') or the devolved administrations are responsible for governing or making secondary legislation ('executive competence').
Devolved institutions	Used to refer collectively to both the devolved administrations and the devolved legislatures.
Devolved legislatures	The law making bodies of the devolved nations of the UK. These are the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.
Directive	A legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result. Directives must be transposed into national law using domestic legislation, in contrast to regulations, which are enforceable as law in their own right. See Article 288 TFEU.
EU agencies	EU agencies are legal entities (separate from the EU institutions) set up to perform specific tasks under EU law. They include bodies such as the European Medicines Agency, the European Police Office (Europol) and the European Union Agency for Railways.
EU institutions	There are a number of EU bodies which are defined under the Treaties as EU institutions including the European Parliament, the European Council, the Council of the European Union and the European Commission.
The EU Treaties (including TEU and TFEU)	The European Economic Community (EEC) was established by the Treaty of Rome in 1957. This Treaty has since been amended and supplemented by a series of treaties, the latest of which is the Treaty of Lisbon. The Treaty of Lisbon, which entered into force on 1 December 2009, re-organised the two treaties on which the European Union is founded: the Treaty on European Union (TEU) and the Treaty establishing the European Community, which was re-named the Treaty on the Functioning of the European Union (TFEU).
European Commission	The Commission is the main executive body of the EU. It has general executive and management functions. In most cases it has the sole right to propose EU legislation. In many areas it negotiates international agreements on behalf of the EU and represents the EU in international organisations. And the Commission also oversees and enforces the application of Union law, in particular by initiating infraction proceedings where it considers that a member state has not complied with its EU obligations. See Article 17 TFEU and Articles 244 to 250

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	TFEU.
European Convention on Human Rights (ECHR)	An international convention, ratified by the UK and incorporated into UK law in the Human Rights Act 1998. It specifies a list of protected Human Rights, and establishes a Court (European Court of Human Rights sitting in Strasbourg) to determine breaches of those rights. All member states are parties to the Convention. The Convention is a Council of Europe Convention, which is a different organisation from the EU. Article 6 TEU provides for the EU to accede to the ECHR.
European Council	The European Council defines the general political direction and priorities of the EU. It consists of the Heads of State or Government of the member states, together with its President and the President of the Commission. See Article 15 TEU and Articles 235 and 236 TFEU.
European Parliament	The European Parliament (EP) consists of representatives elected by Union citizens. The EP shares legislative and budgetary power with the Council, and has oversight over the actions of the Commission. See Article 14 TEU and Articles 223 to 234 TFEU.
Implementing acts	A form of EU instrument which is similar to UK secondary legislation. A legally binding EU act, such as a directive or a regulation, can enable the Commission (and in some cases the Council) to adopt implementing acts where uniform conditions for implementing the legislative act are needed. See Article 291 TFEU.
Negative procedure	A statutory instrument under the negative procedure will become law once made without debate unless there is an objection from either House.
Preserved legislation	Existing domestic legislation which implements our EU obligations and will be preserved in domestic law through the European Union (Withdrawal) Bill.
Regulation	A legislative act of the EU which is directly applicable in member states without the need for national implementing legislation (as opposed to a directive, which must be transposed into domestic law by member states using domestic legislation). See Article 288 TFEU.
Secondary legislation	Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in

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	Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or delegated legislation.
Statute book	The body of legislation that has been enacted by Parliament or one of the devolved legislatures and has effect in the UK.
Statutory instrument	A form of secondary legislation to which the Statutory Instruments Act 1946 applies.

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EUROPEAN UNION (WITHDRAWAL) BILL

EXPLANATORY NOTES

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