



European Union (Withdrawal) Bill 2018

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon Howard Quayle MHK.

INTRODUCTION

1. These explanatory notes relate to the European Union (Withdrawal) Bill 2018 ("the Bill"). They have been prepared by the Cabinet Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

BACKGROUND

3. The Isle of Man's Protocol 3¹ relationship with the European Union (EU) is dependent upon the United Kingdom's (UK's) membership of the EU. The UK's decision to withdraw from the EU, commonly known as "Brexit", means that the Island's relationship with the EU, in its current form at least, will end when the UK's membership of the EU comes to an end at 11pm on 29 March 2019. As in the UK, this event will have an unprecedented effect on the Island's legislative framework.
4. Like many international events, this is beyond the control of the Isle of Man, but the Island must ensure that it can respond appropriately in a timely manner.
5. At the time of the publication of this document negotiations between the UK and the EU have been underway for some time. Whilst the provisions within the draft Withdrawal Agreement dealing with a transitional status quo period, or "implementation period", have been agreed by the UK and the EU, the Withdrawal Agreement as a whole has not yet been formally agreed, with the question of the border between Northern Ireland and the Republic of Ireland being a significant outstanding issue. And, as had been said by the EU's chief negotiator "nothing is agreed until everything is agreed". There is still a great deal of uncertainty about the future relationship that will exist between the UK and the EU after exit day or the end of the implementation period, if there is one.
6. The changes to Manx legislation as a direct or indirect result of Brexit will be wide-ranging and substantial but in the current period of uncertainty about the Island's future relationship (through the UK) with the EU it is not possible to predict exactly what those changes will be or make the necessary amendments to the Island's

¹ <https://www.gov.im/media/624101/protocol3relationshipwiththeeu.pdf>

legislation. A substantial amount of preparatory work has been carried out, however, and it is known that the size of the task is very large. Given that and also the fact that by the time there is clarity the Island is likely to only have a limited period to complete the task, the Bill is necessarily largely enabling in nature.

OVERVIEW

7. The Bill took the UK's European Union (Withdrawal) Bill² ("the UK Withdrawal Bill") as its starting point but provisions in other UK Brexit-related Bills have also been considered during the drafting process, in particular the UK's Trade Bill³, as have the provisions of the Island's [European Communities \(Isle of Man\) Act 1973](#) ("the 1973 Act") and the Brexit Law that has been adopted by Jersey⁴.
8. The Bill:
 - deals with the repeal of the 1973 Act, the preservation (subject to modification) of EU instruments which fall within the scope of Protocol 3, saves existing statutory documents made under the 1973 Act and continues to allow EU instruments to be voluntarily applied to, or implemented in, the Island where useful to do so.
 - makes provision by way of enabling powers for effect to be given to the Withdrawal Agreement (which will include the provisions governing the Implementation Period during which, it is proposed, Protocol 3 will in effect remain in place) in Manx law, so far as possible; and
 - provides enabling powers to allow for continued effect to be given to certain international agreements which currently apply to the Isle of Man by virtue of Protocol 3, or which may be extended to the Island in the future, including certain WTO and free trade agreements;
9. The Bill consists of 26 clauses and 8 Schedules.
10. Clauses 1 to 3 are introductory.
11. Clause 4 deals with "exit day" from the EU, which has to be same for the Island as for the UK.
12. Clause 5 deals with the repeal of the 1973 Act, the Island's main legislative vehicle for giving effect to its Protocol 3 relationship with the EU.
13. Clauses 6 to 10 concern the retention of certain EU law after exit day.
14. Clauses 11 to 13 contain enabling powers in connection with the UK's withdrawal from the EU.
15. Clauses 14 to 19 contain powers that can be exercised on or after exit day.
16. Clauses 20 to 23 deal with the implementation of, and compliance with, trade agreements.

² <https://services.parliament.uk/Bills/2017-19/europeanunionwithdrawal.html>

³ <https://services.parliament.uk/Bills/2017-19/trade.html>

⁴ European Union (Repeal and Amendment) (Jersey) Law 201-: http://www.statesassembly.gov.je/assemblypropositions/2018/p.16-2018_with_corrigendum.pdf

This Law was approved by the States of Jersey on 6 March 2018 and is awaiting Royal Assent.

17. Clauses 24 to 26 are general and final provisions.
18. The Schedules contain provisions which supplement certain of the clauses of the Bill, for example by providing for interpretation and exceptions.
19. A more detailed description of the Bill's provisions is provided in the following paragraphs.

NOTES ON CLAUSES

Clause 1

20. Clause 1 gives the short title that the Act will have if the Bill is passed.

Clause 2

21. Clause 2 provides for commencement of the Bill. Certain provisions will come into operation immediately when Royal Assent is announced in Tynwald and the remaining provisions will be brought into operation by one or more Appointed Day Orders made by the Council of Ministers. Such orders can make consequential, incidental, supplemental, transitional, transitory or saving provisions as are necessary or expedient in connection with the coming into operation of any provision of the Bill.

Clause 3

22. Clause 3 gives effect to Schedule 1, which defines the meaning of terms that are used in the Bill.

Clause 4

23. Clause 4 establishes the day and time of "exit day", i.e. when the UK officially leaves the EU. Unless there are exceptional and unforeseen circumstances this will be 11.00pm on 29 March 2019⁵. On this date the EU Treaties⁶ are due to cease to apply to the United Kingdom in accordance with Article 50(3) of the Treaty on European Union (TEU), being two years following the date on which the UK submitted its formal notification to the EU under Article 50 of its intention to leave the EU.
24. Under Article 50 TEU the two year period referred to above can only be extended with the unanimous agreement of the UK and the other 27 EU Member States. It is not expected that this will happen. Nevertheless, the UK Withdrawal Bill does include a power to amend the definition of "exit day" to ensure that the day and time specified in the definition are the day and time that the EU Treaties are to cease to apply to the United Kingdom if necessary.
25. Because the Isle of Man's Protocol 3 relationship with the EU is through the UK's membership of the Union the Island cannot have a different exit day to that of the UK, so this clause allows the definition of "exit day" to be amended by the Council of Ministers if the definition of "exit day" in the UK Withdrawal Bill is amended.

Clause 5

26. This clause repeals the 1973 Act on exit day. The 1973 Act is the Island's main legislative vehicle to give effect to the Island's Protocol 3 relationship with the EU. Under section 2(1) of the 1973 Act directly applicable EU legislation (i.e. EU

⁵ However, if the Withdrawal Agreement is agreed, notwithstanding that the UK will leave the EU on 29 March 2019, there will be a status quo implementation period until 31 December 2020.

⁶ The Treaty on European Union and the Treaty on the Functioning of the European Union.

Regulations and relevant EU Decisions) which falls within the scope of Protocol 3 has direct effect as part of the law of the Island (without the need for any further Manx legislation). The Act also includes enabling powers to implement such directly applicable EU legislation (by, for example, providing for offences and penalties), to transpose EU Directives that fall within the scope of Protocol 3, and to voluntarily apply and implement EU legislation which is outside the scope of Protocol 3 where useful to do so (in particular the application and implementation of EU sanctions measures).

27. Whilst there may still be circumstances in the future where it will be useful to voluntarily apply and implement certain EU legislation in the Island (see clause 16), the main purpose of the 1973 Act becomes redundant when the Island's Protocol 3 relationship with the EU comes to an end.

Clause 6

28. Clause 6 preserves in effect all orders made by the Council of Ministers under section 2A of the 1973 Act before exit day and all regulations made by the Council of Ministers under section 2B of that Act before exit day.
29. Normally when an Act of Tynwald is repealed the statutory documents made under that Act automatically cease to have effect. However, since the intention is that the transition from immediately before exit day to immediately following exit day should be as seamless as possible, the statutory documents made under the 1973 Act are preserved in operation.
30. There is a power under this clause for the Council of Ministers to subsequently modify (including repeal) such saved statutory documents with the approval of Tynwald. This is in addition to the power in clause 11 to make amendments to Manx legislation to specifically deal with deficiencies arising from the UK's withdrawal from the EU.
31. This clause is subject to the provisions of clause 9 and Schedule 2 which deal with exceptions to savings and retention.

Clause 7

32. Clause 7 preserves as part of the law of the Island certain EU legislation that is currently considered to apply directly to the Isle of Man under Protocol 3 and section 2(1) of the 1973 Act.
33. To avoid a potential legislation cliff-edge immediately following exit day, the UK's Withdrawal Bill will incorporate all "direct EU legislation"⁷ which applies in the UK immediately before exit day as part of UK domestic law.
34. The UK's position in relation to direct EU legislation is clear; except in certain limited and well-defined cases the whole body of direct EU legislation applies to the UK. The position of the Isle of Man (and the other Crown Dependencies) in relation to direct EU legislation is not, and never has been, as clear. Whilst the broad scope of Protocol 3, as supplemented by Council Regulation 706/73⁸, is well-known, which EU instruments are covered by Protocol 3, in whole or in part, has never been explicitly defined. Although work has been undertaken, within the limits of resources and time available,

⁷ This means EU Regulations; EU Decisions which are addressed to the UK and EU; and implementing or delegated measures made under those instruments, or under EU Directives, by the European Commission ("EU tertiary legislation").

⁸ Regulation (EEC) No 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products – <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1521646367502&uri=CELEX:01973R0706-19860424>

to identify the majority of EU Regulations and Decisions that are likely to be within the scope of Protocol 3⁹, ultimately only the European Court of Justice could provide a definitive opinion on the applicability or otherwise of a particular EU instrument to the Island by virtue of Protocol 3.

35. Therefore, with a view to providing greater legal certainty after exit day, only such direct EU legislation which is believed to fall within the scope of Protocol 3 before exit day and which is prescribed in regulations made by the Council of Ministers before exit day will continue to form part of Manx law after exit day. Although this power is broad enough that it would allow the category of all direct EU legislation that falls within Protocol 3 to be prescribed for the purpose of these regulations, if such should be required, it also allows a list of specific EU Regulations and Decisions that are retained as part of Manx law to be established. The current intention is that there will be a defined list of direct EU legislation rather than retaining broad categories of direct EU legislation. Any direct EU legislation that is not prescribed under this clause will cease to have effect in Manx law on exit day (but see clause 17). Regulations under this clause cannot be made after exit day.
36. Only the English language version of such prescribed EU legislation will form part of Manx law.
37. Again with a view to providing legal certainty, in any question as to whether any particular EU regulation, EU decision or EU tertiary legislation did or did not have legal effect in Manx law by virtue of section 2(1) of the 1973 Act immediately before exit day, a certificate issued by or under the authority of HM Attorney General stating that it did or did not have such effect is to be treated as evidence of that fact.
38. This clause is subject to the provisions of clause 9 and Schedule 2 which deal with exceptions to savings and retention.
39. Retained direct EU legislation can be amended by the Council of Ministers to deal with deficiencies arising from the UK's withdrawal from the EU (see clause 11) and also in any way considered appropriate by the Council of Ministers, including to mirror changes made to the legislation as it has effect in the EU after exit day (see clause 14), in each case subject to Tynwald approval.

Clause 8

40. Clause 8 provides that any rights, powers, liabilities, obligations, restrictions, remedies and procedures which are available and recognised in Manx law immediately before exit day by virtue of section 2(1) of 1973 Act (i.e. those rights, powers, etc that fall within the scope of Protocol 3) continue to be available and recognised in the Island on and after exit day. But this saving only applies so far as such rights, powers, etc relate to any statutory document saved under clause 6 or to direct EU legislation that is retained under clause 7.
41. Clause 8 will apply to directly effective rights within the EU treaties (within the meaning of section 1 of the 1973 Act). Directly effective rights are those provisions of the EU treaties which are sufficiently clear, precise and unconditional to confer rights directly on individuals which can be relied on national law without the need for implementing measures.
42. The clause provides for certain exceptions to the retention of directly effective rights.

⁹ And so directly applicable as part of the law of the Island by virtue of section 2(1) of the 1973 Act.

43. Any directly effective rights converted into Manx law as a result of this clause are capable of amendment under clauses 11 and 14.
44. As with the provision in the UK Withdrawal Bill on which it is based, this clause is something of a safety net provision to ensure that anything which may be important is not lost inadvertently.
45. This clause is subject to the provisions of clause 9 and Schedule 2 which deal with exceptions to savings and retention.

Clause 9

46. Clause 9 deals with certain exceptions to the saving and retention of EU law by the Bill. The clause confirms that “retained EU law” (as defined in Schedule 1 to the Bill) is subject to Manx legislation that is passed after exit day. But this clause also confirms that, except for legislation relating to the UK’s withdrawal from the EU, Manx legislation passed or made before exit day is subject to retained EU law; this reflects the fact that currently, by virtue of section 2(1) of the 1973 Act, other laws in the Island must be read in accordance with EU legislation which falls within the scope of Protocol 3.
47. Clause 9 confirms, for the avoidance of doubt, in line with the position under the UK Withdrawal Bill, that the Charter of Fundamental Rights of the European Union¹⁰ does not apply as part of Manx law on or after exit day but this does not affect the continuation of rights under the Charter which exist separately from the Charter – any rights or principles codified by the Charter and which exist in any EU law saved and retained under clauses 6, 7 and 8 will be retained as Manx law¹¹.
48. This clause also gives effect to Schedule 2 which includes some further limited exceptions to the saving and retention of EU law by the Bill.

Clause 10

49. Clause 10 deals with how retained EU law is to be interpreted by courts and tribunals in the Island after exit day.
50. Firstly, the clause confirms that courts and tribunals in the Island are not bound by EU case law and cannot refer any matters to the Court of Justice of the European Union¹², but they may have regard to a decision of the European Court, another EU entity or the EU if they consider it appropriate to do so.
51. Secondly, the clause provides that for retained EU law which has not been modified on or after exit day, any question as to its validity or meaning will be decided in accordance with any relevant pre-exit EU or Manx case law and any relevant pre-exit general principles of EU law. Any such retained EU law will also be interpreted by reference to the limits of EU competences in relation to the Island immediately before

¹⁰ The Charter may currently apply to the Island but only to extent that it relates to the EU Treaties and EU legislation which applies to the Isle of Man by virtue of the Island’s Protocol 3 relationship with EU. The Charter is largely a restatement for the EU of rights that exist under other international instruments such as the European Convention on Human Rights and a number of United Nations human rights conventions.

¹¹ In addition, many of the rights set out in the Charter are similar to rights under international treaties which apply to the Isle of Man and are given effect in Manx law – for example, rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms, which are given effect in Manx law by the Human Rights Act 2001.

¹² At present the Island’s courts can refer questions relating to EU issues that fall within the scope of Protocol 3 to the European Court and judgments of the European Courts on such issues are binding on the Island.

exit day, i.e. within the scope of Protocol 3. But retained EU law which has been amended on or after exit day can be determined in accordance with pre-exit EU or Manx case law and the pre-exit general principles where the amendments to the retained EU law so provide.

52. Thirdly, the clause provides that the Staff of Government Division (i.e. the Island's Court of Appeal) is not bound by any pre-exit EU case law and in deciding whether to depart from such pre-exit EU case law, the Staff of Government Division must apply the same test as it would apply in deciding whether to depart from its own case law. In addition, no Manx court or tribunal is bound by any relevant retained Manx case law (see definition in Schedule 1) that it would not otherwise be bound by.

Clause 11

53. Clause 11 gives the Council of Ministers the power, subject to the approval of Tynwald, to make regulations to prevent, remedy or mitigate any failure of, or other deficiency in, retained EU law or other Manx legislation arising from the withdrawal of the UK from the EU. What constitutes a deficiency for the purpose of this clause is defined.
54. The Council of Ministers can make regulations to provide for other things to be treated as deficiencies for the purpose of this clause but only with the approval of Tynwald.
55. The clause confirms that retained EU law and other Manx legislation is not deficient only because it does not include any modification to EU law which is adopted or notified, comes into operation or only applies on or after exit day.
56. The clause provides that the power to deal with deficiencies can make the same provision as an Act of Tynwald, including amendments to Acts of Tynwald. The clause gives examples of the types of thing that can be done and lists a number of restrictions on the power – it cannot:
- impose or increase taxation;
 - make provision that comes into operation before the date on which the power is exercised (“retrospective provision”);
 - create a criminal offence that has a maximum penalty of greater than 2 years’ custody (“a relevant criminal offence”); or
 - amend, repeal or revoke the Human Rights Act 2001 or any statutory document made under it.

Clause 12

57. Clause 12 gives the Council of Ministers the power to make regulations to prevent or remedy any breach of an existing international obligation that applies or extends to the Island and which arises from the withdrawal of the UK from the EU. Tynwald approval will be required for any such regulations to come into operation.
58. Regulations made under this clause can do anything an Act of Tynwald can do to prevent or remedy any breach of an international obligation. However, regulations under this clause cannot make retrospective provision; create a relevant criminal offence; or amend, repeal or revoke the Human Rights Act 2001¹³.

¹³ It may be noted that unlike the powers in clauses 11 and 13, this clause does not include a restriction in respect of taxation. This is in line with the position in the equivalent clauses of the UK Withdrawal Bill. The UK leaving the EU, the customs union and the single market may alter the way in which the UK and the IOM complies with its international obligations in relation to taxation. For example, there may be obligations in respect of the treatment of WTO most favoured nation status. It is considered that a restriction in relation to

Clause 13

59. Clause 13 gives the Council of Ministers a power to make regulations, with the approval of Tynwald, for the purposes of implementing any withdrawal agreement concluded between the UK and the EU.
60. Regulations under this clause can do anything that an Act of Tynwald might to implement any withdrawal agreement. However, such regulations may not impose or increase taxation; make retrospective provision; create a relevant criminal offence; or amend, repeal or revoke the Human Rights Act 2001.

Clause 14

61. Under clause 14 the Council of Ministers can amend retained direct EU legislation (see clause 7) as it considers appropriate on or after exit day. For example, if it considered appropriate, the retained direct EU legislation could be amended to keep it in line with changes that are made by the European Union to the legislation as it has effect in the EU. The clause also allows for any rights, powers, liabilities, etc preserved under clause 8 to be amended on or after exit day. In both cases the approval of Tynwald will be required.

Clause 15

62. Clause 15 allows the Council of Ministers to make regulations, with the approval of Tynwald, to apply to the Island or to implement in the Island, certain treaty provisions. This clause applies to the EU Treaties (within the meaning of section 1(1) of the 1973 Act). This clause may also be applied to other agreements by the Council of Ministers with the approval of Tynwald. Examples of the types of additional agreements that this clause may be applied to are provided, including future agreements between the UK and EU after exit day. Regulations under this clause cannot come into operation until after exit day.
63. This clause is based on a provision in the European Union (Repeal and Amendment) (Jersey) Law.

Clause 16

64. Clause 16 is similar to existing sections 2A and 2B of the 1973 Act. It will allow the Council of Ministers, with the approval of Tynwald, to:
 - (a) voluntarily apply any EU instrument (whether it is operative before, on or after exit day) to the Island (subject to modifications) and to make any necessary provisions to implement such instruments;
 - (b) implement any other EU law (whether operative before, on or after exit day) into Manx law and to deal with any matters arising out of such implementation.
65. Regulations under this clause can do anything that an Act of Tynwald may do but cannot come into operation until on or after exit day.
66. Regulations must have annexed to them a text of an EU instrument applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.

taxation under this clause might, in some circumstances, prevent important changes to comply with international arrangements from being made and this power is needed to be prepared for all eventualities.

Clause 17

67. Clause 17 provides the Council of Ministers with the power, with the approval of Tynwald, to retrospectively apply and implement certain EU legislation.
68. This clause is a safeguard provision. Its purpose is to deal with the possible circumstances where a piece of EU legislation is currently directly applicable to the Island by virtue of the Protocol 3 relationship with the EU and section 2(1) of the 1973 Act but it is not retained using the power in clause 7 and it is later found to be important. In most cases it is likely that the powers in clause 16 could be used to re-apply the EU legislation to the Island with any necessary modifications but there may be cases where it is important for the law to be treated as having had unbroken effect rather than it ceasing to have effect on exit day. This clause allows for that possibility. EU legislation applied to the Island using this clause can be treated as if it had been retained using the power in clause 7.
69. This enabling power could also be used to implement into Manx law an EU directive which applied to the Island via section 2(1) of the 1973 Act before exit day, but which had not been transposed into Manx law.
70. Regulations under this clause in general can do anything that an Act of Tynwald may do but with certain restrictions. Such regulations may not impose or increase taxation; impose any civil or criminal liability before the day on which the regulations themselves come into operation; or amend, repeal or revoke the Human Rights Act 2001.
71. Regulations made under this clause which apply an EU instrument to the Island must have the text of the applied instrument annexed to them.

Clause 18

72. Clause 18 provides the Council of Ministers with the power, with the approval of Tynwald, to apply certain UK Parliamentary enactments to the Island (subject to modifications) by way of regulations.
73. The power in this clause may be exercised in relation to a UK Parliamentary enactment relating to —
 - (a) the withdrawal of the United Kingdom from the EU;
 - (b) the approval or implementation of any withdrawal agreement; or
 - (c) the future relationship between the United Kingdom and the EU or any member State.
74. The Council of Ministers can amend the list above by adding or deleting any UK Parliamentary enactment or any description of a UK Parliamentary enactment but only with the approval of Tynwald.
75. This clause will allow relevant UK legislation relating to Brexit to be applied to the Island if useful or expedient to do so.
76. Regulations under this clause can apply Parliamentary enactments as amended from time to time and can do anything that an Act of Tynwald may do. Regulations under this clause applying UK legislation to the Island must have the text of that UK legislation as modified in its application to the Island attached to them.

Clause 19

77. Clause 19 enables statutory documents made under clauses 12 to 18 or 21 to refer to EU instruments as amended from time to time.
78. The Council of Ministers has the power under this clause to prescribe by way of regulations statutory documents made under other provisions of Manx legislation as statutory documents which may refer to EU instruments as amended from time to time. This clause cannot create new powers to apply EU legislation; it can only extend powers. For example, there are existing powers in the Airports and Civil Aviation Act 1987 for the Department for Enterprise to apply relevant EU instruments to the Island with any necessary modifications; if it was considered desirable that power could be extended so that an EU instrument (or certain parts of an EU instrument) could be applied to the Island as amended by the EU from time to time. Regulations made under this clause cannot come into operation until on or after exit day and are subject to the “negative” Tynwald procedure.
79. The powers in this clause are derived from the existing section 2C of the 1973 Act.

Clause 20

80. Clause 20 enables the Council of Ministers to make regulations to apply to the Island, and implement in the Island, with the approval of Tynwald, the WTO Agreement.
81. The WTO Agreement means the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994 and extended to the Island as modified from time to time; this includes the agreements and associated legal instruments (GATT, GATS, TRIPs, etc) included in Annexes 1, 2 and 3 to the Agreement which are integral parts of this Agreement, which are binding on all WTO Members¹⁴.
82. Regulations made under this clause can do anything that an Act of Tynwald may do.
83. This is a contingency power. Much of the Island’s compliance with WTO obligations will be through other legislation. For example, in the case of TRIPs¹⁵ the Island largely complies through UK intellectual property (IP) legislation which applies to the Island and IP legislation passed or made by the Department for Enterprise.
84. Although the Isle of Man has been included in the UK’s membership of the WTO for 20 years, as a result of Brexit and the UK becoming a member of the WTO in its own right rather than as a Member State of the EU, compliance with WTO obligations, both for the UK and the IOM, is under greater scrutiny than previously. It is important that if any deficiencies are identified the Island can address them in a timely manner.

Clause 21

85. Clause 21 enables the Council of Ministers, with the approval of Tynwald, to implement into Manx law an international trade agreement entered into by the Island or entered into by the United Kingdom and which has been extended to the Island. Regulations made under this clause can do anything that an Act of Tynwald may do.
86. This clause is based on clause 2 of the UK’s Trade Bill but, unlike the clause in the UK Trade Bill, the power is not limited to the implementation only of international trade agreements entered into between the EU and the other signatory(ies) before exit day.

¹⁴ The UK’s ratification of the WTO Agreement was extended to the Isle of Man with effect from 3 March 1997. The legal texts can be found at: https://www.wto.org/english/docs_e/legal_e/final_e.htm

¹⁵ Agreement on Trade-Related aspects of Intellectual Property Rights.

Clause 22

87. Clause 22 provides the Treasury with a power, subject to Tynwald approval, to make regulations for the purposes of obtaining information in relation to the export of goods and services from the Island. Regulations made under this clause can do anything that an Act of Tynwald may do.
88. The clause includes examples of what may be included in any such regulations.
89. This clause is based on clause 7 of the UK's Trade Bill.

Clause 23

90. Clause 23 gives the Treasury a power, subject to Tynwald approval, to make regulations in relation to the disclosure of information for the purpose of facilitating the Treasury's functions relating to trade or for the purpose of facilitating an international organisation or authority's public functions relating to trade. Regulations made under this clause can do anything that an Act of Tynwald may do.
91. The clause includes examples of what may be included in any such regulations.
92. This clause is based on clause 8 of the UK's Trade Bill.

Clause 24

93. Clause 24 gives effect to Schedule 3 on the rules of evidence for retained EU law.

Clause 25

94. Clause 25 gives effect to Schedule 4 which contains general provisions about the powers to make statutory documents under the Bill.

Clause 26

95. Clause 26 contains enabling powers in relation to any consequential and transitional provisions that may be required and it gives effect to:
 - Schedule 5 (which contains general consequential provisions);
 - Schedule 6 (which contains transitional, transitory and saving provisions);
 - Schedule 7 (which contains specific consequential amendments); and
 - Schedule 8 (which contains repeals not made elsewhere in this Act).
96. The clause allows Council of Ministers to make regulations, subject to the approval of Tynwald, which are appropriate as a consequence of the Bill. Such regulations can do anything that an Act of Tynwald may do but they cannot amend Acts of Tynwald passed after the end of the parliamentary session in which the Bill is passed.
97. The clause also gives the Council of Ministers the power to make regulations to make incidental, supplemental, transitional, transitory or saving provisions in connection with the coming into operation of any provision of the resulting Act (including its operation in connection with exit day). Tynwald approval must be sought for any such regulations after they have been made i.e. the Tynwald procedure will be "affirmative".

Schedule 1

98. Schedule 1 defines certain terms used in the Bill.
99. It provides that any reference in the Bill to former Article 34(2)(c) of the Treaty on European Union (such references appear in certain of the defined terms) 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.
100. Any other references in the Bill to certain provisions of the Treaty on European Union or the Treaty on the Functioning of the European Union include references to those provisions as they apply to the Euratom Treaty.

Schedule 2

101. Schedule 2 sets out further exceptions to the saving and retention of EU law provided for under clauses 6, 7 and 8. This schedule should be read together with paragraphs 2 and 3 of Schedule 6 which make transitional, transitory and saving provisions.
102. Paragraph 1 of this Schedule deals with challenges to the validity of retained EU law.
103. It provides that on or after exit day, there is no right to challenge any retained EU law on the grounds that immediately before exit day —
 - (a) an EU instrument was invalid; or
 - (b) an EU instrument did not have legal effect in the Island by virtue of section 2(1) of the 1973 Act.
104. However, this restriction is subject to the following two exceptions —
 - (a) the European Court has decided before exit day that the EU instrument is invalid; or
 - (b) the challenge is of a kind described or provided for in regulations (which require the approval of Tynwald) made by the Council of Ministers.
105. Paragraph 2 of this Schedule deals with general principles of EU law.
106. It provides that only EU general principles that have been recognised in European Court cases decided before exit day will form part of Manx law on or after exit day and there is no right of action in Manx law on or after exit day based on failure to comply with EU general principles. In addition, the Island's courts cannot dis-apply Manx law on or after exit day on the basis that it is incompatible with EU general principles and courts will not be able to quash any conduct or decide that it is unlawful on the basis that it was not compatible with the EU general principles. Courts will, however, be required under clause 10 to interpret retained EU law in accordance with retained general principles of EU law.
107. Paragraph 3 of Schedule 2 deals with what is known as the rule in Francovich. Francovich v Italy was a decision of the Court of Justice of the European Union¹⁶ which established that European Union member states could be liable to pay compensation to individuals who suffered a loss by reason of the member state's failure to transpose an EU Directive into national law. It is sometimes known as the principle of state liability in European Union law. To the extent that an EU Directive falls within the scope of

¹⁶ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:61990CJ0006>

Protocol 3, at present the Isle of Man Government could potentially be liable for compensation if an Island resident suffered loss because the Directive had not been transposed into Manx law. In line with the position in the UK Withdrawal Bill, there will be no right to claim damages on this ground on and after exit day.

108. Paragraph 4 of Schedule 2 clarifies that the references in clause 9 and this Schedule to the Charter of Fundamental Rights, any general principle of EU law or the rule in Francovich are to be read as references to that Charter, principle or rule as they stand at exit day, not as they will operate in EU law in the future.

Schedule 3

109. Schedule 3 deals with rules of evidence.
110. Section 3(1) of the 1973 Act provides that for the purposes of all legal proceedings any question as to the meaning or effect of any of the provisions of the EU Treaties having effect in the Island, or as to the validity, meaning or effect of any EU instrument having effect in the Island, shall be treated as a question of law.
111. Some EU law will not become retained EU law under this Bill, but it may still be relevant to the interpretation of the retained EU law. Paragraph 1 therefore 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.
112. 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.
113. Paragraph 2 of this Schedule provides that the Council of Ministers may 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 or documents issued by or in the custody of an EU entity. This will ensure that appropriate evidential rules can be put in place to reflect the new legal landscape after exit day. The Tynwald procedure for any such regulations will be “affirmative”.

Schedule 4

114. Schedule 4 contains general provisions about the powers to make statutory documents in the Bill.
115. Paragraph 1 applies to all powers in the Bill to make a statutory document. It provides that any power in the Bill to make a statutory document —
- (a) may be exercised to modify retained EU law or other Manx legislation;
 - (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision; to permit a person to exercise a discretion; and to require compliance with standards or the adoption of practices recommended by a specified person or body.
116. This paragraph also confirms that a power in the Bill to make a statutory document does not affect the extent of any other power in the Bill, in retained EU law or in other Manx legislation to make a statutory document.
117. Paragraph 2 of this Schedule deals with the scope of consequential and transition powers.

118. It provides that the law saved and retained by clauses 6 to 10 may be modified by the power to make consequential provision.
119. It also 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 1973 Act;
 - the power to make statutory documents under clauses 2(3) or 26(4) includes the power to make consequential, incidental, supplemental, transitional, transitory or saving provision in connection with the repeal of the 1973 Act or the withdrawal of the UK from the EU which is additional to that made by the clauses in the Bill that deal with the saving, retention and interpretation of EU law, or which alters their effect in particular cases or descriptions of cases;
 - the power to make regulations under clause 26(1) includes the power to make transitional or saving provision which is —
 - (a) in connection with any repeal made by such regulations of any Manx legislation which is consequential upon the repeal of the 1973 Act or the withdrawal of the UK from the EU; and
 - (b) is additional to that made by the clauses of the Bill that deal with saving, retention and interpretation of EU law or alters their effect in particular cases or descriptions of cases.
120. Certain such provisions can be treated as retained EU law.
121. Paragraph 3 of Schedule 4 confirms that the power of the Council of Ministers to appoint a day for any provision of this Bill to come into operation (see clause 2) includes a power to appoint a time on that day.
122. Paragraph 4 provides that the powers in the Bill may be used to make different provision, in particular cases, from the changes made by Schedule 5 (which contains general consequential provisions) and the amendments made to the Interpretation Act 2015 and the Legislation Act 2015 by paragraphs 2 and 3 of Schedule 7.
123. Paragraph 5 provides that where a statutory document modifies earlier statutory documents made under the Bill, the rules for choosing the Tynwald procedure apply afresh¹⁷.
124. Paragraph 6 applies to a statutory document made under this Bill which will be subject to the “approval required” Tynwald procedure. If the Council of Ministers is satisfied that the need to make the statutory document is urgent, the “affirmative” Tynwald procedure can apply rather than the “approval required” procedure. Under the “affirmative” procedure a statutory document must be laid before Tynwald as soon as practicable after it is made and if Tynwald approval is not obtained at that sitting or

¹⁷ This paragraph makes reference to section 93 of the Interpretation Act 2015, which provides that the power to make a public document includes the power to amend or repeal and gives rules for how the amendment or repealing power may operate:

93 Power to make public document includes power to amend or repeal

(1) A power to make a public document includes the power to amend or repeal it.

(2) The power to amend or repeal is exercisable in the same way, and subject to the same conditions, as the power to make the public document.

(3) However, despite subsection (2), a statutory document may, after consultation with the Legislation Consolidation Board under the Legislation Act, be repealed by an order of the Council of Ministers (a “repeal order”) without complying with the conditions.

(4) A repeal order may be made for more than one statutory document and for statutory documents that have different authorising legislation.

(5) Tynwald procedure - negative.

the next sitting the statutory document ceases to have effect. Any statutory document made in reliance on this provision must include a declaration that the Council of Ministers considers the matter to be urgent and therefore that the affirmative procedure should apply. It will be possible for Tynwald to question the need for urgency when such a statutory document is subsequently moved for approval.

Schedule 5

125. Schedule 5 contains general consequential provisions.
126. Paragraphs 1 and 2 deal with what happens to existing ambulatory references after exit day. Ambulatory references are cross references to EU instruments as amended from time to time in the future.
127. The effect of paragraph 1 is that existing ambulatory references to EU regulations, decisions and tertiary legislation which are to be retained as Manx law under clause 7 will, on exit day, become references to the retained versions of those instruments as they are modified from time to time by Manx law.
128. Paragraph 2 provides that any existing ambulatory references (which do not fall within paragraph 1) to any of the EU Treaties, other EU instruments (e.g. directives) or to any other document of an EU entity, do not continue to update after exit day. In such cases the references are to be treated as references to the EU legislation, Treaties or document as they had effect immediately before exit day.
129. Paragraph 3 of Schedule 5 deals with the effect of the Bill on existing powers to make statutory documents.
130. Paragraph 3(1) provides that any existing powers to make statutory documents in pre-exit legislation are capable of amending retained direct EU legislation. For example, a power in the Animal Health Act 1996 to make statutory documents in respect of certain animal health matters could amend retained direct EU legislation dealing with animal health matters; and, under paragraph 3(2), the Tynwald procedure would be the same as that set out in that Act.
131. Paragraph 3(3) provides that any existing powers to make statutory documents in pre-exit legislation and which include a power to modify Manx legislation are to be read on and after exit day as being capable of amending retained direct EU legislation. This is a belt and braces provision which has been included for the avoidance of any doubt. Its purpose is to make it clear that any pre-exit enabling powers which enable secondary legislation to amend any enactment which is inconsistent with, or unnecessary in consequence of, that secondary legislation, is to be read on and after exit day as also enabling any retained direct EU legislation to be amended.
132. Paragraph 3(4) provides that any pre-exit day powers do not have any implied EU law restriction on or after exit day. The means the powers can be used to legislate in a way that would not have been compatible with directly applicable EU law pre-exit day, as long as the power would be capable of being used in that way on a plain reading.
133. Paragraph 4 of Schedule 5 provides that powers to make statutory documents in Acts of Tynwald passed on or after exit day are capable of amending retained direct EU legislation, unless otherwise provided.
134. Paragraph 5 of this Schedule provides that retained direct EU legislation is to be treated as primary legislation for the purposes of the Human Rights Act 2001. This

means that any retained direct EU legislation is to be treated as primary legislation for the purposes of challenges under the Human Rights Act 2001, so that if the legislation is found to breach that Act, a court may issue a declaration of incompatibility but may not strike down the legislation.

Schedule 6

135. Schedule 6 contains transitional, transitory and saving provisions.
136. Paragraph 1 provides that anything done or in operation 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.
137. Paragraph 2 provides that rights etc which are recognised under EU directives and are recognised by a court or tribunal in the Island or the United Kingdom in cases which have begun before exit day but are decided on or after exit day are saved by clause 8 (saving for rights etc. under section 2(1) of the European Communities (Isle of Man) Act 1973) and are not excluded under subsection (3) of that clause.
138. Paragraph 3 makes further provision about the exceptions to the saving and retention of EU law set out in clause 9 and Schedule 2.
139. Under paragraph 3(1) the exceptions to the saving and retention of EU law set out in Schedule 2 to the Bill apply in relation to anything occurring before exit day as well as anything occurring after exit. However, this is subject to the remaining provisions of paragraph 3 and also to any provision made by the Council of Ministers under clause 2(3) or 26(4) – both of which deal with incidental, supplemental, transitional, transitory or saving provisions in connection with the Bill coming into operation.
140. Paragraph 3(2) provides that the exceptions for claims in respect of validity, general principles and Francovich do not apply in relation to cases decided before exit day.
141. Paragraph 3(3) provides that the exceptions in paragraphs 2(2) and (3) and 3 of Schedule 2 (for general principles and Francovich claims) will not apply in respect of proceedings which have begun before exit day but are not decided until on or after exit day.
142. Paragraph 3(4) provides that the exceptions for claims in respect of validity, general principles and Francovich will not apply in relation to any criminal conduct which occurred prior to exit day.
143. Paragraph 3(5) provides that the restriction on challenges based on incompatibility with any of the general principles of EU law (set out in paragraphs 2(2) and (3) of Schedule 2) does not apply in respect of certain proceedings begun up to three months after exit day. In order to fall within the scope of this sub-paragraph, any challenge must relate to something that occurred before exit day and may be made against either administrative action or Manx legislation other than Acts of Tynwald or rules of law.
144. Paragraph 3(6) provides that a court, tribunal or other public authority will, on or after exit day, still be able to disapply any Manx legislation or rule of law, or quash any conduct on the basis of incompatibility with the general principles where it is a necessary consequence of a decision made by a court or tribunal made before exit day,

or decision in proceedings commenced during the three month period after exit day provided for under paragraph 3(5).

Schedule 7

145. Schedule 7 makes specific consequential amendments to certain Acts of Tynwald.
146. Paragraph 1 amends the Customs and Excise Act 1993. These amendments are to ensure that the Treasury has sufficient powers to deal with all possible scenarios when the UK leaves the EU and all EU customs legislation, which currently applies directly and automatically to the both the UK and the Isle of Man, no longer applies.
147. Paragraphs 2 and 3 amend the Interpretation Act 2015 and the Legislation Act 2015 respectively consequential to the Bill and the repeal of the 1973 Act.
148. Paragraph 4 amends the European Communities (Amendment) Act 1994, which gave effect to the European Economic Area Agreement (to the extent that its provisions are within the scope of Protocol 3) in the Isle of Man. Although the UK will leave the EEA Agreement when it leaves the EU, the remaining provisions of this Act will deal with the correct interpretation of related matters after exit day.

Schedule 8

149. Schedule 8 lists further Acts of Tynwald which are repealed by the Bill. These Acts are largely amending Acts which amended the 1973 Act.