
EUROPEAN UNION (WITHDRAWAL) BILL 2018

Explanatory Memorandum

1. This Bill is promoted by [•] on behalf of the Cabinet Office.
2. *Clause 1* deals with the short title of the resulting Act.
3. *Clause 2* deals with the commencement of the resulting Act. Subsection (1) provides for certain sections of the resulting Act to come into operation on the day on which Royal Assent is announced to Tynwald.

Subsection (2) provides that the remaining provisions of the resulting Act will come into operation on such day or days appointed by the Council of Ministers by way of an order. The Tynwald procedure for such an order is laying only.

Subsection (3) enables an order under subsection (2) to make such consequential, incidental, supplemental, transitional, transitory or saving provisions as the Council of Ministers considers necessary in connection with the coming into operation of any section of the resulting Act. The power also enables the Council of Ministers to make such provisions in connection with the operation of any such sections in connection with exit day.

4. *Clause 3* gives effect to Schedule 1 to the Bill which defines certain terms used in the Bill.
5. *Clause 4* expands on the meaning of “exit day” for the purposes of the Bill. “Exit day” is defined in Schedule 1 to the Bill as meaning 11.00 p.m. on 29 March 2019. This is in line with the calculation of time in EU law, as well as the EU’s negotiating directives, which indicate that the UK will leave the EU at 00.00 on 30 March 2019 Brussels time which corresponds to 11.00 p.m. on 29 March 2019 UK time.

Subsection (1) provides that references in the Bill to before, after or on exit day, or to beginning with exit day, are to be read as references to before, after or at 11.00 p.m. on 29 March 2019 or (as the case may be) to beginning with 11.00 p.m. on that day.

Subsections (2) and (3) provide that if the date and time at which the Treaties cease to apply to the United Kingdom is not the date and time specified in subsection (1), the Council of Ministers may by regulations amend the definition of “exit day” in Schedule 1 to ensure that they are aligned. The Tynwald procedure for making such regulations is laying only.

For the purposes of subsections (2) and (3) “the Treaties” are defined as meaning the Treaty on European Union and the Treaty on the Functioning of the European Union.

6. *Clause 5* repeals the *European Communities (Isle of Man) Act 1973* (the “1973 Act”) on exit day. This Act is the conduit via which EU law flows into Manx domestic law. The main effect of the repeal of the 1973 Act is to remove the mechanism for the automatic flow of EU law into Manx law (under section 2(1) of the 1973 Act) and to remove the enabling powers to make statutory documents to implement EU obligations into Manx law (under section 2B(1)(a) and (b) of the 1973 Act) and to apply EU instruments to the Island (under section 2A and 2B(1)(c) and (d) of the 1973 Act).
7. Normally, a statutory document will automatically lapse when the primary legislation under which it was made is repealed, unless the statutory document is expressly saved. One purpose of *clause 6* is to save any statutory documents made under section 2A or section 2B of the 1973 Act so that they will continue to have effect in Manx law on and after exit day following the repeal of the 1973 Act. These saved statutory documents will form part of a new category of law which will be called “retained EU law”.

An enabling power to make a statutory document also includes the power to amend or repeal it. As the enabling power for these statutory documents will be lost on the repeal of the 1973 Act, subsection (2) gives the Council of Ministers the power to modify any statutory document saved under clause 6(1) on and after exit day.

Subsection (3) provides that the saving of these statutory documents is subject to the exceptions in clause 9 and Schedule 2.

8. Section 2(1) of the 1973 Act provides that EU legislation is given legal effect in the Island “in accordance with the Treaties”. This provision ensures that certain types of EU legislation e.g. EU regulations, are directly applicable in Manx law without the need for any further implementing Manx legislation. However, only EU legislation which falls within the scope of Protocol 3 is given legal effect in the Island by virtue of section 2(1) of the 1973 Act.

Upon the withdrawal of the United Kingdom from the EU, the Island will no longer be bound by the Treaties and EU legislation can no longer have effect in the Island in accordance with the Treaties. The purpose of *clause 7* is to convert and retain certain directly applicable EU legislation as Manx law on and after exit day. It is the text of the legislation itself which will form part of Manx law.

Subsection (1) requires the Council of Ministers to prescribe which directly applicable EU legislation will be converted and retained as Manx law on and after exit day. The Tynwald procedure for such regulations will be “approval required”. Subsection (2) provides the Council of Ministers with a number of options as to how to prescribe the relevant EU legislation.

The types of legislation which will be converted and retained under clause 7 are EU regulations, EU decisions and EU tertiary legislation. These terms are defined in Schedule 1. These terms are defined as also including any adaptations made to the relevant instrument under the EEA agreement. This is

to ensure that such adaptations are also converted and retained as Manx law on and after exit day.

Subsection (3) provides that any directly applicable EU legislation which does not fall within subsection (1) ceases to have effect in Manx law on and after exit day.

Subsection (5) clarifies that clause 7 will only convert and retain the English language version of the prescribed directly applicable EU legislation into Manx law. However, other language versions can continue to be considered as aids to interpretation.

Subsection (6) gives the Attorney General the power to certify that any 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. Any such certificate will be evidence of that fact.

Subsection (7) provides that the conversion and retention of any directly applicable legislation is subject to the exceptions in clause 9 and Schedule 2.

9. *Clause 8* ensures that any remaining rights, powers, liabilities, obligations, restrictions, remedies and procedures which were recognised and available in Manx law immediately before exit day by virtue of section 2(1) of the 1973 Act continue to be recognised and available in Manx law on and after exit day.

Subsection (2) provides that this clause only applies to such rights, powers, liabilities, obligations, restrictions, remedies and procedures so far as they pertain to any statutory document saved under clause 6 or any directly applicable EU legislation retained under clause 7.

This includes, for example, directly effective rights contained within EU treaties. 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.

Any directly effective rights converted into Manx law as a result of this clause would be subject to amendment under clause 11 and 14.

Subsection (3) sets out exceptions to the conversion under subsections (1) and (2). It provides that the clause does not bring in any rights, powers etc if they already form part of Manx law by virtue of clause 7 (in order to avoid duplication on the Manx statute book) and it excludes certain directly effective rights arising under an EU directive.

Subsection (4) clarifies that subsection (1) does not save any rights, powers etc pertaining to any directly applicable EU legislation which is not retained under clause 7.

Subsection (5) provides that this clause is also subject to the exceptions in clause 9 and Schedule 2.

10. *Clause 9* sets out exceptions to the savings and retention of EU law provided for in clauses 6, 7 and 8. Subsection (1)(a) makes it clear that retained EU law is to be construed and have effect subject to any Manx law made on or after exit day.

Subsection (1)(b) acknowledges that any Manx law made before exit day will be construed and have effect subject to any retained EU law. However subsection (2) provides that this does not apply to any Manx legislation passed or made before exit day and which is expressed to be as a result of the withdrawal of the United Kingdom from the EU; this ensures that any Manx legislation passed or made before exit day in preparation for exit day will not be construed, and will not have effect, subject to any retained EU law.

Subsection (3) provides that the Charter of Fundamental Rights will not be part of Manx law on or after exit day.

Subsection (4) clarifies that this exception does not affect the retention in Manx law on or after exit day in accordance with the Bill of any fundamental rights or principles which exist irrespective of the Charter.

Subsection (5) provides that further limited exceptions to the savings and retention of EU law, as set out in Schedule 2, have effect.

11. *Clause 10* sets out how retained EU law is to be read and interpreted on and after exit day.

Subsections (1) and (2) set out the relationship between the European Court and the Manx courts and tribunals on and after exit. On or after exit day, a Manx court and tribunal —

- (a) is not bound by any principles laid down, or any decisions made, by the European Court;
- (b) cannot refer any matter to the European Court;
- (c) need not have regard to anything done by the European Court, another EU entity or the EU.

Subsection (3) provides that if any retained EU law is unmodified 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 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 exit day. A matter could not fall within retained EU law if the EU had no competence in that area.

However, subsections (4) and (5) provide that the Staff of Government division 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 pre-exit Manx case law that it would not otherwise be bound by.

Subsection (6) sets out that 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 so provide.

12. *Clause 11* gives the Council of Ministers the power 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 United Kingdom from the EU. The Tynwald procedure for such regulations will be “approval required”.

Subsection (2) sets out a list of what constitutes a deficiency for the purposes of subsection (1).

Subsection (3) states that deficiencies not on the list in subsection (2), but which are “of a similar kind”, are within the scope of the correcting power set out in subsection (1). Subsection (3) will also enable the Council of Ministers to make regulations to describe or provide for other kinds of deficiency in retained EU law or other Manx legislation. The Tynwald procedure for such regulations will be “approval required”.

Subsection (4) provides that retained EU law or other Manx legislation is not deficient just because it does not contain any modification of EU law which is adopted or notified, comes into operation or only applies on or after exit day.

Subsection (5) provides that regulations made under subsection (1) can do anything an Act of Tynwald might to deal with deficiencies. This could include amending Acts of Tynwald where appropriate.

Subsection (6) sets out a non-exhaustive list of what regulations made under subsection (1) may do. Such regulations may –

- (a) provide for functions of EU entities or public authorities to be exercisable by a public authority in the Island or the United Kingdom;
- (b) provide for the establishment of public authorities in the Island to carry out functions; or
- (c) provide for the modification of any retained EU law or other Manx legislation.

Subsection (7) sets out a number of safeguards on the use of the power in subsection (1). 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.

Subsection (8) clarifies that the power of the Council of Ministers to make regulations under this clause will not limit its powers to make statutory documents under clauses 6(2) or 14.

13. *Clause 12* gives the Council of Ministers the power to make regulations to prevent or remedy any breach of an international obligation that applies or extends to the Island and which arises from the withdrawal of the United

Kingdom from the EU. The Tynwald procedure for such regulations will be “approval required”.

Subsection (2) provides that regulations made under subsection (1) can do anything an Act of Tynwald might to prevent or remedy any breach.

Subsection (3) sets out a number of safeguards on the use of the power in subsection (1). Such regulations may not make retrospective provision; create a relevant criminal offence; or amend, repeal or revoke the Human Rights Act 2001.

14. *Clause 13* gives the Council of Ministers a power to make regulations for the purposes of implementing any withdrawal agreement concluded between the United Kingdom and the EU under article 50(2) of the Treaty on European Union.

Subsection (2) provides that regulations made under subsection (1) can do anything that an Act of Tynwald might to implement any withdrawal agreement.

Subsection (3) sets out a number of safeguards on the use of the power in subsection (1). 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.

15. *Clause 14* gives the Council of Ministers the power to make regulations to modify —

- (a) retained direct EU legislation (including to ensure that such retained direct EU legislation keeps in step with the relevant EU law on or after exit day); and
- (b) any EU law saved under clause 8.

The Tynwald procedure for such regulations will be “approval required”.

16. *Clause 15* provides the Council of Ministers with the power (by way of regulations) to apply to the Island or to implement in the Island, any treaty provision. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald might to apply or implement a treaty provision.

Subsection (3) defines “treaty” as meaning any of the EU Treaties or any agreement declared to be a treaty in regulations made by the Council of Ministers. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (4) provides a non-exhaustive list of the types of agreement which may be declared to be a treaty under subsection (3).

Subsection (5) clarifies that regulations made under this clause cannot come into operation until on or after exit day.

17. *Clause 16* is similar to sections 2A and 2B of the 1973 Act. Subsection (1) will enable the Council of Ministers (by way of regulations) 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.

The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsections (3) to (6) contain provisions relating to the production of texts of the applied instrument.

Subsection (7) provides that any regulations made under subsection (1) cannot come into operation until on or after exit day.

18. *Clause 17* provides the Council of Ministers with the power (by way of regulations) to —

- (a) apply certain EU regulations, EU decisions or EU tertiary legislation to the Island retrospectively (see subsection (3)) and to make any necessary provisions to implement such instruments;
- (b) implement certain EU laws into Manx law retrospectively (see subsection (3)) and to deal with any matters arising out of such implementation.

The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) provides that any regulations made under this clause may be made retrospective.

Subsection (4) contains safeguards on the use of the power in subsection (1). Any such regulations may not impose or increase taxation or impose any civil or criminal liability before the day on which the regulations themselves come into operation. Subsection (7) further provides that any such regulations may not amend, repeal or revoke the Human Rights Act 2001.

Subsection (5) requires any regulations made under subsection (1)(a) to have a text of the applied instrument annexed to it.

Subsection (6) gives the Council of Ministers the power to include a provision in the regulations providing that the applied legislation is to be treated as “retained direct EU legislation” or “retained EU law”.

Subsection (8) provides that any regulations made under subsection (1) cannot themselves come into operation until on or after exit day.

19. *Clause 18* provides the Council of Ministers with the power to apply certain Parliamentary enactments to the Island (subject to modifications) by way of regulations. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) provides that the power in subsection (1) may be exercised in relation to any 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.

Subsection (4) enables the Council of Ministers to amend subsection (3) by adding or deleting any Parliamentary enactment or any description of a Parliamentary enactment. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (5) enables Parliamentary enactments to be applied to the Island on an ambulatory basis i.e. as amended from time to time.

Subsections (6) to (8) contain provisions relating to the text of any applied Parliamentary enactment.

20. *Clause 19* enables statutory documents made under clauses 12 to 18 or 21 to refer to EU instruments on an ambulatory basis i.e. as amended from time to time.

Subsection (3) gives the Council of Ministers the power to prescribe by way of regulations statutory documents made under other provisions of Manx legislation as statutory documents which may refer to EU instruments on an ambulatory basis. The Tynwald procedure for such any such regulations will be “negative”. Subsection (4) provides that any regulations made under subsection (3) cannot come into operation until on or after exit day.

21. *Clause 20* enables the Council of Ministers to make regulations to apply to the Island, and implement in the Island, the WTO Agreement. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) defines the “WTO Agreement”.

22. *Clause 21* enables the Council of Ministers, by regulations, 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. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) defines certain terms for the purposes of this clause.

23. *Clause 22* provides the Treasury with an enabling power to make regulations for the purposes of obtaining information in relation to the export of goods and services from the Island. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) sets out a non-exhaustive list of what may be included in any such regulations.

24. *Clause 23* provides the Treasury with an enabling power 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. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) sets out a non-exhaustive list of what may be included in any such regulations.

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

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

27. *Clause 26* contains consequential and transitional provisions. Subsection (1) allows the Council of Ministers to make regulations which are appropriate as a consequence of the Bill. The Tynwald procedure for any such regulations will be “approval required”.

Subsection (2) provides that any regulations made under subsection (1) can do anything that an Act of Tynwald may do.

Subsection (3) provides that any regulations made under subsection (1) cannot amend Acts of Tynwald passed after the end of the parliamentary session in which the Bill is passed.

Subsection (4) gives the Council of Ministers the power, by way of 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). The Tynwald procedure for any such regulations will be “affirmative”.

Subsection (5) gives effect to Schedule 5 which contains general consequential provisions.

Subsection (6) gives effect to Schedule 6 which contains transitional, transitory and saving provisions.

Subsection (7) gives effect to Schedule 7 which contains specific consequential amendments.

Subsection (8) gives effect to Schedule 8 which sets out repeals not made elsewhere in the Bill.

28. *Schedule 1* defines certain terms used in the Bill.

Subsection (4) provides that any reference in the Bill to former Article 34(2)(c) of the Treaty on European Union 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.

Subsection (5) provides that 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.

29. *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.

Paragraph (1) 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.

However paragraph (1) is subject to the following two exceptions set out in paragraph (2) —

- (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 made by the Council of Ministers. The Tynwald procedure for any such regulations will be “approval required”.

Paragraph 2(1) 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.

Paragraph 2(2) provides that there is no right of action in Manx law on or after exit day based on failure to comply with EU general principles.

Paragraph 2(3) provides that courts cannot dis-apply Manx law on or after exit day on the basis that it is incompatible with EU general principles. In addition, 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 general principles. Courts will

however be required under clause 10 to interpret retained EU law in accordance with retained general principles of EU law.

Paragraph 3 provides that the right to claim damages against the state for breaches of EU law will not be available on or after exit day.

Paragraph 4 clarifies that the references in clause 9 and Schedule 2 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.

30. *Schedule 3* deals with rules of evidence. 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 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.

Some EU law will not become retained EU law, but 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.

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. Paragraph 2 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”.

31. *Schedule 4* contains general provisions about the powers to make statutory documents in the Bill.

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.

Paragraph 1(2) provides 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.

Paragraph 2(1) provides that the law saved and retained by clauses 6 to 10 may be modified by the power to make consequential provision under clause 26(1).

Paragraph 2(2) 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.

Paragraph 2(3) clarifies that the power to make statutory documents under clauses 2(3) and 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.

Paragraph 2(4) clarifies that 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.

Paragraph 2(5) provides that such provisions can be treated as retained EU law.

Paragraph 3 provides that any power of the Council of Ministers to appoint a day, includes a power to appoint a time on that day.

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 and amendments made to the *Interpretation Act 2015* and the *Legislation Act 2015* by paragraphs 2 and 3 of Schedule 7.

Paragraph 5 provides that where an instrument modifies certain earlier statutory documents made under the Bill, the rules for choosing the Tynwald procedure apply afresh.

Paragraph 6 applies to a statutory document made under this Bill which will be subject to the “approval required” Tynwald procedure. If the statutory document contains a declaration that the Council of Ministers is satisfied that, by reasons of urgency, the “affirmative” Tynwald procedure should apply, the “affirmative” Tynwald procedure will apply instead.

32. *Schedule 5* contains general consequential provisions.

Paragraphs 1 and 2 set out what happens with existing ambulatory reference on and after exit day. Ambulatory references are cross references to EU instruments as they may be amended from time to time in the future.

Paragraph 3(1) provides that any existing powers to make statutory documents in pre-exit legislation are capable of amending retained direct EU legislation.

Paragraph 3(3) provides that any exiting powers to make statutory documents in pre-exit legislation and which include a power to modify Manx legislation are capable of amending retained direct EU legislation.

Paragraph 3(4) provides that any pre-exit day powers do not have any implied EU law restriction on or after exit day.

Paragraph 4 provides that power to make statutory documents in Acts passed on or after exit day are capable of amending retained direct EU legislation, unless otherwise provided.

Paragraph 5 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, meaning 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.

33. *Schedule 6* contains transitional, transitory and saving provisions.

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.

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 and are not excluded under subsection (3) of that clause.

Paragraph 3 makes further provision about the exceptions to the saving and retention of EU law set out in clause 9 and Schedule 2.

Paragraph 3(1) provides that the exceptions in Schedule 2 apply in relation to anything occurring before exit day as well as anything occurring after exit day. However this is subject to any provisions made under clauses 2(3) or 26(4) and to the remaining provisions of paragraph 3.

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.

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.

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.

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.

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).

34. *Schedule 7 makes specific consequential amendments to the Customs and Excise Act 1993, the Interpretation Act 2015, the Legislation Act 2015 and the European Communities (Amendment) Act 1994.*
35. *Schedule 8 lists further Acts of Tynwald which are repealed, either in whole or in part, by the Bill.*
36. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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EUROPEAN UNION (WITHDRAWAL) BILL 2018

A BILL to repeal the European Communities (Isle of Man) Act 1973; to make provision consequent upon the withdrawal of the United Kingdom from the EU and the resultant cessation of Protocol No. 3 to the Act annexed to the Treaty relating to the Accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community signed at Brussels on the 22 January 1972; to make provision to apply EU law to, and to implement EU law in, the Island after exit day; to make provision to apply to the Island Parliamentary enactments relating to the United Kingdom's withdrawal from the EU and the United Kingdom's future relationship with the EU; to make provisions in relation to trade and trade agreements; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

Introductory

1 Short title

The short title of this Act is the European Union (Withdrawal) Act 2018.

2 Commencement

- (1) This section and the following provisions of this Act—
- (a) section 1;
 - (b) section 3 (including Schedule 1) (interpretation);
 - (c) section 4 (appointment of exit day);
 - (d) sections 11 to 13 (powers in connection with withdrawal);
 - (e) sections 14 to 19 (further powers operable on or after exit day);
 - (f) sections 20 to 23 (trade agreements);
 - (g) section 25 (including Schedule 4) (statutory documents); and
 - (h) section 26(1) to (4) (consequential and transitional provisions),
- come into operation on the day on which this Act is passed.

- (2) The remaining provisions of this Act come into operation on such day or days as the Council of Ministers may by order appoint.

Tynwald procedure – laying only.

- (3) An order under subsection (2) may make such consequential, incidental, supplemental, transitional, transitory or saving provisions as the Council of Ministers considers necessary or expedient in connection with the coming into operation of any provision of this Act (including its operation in connection with exit day).

3 Interpretation

[P2018/?/14]

Schedule 1 (interpretation) has effect.

Exit day

4 Exit day

[P2018/?/14(2)-(5)]

- (1) In this Act references to before, after or on exit day, or to beginning with exit day, are to be read as references to before, after or at 11.00 p.m. on 29 March 2019 or (as the case may be) to beginning with 11.00 p.m. on that day.
- (2) Subsection (3) applies if the day or time on or at which the Treaties are to cease to apply to the United Kingdom in accordance with Article 50(3) of the Treaty on European Union is different from that specified in the definition of “exit day” in Schedule 1.
- (3) The Council of Ministers may by regulations —
- (a) amend the definition of “exit day” in Schedule 1 to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom; and
 - (b) amend subsection (1) in consequence of any such amendment.

Tynwald procedure – laying only.

- (4) In subsections (2) and (3) “the Treaties” means the Treaty on European Union and the Treaty on the Functioning of the European Union.

Repeal of the European Communities (Isle of Man) Act 1973

5 Repeal of the European Communities (Isle of Man) Act 1973

[P2018/?/1]

The *European Communities (Isle of Man) Act 1973* is repealed on exit day.

*Retention of existing EU law***6 Saving for statutory documents made under the European Communities (Isle of Man) Act 1973**

[P2018/?/2]

- (1) Any statutory document made under section 2A or 2B of the *European Communities (Isle of Man) Act 1973*, as it has effect immediately before exit day, continues to have effect in Manx law on and after exit day.
- (2) On or after exit day, the Council of Ministers may by order or regulations (as appropriate) modify any statutory document saved under subsection (1).
Tynwald procedure – approval required.
- (3) This section is subject to section 9 and Schedule 2 (exceptions to savings and retention).

7 Retention of direct EU legislation

[P2018/?/3 and drafting]

- (1) Any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day, which –
 - (a) has legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day; and
 - (b) is prescribed by regulations made by the Council of Ministers for the purposes of this subsection.forms part of Manx law on and after exit day.
Tynwald procedure – approval required.
- (2) The power to prescribe under subsection (1)(b) includes the power to prescribe –
 - (a) specific EU regulations, EU decisions or EU tertiary legislation either in their entirety or in part;
 - (b) a generic description or class of EU regulations, EU decisions or EU tertiary legislation;
 - (c) all EU regulations, EU decisions or EU tertiary legislation which have legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day;
 - (d) any exemptions, exceptions or exclusions (whether specific or generic) from any prescribed EU regulations, EU decisions or EU tertiary legislation.

- (3) Any EU regulation, EU decision or EU tertiary legislation which has legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day, but which does not fall within subsection (1), ceases to have effect in Manx law on and after exit day.
- (4) No regulations may be made under subsection (1) after exit day.
- (5) This section brings into Manx law any EU regulation, EU decision or EU tertiary legislation only in the form of the English language version of that legislation but this does not affect the use of the other language versions of that legislation for the purposes of interpreting it.
- (6) A certificate issued by or under the authority of the Attorney General stating that any 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 *European Communities (Isle of Man) Act 1973* immediately before exit day is evidence of that fact.
- (7) This section is subject to section 9 and Schedule 2 (exceptions to savings and retention).

8 Saving for rights etc. under section 2(1) of the European Communities (Isle of Man) Act 1973

[P2018/?/4 and drafting]

- (1) Subject to subsection (2), any rights, powers, liabilities, obligations, restrictions, remedies and procedures which immediately before exit day —
 - (a) are recognised and available in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973*; and
 - (b) are enforced, allowed and followed accordingly,continue on and after exit day to be recognised and available in Manx law (and to be enforced, allowed and followed accordingly).
- (2) Subsection (1) only applies to such rights, powers, liabilities, obligations, restrictions, remedies and procedures so far as they pertain to any statutory document saved under section 6 and any EU legislation retained under section 7.
- (3) Subsection (1) does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they —
 - (a) form part of Manx law by virtue of section 7; or
 - (b) arise under an EU directive (including as applied by the EEA agreement) and are not of a kind recognised by the European Court or any court or tribunal in the Island or the United Kingdom in a case decided before exit day (whether or not as an essential part of the decision in the case).

- (4) To avoid doubt, subsection (1) does not save any rights, powers, liabilities, obligations, restrictions, remedies and procedures pertaining to any EU regulation, EU decision or EU tertiary legislation which has legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day, but which has not been prescribed under section 7(1).
- (5) This section is subject to section 9 and Schedule 2 (exceptions to savings and retention).

9 Exceptions to savings and retention

[P2018/?/5]

- (1) On and after exit day —
 - (a) any retained EU law is to be construed and have effect subject to any Manx legislation or rule of law passed or made on or after exit day; and
 - (b) any Manx legislation or rule of law passed or made before exit day is to be construed and have effect subject to any retained EU law.
- (2) Subsection (1)(b) does not apply to any Manx legislation passed or made before exit day and which is expressed to be as a result of the withdrawal of the United Kingdom from the EU.
- (3) The Charter of Fundamental Rights is not part of Manx law on or after exit day.
- (4) Subsection (3) does not affect the retention in Manx law on or after exit day in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles).
- (5) Schedule 2 (which makes further provision about exceptions to savings and retention) has effect.

10 Interpretation of retained EU law

[P2018/?/6]

- (1) A court or tribunal —
 - (a) is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court; and
 - (b) cannot refer any matter to the European Court on or after exit day.

- (2) A court or tribunal need not have regard to anything done on or after exit day by the European Court, another EU entity or the EU but may do so if it considers it appropriate to do so.
- (3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after exit day and so far as relevant to it—
 - (a) in accordance with any retained case law and any retained general principles of EU law; and
 - (b) having regard (among other things) to the limits, immediately before exit day, of EU competences in relation to the Island.
- (4) But—
 - (a) the Staff of Government Division is not bound by any retained EU case law; and
 - (b) no court or tribunal is bound by any retained Manx case law that would not otherwise bind that body.
- (5) In deciding whether to depart from any retained 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.
- (6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after exit day from being decided as provided for in that subsection if the modification expressly so provides.

Powers in connection with withdrawal

11 Dealing with deficiencies arising from withdrawal

[P2018/?/7]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate to prevent, remedy or mitigate—
 - (a) any failure of retained EU law or other Manx legislation to operate effectively; or
 - (b) any other deficiency in retained EU law or other Manx legislation, arising from the withdrawal of the United Kingdom from the EU.Tynwald procedure – approval required.
- (2) Deficiencies in retained EU law or other Manx legislation are where the Council of Ministers considers that retained EU law or other Manx legislation—
 - (a) contains anything which has no practical application in relation to the Island or is otherwise redundant or substantially redundant;

- (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the Island or the United Kingdom (or any part of it);
 - (c) makes provision for, or in connection with, reciprocal arrangements between—
 - (i) the Island or the United Kingdom (or any part of it) or a public authority in the Island or the United Kingdom; and
 - (ii) the EU, an EU entity, a member State or a public authority in a member State,which no longer exist or are no longer appropriate as a result of the withdrawal of the United Kingdom from the EU;
 - (d) makes provision for, or in connection with, other arrangements which—
 - (i) involve the EU, an EU entity, a member State or a public authority in a member State; or
 - (ii) are otherwise dependent upon the Island's or the United Kingdom's relationship with the EU,and which no longer exist or are no longer appropriate;
 - (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the withdrawal of the United Kingdom from the EU;
 - (f) does not contain any functions or restrictions which —
 - (i) were in an EU directive and in operation immediately before exit day (including any power to make EU tertiary legislation); and
 - (ii) it is appropriate to retain; or
 - (g) contains EU references which are no longer appropriate.
- (3) There is also a deficiency in retained EU law or other Manx legislation where the Council of Ministers considers that there is —
- (a) anything in retained EU law or other Manx legislation which is of a similar kind to any deficiency which falls within subsection (2); or
 - (b) a deficiency in retained EU law or other Manx legislation of a kind described, or provided for, in regulations made by the Council of Ministers.
- Tynwald procedure – approval required.
- (4) But retained EU law and other Manx legislation is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into operation or only applies on or after exit day.

- (5) Regulations under subsection (1) may make any provision that could be made by an Act of Tynwald.
- (6) Regulations under subsection (1) may (among other things)—
 - (a) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
 - (i) exercisable instead by a public authority (whether or not newly established or established for the purpose) in the Island or the United Kingdom; or
 - (ii) replaced, abolished or otherwise modified;
 - (b) provide for the establishment of public authorities in the Island to carry out functions provided for by regulations under subsection (1); or
 - (c) provide for the modification of any retained EU law or other Manx legislation.
- (7) But regulations under subsection (1) may not—
 - (a) impose or increase taxation;
 - (b) make retrospective provision;
 - (c) create a relevant criminal offence; or
 - (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (8) The reference in subsection (1) to a failure or other deficiency arising from the withdrawal of the United Kingdom from the EU includes a reference to any failure or other deficiency arising from that withdrawal taken together with the operation of any provision, or the interaction between any provisions, made by or under this Act.
- (9) The power of the Council of Ministers to make regulations under this section is in addition to any power of the Council of Ministers to make regulations under sections 6(2) or 14.

12 Complying with international obligations

[P2018/?/8]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate to prevent or remedy any breach, arising from the withdrawal of the United Kingdom from the EU, of an international obligation that applies or extends to the Island.

Tynwald procedure – approval required.
- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) But regulations under this section may not—

- (a) make retrospective provision;
- (b) create a relevant criminal offence; or
- (c) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.

13 Implementing the withdrawal agreement

[P2018/?/9]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate for the purposes of implementing any withdrawal agreement.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald (including modifying this Act).
- (3) But regulations under this section may not—
 - (a) impose or increase taxation;
 - (b) make retrospective provision;
 - (c) create a relevant criminal offence; or
 - (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.

Further powers operable on or after exit day

14 Amendment of retained direct EU legislation and other rights etc.

On or after exit day, the Council of Ministers may by regulations modify, as it considers appropriate —

- (a) any retained direct EU legislation, including so that it contains any modification of EU law which is adopted or notified, comes into operation or applies on or after exit day; and
- (b) any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in Manx law by virtue of section 8 (saving for rights etc. under section 2(1) of the *European Communities (Isle of Man) Act 1973*).

Tynwald procedure – approval required.

15 Application and implementation of Treaty provisions

- (1) The Council of Ministers may by regulations —
 - (a) apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations; or

- (b) implement into Manx law and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation,

any provision contained in or arising under a treaty.

Tynwald procedure – approval required.
- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) For the purposes of this section, “treaty” means –
 - (a) any of the EU Treaties; and
 - (b) any agreement declared, in regulations made by the Council of Ministers, to be a treaty for the purposes of this section.

Tynwald procedure – approval required.
- (4) An agreement which may be declared by the Council of Ministers to be a treaty under subsection (3)(b) includes (but is not limited to) –
 - (a) an agreement entered into between the United Kingdom and the EU in connection with the relationship between the United Kingdom and the EU on or after exit day;
 - (b) an agreement entered into by the Island or extended to the Island in connection with the withdrawal of the United Kingdom from the EU and any future relationship between the United Kingdom and the EU;
 - (c) an agreement amending any of the EU Treaties;
 - (d) an agreement entered into by the EU or by all of the member States and which relates to the EU.
- (5) Any regulations made under this section must not come into operation until on or after exit day.

16 Application and implementation of EU instruments and law

[1973/14/2A and 2B and drafting]

- (1) The Council of Ministers may by regulations –
 - (a) apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations, any EU instrument (whether it is operative before, on or after exit day);
 - (b) implement any EU instrument applied to the Island under paragraph (a) and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation; or
 - (c) implement any other EU law (whether operative before, on or after exit day) into Manx law and make such provisions as it

considers appropriate to deal with any matters arising out of or related to any such implementation.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) Regulations made under subsection (1)(a) must have annexed to them a text of the instrument applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.
- (4) Subsections (5) and (6) apply if regulations made under subsection (1)(a) provide that a reference in the regulations to an EU instrument (or a provision of an EU instrument) is to be construed as a reference to the instrument or provision as amended from time to time (see section 19 (ambulatory references to EU instruments)).
- (5) To avoid doubt, the text to be annexed under subsection (3) is the text of the instrument at the time the regulations are made.
- (6) However, the Council of Ministers –
 - (a) may update the text annexed under subsection (3) to reflect any amendment made to the EU instrument or provision after the making of the regulations; and
 - (b) must update the text if a person requests an updated text of the instrument applied by the regulations.
- (7) Any regulations made under this section must not come into operation until on or after exit day.

17 Application and implementation of previous direct EU legislation and EU law

- (1) The Council of Ministers may by regulations –
 - (a) apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations, any EU regulation, EU decision or EU tertiary legislation which –
 - (i) had legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day; and
 - (ii) did not form part of Manx law on and after exit day by virtue of section 7;
 - (b) implement any instrument applied to the Island under paragraph (a) and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation;

- (c) implement into Manx law any EU law which had legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) Any regulations under this section may be made retrospective and be deemed to have come into operation from such day or days as may be specified in the regulations.
- (4) But a provision made by such regulations may not —
 - (a) impose or increase taxation; or
 - (b) impose any civil or criminal liability,before the day on which the regulations themselves come into operation.
- (5) Any regulations made under subsection (1)(a) must have annexed to them a text of the instrument applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.
- (6) Any regulations made under this section may provide that any provision applied to the Island or implemented into Manx law is to be treated as “retained direct EU legislation” or “retained EU law”.
- (7) Any regulations made under this section may not amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (8) Any regulations made under this section must not themselves come into operation until on or after exit day.

18 Application to the Island of Parliamentary enactments

- (1) The Council of Ministers may by regulations apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the regulations, any Parliamentary enactment to which this section applies.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) This section applies to —
 - (a) any Parliamentary enactment which relates, directly or indirectly, to the withdrawal of the United Kingdom from the EU (as in operation from time to time);

- (b) any Parliamentary enactment which relates to the approval or implementation of any withdrawal agreement (as in operation from time to time); or
 - (c) any Parliamentary enactment which relates to the future relationship between the United Kingdom and the EU or any member State (as in operation from time to time).
- (4) The Council of Ministers may by regulations amend subsection (3) —
- (a) by adding to it (with or without qualification) any Parliamentary enactment or any description of a Parliamentary enactment; and
 - (b) deleting from it any Parliamentary enactment or any description of a Parliamentary enactment (including any such enactment or description added to it by previous regulations under this subsection).

Tynwald procedure – approval required.

- (5) Any regulations under subsection (1) may apply to the Island any Parliamentary enactment as in operation from time to time in the United Kingdom.
- (6) Any regulations under subsection (1) must —
- (a) specify the exceptions, adaptations and modifications subject to which the Parliamentary enactment applies to the Island;
 - (b) have annexed to it a text of the Parliamentary enactment applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations; and
 - (c) in the case of regulations applying a Parliamentary enactment which amends a previous Parliamentary enactment applied to the Island, have annexed to it a text of the previous legislation so applied as amended, incorporating the exceptions, adaptations and modifications specified in the regulations.
- (7) If subsection (5) applies, the regulations must set out the Parliamentary enactment at the time the regulations are made.
- (8) However, the Council of Ministers —
- (a) may update the text of the Parliamentary enactment applied to the Island to reflect any amendment made to it after the making of the regulations ; and
 - (b) must update the text if a person requests an updated text of the Parliamentary enactment applied by the regulations.

19 Ambulatory references to EU instruments

[1973/14/2C]

- (1) A statutory document to which this section applies may provide that a reference in it to an EU instrument or a provision of an EU instrument is

to be construed as a reference to the instrument as amended from time to time.

- (2) This section applies to —
- (a) a statutory document made under sections 12 to 18 or 21; or
 - (b) any statutory document made under any other provision of Manx legislation which is prescribed for the purposes of this section by regulations made under subsection (3).
- (3) The Council of Ministers may by regulations prescribe any Manx legislation or any provision of Manx legislation in respect of which a statutory document made under the prescribed Manx legislation or provision is a statutory document to which subsection (2) applies.
- Tynwald procedure – negative.
- (4) Any regulations made under subsection (3) must not come into operation until on or after exit day.

Trade Agreements

20 Application and implementation of WTO Agreement

- (1) The Council of Ministers may by regulations —
- (a) apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations; and
 - (b) implement into Manx law and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation,
- the WTO Agreement.
- Tynwald procedure – approval required.
- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.

21 Implementation of international trade agreements

[P2018/?/2 and drafting]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate for the purpose of implementing into Manx law an international trade agreement —
- (a) entered into by the Island; or
 - (b) entered into by the United Kingdom and which has been extended to the Island.

Tynwald procedure – approval required.

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

(3) In this section —

“international trade agreement” means —

- (a) a free trade agreement; or
- (b) an international agreement that mainly relates to trade, other than a free trade agreement;

“free trade agreement” means an agreement that is or was notifiable under —

- (a) paragraph 7(a) of Article XXIV of GATT; or
- (b) paragraph 7(a) of Article V of GATS;

“GATS” means the General Agreement on Trade in Services, part of Annex 1B to the WTO Agreement (as modified from time to time);

“GATT” means the General Agreement on Tariffs and Trade, part of Annex 1A to the WTO Agreement (as modified from time to time).

22 Trade information

(1) The Treasury may by regulations make such provision as it considers appropriate for the purpose of obtaining information in relation to the export of goods and services from the Island in the course of a trade, business or profession.

Tynwald procedure – approval required.

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

(3) Such regulations may make provision about —

- (a) when goods and services are exported from the Island;
- (b) the type of information that may be requested;
- (c) to whom a request for information may be made; and
- (d) how a request may be made.

23 Disclosure of information by the Treasury

(1) The Treasury may by regulations make such provision as it considers appropriate in relation to the disclosure of information for the purpose of —

- (a) facilitating the exercise by the Treasury of the Treasury’s functions relating to trade; or
- (b) facilitating the exercise by an international organisation or authority, or by any other body, of its public functions relating to trade.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) Regulations under this section may —
 - (a) make provision about the use of any information disclosed;
 - (b) make provision about the further disclosure of information;
 - (c) provide for any contravention of the regulations to be an offence and prescribe a penalty for the commission of the offence.

General and final provisions

24 Rules of evidence

[P2018/?/13]

Schedule 3 (which makes provision about rules of evidence) has effect.

25 Statutory documents

[P2018/?/16]

Schedule 4 (which contains general provision about statutory documents) has effect.

26 Consequential and transitional provisions

[P2018/?/17]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate in consequence of this Act.

Tynwald procedure – approval required.

- (2) Regulations under subsection (1) may make any provision that could be made by an Act of Tynwald.
- (3) Regulations under subsection (1) may not modify an Act of Tynwald passed after the end of the Session in which this Act is passed.
- (4) The Council of Ministers may by regulations make such incidental, supplemental, transitional, transitory or saving provisions as it considers appropriate in connection with the coming into operation of any provision of this Act (including its operation in connection with exit day).

Tynwald procedure – affirmative.

- (5) Schedule 5 (which contains general consequential provisions) has effect.
- (6) Schedule 6 (which contains transitional, transitory and saving provisions) has effect.
- (7) Schedule 7 (which contains specific consequential amendments) has effect.

- (8) The Manx legislation mentioned in Schedule 8 (which contains repeals not made elsewhere in this Act) is repealed to the extent specified.

Draft

Draft

SCHEDULE 1

[Section 3]

INTERPRETATION

(1) In this Act—

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

“**the EEA**” means the European Economic Area;

“**EEA agreement**” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the protocol adjusting that Agreement signed at Brussels on 17 March 1993, as it has effect in relation to the Island having regard to the provisions of Articles 25, 26 and 27 annexed to the Treaty of Accession and to the provisions of Protocol No. 3;

“**the EU**” has the meaning given in the *Interpretation Act 2015*;

“**EU decision**” means—

- (a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union; or
- (b) a decision under former Article 34(2)(c) of the Treaty on European Union,
together with any adaptations made to that decision under the EEA agreement immediately before exit day;

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

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

“**EU institution**” has the meaning given in the *Interpretation Act 2015*;

“**EU instrument**” has the meaning given in the *Interpretation Act 2015*;

“**EU reference**” means—

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

“**EU regulation**” means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union, together with any adaptations made to that regulation under the EEA agreement immediately before exit day;

“**EU tertiary legislation**” means—

- (a) any provision made under—

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

and includes any such provision or measure as adapted under the EEA agreement immediately before exit day but does not include any such provision or measure which is an EU directive;

“EU Treaties” has the meaning given in the *Interpretation Act 2015*;

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

“European Court” has the meaning given in the *Interpretation Act 2015*;

“exit day” means 29 March 2019 at 11.00 p.m. (and see section 4 (exit day));

“Manx legislation” includes, except where there is otherwise a contrary intention, any retained direct EU legislation;

“member” in the expression **“member States”** refers to membership of the EU;

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

“Parliamentary enactment” has the meaning given in section 13 of the *Interpretation Act 2015*;

“primary legislation” means an Act of Tynwald;

“Protocol 3” means Protocol No. 3 to the Act annexed to the Treaty of Accession;

“public authority” means a public authority within the meaning of section 6 of the *Human Rights Act 2001*;

“relevant criminal offence” means an offence for which an individual who has reached the age of 18 is capable of being sentenced to custody for a term exceeding 2 years;

“retained case law” means —

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

“retained direct EU legislation” means any EU regulation, EU decision or EU tertiary legislation which forms part of Manx law by virtue of section 7

(as modified by or under this Act or by other Manx law from time to time, and including any instruments made under it on or after exit day);

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

- (a) relate to —
 - (i) anything to which section 6, 7 or 8 applies; or
 - (ii) any Manx legislation passed or made or operating before exit day for a purpose mentioned in section 2B(1)(a) or (b) of the *European Communities (Isle of Man) Act 1973*;
- (b) fall within the limits of EU competences in relation to the Island; and
- (c) are not excluded by section 9 or Schedule 2,

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

“retained EU law” means —

- (a) any statutory document made under section 2B of the *European Communities (Isle of Man) Act 1973* and saved by virtue of section 6;
- (b) any retained direct EU legislation;
- (c) any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised in Manx law by virtue of section 8;
- (d) anything which on or after exit day continues to be, or forms part of, Manx law by virtue of section 10(3) or (6); and
- (e) any Manx legislation passed or made or operating before exit day for a purpose mentioned in section 2B(1)(a) or (b) of the *European Communities (Isle of Man) Act 1973*,

(as that body of law is added to or otherwise modified by or under this Act or by other Manx law from time to time);

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

- (a) relate to —
 - (i) anything to which section 6, 7 or 8 applies; or
 - (ii) any Manx legislation passed or made or operating before exit day for a purpose mentioned in section 2B(1)(a) or (b) of the *European Communities (Isle of Man) Act 1973*;
- (b) fall within the limits of EU competences in relation to the Island; and

(c) are not excluded by section 9 or Schedule 2,

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

“retained Manx case law” means any principles laid down by, and any decisions of, a court or tribunal in the Island, as they have effect immediately before exit day and so far as they —

(a) relate to —

(i) anything to which section 6, 7 or 8 applies; or

(ii) any Manx legislation passed or made or operating before exit day for a purpose mentioned in section 2B(1)(a) or (b) of the *European Communities (Isle of Man) Act 1973*; and

(b) are not excluded by section 9 or Schedule 2,

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

“retrospective provision”, in relation to provision made by a statutory document, means provision taking effect from a date earlier than the date on which the statutory document comes into operation;

“Treaty of Accession” means the Treaty relating to the accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on 22 January 1972;

“tribunal” means any tribunal in the Island;

“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);

“withdrawal agreement” means any agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU.

(2) For the purposes of this Act, “Manx legislation” does not include any laws that, under an Act of Tynwald, apply to the Island as contemplated by section 9(1)(c) of the *Interpretation Act 2015*.

(3) To avoid doubt, references in this Act to the withdrawal of the United Kingdom from the EU include a reference to the cessation of Protocol 3.

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

(5) Any other reference in this Act to an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union includes a reference to that Article as applied by Article 106a of the Euratom Treaty.

- (6) See paragraph 2 of Schedule 7 for amendments made by this Act to the Schedule to the *Interpretation Act 2015*.

Draft

SCHEDULE 2

[Section 9(5)]

FURTHER PROVISION ABOUT EXCEPTIONS TO SAVINGS AND RETENTION**1 Challenges to validity of retained EU law**

- (1) There is no right in Manx law on or after exit day to challenge any retained EU law on the basis that, immediately before exit day —
 - (a) an EU instrument was invalid; or
 - (b) an EU instrument did not have legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day.
- (2) Sub-paragraph (1) does not apply so far as —
 - (a) the European Court has decided before exit day that the instrument is invalid; or
 - (b) the challenge is of a kind described, or provided for, in regulations made by the Council of Ministers.

Tynwald procedure – approval required.
- (3) Regulations under sub-paragraph (2)(b) may (among other things) provide for a challenge which would otherwise have been against an EU institution to be against a public authority in the Island.

2 General principles of EU law

- (1) No general principle of EU law is part of Manx law on or after exit day if it was not recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case).
- (2) There is no right of action in Manx law on or after exit day based on a failure to comply with any of the general principles of EU law.
- (3) No court or tribunal or other public authority may, on or after exit day —
 - (a) disapply or quash any Manx legislation or other rule of law; or
 - (b) quash any conduct or otherwise decide that it is unlawful,because it is incompatible with any of the general principles of EU law.

3 Rule in Francovich

There is no right in Manx law on or after exit day to damages in accordance with the rule in Francovich.

4 Interpretation

References in section 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 so far as it would otherwise continue to be, or form part of, Manx law on or after exit day in accordance with this Act.

Draft

SCHEDULE 3

[Section 24]

RULES OF EVIDENCE**1 Questions as to meaning of EU law**

- (1) Where it is necessary, for the purpose of interpreting retained EU law in legal proceedings, to decide a question as to—
- (a) the meaning or effect in EU law of any of the EU Treaties or any other treaty relating to the EU; or
 - (b) the validity, meaning or effect in EU law of any EU instrument,
- the question is to be treated for that purpose as a question of law.
- (2) In this paragraph —
- “interpreting retained EU law” means deciding any question as to the validity, meaning or effect of any retained EU law; and
- “treaty” includes—
- (a) any international agreement; and
 - (b) any protocol or annex to a treaty or international agreement.

2 Power to make provision about judicial notice and admissibility

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

Tynwald procedure – affirmative.

- (2) Regulations under sub-paragraph (1)(b) may provide that evidence is admissible only where specified conditions are met (for example, conditions as to certification of documents).
- (3) Regulations under this paragraph may modify any provision made by or under a provision of Manx legislation.
- (4) In sub-paragraph (3) “Manx legislation” does not include primary legislation passed or made after the end of the Session in which this Act is passed.

- (5) For the purposes of this paragraph each of the following is a “relevant matter”—
- (a) retained EU law;
 - (b) EU law;
 - (c) the EEA agreement; and
 - (d) anything which is specified in the regulations and which relates to a matter mentioned in paragraph (a), (b) or (c).

Draft

SCHEDULE 4

[Section 25]

STATUTORY DOCUMENTS**1 Scope and nature of powers: general**

- (1) Any power to make a statutory document under this Act—
 - (a) may be exercised so as to modify retained EU law or other Manx legislation; and
 - (b) includes power —
 - (i) to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision restating any retained EU law in a clearer or more accessible way);
 - (ii) to permit a person to exercise a discretion in respect of any matters specified in the statutory document; and
 - (iii) to require compliance with standards or the adoption of practices recommended or specified from time to time (whether before or after the making of the statutory document) by a person or body specified in the statutory document.
- (2) The fact that a power to make a statutory document is conferred by this Act does not affect the extent of any other power to make a statutory document under this Act or under any other provision of retained EU law or Manx legislation.

2 Scope of consequential and transitional powers

- (1) The fact that anything continues to be, or forms part of, Manx law by virtue of any provision of sections 6 to 10 or Schedule 2 does not prevent it from being modified by regulations made under section 26(1) in consequence of any other provision made by or under this Act.
- (2) Accordingly, any retained EU law may, for example, be modified by regulations made under section 26(1) in consequence of the repeal of any provision of the *European Communities (Isle of Man) Act 1973*.
- (3) The power to make a statutory document under sections 2(2) or 26(4) includes the power to make consequential, incidental, supplemental, transitional, transitory or saving provision in connection with—
 - (a) the repeal of any provision of the *European Communities (Isle of Man) Act 1973*; or
 - (b) the withdrawal of the United Kingdom from the EU,

which is additional to that made by any provision of sections 6 to 10, or Schedule 2 or alters its effect in particular cases or descriptions of cases.

- (4) The power to make regulations under section 26(1) includes the power to make transitional, transitory or saving provision which—
- (a) is in connection with any repeal or revocation made by any such regulations of any provision of Manx legislation in consequence of—
 - (i) the repeal of any provision of the *European Communities (Isle of Man) 1973*; or
 - (ii) the withdrawal of the United Kingdom from the EU; and
 - (b) is additional to that made by any provision of sections 6 to 10 or Schedule 2 or alters its effect in particular cases or descriptions of cases.
- (5) Provision of the kind mentioned in sub-paragraph (3) or (4) may (among other things) include further provision treating any provision of that kind as retained EU law for particular purposes or all purposes.

3 Scope of appointed day powers

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

4 Effect of certain provisions in Schedule 5 and 7 on scope of powers

The modifications made by Schedule 5 (general consequential provisions) and paragraphs 2 and 3 of Schedule 7 (amendments to the *Interpretation Act 2015* and the *Legislation Act 2015*) do not prevent or otherwise limit the making of different provision, in particular cases or descriptions of cases, in regulations under section 26(1) or in any other statutory document made under this Act.

5 Procedure on re-exercise of certain powers

A statutory document which repeals, amends or re-enacts any other statutory document made under this Act may (despite section 93 of the *Interpretation Act 2015*) be subject to a different Tynwald procedure from the procedure to which the original statutory document was subject.

6 Tynwald procedure in certain urgent cases

- (1) This paragraph applies to a statutory document to which section 30 of the *Legislation Act 2015* (“approval required”) applies by virtue of any provision of this Act.
- (2) If the statutory document contains a declaration that the Council of Ministers is of the opinion that, by reason of urgency, it is necessary to make the statutory document subject to the Tynwald procedure set out in

section 31 of the *Legislation Act 2015* (“affirmative”), that procedure applies to the statutory document instead.

Draft

SCHEDULE 5

[Section 26(4)]

GENERAL CONSEQUENTIAL PROVISIONS**1 Existing ambulatory references to retained direct EU legislation**

- (1) Any reference which, immediately before exit day—
- (a) exists in—
 - (i) any provision of Manx legislation;
 - (ii) any EU regulation, EU decision or EU tertiary legislation (including as adapted under the EEA agreement) which is to form part of Manx law by virtue of section 7; or
 - (iii) any document relating to anything falling within sub-paragraph (i) or (ii); and
 - (b) is a reference to (as it has effect from time to time) any EU regulation, EU decision or EU tertiary legislation (including as adapted under the EEA agreement) which is to form part of Manx law by virtue of section 7,

is to be read, on or after exit day, as a reference to the EU regulation, EU decision or EU tertiary legislation (including as adapted under the EEA agreement) as it forms part of Manx law by virtue of section 7 and, unless the contrary intention appears, as modified by Manx law from time to time.

- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make a statutory document so far as the power to make the statutory document is —
- (a) contained in Manx legislation; and
 - (b) subject to a procedure before Tynwald.
- (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other provision of Manx legislation.

2 Other existing ambulatory references

- (1) Any reference which—
- (a) exists, immediately before exit day, in—
 - (i) any provision of Manx legislation;
 - (ii) any EU regulation, EU decision, EU tertiary legislation (including as adapted under the EEA agreement) which is to form part of Manx law by virtue of section 7; or
 - (iii) any document relating to anything falling within sub-paragraph (i) or (ii),

- (b) is not a reference to which paragraph 1(1) applies; and
- (c) is, immediately before exit day, a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,

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

- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make a statutory document so far as the power to make the statutory document is —
 - (a) contained in Manx legislation; and
 - (b) subject to a procedure before Tynwald.
- (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other provision of Manx legislation.

3 Existing powers to make statutory documents

- (1) Any power to make a statutory document which was conferred before exit day is to be read, on or after exit day and so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation.
- (2) Any statutory document modifying any retained direct EU legislation which is made by virtue of sub-paragraph (1) is subject to the same Tynwald procedure (if any) as would be the case for that statutory document if it was modifying another statutory document.
- (3) Any power to make a statutory document which was conferred before exit day and which includes a power to modify Manx legislation is to be read, on or after exit day, as being capable of being exercised to modify any retained direct EU legislation.
- (4) Any power to make a statutory document which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on or after exit day without that restriction or any corresponding restriction in relation to compatibility with retained EU law.
- (5) Sub-paragraphs (1) to (4) are subject to any other provision made by or under this Act or any other provision of Manx legislation.

4 Future powers to make statutory documents

Any power to make a statutory document which is conferred on or after exit day may, so far as applicable and unless the contrary intention appears, be exercised so as to modify (or, as the case may be, result in the modification of) any retained direct EU legislation.

5 Human Rights Act 2001

- (1) For the purposes of the *Human Rights Act 2001*, any retained direct EU legislation is to be treated as primary legislation and not subordinate legislation.
- (2) In sub-paragraph (1) “primary legislation” and “subordinate legislation” have the same meaning as in the *Human Rights Act 2001*.

Draft

SCHEDULE 6

[Section 26(6)]

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS**1 Continuation of existing acts etc**

- (1) Anything done—
- (a) in connection with anything which continues to be, or forms part of, Manx law by virtue of section 6, 7, 8 or 10(3) or (6); or
 - (b) for a purpose mentioned in section 2B(1) of the *European Communities (Isle of Man) Act 1973* or otherwise related to the EU or the EEA,
- if in operation or effective immediately before exit day, continues to be in operation or effective on and after exit day.
- (2) Anything done—
- (a) in connection with anything which continues to be, or forms part of, Manx law by virtue of section 6, 7, 8 or 10(3) or (6); or
 - (b) for a purpose mentioned in section 2B(1) of the *European Communities (Isle of Man) Act 1973* or otherwise related to the EU or the EEA,
- which, immediately before exit day, is in the process of being done continues to be done on and after exit day.
- (3) Sub-paragraphs (1) and (2) are subject to—
- (a) section 5 and the withdrawal of the United Kingdom from the EU;
 - (b) sections 6 to 10 and Schedule 2;
 - (c) any provision made under sections 2(2) or 26(4); and
 - (d) any other provision made by or under this Act or any other provision of Manx legislation.
- (4) References in this paragraph to anything done include references to anything omitted to be done.

2 Retention of existing EU law

Section 8(3)(b) does not apply in relation to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they are of a kind recognised by a court or tribunal in the Island or the United Kingdom in a case decided on or after exit day but begun before exit day (whether or not as an essential part of the decision in the case).

3 Further provision relating to section 9 and Schedule 2

- (1) Subject as follows and subject to any provision made under sections 2(3) or 26(4), paragraphs 1 to 3 of Schedule 2 apply in relation to anything occurring before exit day (as well as anything occurring on or after exit day).
- (2) Paragraphs 1 to 3 of Schedule 2 do not affect any decision of a court or tribunal made before exit day.
- (3) Paragraphs 2(2) and (3) and 3 of Schedule 2 do not apply in relation to any proceedings begun, but not finally decided, before a court or tribunal in the Island before exit day.
- (4) Paragraphs 1 to 3 of Schedule 2 do not apply in relation to any conduct which occurred before exit day which gives rise to any criminal liability.
- (5) Paragraph 2(2) and (3) of Schedule 2 does not apply in relation to any proceedings begun within the period of 3 months beginning with exit day so far as —
 - (a) the proceedings involve a challenge to anything which occurred before exit day; and
 - (b) the challenge is not for the disapplication or quashing of —
 - (i) an Act of Tynwald or a rule of law which is not Manx legislation; or
 - (ii) any Manx legislation, or anything else, not falling within sub-paragraph (i) which, as a result of anything falling within that sub-paragraph, could not have been different or which gives effect to, or enforces, anything falling within that sub-paragraph.
- (6) Paragraph 2(3) of Schedule 2 does not apply in relation to any decision of a court or tribunal, or other public authority, on or after exit day which is a necessary consequence of any decision of a court or tribunal made before exit day or made on or after that day by virtue of this paragraph.

SCHEDULE 7

[Section 26(7)]

SPECIFIC CONSEQUENTIAL AMENDMENTS

1 Customs and Excise Act 1993

- (1) The *Customs and Excise Act 1993* is amended as follows.
- (2) In section 1 (application to the Island of certain enactments relating to customs and excise etc) —
 - (a) in subsection (2), after “(other than an enactment in this Act)” insert **2A**, including any retained EU law, **2A**;
 - (b) after subsection (2) insert —

2A(2A) An order under this section may make any provision that could be made by an Act of Tynwald. **2A**
 - (c) in subsection (3)(aa), after “(an Act of Parliament)” insert **2A**, as amended from time to time **2A**;
 - (d) after subsection (3)(aa), insert —

2A(ab) any Parliamentary enactment imposing and regulating a duty of customs by reference to the importation or exportation of goods into or from the United Kingdom and making any other provision in relation to any duty of customs, excise duty and value added tax in connection with the withdrawal of the United Kingdom from the EU; **2A**;
 - (e) in subsection (3)(b), for “paragraph (a) or (aa)” substitute **2A** paragraphs (a), (aa) or (ab) **2A**;
 - (f) for subsection (3)(f) substitute —

2A(f) any instrument of a legislative character (including, for the avoidance of doubt, any notice or public notice) made, issued, given or published, or having effect as if made, issued, given or published, under any of the enactments mentioned in paragraphs (a) to (e); or **2A**;
 - (g) after subsection (3) insert —

2A(3A) The Treasury may by order amend subsection (3) by —

 - (a) adding to it (with or without qualification) any instrument; or
 - (b) deleting from it any instrument (including any instrument added to it by a previous order under this subsection).

Tynwald procedure – approval required. **2A**.

- (3) In section 3 (public documents) —
- (a) after subsection (3), insert —
- “(3A) An order under section 1 may provide that a reference in it to an instrument referred to in section 1(3) or to a provision of such an instrument is to be construed as a reference to the instrument or provision as amended from time to time.”;
- (b) in subsection (4), for “any legislation” substitute “any instrument”;
- (c) after subsection (4), insert —
- “(4A) If subsection (3A) applies, the text to be annexed under subsection (4) is the text of the instrument at the time the order is made.
- (4B) However, the Treasury —
- (a) may update the text to reflect any amendment made to the instrument after the making of the order; and
- (b) must update the text if a person requests an updated text of the instrument applied by the order.”.

2 Interpretation Act 2015

- (1) The *Interpretation Act 2015* is amended as follows.
- (2) In section 5 (combined operation of this Act and the *Legislation Act 2015*) —
- (a) in subsection (2), for “Both Acts apply” substitute “Subject to section 5A of this Act and section 4A of the *Legislation Act 2015*, both Acts apply”;
- (b) in subsection (3), for “Subject to sections 6 and 7” substitute “Subject to sections 5A, 6 and 7 of this Act and section 4A of the *Legislation Act 2015*”.
- (3) After section 5 (combined operation of the *Interpretation Act 2015* and the *Legislation Act 2015*) insert —

5A Retained direct EU legislation

- (1) The provisions of this Act (except sections 69(4), 71 and 99 to 102) apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation, which is not subordinate legislation, but only so far as it is amended by an Act or subordinate legislation.
- (2) In their application by virtue of subsection (1) —
- (a) section 32 (references to the Sovereign) has effect as if the reference to the legislation commencing was a reference to the corresponding time;

- (b) section 43 (application to all of the Island) has effect as if the reference to Manx legislation included a reference to the retained direct EU legislation so far as unamended (as well as a reference to that legislation so far as amended);
 - (c) section 44 (Manx legislation is always speaking) has effect as if the reference to Manx legislation included a reference to the retained direct EU legislation so far as unamended (as well as a reference to that legislation so far as amended).
- (3) The provisions of this Act apply to retained direct EU legislation which is subordinate legislation in the same way as it applies to subordinate legislation which is not retained direct EU legislation.
- (4) In this section, “corresponding time” means the time when the amending Act or subordinate legislation was passed or (as the case may be) made. **22**.
- (4) In section 9(1) (“Manx legislation” and “statutory provision”), after paragraph (aa) insert —
 - 23**(ab) retained direct EU legislation; **22**.
- (5) In section 11 (“Manx enactment”) —
 - (a) for subsection (1), substitute —
 - 24**(1) A “**Manx enactment**” is an Act, a Measure, any retained direct EU legislation or a provision of an Act, a Measure or any retained direct EU legislation. **22**.
 - (b) after subsection (4) insert —
 - 25**(5) In subsection (3)(a) the reference to “originally enacted”, in relation to retained direct EU legislation, is a reference to the retained direct EU legislation in the form in which it was in on exit day. **22**.
- (6) In section 14 (references in Manx enactments to EU instruments) —
 - (a) for subsection (1)(a) substitute —
 - 26**(a) a Manx enactment passed —
 - (i) after section 1B of the repealed Interpretation Act commenced; but
 - (ii) before exit day,
 refers to an EU instrument (the “original instrument”); and **22**.
 - (b) for subsection (2) (and its associated note) substitute —
 - 27**(2) If the reference is to an EU instrument which forms part of Manx law by virtue of section 7 of the *European Union (Withdrawal) Act 2018*, the reference is to be read, on or after exit day, as a reference

- to the EU instrument as it forms part of Manx law by virtue of section 7 and, unless the contrary intention appears, as modified by Manx law from time to time.
- Note:*
For public documents, see section 89 (public document may apply other laws or documents).
- (3) If the reference is to an EU instrument which does not form part of Manx law by virtue of section 7 of the *European Union (Withdrawal) Act 2018*, the reference is to be read, on or after exit day, as a reference to the EU instrument as it has effect immediately before exit day. **22**.
- (7) In section 15 (“public document”) —
- (a) in subsection (1), after “made under an Act or a Measure” insert **23** or made on or after exit day under any retained direct EU legislation **22**.
- (b) in subsection (2) —
- (i) after “made under an Act or a Measure” insert **23** or any retained direct EU legislation **22**;
- (ii) in paragraph (a), after “the Act or Measure” insert **23** or retained direct EU legislation **22**.
- (8) In section 16 (“statutory document” and its “responsible authority”) —
- (a) in subsection (1)(a), after “any of the following made under an Act or a Measure” insert **23** or made on or after exit day under any retained direct EU legislation **22**;
- (b) in subsection (3)(ba), after “issued under an Act” insert **23** or any retained direct EU legislation **22**.
- (9) In section 18 (“Authorising legislation”), after paragraph (b) insert —
- 23**(c) retained direct EU legislation, that retained direct EU legislation. **22**.
- (10) In section 82 (matter for which general fee power may be exercised), for paragraph (c) substitute —
- 23**(c) a matter for which —
- (i) an Act; or
- (ii) any retained direct EU legislation which is not subordinate legislation,
- provides that a fee is to be prescribed under the general fee power; and **22**.
- (11) In the Schedule (defined terms) —

- (a) in paragraph 1, in the definition of “subordinate legislation”, after “an Act or Measure” insert **“or made on or after exit day under any retained direct EU legislation”**.
- (b) in paragraph 1, omit the following definitions —
 - “enforceable EU right”;
 - “the EU”;
 - “EU customs duty”;
 - “EU institution”;
 - “EU instrument”;
 - “EU obligation”;
 - “EU provision”;
 - “the European Court”;
 - “the EU treaties”;
 - “European Communities Act”.
- (c) after paragraph 1, insert —

1A Definitions relating to the EU and the United Kingdom’s withdrawal from the EU

In all Manx legislation, except where express provision to the contrary is made —

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

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

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the protocol adjusting that Agreement signed at Brussels on 17 March 1993, as it had effect in relation to the Island having regard to the provisions of Articles 25, 26 and 27 of the Act annexed to the Treaty of Accession and to the provisions of the Protocol, as modified or supplemented from time to time, but does not include any retained direct EU legislation;

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

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

“E.E.C. Treaty” means the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957;

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

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

“**EU institution**” means any institution of the EU;

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

“**Euratom**”, “**Economic Community**” and “**Coal and Steel Community**” mean respectively the European Atomic Energy Community, the European Economic Community and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities);

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

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

“**exit day**” (and related expressions) have the same meaning as in the *European Union (Withdrawal) Act 2018* (see section 4 of, and Schedule 1 to, that Act);

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

“**Protocol 3**” means Protocol No. 3 to the Act annexed to the Treaty relating to the Accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on 22 January 1972;

“**retained EU law**” has the same meaning as in the *European Union (Withdrawal) Act 2018* (see Schedule 1 to that Act);

“**retained direct EU legislation**” has the same meaning as in the *European Union (Withdrawal) Act 2018* (see Schedule 1 to that Act);

“**retained EU obligation**” means an obligation that —

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

“**the Treaties**” or “**the EU Treaties**” means the Treaties or EU Treaties, within the meaning given by section 1(1) of the *European Communities (Isle of Man) Act 1973* as that Act had effect

immediately before its repeal by section 5 of the *European Union (Withdrawal) Act 2018*, as at immediately before exit day. ²².

3 **Legislation Act 2015**

- (1) The *Legislation Act 2015* is amended as follows.
- (2) In section 4 (combined operation of this Act and the Interpretation Act) —
 - (a) in subsection (2), for “Both Acts apply” substitute ²³Subject to section 4A of this Act and section 5A of the *Interpretation Act 2015*, both Acts apply ²²;
 - (b) in subsection (3), for “Manx legislation” substitute ²³Subject to section 4A of this Act and section 5A of the *Interpretation Act 2015*, Manx legislation ²².
- (3) After section 4 (combined operation of this Act and the Interpretation Act), insert —

²³4A **Retained direct EU legislation**

- (1) The provisions of this Act (except sections 46, 54, 55, 59 and paragraph 1 of Schedule 1) apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation, which is not subordinate legislation.
- (2) In their application by virtue of subsection (1) —
 - (a) section 67 (transition of references in other legislation) has effect as if the reference to Manx legislation includes only a reference to retained direct EU legislation so far as it has been amended by an Act or subordinate legislation;
 - (b) section 68 (transition of specific references for things happening after repeal) has effect as if the reference to Manx legislation includes only a reference to retained direct EU legislation so far as it has been amended by an Act or subordinate legislation.
- (3) The provisions of this Act apply to retained direct EU legislation which is subordinate legislation in the same way as it applies to subordinate legislation which is not retained direct EU legislation. ²².
- (4) Section 6 (relationship with European Communities Act) is repealed.

4 **European Communities (Amendment) Act 1994**

- (1) The *European Communities (Amendment) Act 1994* is amended as follows.
- (2) Omit section 1 (Treaty on European Union).

- (3) Omit section 2 (Agreement on European Economic Area).
- (4) In section 3(3) (consistent application of law to the whole of the EEA) —
 - (a) in paragraph (a), after “Act” insert **as at immediately before exit day**, and
 - (b) omit paragraph (b), the “or” before that paragraph and the words after that paragraph.
- (5) After section 3(3) insert —

(3A) This section is subject to any amendment, repeal, revocation or other modification of retained EU law or Manx legislation on or after exit day.
- (6) Omit sections 3(4) to (6).
- (7) In Section 4(3) (general implementation of EEA agreement) —
 - (a) in paragraph (a), after “Act” insert **as at immediately before exit day**, and
 - (b) omit paragraph (b), the “or” before that paragraph and the words after that paragraph.
- (8) After section 4(4) insert —

(4A) This section is subject to any amendment, repeal, revocation or other modification of retained EU law or Manx legislation on or after exit day.
- (9) Omit section 5 (amendment of section 3 of the European Communities (Isle of Man) Act 1973).
- (10) In section 7 (interpretation), in subsection (1) —
 - (a) for the definition of “the 1973 Act” substitute —

“the 1973 Act” means the *European Communities (Isle of Man) Act 1973* (before its repeal by section 5 of the *European Union (Withdrawal) Act 2018*);
 - (b) for the definition of “the Agreement” substitute —

“the Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 together with the protocol adjusting that Agreement signed at Brussels on 17 March 1993 as it has effect in relation to the Island having regard to the provisions of Articles 25, 26 and 27 of the Act annexed to the Treaty of Accession and to the provisions of the Protocol;

“the Protocol” means Protocol No. 3 to the Act annexed to the Treaty of Accession;
 - (c) in the definition of “relevant provision”, in paragraph (b), for “that date” substitute **the date on which the Agreement comes into force**;

(d) after the definition of “relevant provision” insert —

“**Treaty of Accession**” means the Treaty relating to the Accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on the 22 January 1972.”

Draft

SCHEDULE 8

[Section 26(8)]

ADDITIONAL REPEALS

Short title	Extent of repeal
European Communities (Implementation of Article 3 of Regulation 706/73) Act 1979	The whole Act.
European Communities (Greek Accession) Act 1981	The whole Act.
European Communities (Spanish and Portuguese Accession) Act 1985	The whole Act.
European Communities (Amendment) Act 1988	The whole Act.
European Communities (Amendment) Act 1991	The whole Act.
European Communities (Amendment) (No.2) Act 1992	The whole Act.
European Communities (Amendment) Act 1995	The whole Act.
European Communities (Amendment) Act 1999	The whole Act.
European Communities (Amendment) Act 2000	The whole Act.
European Communities (Amendment) Act 2003	The whole Act.
European Union (Accessions) Act 2004	The whole Act.
European Communities (Amendment) Act 2007	The whole Act.
European Union (Amendment) Act 2011	The whole Act.
European Union (Amendment) Act 2014	The whole Act.