



Isle of Man

Ellan Vannin

EUROPEAN UNION AND TRADE BILL 2018

EUROPEAN UNION AND TRADE BILL 2018

Explanatory Memorandum

1. This Bill is promoted by Hon R H Quayle MHK on behalf of the Council of Ministers.
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) provides that the saved statutory documents will have effect as if made as regulations under *clause 16*.

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.

Whether or not any EU regulation, EU decision or EU tertiary legislation falls within Protocol 3 is not always clear cut. For example, whilst certain provisions of an EU regulation may clearly fall within the scope of Protocol 3, it may not be possible to effectively sever them from the remaining provisions of the regulation. In order to provide legal certainty on and after exit day, subsection (3) clarifies that, notwithstanding that only part of an EU regulation, EU decision or piece of EU tertiary legislation prescribed under clause 7(1)(b) may fall within the scope of Protocol 3, the whole of that EU regulation, EU decision or piece of EU tertiary legislation will be retained as Manx law. This is subject to anything to the contrary provided for in the regulations made by the Council of Ministers under clause 7(1)(b).

Subsection (4) provides that directly applicable EU legislation is only converted into Manx law if it is operative immediately before exit day.

Subsection (5) clarifies the meaning of the term “operative”.

Subsection (6) 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 (8) 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 (9) 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 (either in its entirety or in part) by virtue of section 2(1) of the 1973 Act immediately before exit day. Any such certificate will be evidence of that fact.

Subsection (10) provides that the conversion and retention of any directly applicable EU 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 arise under or 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. arising under or 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 and coming into operation before exit day will be construed and have effect subject to any retained EU law which had legal effect in Manx law by virtue of section 2(1) of the 1973 Act immediately before exit day. However subsection (2) provides that this does not apply to any Manx legislation passed or made and coming into operation 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) may have regard to anything done by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

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 if doing so is consistent with the intention of the modifications.

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 may do. 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) provides that regulations made under subsection (1) can modify retained EU law or other Manx legislation so that it includes a provision enabling a Department or Statutory Board to make regulations.

Subsection (9) 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 (11) clarifies that regulations made under subsection (1) may prevent, remedy or mitigate any failure or other deficiency in retained EU law or other Manx legislation which has been voluntarily applied to, or implemented in, the Island.

Subsection (12) clarifies that the power of the Council of Ministers to make regulations under this clause will not limit its powers to make regulations under other clauses in the Bill.

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 clause 12 can do anything an Act of Tynwald may do.

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*.

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

Subsection (2) provides that regulations made under clause 13 can do anything that an Act of Tynwald may do.

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 —

- (a) modify retained direct EU legislation and anything which is retained EU law by virtue of clause 8 of the Bill so that it keeps in step with the relevant EU law on or after exit day;
- (b) modify retained direct EU legislation so that any provision of it has effect as amended from time to time by EU law;
- (c) make exceptions, adaptations and modifications to any retained direct EU legislation and anything which is retained EU law by virtue of clause 8 for the purpose of giving effect to such provisions in Manx law;
- (d) repeal or revoke any retained direct EU legislation and anything which is retained EU law by virtue of clause 8;
- (e) modify any retained direct EU legislation and anything which is retained EU law by virtue of clause 8 so that it corresponds with the like legislation from time to time operating in the UK.

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

Subsection (2) provides that regulations made under this clause can do anything that an Act of Tynwald may do.

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*.

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 clause 15 can do anything that an Act of Tynwald may do.

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) enables 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;
- (c) implement any retained EU law and to deal with any matters arising out of or related to any such implementation.

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

Subsection (2) provides that any regulations made under clause 16 can do anything that an Act of Tynwald may do.

Subsection (3) provides that regulations made under subsection (1) may include a provision authorising a Department or Statutory Board to make regulations.

Subsections (5) to (8) contain provisions relating to the text of any applied instrument.

Subsection (9) gives the Council of Ministers the power to include a provision in the regulations to the effect that the regulations are to be treated as “retained EU law”.

Subsection (10) 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 (11) 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 (4)) and to make any necessary provisions to implement such instruments;
- (b) implement certain EU laws into Manx law retrospectively (see subsection (4)) 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 clause 17 can do anything that an Act of Tynwald may do.

In a similar way to clause 7(3) referred to in paragraph 8 above, subsection (3) clarifies that notwithstanding that only part of an EU regulation, EU decision or piece of EU tertiary legislation may have had legal effect in Manx law by virtue of section 2(1) of the 1973 Act, the whole of that EU regulation, EU decision or piece of EU tertiary legislation may be applied to the Island.

Subsection (4) provides that any regulations made under this clause may be made retrospective.

Subsection (5) 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 (8) further provides that any such regulations may not amend, repeal or revoke the *Human Rights Act 2001*.

Subsection (6) requires any regulations made under subsection (1)(a) to have a text of the applied instrument annexed to it.

Subsection (7) gives the Council of Ministers the power to include a provision in the regulations to the effect that the regulations are to be treated as “retained EU law”.

Subsection (9) 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 UK legislation 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 clause 18 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 UK legislation 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 UK legislation or any description of UK legislation. The Tynwald procedure for any such regulations will be “approval required”.

Subsections (5) to (8) contain provisions relating to the text of any applied UK legislation.

20. *Clause 19* provides the Department of Environment, Food and Agriculture with the power (by way of regulations) to —

- (a) apply UK legislation to the Island (subject to modifications) which relates to any of the subject areas listed in subsection (1)(a);
- (b) apply EU instruments to the Island (subject to modifications) which relate to any of the subject areas listed in subsection (1)(a) and to make any necessary provisions to implement such instruments;
- (c) implement EU law into Manx law which relates to any of the subject areas listed in subsection (1)(a) and to deal with any matters arising out of or related to any such implementation.

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

Subsection (3) provides that any regulations made under clause 19 can do anything that an Act of Tynwald can do.

Subsections (4) to (7) contain provisions relating to the text of any applied UK legislation or EU instrument.

Subsection 8 sets out a number of safeguards on the use of the powers in this clause. Such regulations may not impose or increase taxation; make retrospective provisions; create a relevant criminal offence; or amend, repeal or revoke the *Human Rights Act 2001*.

Subsection (9) gives the Council of Ministers the power to amend the fields of legislation referred to in subsection (1)(a). The Tynwald procedure for any such regulations will be “approval required”.

21. *Clause 20* enables statutory documents made under clauses 12 to 19 or 22 to refer to EU instruments or any UK legislation 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 or UK legislation 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.

22. *Clause 21* 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 clause 21 can do anything that an Act of Tynwald may do.

23. *Clause 22* 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 clause 22 can do anything that an Act of Tynwald may do.

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

24. *Clause 23* 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 clause 23 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* 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 clause 24 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.

26. *Clause 25* gives effect to Schedule 3 on the rules of evidence for retained EU law and other relevant documents and instruments.

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

28. *Clause 27* 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.

Subsection (9) saves the operation of article 3(3) of the European Union (Changes in Terminology) Order 2012 (SD0606/12). This statutory document was made under section 1A(1) of the 1973 Act and deals with changes in terminology from "European Community" to "European Union" made by the Treaty of Lisbon.

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

Paragraph (5) 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.

Paragraph (6) 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.

30. *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(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(1) is subject to the following two exceptions set out in paragraph 1(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.

31. *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”.

32. *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 27(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 27(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 27(1) includes the power to make transitional, transitory 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 clarifies that the powers to make a statutory document in the Bill can be exercised before exit day so as to modify retained EU law which will not exist until exit 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 provides that a statutory document made by way of regulations under the Bill may modify any retained EU law or other Manx legislation notwithstanding that such retained EU law or other Manx legislation may have been made by way of a different type of statutory document e.g. an Order.

Paragraph 7 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.

33. *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, which were conferred before this Bill becomes an Act, which include a power to modify Manx legislation are capable of amending retained direct EU legislation and anything which is retained EU law by virtue of clause 8.

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

Paragraph 3(6) clarifies that a power referred to in paragraph 3(1) or in any Act of Tynwald passed before and in the same Session as this Bill, can be exercised before exit day to come into operation on or after exit day.

Paragraph 4(1) provides that power to make statutory documents in Acts passed on or after the day this Bill becomes an Act are capable of amending retained direct EU legislation and anything which is retained EU law by virtue of clause 8, unless otherwise provided.

Paragraph 4(4) clarifies that such powers can be exercised before exit day to modify retained EU law if they come into operation on or after exit day.

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.

34. *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 clause 9(3) and 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 27(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 clause 9(3), 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 3 years 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 3 year period after exit day provided for under paragraph 3(5).

Paragraph 3(7) provides that the prohibition on seeking Francovich damages in Manx law will not apply in relation to any proceedings begun within 2 years beginning with exit day so far as the proceedings relate to anything which occurred before exit day.

35. *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*.
36. *Schedule 8* lists further Acts of Tynwald which are repealed by the Bill.
37. The resulting Act is largely enabling in nature to address a range of potential circumstances in connection with the United Kingdom's withdrawal from the European Union and future trading relationships. The financial and human resource implications arising from these circumstances are difficult to quantify but there will be resource implications in respect of the preparation of statutory documents that need to be made under the Act.
38. 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*.



Ellan Vannin

EUROPEAN UNION AND TRADE BILL 2018

Index

Section	Page
<i>Introductory</i>	21
1 Short title	21
2 Commencement	21
3 Interpretation.....	22
<i>Exit day</i>	22
4 Exit day.....	22
<i>Repeal of the European Communities (Isle of Man) Act 1973</i>	22
5 Repeal of the European Communities (Isle of Man) Act 1973	22
<i>Retention of existing EU law</i>	23
6 Saving for statutory documents made under the European Communities (Isle of Man) Act 1973.....	23
7 Retention of direct EU legislation.....	23
8 Saving for rights etc. under section 2(1) of the European Communities (Isle of Man) Act 1973.....	24
9 Exceptions to savings and retention	25
10 Interpretation of retained EU law	26
<i>Powers in connection with withdrawal</i>	27
11 Dealing with deficiencies arising from withdrawal	27
12 Complying with international obligations.....	29
13 Implementing the withdrawal agreement	29
<i>Further powers operable on or after exit day</i>	30
14 Amendment of retained direct EU legislation and other rights etc.....	30
15 Application and implementation of treaty provisions	31
16 Application and implementation of EU instruments and law	32
17 Application and implementation of previous direct EU legislation and EU law.....	33
18 Application to the Island of UK legislation.....	34
19 Application to the Island of UK legislation and EU legislation by the Department of Environment, Food and Agriculture.....	35
20 Ambulatory references to EU instruments and UK legislation	37
<i>Trade Agreements</i>	38

21	Application and implementation of WTO Agreement	38
22	Implementation of international trade agreements.....	38
23	Trade information	39
24	Disclosure of information by the Treasury	39
	<i>General and final provisions</i>	39
25	Rules of evidence.....	39
26	Statutory documents.....	40
27	Consequential and transitional provisions.....	40
SCHEDULE 1		41
INTERPRETATION		41
SCHEDULE 2		46
FURTHER PROVISION ABOUT EXCEPTIONS TO SAVINGS AND RETENTION		46
SCHEDULE 3		48
RULES OF EVIDENCE		48
SCHEDULE 4		50
STATUTORY DOCUMENTS		50
SCHEDULE 5		53
GENERAL CONSEQUENTIAL PROVISIONS		53
SCHEDULE 6		56
TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS		56
SCHEDULE 7		58
SPECIFIC CONSEQUENTIAL AMENDMENTS		58
SCHEDULE 8		67
ADDITIONAL REPEALS		67



Ellan Vannin

EUROPEAN UNION AND TRADE BILL 2018

1 **A BILL** to repeal the European Communities (Isle of Man) Act 1973; to make
2 provision consequent upon the withdrawal of the United Kingdom from the EU
3 and the resultant cessation of Protocol No. 3 to the Act annexed to the Treaty
4 relating to the Accession of the United Kingdom to the European Economic
5 Community and to the European Atomic Energy Community signed at Brussels
6 on the 22 January 1972; to make provision to apply EU law to, and to
7 implement EU law in, the Island after exit day; to make provision to apply to
8 the Island UK legislation relating to the United Kingdom's withdrawal from the
9 EU and the United Kingdom's future relationship with the EU and relating to
10 the functions of the Department of Environment, Food and Agriculture; to
11 make provision in relation to trade and trade agreements; and for connected
12 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:—

13

Introductory

14

1 Short title

15

The short title of this Act is the European Union and Trade Act 2019.

16

2 Commencement

17

(1) This section and the following provisions of this Act—

18

(a) section 1;

19

(b) section 3 (including Schedule 1) (interpretation);

20

(c) section 4 (appointment of exit day);

21

(d) sections 11 to 13 (powers in connection with withdrawal);

22

(e) sections 14 to 20 (further powers operable on or after exit day);

23

(f) sections 21 to 24 (trade agreements);

24

(g) section 26 (including Schedule 4) (statutory documents); and

25

(h) section 27(1) to (4) (consequential and transitional provisions),



- 1 come into operation on the day on which this Act is passed.
- 2 (2) The remaining provisions of this Act come into operation on such day or
3 days as the Council of Ministers may by order appoint.
- 4 Tynwald procedure – laying only.
- 5 (3) An order under subsection (2) may make such consequential, incidental,
6 supplemental, transitional, transitory or saving provisions as the Council
7 of Ministers considers necessary or expedient in connection with the
8 coming into operation of any provision of this Act (including its
9 operation in connection with exit day).

10 **3 Interpretation**

11 Schedule 1 (interpretation) has effect.

12 *Exit day*

13 **4 Exit day**

14 [P2018/16/20(2)-(5)]

- 15 (1) In this Act references to before, after or on exit day, or to beginning with
16 exit day, are to be read as references to before, after or at 11.00 p.m. on 29
17 March 2019 or (as the case may be) to beginning with 11.00 p.m. on that
18 day.
- 19 (2) Subsection (3) applies if the day or time on or at which the Treaties are to
20 cease to apply to the United Kingdom in accordance with Article 50(3) of
21 the Treaty on European Union is different from that specified in the
22 definition of “exit day” in Schedule 1.
- 23 (3) The Council of Ministers may by regulations –
- 24 (a) amend the definition of “exit day” in Schedule 1 to ensure that the
25 day and time specified in the definition are the day and time that
26 the Treaties are to cease to apply to the United Kingdom; and
- 27 (b) amend subsection (1) in consequence of any such amendment.
- 28 Tynwald procedure – laying only.
- 29 (4) In subsections (2) and (3) “the Treaties” means the Treaty on European
30 Union and the Treaty on the Functioning of the European Union.

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

32 **5 Repeal of the European Communities (Isle of Man) Act 1973**

33 [P2018/16/1]

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

1

Retention of existing EU law

2

6 Saving for statutory documents made under the European Communities (Isle of Man) Act 1973

3

4

[P2018/16/2 and drafting]

5

(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.

6

7

8

(2) A statutory document referred to in subsection (1) has effect as if made as regulations under section 16 (application and implementation of EU instruments and law).

9

10

11

But section 16(11) does not apply to such a statutory document.

12

13

(3) This section is subject to section 9 and Schedule 2 (exceptions to savings and retention).

14

7 Retention of direct EU legislation

15

[P2018/16/3 and drafting]

16

(1) Any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day, which –

17

18

(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

19

20

21

(b) is prescribed by regulations made by the Council of Ministers for the purposes of this subsection,

22

23

forms part of Manx law on and after exit day.

24

Tynwald procedure – approval required.

25

(2) The power to prescribe under subsection (1)(b) includes the power to prescribe –

26

27

(a) specific EU regulations, EU decisions or EU tertiary legislation either in their entirety or in part;

28

29

(b) a generic description or class of EU regulations, EU decisions or EU tertiary legislation;

30

31

(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;

32

33

34

35

(d) any exemptions, exceptions or exclusions (whether specific or generic) from any prescribed EU regulations, EU decisions or EU tertiary legislation.

36

37

- 1 (3) Despite subsections (1) and (2), if only part of an EU regulation, EU
2 decision or piece of EU tertiary legislation prescribed under subsection
3 (1)(b) has legal effect in Manx law by virtue of section 2(1) of the
4 *European Communities (Isle of Man) Act 1973* immediately before exit day,
5 the whole of that EU regulation, EU decision or piece of EU tertiary
6 legislation forms part of Manx law on and after exit day unless
7 regulations made under subsection (1)(b) expressly provide otherwise.
- 8 (4) Only EU regulations, EU decisions or EU tertiary legislation which are
9 operative immediately before exit day can form part of Manx law on and
10 after exit day under subsection (1).
- 11 (5) For the purposes of this Act, any EU regulation, EU decision or EU
12 tertiary legislation is operative immediately before exit day if –
- 13 (a) in the case of anything which comes into operation at a particular
14 time and is stated to apply from a later time, it is in operation and
15 applies immediately before exit day;
- 16 (b) in the case of a decision which specifies to whom it is addressed, it
17 has been notified to that person before exit day; and
- 18 (c) in any other case, it is in operation immediately before exit day.
- 19 (6) Any EU regulation, EU decision or EU tertiary legislation which has legal
20 effect in Manx law by virtue of section 2(1) of the *European Communities*
21 *(Isle of Man) Act 1973* immediately before exit day, but which does not
22 fall within subsection (1), ceases to have effect in Manx law on and after
23 exit day.
- 24 (7) No regulations may be made under subsection (1) after exit day.
- 25 (8) This section brings into Manx law any EU regulation, EU decision or EU
26 tertiary legislation only in the form of the English language version of
27 that legislation but this does not affect the use of the other language
28 versions of that legislation for the purposes of interpreting it.
- 29 (9) A certificate issued by or under the authority of the Attorney General
30 stating that any EU regulation, EU decision or EU tertiary legislation did
31 or did not have legal effect in Manx law (either in its entirety or in part)
32 by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973*
33 immediately before exit day is evidence of that fact.
- 34 (10) This section is subject to section 9 and Schedule 2 (exceptions to savings
35 and retention).

36 8 Saving for rights etc. under section 2(1) of the European Communities 37 (Isle of Man) Act 1973

38 [P2018/16/4 and drafting]

- 39 (1) Subject to subsection (2), any rights, powers, liabilities, obligations,
40 restrictions, remedies and procedures which immediately before exit
41 day –

- 1 (a) are recognised and available in Manx law by virtue of section 2(1)
2 of the *European Communities (Isle of Man) Act 1973*; and
3 (b) are enforced, allowed and followed accordingly,
4 continue on and after exit day to be recognised and available in Manx
5 law (and to be enforced, allowed and followed accordingly).
- 6 (2) Subsection (1) only applies to such rights, powers, liabilities, obligations,
7 restrictions, remedies and procedures so far as they arise under or
8 pertain to any statutory document saved under section 6 and any EU
9 legislation retained under section 7.
- 10 (3) Subsection (1) does not apply to any rights, powers, liabilities,
11 obligations, restrictions, remedies or procedures so far as they —
12 (a) form part of Manx law by virtue of section 7; or
13 (b) arise under an EU directive (including as applied by the EEA
14 agreement) and are not of a kind recognised by the European
15 Court or any court or tribunal in the Island or the United
16 Kingdom in a case decided before exit day (whether or not as an
17 essential part of the decision in the case).
- 18 (4) To avoid doubt, subsection (1) does not save any rights, powers,
19 liabilities, obligations, restrictions, remedies and procedures arising
20 under or pertaining to any EU regulation, EU decision or EU tertiary
21 legislation which has legal effect in Manx law by virtue of section 2(1) of
22 the *European Communities (Isle of Man) Act 1973* immediately before exit
23 day, but which has not been prescribed under section 7(1).
- 24 (5) This section is subject to section 9 and Schedule 2 (exceptions to savings
25 and retention).

26 9 Exceptions to savings and retention

27 [P2018/16/5 and drafting]

- 28 (1) On and after exit day —
29 (a) any retained EU law is to be construed and have effect subject to
30 any Manx legislation or rule of law passed or made on or after
31 exit day; and
32 (b) any Manx legislation or rule of law —
33 (i) passed or made before exit day; and
34 (ii) coming into operation before exit day,
35 is to be construed and have effect subject to any retained EU law
36 which immediately before exit day had legal effect in Manx law
37 by virtue of section 2(1) of the *European Communities (Isle of Man)*
38 *Act 1973*.
- 39 (2) Subsection (1)(b) does not apply to any Manx legislation —
40 (a) passed or made before exit day; and

(b) coming into operation 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

[P2018/16/6]

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

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after 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.

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

5 *Powers in connection with withdrawal*

6 **11 Dealing with deficiencies arising from withdrawal**

7 [P2018/16/8]

- 8 (1) The Council of Ministers may by regulations make such provision as it
 9 considers appropriate to prevent, remedy or mitigate—
 10 (a) any failure of retained EU law or other Manx legislation to
 11 operate effectively; or
 12 (b) any other deficiency in retained EU law or other Manx legislation,
 13 arising from the withdrawal of the United Kingdom from the EU.
 14 Tynwald procedure – approval required.
- 15 (2) Deficiencies in retained EU law or other Manx legislation are where the
 16 Council of Ministers considers that retained EU law or other Manx
 17 legislation—
 18 (a) contains anything which has no practical application in relation to
 19 the Island or is otherwise redundant or substantially redundant;
 20 (b) confers functions on, or in relation to, EU entities which no longer
 21 have functions in that respect under EU law in relation to the
 22 Island or the United Kingdom (or any part of it);
 23 (c) makes provision for, or in connection with, reciprocal
 24 arrangements between—
 25 (i) the Island or the United Kingdom (or any part of it) or a
 26 public authority in the Island or the United Kingdom; and
 27 (ii) the EU, an EU entity, a member State or a public authority
 28 in a member State,
 29 which no longer exist or are no longer appropriate as a result of
 30 the withdrawal of the United Kingdom from the EU;
 31 (d) makes provision for, or in connection with, other arrangements
 32 which—
 33 (i) involve the EU, an EU entity, a member State or a public
 34 authority in a member State; or
 35 (ii) are otherwise dependent upon the Island’s or the United
 36 Kingdom’s relationship with the EU,
 37 and which no longer exist or are no longer appropriate;
 38 (e) makes provision for, or in connection with, any reciprocal or other
 39 arrangements not falling within paragraph (c) or (d) which no

- 1 longer exist, or are no longer appropriate, as a result of the
2 withdrawal of the United Kingdom from the EU;
- 3 (f) does not contain any functions or restrictions which –
- 4 (i) were in an EU directive and in operation immediately
5 before exit day (including any power to make EU tertiary
6 legislation); and
- 7 (ii) it is appropriate to retain; or
- 8 (g) contains EU references which are no longer appropriate.
- 9 (3) There is also a deficiency in retained EU law or other Manx legislation
10 where the Council of Ministers considers that there is –
- 11 (a) anything in retained EU law or other Manx legislation which is of
12 a similar kind to any deficiency which falls within subsection (2);
13 or
- 14 (b) a deficiency in retained EU law or other Manx legislation of a kind
15 described, or provided for, in regulations made by the Council of
16 Ministers.
- 17 Tynwald procedure – approval required.
- 18 (4) But retained EU law and other Manx legislation is not deficient merely
19 because it does not contain any modification of EU law which is adopted
20 or notified, comes into operation or only applies on or after exit day.
- 21 (5) Regulations under subsection (1) may make any provision that could be
22 made by an Act of Tynwald.
- 23 (6) Regulations under subsection (1) may (among other things)–
- 24 (a) provide for functions of EU entities or public authorities in
25 member States (including making an instrument of a legislative
26 character or providing funding) to be–
- 27 (i) exercisable instead by a public authority (whether or not
28 newly established or established for the purpose) in the
29 Island or the United Kingdom; or
- 30 (ii) replaced, abolished or otherwise modified;
- 31 (b) provide for the establishment of public authorities in the Island to
32 carry out functions provided for by regulations under subsection
33 (1); or
- 34 (c) provide for the modification of any retained EU law or other
35 Manx legislation.
- 36 (7) Regulations under subsection (1) may modify any retained EU law or
37 other Manx legislation so that it includes a provision authorising a
38 Department or Statutory Board to make regulations and specifying the
39 permissible content of such regulations.
- 40 (8) Any provision mentioned in subsection (7) must specify the Tynwald
41 procedure applicable to any regulations made under that provision.

- 1 (9) But regulations under subsection (1) may not—
2 (a) impose or increase taxation;
3 (b) make retrospective provision;
4 (c) create a relevant criminal offence; or
5 (d) amend, repeal or revoke the *Human Rights Act 2001* or any
6 statutory document made under it.
- 7 (10) The reference in subsection (1) to a failure or other deficiency arising
8 from the withdrawal of the United Kingdom from the EU includes a
9 reference to any failure or other deficiency arising from that withdrawal
10 taken together with the operation of any provision, or the interaction
11 between any provisions, made by or under this Act.
- 12 (11) To avoid doubt, regulations under subsection (1) may prevent, remedy
13 or mitigate any failure or other deficiency in retained EU law or other
14 Manx legislation which does not fall within the scope of Protocol 3 as if
15 such law or legislation did fall within the scope of Protocol 3.
- 16 (12) The power of the Council of Ministers to make regulations under this
17 section is in addition to any power of the Council of Ministers to make
18 regulations under sections 14 to 18.

19 **12 Complying with international obligations**

- 20 (1) The Council of Ministers may by regulations make such provision as it
21 considers appropriate to prevent or remedy any breach, arising from the
22 withdrawal of the United Kingdom from the EU, of an international
23 obligation that applies or extends to the Island.
24 Tynwald procedure – approval required.
- 25 (2) Regulations under this section may make any provision that could be
26 made by an Act of Tynwald.
- 27 (3) But regulations under this section may not—
28 (a) impose or increase taxation;
29 (b) make retrospective provision;
30 (c) create a relevant criminal offence; or
31 (d) amend, repeal or revoke the *Human Rights Act 2001* or any
32 statutory document made under it.

33 **13 Implementing the withdrawal agreement**

34 [P2018/16/9]

- 35 (1) The Council of Ministers may by regulations make such provision as it
36 considers appropriate for the purposes of implementing any withdrawal
37 agreement.
38 Tynwald procedure – approval required.

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

9 *Further powers operable on or after exit day*

10 **14 Amendment of retained direct EU legislation and other rights etc.**

- 11 (1) The Council of Ministers may, by regulations, to the extent it considers
12 appropriate —
- 13 (a) modify any retained direct EU legislation and anything which is
14 retained EU law by virtue of section 8 so that it contains any
15 modification of EU law which is adopted or notified, comes into
16 operation or applies on or after exit day;
- 17 (b) modify any retained direct EU legislation so that any provision of
18 it has effect as amended from time to time by EU law;
- 19 (c) make exceptions, adaptations and modifications to any retained
20 direct EU legislation or anything which is retained EU law by
21 virtue of section 8 for the purpose of giving effect to such
22 provisions in Manx law;
- 23 (d) repeal or revoke (either in its entirety or in part) any retained
24 direct EU legislation or anything which is retained EU law by
25 virtue of section 8;
- 26 (e) modify any retained direct EU legislation and anything which is
27 retained EU law by virtue of section 8 to make such retained
28 direct EU legislation and anything which is retained EU law by
29 virtue of section 8 correspond (subject to such modifications,
30 exceptions or adaptations as the Council of Ministers considers
31 appropriate) with the like legislation from time to time operating
32 in the United Kingdom.

33 Tynwald procedure – approval required.

- 34 (2) Regulations under this section may make any provision that could be
35 made by an Act of Tynwald.
- 36 (3) But regulations under this section may not —
- 37 (a) impose or increase taxation;
- 38 (b) make retrospective provision;

- 1 (c) create a relevant criminal offence; or
- 2 (d) amend, repeal or revoke the *Human Rights Act 2001* or any
- 3 statutory document made under it.
- 4 (4) Any regulations made under this section must not come into operation
- 5 until on or after exit day.

6 **15 Application and implementation of treaty provisions**

- 7 (1) The Council of Ministers may by regulations –
- 8 (a) apply to the Island as part of the law of the Island, to such extent
- 9 and subject to such exceptions, adaptations and modifications as
- 10 may be specified in the regulations; or
- 11 (b) implement into Manx law and make such provisions as it
- 12 considers appropriate to deal with any matters arising out of or
- 13 related to any such implementation,
- 14 any provision contained in or arising under a treaty.
- 15 Tynwald procedure – approval required.
- 16 (2) Regulations under this section may make any provision that could be
- 17 made by an Act of Tynwald.
- 18 (3) For the purposes of this section, “treaty” means –
- 19 (a) any of the EU Treaties; and
- 20 (b) any agreement declared, in regulations made by the Council of
- 21 Ministers, to be a treaty for the purposes of this section.
- 22 Tynwald procedure – approval required.
- 23 (4) An agreement which may be declared by the Council of Ministers to be a
- 24 treaty under subsection (3)(b) includes (but is not limited to) –
- 25 (a) an agreement entered into between the United Kingdom and the
- 26 EU in connection with the relationship between the United
- 27 Kingdom and the EU on or after exit day;
- 28 (b) an agreement entered into by the Island or extended to the Island
- 29 in connection with the withdrawal of the United Kingdom from
- 30 the EU or any future relationship between the United Kingdom
- 31 and the EU;
- 32 (c) an agreement amending any of the EU Treaties;
- 33 (d) an agreement entered into by the EU or by all of the member
- 34 States and which relates to the EU.
- 35 (5) Any regulations made under this section must not come into operation
- 36 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;
 - (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; or
 - (d) make such provision as it considers appropriate to implement any retained EU law and 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 under subsection (1) may include a provision authorising a Department or Statutory Board to make regulations and specifying the permissible content of such regulations.
- (4) Any provision mentioned in subsection (3) must specify the Tynwald procedure applicable to any regulations made under that provision.
- (5) 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) Subsections (7) and (8) 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 20 (ambulatory references to EU instruments)).
- (7) To avoid doubt, the text to be annexed under subsection (5) is the text of the instrument at the time the regulations are made.
- (8) However, the Council of Ministers —
- (a) may update the text annexed under subsection (5) to reflect any amendment made to the EU instrument or provision after the making of the regulations; and

- 1 (b) must update the text if a person requests an updated text of the
2 instrument applied by the regulations.
- 3 (9) Any regulations made under this section may include a provision to the
4 effect that the regulations are to be treated as “retained EU law”.
- 5 (10) But regulations under this section may not —
6 (a) impose or increase taxation;
7 (b) make retrospective provision;
8 (c) create a relevant criminal offence; or
9 (d) amend, repeal or revoke the *Human Rights Act 2001* or any
10 statutory document made under it.
- 11 (11) Any regulations made under this section must not come into operation
12 until on or after exit day.

13 **17 Application and implementation of previous direct EU legislation and**
14 **EU law**

- 15 (1) The Council of Ministers may by regulations —
16 (a) apply to the Island as part of the law of the Island, to such extent
17 and subject to such exceptions, adaptations and modifications as
18 may be specified in the regulations, any EU regulation, EU
19 decision or EU tertiary legislation which —
20 (i) had legal effect in Manx law by virtue of section 2(1) of the
21 *European Communities (Isle of Man) Act 1973* immediately
22 before exit day; and
23 (ii) did not form part of Manx law on and after exit day by
24 virtue of section 7;
25 (b) implement any instrument applied to the Island under paragraph
26 (a) and make such provisions as it considers appropriate to deal
27 with any matters arising out of or related to any such
28 implementation;
29 (c) implement into Manx law any EU law which —
30 (i) had legal effect in Manx law by virtue of section 2(1) of the
31 *European Communities (Isle of Man) Act 1973* immediately
32 before exit day; and
33 (ii) was not implemented into Manx law,
34 and make such provisions as it considers appropriate to deal with
35 any matters arising out of or related to any such implementation.
36 Tynwald procedure – approval required.
- 37 (2) Regulations under this section may make any provision that could be
38 made by an Act of Tynwald.

- 1 (3) Despite subsection (1)(a), if only part of an EU regulation, EU decision or
2 piece of EU tertiary legislation had legal effect in Manx law by virtue of
3 section 2(1) of the *European Communities (Isle of Man) Act 1973*
4 immediately before exit day, the whole of that EU regulation, EU
5 decision or piece of EU tertiary legislation may be applied to the Island
6 under subsection (1)(a).
- 7 (4) Any regulations under this section may be made retrospective and be
8 deemed to have come into operation from such day or days as may be
9 specified in the regulations.
- 10 (5) But a provision made by such regulations may not —
11 (a) impose or increase taxation; or
12 (b) impose any civil or criminal liability,
13 before the day on which the regulations themselves come into operation.
- 14 (6) Any regulations made under subsection (1)(a) must have annexed to
15 them a text of the instrument applied by the regulations, incorporating
16 the exceptions, adaptations and modifications specified in the
17 regulations.
- 18 (7) Any regulations made under this section may include a provision to the
19 effect that the regulations are to be treated as “retained EU law”.
- 20 (8) Any regulations made under this section may not amend, repeal or
21 revoke the *Human Rights Act 2001* or any statutory document made
22 under it.
- 23 (9) Any regulations made under this section must not themselves come into
24 operation until on or after exit day.

25 18 Application to the Island of UK legislation

- 26 (1) The Council of Ministers may by regulations apply to the Island as part
27 of the law of the Island, to such extent and subject to such exceptions,
28 adaptations and modifications as may be specified in the regulations, any
29 UK legislation to which this section applies.
- 30 Tynwald procedure – approval required.
- 31 (2) Regulations under this section may make any provision that could be
32 made by an Act of Tynwald.
- 33 (3) This section applies to —
34 (a) any UK legislation which relates, directly or indirectly, to the
35 withdrawal of the United Kingdom from the EU;
36 (b) any UK legislation which relates to the approval or
37 implementation of any withdrawal agreement;
38 (c) any UK legislation which relates to the future relationship
39 between the United Kingdom and the EU or any member State; or

- 1 (d) any instrument of a legislative character made, or having effect as
2 if made, under any UK legislation mentioned in paragraphs (a) to
3 (c).
- 4 (4) The Council of Ministers may by regulations amend subsection (3) —
5 (a) by adding to it (with or without qualification) any UK legislation
6 or any description of UK legislation; and
7 (b) deleting from it any UK legislation or any description of UK
8 legislation (including any such legislation or description added to
9 it by previous regulations under this subsection).
- 10 Tynwald procedure – approval required.
- 11 (5) Any regulations under subsection (1) must —
12 (a) specify the exceptions, adaptations and modifications subject to
13 which the UK legislation applies to the Island; and
14 (b) have annexed to them a text of the UK legislation applied by the
15 regulations, incorporating the exceptions, adaptations and
16 modifications specified in the regulations.
- 17 (6) Subsections (7) and (8) apply if regulations made under subsection (1)
18 provide that a reference in the regulations to any UK legislation is to be
19 construed as a reference to the UK legislation as amended from time to
20 time (see section 20 (ambulatory references to UK legislation)).
- 21 (7) To avoid doubt, the text to be annexed under subsection (5) is the text of
22 the UK legislation at the time the regulations are made.
- 23 (8) However, the Council of Ministers —
24 (a) may update the text annexed under subsection (5) to reflect any
25 amendment made to the UK legislation after the making of the
26 regulations; and
27 (b) must update the text if a person requests an updated text of the
28 UK legislation applied by the regulations.

29 **19 Application to the Island of UK legislation and EU legislation by the** 30 **Department of Environment, Food and Agriculture**

- 31 (1) The Department of Environment, Food and Agriculture (the
32 “Department”) may by regulations apply to the Island as part of the law
33 of the Island, to such extent and subject to such exceptions, adaptations
34 and modifications as may be specified in the regulations —
35 (a) any UK legislation relating to —
36 (i) veterinary medicines;
37 (ii) veterinary surgeons and veterinarians;
38 (iii) animal health;
39 (iv) animal welfare;

- 1 (v) plant health;
- 2 (vi) pesticides, including plant protection products;
- 3 (vii) biocides;
- 4 (viii) marketing of seeds and seedlings;
- 5 (ix) food;
- 6 (x) feedingstuffs; and
- 7 (xi) quality and marketing standards of agricultural and
- 8 fisheries products (including fish);

9 (b) any instrument of a legislative character made, or having effect as

10 if made, under any UK legislation mentioned in paragraph (a);

11 (c) any EU instrument (whether operative before, on or after exit day)

12 which relates, directly or indirectly, to anything mentioned in

13 paragraph (a)(i) to (xi).

14 Tynwald procedure – approval required.

15 (2) The Department may by regulations –

16 (a) implement any EU instrument applied to the Island under

17 subsection (1)(c) and make such provisions as it considers

18 appropriate to deal with any matter arising out of or related to

19 any such implementation;

20 (b) implement into Manx law any other EU law (whether operative

21 before, on or after exit day) which relates, directly or indirectly, to

22 anything mentioned in subsection (1)(a)(i) to (xi) and make such

23 provision as it considers appropriate to deal with any matters

24 arising out of or related to any such implementation.

25 Tynwald procedure – approval required.

26 (3) Regulations under this section may make any provision that could be

27 made by an Act of Tynwald.

28 (4) Any regulations made under subsection (1) must –

29 (a) specify the exceptions, adaptations and modifications subject to

30 which the legislation or instrument applies to the Island; and

31 (b) have annexed to them a text of the legislation or instrument

32 applied by the regulations, incorporating the exceptions,

33 adaptations and modifications specified in the regulations.

34 (5) Subsections (6) and (7) apply if regulations made under subsection (1)

35 provide that a reference in the regulations to any legislation or

36 instrument is to be construed as a reference to the legislation or

37 instrument as amended from time to time (see section 20 (ambulatory

38 references to EU instruments and UK legislation)).

39 (6) To avoid doubt, the text to be annexed under subsection (4) is the text of

40 the legislation or instrument at the time the regulations are made.

- 1 (7) However, the Department —
- 2 (a) may update the text annexed under subsection (4) to reflect any
- 3 amendment made to the legislation or instrument after the
- 4 making of the regulations; and
- 5 (b) must update the text if a person requests an updated text of the
- 6 legislation or instrument applied by the regulations.
- 7 (8) But regulations under this section may not —
- 8 (a) impose or increase taxation;
- 9 (b) make retrospective provision;
- 10 (c) create a relevant criminal offence;
- 11 (d) amend, repeal or revoke the *Human Rights Act 2001* or any
- 12 statutory document made under it.
- 13 (9) The Council of Ministers may by order amend subsection (1)(a) so as to
- 14 modify the field of legislation referred to by —
- 15 (a) adding a new field of legislation;
- 16 (b) removing a field of legislation; or
- 17 (c) amending a field of legislation.
- 18 Tynwald procedure – approval required.

19 **20 Ambulatory references to EU instruments and UK legislation**

20 [1973/14/2C]

- 21 (1) A statutory document to which this section applies may provide that a
- 22 reference in it to an EU instrument or any UK legislation or a provision
- 23 of an EU instrument or any UK legislation is to be construed as a
- 24 reference to the instrument, legislation or provision as amended from
- 25 time to time.
- 26 (2) This section applies to —
- 27 (a) a statutory document made under sections 12 to 19 or 22; or
- 28 (b) any statutory document made under any other provision of Manx
- 29 legislation which is prescribed for the purposes of this section by
- 30 regulations made under subsection (3).
- 31 (3) The Council of Ministers may by regulations prescribe any Manx
- 32 legislation or any provision of Manx legislation in respect of which a
- 33 statutory document made under the prescribed Manx legislation or
- 34 provision is a statutory document to which subsection (2) applies.
- 35 Tynwald procedure – negative.
- 36 (4) Any regulations made under subsection (3) must not come into operation
- 37 until on or after exit day.

Trade Agreements

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

21 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.

22 Implementation of international trade agreements

- (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).

- 1 **23 Trade information**
- 2 (1) The Treasury may by regulations make such provision as it considers
- 3 appropriate for the purpose of obtaining information in relation to the
- 4 export of goods and services from the Island in the course of a trade,
- 5 business or profession.
- 6 Tynwald procedure – approval required.
- 7 (2) Regulations under this section may make any provision that could be
- 8 made by an Act of Tynwald.
- 9 (3) Such regulations may make provision about –
- 10 (a) when goods and services are exported from the Island;
- 11 (b) the type of information that may be requested;
- 12 (c) to whom a request for information may be made; and
- 13 (d) how a request may be made.

14 **24 Disclosure of information by the Treasury**

- 15 (1) The Treasury may by regulations make such provision as it considers
- 16 appropriate in relation to the disclosure of information for the purpose
- 17 of –
- 18 (a) facilitating the exercise by the Treasury of the Treasury’s
- 19 functions relating to trade; or
- 20 (b) facilitating the exercise by an international organisation or
- 21 authority, or by any other body, of its public functions relating to
- 22 trade.
- 23 Tynwald procedure – approval required.
- 24 (2) Regulations under this section may make any provision that could be
- 25 made by an Act of Tynwald.
- 26 (3) Regulations under this section may (amongst other things) –
- 27 (a) make provision about the use of any information disclosed; or
- 28 (b) make provision about the further disclosure of information.

29 *General and final provisions*

30 **25 Rules of evidence**

31 [P2018/16/15 and drafting]

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

- 1 **26 Statutory documents**
2 [P2018/16/22 and drafting]
3 Schedule 4 (which contains general provision about statutory documents) has
4 effect.
- 5 **27 Consequential and transitional provisions**
6 [P2018/16/23 and drafting]
- 7 (1) The Council of Ministers may by regulations make such provision as it
8 considers appropriate in consequence of this Act.
9 Tynwald procedure – approval required.
- 10 (2) Regulations under subsection (1) may make any provision that could be
11 made by an Act of Tynwald.
- 12 (3) Regulations under subsection (1) may not modify an Act of Tynwald
13 passed after the end of the Session in which this Act is passed.
- 14 (4) The Council of Ministers may by regulations make such incidental,
15 supplemental, transitional, transitory or saving provisions as it considers
16 appropriate in connection with the coming into operation of any
17 provision of this Act (including its operation in connection with exit
18 day).
19 Tynwald procedure – affirmative.
- 20 (5) Schedule 5 (which contains general consequential provisions) has effect.
- 21 (6) Schedule 6 (which contains transitional, transitory and saving
22 provisions) has effect.
- 23 (7) Schedule 7 (which contains specific consequential amendments) has
24 effect.
- 25 (8) The Manx legislation mentioned in Schedule 8 (which contains repeals
26 not made elsewhere in this Act) is repealed to the extent specified.
- 27 (9) The revocation of the European Union (Changes in Terminology) Order
28 2012 (SD0606/12) made under section 1A(1) of the *European Communities*
29 *(Isle of Man) Act 1973*, by virtue of the repeal of that Act, does not affect
30 the continuing operation of article 3(3) of that Order.

1

SCHEDULE 1

2

[Section 3]

3

[P2018/16/20]

4

INTERPRETATION

5

(1) In this Act—

6

“**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;

7

8

9

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

10

“**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 of the Act annexed to the Treaty of Accession and to the provisions of Protocol No. 3;

11

12

13

14

15

16

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

17

“**EU decision**” means—

18

(a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union; or

19

20

(b) a decision under former Article 34(2)(c) of the Treaty on European Union,

21

22

together with any adaptations made to that decision under the EEA agreement immediately before exit day;

23

24

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

25

26

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

27

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

28

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

29

“**EU reference**” means—

30

(a) any reference to the EU, an EU entity or a member State;

31

(b) any reference to an EU directive or any other EU law; or

32

(c) any other reference which relates to the EU;

33

“**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;

34

35

36

1 “EU tertiary legislation” means—

2 (a) any provision made under—

3 (i) an EU regulation;

4 (ii) a decision within the meaning of Article 288 of the Treaty
5 on the Functioning of the European Union; or

6 (iii) an EU directive,

7 by virtue of Article 290 or 291(2) of the Treaty on the Functioning
8 of the European Union or former Article 202 of the Treaty
9 establishing the European Community; or

10 (b) any measure adopted in accordance with former Article 34(2)(c) of
11 the Treaty on European Union to implement decisions under
12 former Article 34(2)(c),

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

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

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

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

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

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

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

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

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

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

30 “relevant criminal offence” means an offence the maximum punishment for
31 which exceeds —

32 (a) on conviction on information, custody for 2 years, a fine, or both;

33 (b) on summary conviction, custody for 12 months, a fine of level 5
34 on the standard scale (if not calculated on a daily basis) or a fine
35 of £200 a day, or both;

36 “retained case law” means —

37 (a) retained Manx case law; and

38 (b) retained EU case law;

- 1 “**retained direct EU legislation**” means any EU regulation, EU decision or EU
2 tertiary legislation which forms part of Manx law by virtue of section 7
3 (as modified by or under this Act or by other Manx law from time to
4 time, and including any instruments made under it on or after exit day);
- 5 “**retained EU case law**” means any principles laid down by, and any decisions
6 of, the European Court, as they have effect in EU law immediately before
7 exit day and so far as they —
- 8 (a) relate to —
- 9 (i) anything to which section 6, 7 or 8 applies; or
- 10 (ii) any Manx legislation passed or made or operating before
11 exit day for a purpose mentioned in section 2B(1)(a) or (b)
12 of the *European Communities (Isle of Man) Act 1973*;
- 13 (b) fall within the limits of EU competences in relation to the Island;
14 and
- 15 (c) are not excluded by section 9 or Schedule 2,
16 (as those principles and decisions are modified by or under this Act or by
17 other Manx law from time to time);
- 18 “**retained EU law**” means —
- 19 (a) any statutory document made under sections 2A or 2B of the
20 *European Communities (Isle of Man) Act 1973* and saved by virtue of
21 section 6;
- 22 (b) any retained direct EU legislation;
- 23 (c) any rights, powers, liabilities, obligations, restrictions, remedies
24 and procedures which continue to be recognised in Manx law by
25 virtue of section 8;
- 26 (d) anything which on or after exit day continues to be, or forms part
27 of, Manx law by virtue of section 10(3) or (6); and
- 28 (e) any Manx legislation passed or made or operating before exit day
29 for a purpose mentioned in section 2B(1)(a) or (b) of the *European*
30 *Communities (Isle of Man) Act 1973*,
- 31 (as that body of law is added to or otherwise modified by or under this
32 Act or by other Manx law from time to time);
- 33 “**retained general principles of EU law**” means the general principles of EU
34 law, as they have effect in EU law immediately before exit day and so far
35 as they —
- 36 (a) relate to —
- 37 (i) anything to which section 6, 7 or 8 applies; or
- 38 (ii) any Manx legislation passed or made or operating before
39 exit day for a purpose mentioned in section 2B(1)(a) or (b)
40 of the *European Communities (Isle of Man) Act 1973*;

1 (b) fall within the limits of EU competences in relation to the Island;
2 and

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

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

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

9 (a) relate to —

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

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

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

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

17 “**retrospective provision**”, in relation to provision made by a statutory
18 document, means provision taking effect from a date earlier than the
19 date on which the statutory document is made;

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

23 “**tribunal**” means any tribunal in the Island;

24 “**UK legislation**” has the meaning given in the *Interpretation Act 2015*;

25 “**WTO Agreement**” means the agreement establishing the World Trade
26 Organisation signed at Marrakesh on 15 April 1994 and extended to the
27 Island (as modified from time to time);

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

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

36 (3) For the purposes of this Act, section 9(1)(c) of the *Interpretation Act 2015*
37 (which defines “Manx legislation”) does not include any EU laws that
38 apply to the Island under section 2(1) of the *European Communities (Isle of*
39 *Man) Act 1973*.

- 1 (4) To avoid doubt, references in this Act to the withdrawal of the United
2 Kingdom from the EU include a reference to the cessation of Protocol 3.
- 3 (5) References in this Act to former Article 34(2)(c) of the Treaty on
4 European Union are references to that Article as it had effect at any time
5 before the coming into force of the Treaty of Lisbon.
- 6 (6) Any other reference in this Act to an Article of the Treaty on European
7 Union or the Treaty on the Functioning of the European Union includes a
8 reference to that Article as applied by Article 106a of the Euratom Treaty.
- 9 (7) See paragraph 2 of Schedule 7 for amendments made by this Act to the
10 Schedule to the *Interpretation Act 2015*.
11

SCHEDULE 2

[Section 9(5)]

[P2018/16/Sch 1 and drafting]

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.

1 **3 Rule in Francovich**

2 There is no right in Manx law on or after exit day to damages in accordance
3 with the rule in Francovich¹.

4 **4 Interpretation**

5 References in section 9 and this Schedule to the Charter of Fundamental Rights,
6 any general principle of EU law or the rule in Francovich are to be read as
7 references to that Charter, principle or rule so far as it would otherwise continue
8 to be, or form part of, Manx law on or after exit day in accordance with this Act.
9

¹ Cases C-6/90 and C-9/90 Francovich [1991] ECR I-5357

SCHEDULE 3

[Section 25]

[P2018/16/Sch 5, Part 2]

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 an Act of Tynwald passed or made after the end of the Session in which this Act is passed.

- 1 (5) For the purposes of this paragraph each of the following is a “relevant
2 matter”—
- 3 (a) retained EU law;
- 4 (b) EU law;
- 5 (c) the EEA agreement; and
- 6 (d) anything which is specified in the regulations and which relates to
7 a matter mentioned in paragraph (a), (b) or (c).
8

SCHEDULE 4

[Section 26]

[P2018/16/Sch 7, Part 3 and drafting]

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 27(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 27(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 27(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

- 1 (b) the withdrawal of the United Kingdom from the EU,
 2 which is additional to that made by any provision of sections 6 to 10, or
 3 Schedule 2 or alters its effect in particular cases or descriptions of cases.
- 4 (4) The power to make regulations under section 27(1) includes the power to
 5 make transitional, transitory or saving provision which—
- 6 (a) is in connection with any repeal or revocation made by any such
 7 regulations of any provision of Manx legislation in consequence
 8 of—
- 9 (i) the repeal of any provision of the *European Communities*
 10 (*Isle of Man*) 1973; or
- 11 (ii) the withdrawal of the United Kingdom from the EU; and
- 12 (b) is additional to that made by any provision of sections 6 to 10 or
 13 Schedule 2 or alters its effect in particular cases or descriptions of
 14 cases.
- 15 (5) Provision of the kind mentioned in sub-paragraph (3) or (4) may (among
 16 other things) include further provision treating any provision of that
 17 kind as retained EU law for particular purposes or all purposes.

18 **3 Anticipatory exercise of powers in relation to retained EU law**

19 Any power to make a statutory document under this Act which modifies —

- 20 (a) retained direct EU legislation;
 21 (b) anything which is retained EU law by virtue of section 8; or
 22 (c) any other retained EU law,

23 is capable of being exercised before exit day so that the statutory document
 24 comes into operation on or after exit day.

25 **4 Effect of certain provisions in Schedule 5 and 7 on scope of powers**

26 The modifications made by Schedule 5 (general consequential provisions) and
 27 paragraphs 2 and 3 of Schedule 7 (amendments to the *Interpretation Act 2015* and
 28 the *Legislation Act 2015*) do not prevent or otherwise limit the making of
 29 different provision, in particular cases or descriptions of cases, in regulations
 30 under section 27(1) or in any other statutory document made under this Act.

31 **5 Procedure on re-exercise of certain powers**

32 A statutory document which repeals, amends or re-enacts any other statutory
 33 document made under this Act may (despite section 93 of the *Interpretation Act*
 34 *2015*) be subject to a different Tynwald procedure from the procedure to which
 35 the original statutory document was subject.

1 **6 Type of statutory document**

2 A statutory document made under this Act by way of regulations may (despite
3 section 93 of the *Interpretation Act 2015*) modify any retained EU law or other
4 Manx legislation notwithstanding that such retained EU law or other Manx
5 legislation may have been made by way of a different type of statutory
6 document.

7 **7 Tynwald procedure in certain urgent cases**

8 (1) This paragraph applies to a statutory document to which section 30 of
9 the *Legislation Act 2015* (“approval required”) applies by virtue of any
10 provision of this Act.

11 (2) If the statutory document contains a declaration that the Council of
12 Ministers is of the opinion that, by reason of urgency, it is necessary to
13 make the statutory document subject to the Tynwald procedure set out in
14 section 31 of the *Legislation Act 2015* (“affirmative”), that procedure
15 applies to the statutory document instead.
16

1

SCHEDULE 5

2

[Section 27(5)]

3

[P2018/16/Sch 8, Part 1 (in part), paragraph 30 of Part 2, and drafting]

4

GENERAL CONSEQUENTIAL PROVISIONS

5

1 Existing ambulatory references to retained direct EU legislation

6

(1) Any reference which, immediately before exit day —

7

(a) exists in —

8

(i) any provision of Manx legislation;

9

(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

10

11

12

(iii) any document relating to anything falling within sub-paragraph (i) or (ii); and

13

14

(b) is a reference to, or to a provision of, (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,

15

16

17

18

is to be read, on or after exit day, as a reference to, or to a provision of, 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.

19

20

21

22

23

(2) Sub-paragraph (1) is subject to any other provision made by or under this Act or any other provision of Manx legislation.

24

25

2 Other existing ambulatory references

26

(1) Any reference which —

27

(a) exists, immediately before exit day, in —

28

(i) any provision of Manx legislation;

29

(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

30

31

32

(iii) any document relating to anything falling within sub-paragraph (i) or (ii),

33

34

(b) is not a reference to which paragraph 1(1) applies; and

(c) is, immediately before exit day, a reference to, or to a provision of, (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, or to a provision of, the EU Treaty, instrument or document as it has effect immediately before exit day.

(2) Despite sub-paragraph (1), the Council of Ministers may by regulations specify that a reference which falls within sub-paragraph (1) is to be read as a reference to, or to a provision of, that EU Treaty, EU instrument or other document of an EU entity as amended from time to time by EU law.

Tynwald procedure – approval required.

(3) Regulations under sub-paragraph (2) may specify –

- (a) specific references; or
- (b) a generic description of references.

(4) Sub-paragraph (1) is also 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 –

- (a) was conferred before the day on which this Act is passed; and
- (b) is capable of being exercised to modify Manx legislation,

is to be read as being capable of being exercised to modify any retained direct EU legislation or anything which is retained EU law by virtue of section 8.

(2) Any statutory document made by virtue of sub-paragraph (1) is subject to the same Tynwald procedure as applies to the power under which the statutory document itself is made.

(3) 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.

(4) Sub-paragraphs (1) to (3) and this sub-paragraph –

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

(5) For the purposes of sub-paragraph (1) –

- (a) a power is conferred whether or not it is in operation; and

- 1 (b) a power in retained direct EU legislation is not conferred before
2 the date on which this Act is passed.
- 3 (6) A power which, by virtue of sub-paragraph (1) or any Act of Tynwald
4 passed before, and in the same Session as, this Act, is capable of being
5 exercised to modify retained EU law is capable of being so exercised
6 before exit day so as to come into operation on or after exit day.

7 **4 Future powers to make statutory documents**

- 8 (1) Any power to make a statutory document which is conferred on or after
9 the day on which this Act is passed may, so far as applicable and unless
10 the contrary intention appears, be exercised so as to modify (or, as the
11 case may be, result in the modification of) any retained direct EU
12 legislation or anything retained by virtue of section 8.
- 13 (2) Sub-paragraph (1) and this sub-paragraph —
- 14 (a) do not prevent the conferral of wider powers; and
- 15 (b) are subject to any other provision made by or under this Act or
16 any other provision of Manx legislation.
- 17 (3) For the purposes of sub-paragraph (1) —
- 18 (a) a power is conferred whether or not it is in operation;
- 19 (b) a power in retained direct EU legislation is conferred on or after
20 the day on which this Act is passed; and
- 21 (c) the references to powers conferred include powers conferred by
22 regulations under this Act (but not powers conferred by this Act).
- 23 (4) A power which, by virtue of sub-paragraph (1) or any Act of Tynwald
24 passed after, and in the same Session as, this Act, is capable of being
25 exercised to modify any retained EU law is capable of being so exercised
26 before exit day so as to come into operation on or after exit day.

27 **5 Human Rights Act 2001**

- 28 (1) For the purposes of the *Human Rights Act 2001*, any retained direct EU
29 legislation is to be treated as an Act of Tynwald and not subordinate
30 legislation.
- 31 (2) In sub-paragraph (1) “subordinate legislation” has the same meaning as
32 in the *Human Rights Act 2001*.
- 33

SCHEDULE 6

[Section 27(6)]

[P2018/16/Sch 8, Part 3, paragraphs 38 and 39 of Part 4, and drafting]

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(3) or 27(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 27(4), section 9(3) and 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) Section 9(3) and paragraphs 1 to 3 of Schedule 2 do not affect any decision of a court or tribunal in the Island made before exit day.
- (3) Section 9(3) and 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 years beginning with exit day so far as —
- (a) the proceedings involve a challenge to anything which occurred before exit day; and
 - (b) the challenge is not for the disapplication or quashing of —
 - (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.
- (7) Paragraph 3 of Schedule 2 does not apply in relation to any proceedings begun within the period of 2 years beginning with exit day so far as the proceedings relate to anything which occurred before exit day.

SCHEDULE 7

[Section 27(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 “, including any retained EU law,”;
- (b) after subsection (2) insert —
- “(2A) An order under this section may make any provision that could be made by an Act of Tynwald.”;
- (c) in subsection (3)(aa), after “(an Act of Parliament)” insert “, as amended from time to time”;
- (d) after subsection (3)(aa), insert —
- “(ab) any UK legislation 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;”;
- (e) in subsection (3)(b), for “paragraph (a) or (aa)” substitute “paragraphs (a), (aa) or (ab)”;
- (f) for subsection (3)(f) substitute —
- “(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”;
- (g) after subsection (3) insert —
- “(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.”.
- (3) In section 3 (public documents) —

- 1 (a) after subsection (3), insert —
- 2 “(3A) An order under section 1 may provide that a reference in it to an
- 3 instrument referred to in section 1(3) or to a provision of such an
- 4 instrument is to be construed as a reference to the instrument or
- 5 provision as amended from time to time.”;
- 6 (b) in subsection (4), for “any legislation” substitute “any
- 7 instrument”;
- 8 (c) after subsection (4), insert —
- 9 “(4A) If subsection (3A) applies, the text to be annexed under subsection
- 10 (4) is the text of the instrument at the time the order is made.
- 11 (4B) However, the Treasury —
- 12 (a) may update the text to reflect any amendment made to the
- 13 instrument after the making of the order; and
- 14 (b) must update the text if a person requests an updated text
- 15 of the instrument applied by the order.”.

16 2 Interpretation Act 2015

- 17 (1) The *Interpretation Act 2015* is amended as follows.
- 18 (2) In section 5 (combined operation of this Act and the *Legislation Act*
- 19 2015) —
- 20 (a) in subsection (2), for “Both Acts apply” substitute “Subject to
- 21 section 5A of this Act and section 4A of the *Legislation Act 2015*,
- 22 both Acts apply”;
- 23 (b) in subsection (3), for “Subject to sections 6 and 7” substitute
- 24 “Subject to sections 5A, 6 and 7 of this Act and section 4A of the
- 25 *Legislation Act 2015*”.
- 26 (3) After section 5 (combined operation of the *Interpretation Act 2015* and
- 27 the *Legislation 2015*) insert —

28 “5A Retained direct EU legislation

- 29 (1) The provisions of this Act apply, so far as applicable and unless
- 30 the contrary intention appears, to any retained direct EU
- 31 legislation, which is not subordinate legislation.
- 32 (2) The provisions of this Act apply to retained direct EU legislation
- 33 which is subordinate legislation in the same way as it applies to
- 34 subordinate legislation which is not retained direct EU legislation.
- 35 (3) This section is subject to the *European Union and Trade Act 2019*.”.
- 36 (4) In section 9(1) (“Manx legislation” and “statutory provision”), after
- 37 paragraph (aa) insert —
- 38 “(ab) retained direct EU legislation;”.

- (5) In section 11 (“Manx enactment”) —
- (a) for subsection (1), substitute —
- “(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.”;
- (b) after subsection (4) insert —
- “(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.”.
- (6) For section 14 (references in Manx enactments to EU instruments) substitute —

“14 References in Manx enactments to EU instruments

- (1) Subsections (2) and (3) apply if —
- (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
- (b) the original instrument has been amended, extended or applied by another EU instrument.

Note:

Section 1B of the repealed Interpretation Act commenced on 18 October 2011.

- (2) If the reference is to an EU instrument which forms part of Manx law by virtue of section 7 of the *European Union and Trade Act 2019*, 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 of that Act 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 and Trade Act 2019*, 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.

- 1 (4) A reference to an EU instrument in a Manx enactment passed or
2 made on or after exit day is a reference to the EU instrument as it
3 was in operation when the provision containing the reference
4 commenced.”.
- 5 (7) In section 15 (“public document”) —
- 6 (a) in subsection (1), after “made under an Act or a Measure” insert
7 “or made under any EU authorising legislation”;
- 8 (b) in subsection (2) —
- 9 (i) after “made under an Act or a Measure” insert “or any EU
10 authorising legislation”;
- 11 (ii) in paragraph (a), after “the Act or Measure” insert “or EU
12 authorising legislation”.
- 13 (8) In section 16 (“statutory document” and its “responsible authority”) —
- 14 (a) in subsection (1)(a), after “any of the following made under an Act
15 or a Measure” insert “or made under any EU authorising
16 legislation”;
- 17 (b) in subsection (3)(ba), after “issued under an Act” insert “or any
18 EU authorising legislation”.
- 19 (9) In section 18 (“Authorising legislation”), after paragraph (b) insert —
- 20 “(c) EU authorising legislation, that EU authorising
21 legislation.”.
- 22 (10) In section 82 (matter for which general fee power may be exercised), for
23 paragraph (c) substitute —
- 24 “(c) a matter for which —
- 25 (i) an Act; or
- 26 (ii) any EU authorising legislation,
27 provides that a fee is to be prescribed under the general fee
28 power; and”.
- 29 (11) In the Schedule (defined terms) —
- 30 (a) in paragraph 1 —
- 31 (i) after the definition of “enacted” or “passed” insert —
- 32 ““EU authorising legislation” means —
- 33 (a) any retained direct EU legislation;
- 34 (b) any EU instrument applied to the Island under section 2A
35 of the *European Communities (Isle of Man) Act 1973* and
36 saved under section 6 of the *European Union and Trade Act*
37 *2019*;
- 38 (c) any EU instrument applied to the Island under section 16
39 or 17 of the *European Union and Trade Act 2019*”;

(ii) in the definition of “subordinate legislation”, after “an Act or Measure” insert “or made under any EU authorising 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 Protocol 3, 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;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

“**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 and Trade Act 2019* (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 and Trade Act 2019* (see Schedule 1 to that Act);

“**retained direct EU legislation**” has the same meaning as in the *European Union and Trade Act 2019* (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 and Trade Act 2019*, as at immediately before exit day.

“**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.”.

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 “Subject to section 4A of this Act and section 5A of the *Interpretation Act 2015*, both Acts apply”;
 - (b) in subsection (3), for “Manx legislation” substitute “Subject to section 4A of this Act and section 5A of the *Interpretation Act 2015*, Manx legislation”.
- (3) After section 4 (combined operation of this Act and the Interpretation Act), insert —

“4A Retained direct EU legislation

- (1) The provisions of this Act apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation, which is not subordinate legislation.
- (2) 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.
- (3) This section is subject to the *European Union and Trade Act 2019*.”.
- (4) Section 6 (relationship with European Communities Act) is repealed.
- (5) In section 43(1)(b) (electronic gazettal and arrangements for publication and sale), after “cause Manx legislation” insert “(other than retained direct EU legislation which is not subordinate legislation)”.
- (6) In section 44(1) (defence if Manx legislation not published) after “consisting of a contravention of any Manx legislation” insert “(other than retained direct EU legislation which is not subordinate legislation)”.

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).

- 1 (4) In section 3(3) (consistent application of law to the whole of the EEA) —
- 2 (a) in paragraph (a), after “Act” insert “as at immediately before exit
- 3 day”; and
- 4 (b) omit paragraph (b), the “or” before that paragraph and the words
- 5 after that paragraph.
- 6 (5) After section 3(3) insert —
- 7 “(3A) This section is subject to any amendment, repeal, revocation or
- 8 other modification of retained EU law or Manx legislation on or
- 9 after exit day.”.
- 10 (6) Omit sections 3(4) to (6).
- 11 (7) In section 4(3) (general implementation of EEA agreement) —
- 12 (a) in paragraph (a), after “Act” insert “as at immediately before exit
- 13 day”; and
- 14 (b) omit paragraph (b), the “or” before that paragraph and the words
- 15 after that paragraph.
- 16 (8) After section 4(4) insert—
- 17 “(4A) This section is subject to any amendment, repeal, revocation or
- 18 other modification of retained EU law or Manx legislation on or
- 19 after exit day.”.
- 20 (9) Omit section 5 (amendment of section 3 of the European Communities
- 21 (Isle of Man) Act 1973).
- 22 (10) In section 7 (interpretation), in subsection (1) —
- 23 (a) for the definition of “the 1973 Act” substitute —
- 24 “**“the 1973 Act”** means the *European Communities (Isle of Man) Act 1973*
- 25 *(before its repeal by section 5 of the European Union and Trade Act*
- 26 *2019);”;*
- 27 (b) for the definition of “the Agreement” substitute —
- 28 “**“the Agreement”** means the agreement on the European Economic
- 29 Area signed at Oporto on 2 May 1992 together with the protocol
- 30 adjusting that agreement signed at Brussels on 17 March 1993 as it
- 31 has effect in relation to the Island having regard to the provisions
- 32 of Articles 25, 26 and 27 of the Act annexed to the Treaty of
- 33 Accession and to the provisions of the Protocol;
- 34 **“the Protocol”** means Protocol No. 3 to the Act annexed to the Treaty of
- 35 Accession;”;
- 36 (c) in the definition of “relevant provision”, in paragraph (b), for
- 37 “that date” substitute “the date on which the Agreement comes
- 38 into force”;
- 39 (d) after the definition of “relevant provision” insert —

1
2
3
4
5

“**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.”

1

SCHEDULE 8

2

[Section 27(8)]

3

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.

4

IN THE KEYS

EUROPEAN UNION AND TRADE 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 UK legislation relating to the United Kingdom's withdrawal from the EU and the United Kingdom's future relationship with the EU and relating to the functions of the Department of Environment, Food and Agriculture; to make provision in relation to trade and trade agreements; and for connected purposes.

Leave to introduce given by the Council on 4 October 2018.

MR QUAYLE

23 OCTOBER 2018

Published by Authority