



**Isle of Man**

*Ellan Vannin*

**AT 2 of 2019**

**EUROPEAN UNION AND TRADE ACT 2019**





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*Ellan Vannin*

## EUROPEAN UNION AND TRADE ACT 2019

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**Isle of Man***Ellan Vannin*

## EUROPEAN UNION AND TRADE ACT 2019

*Signed in Tynwald:* 15 January 2019  
*Received Royal Assent:* 15 January 2019  
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**AN ACT** 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.

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

### *Introductory*

#### **1 Short title**

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

#### **2 Commencement**

- (1) This section and the following provisions of this Act—
- (a) section 1;
  - (b) section 3 (including Schedule 1) (interpretation);
  - (c) section 4 (appointment of exit day);
  - (d) sections 12 to 14 (powers in connection with withdrawal);

- (e) sections 15 to 21 (further powers operable on or after exit day);
- (f) sections 22 to 25 (trade agreements);
- (g) section 27 (including Schedule 4) (statutory documents); and
- (h) section 28(1) to (4) (consequential and transitional provisions),

come into operation on the day on which this Act is passed.

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

Tynwald procedure – laying only.

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

### 3 Interpretation

Schedule 1 (interpretation) has effect.

#### *Exit day*

### 4 Exit day

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

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

Tynwald procedure – laying only.

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

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

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

[P2018/16/1]

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

*Retention of existing EU law*

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

[P2018/16/2 and drafting]

- (1) Any statutory document made under section 2A or 2B of the *European Communities (Isle of Man) Act 1973*, as it has effect immediately before exit day, continues to have effect in Manx law on and after exit day.
- (2) A statutory document referred to in subsection (1) has effect as if made as regulations under section 17 (application and implementation of EU instruments and law).

But section 17(11) does not apply to such a statutory document.

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

**7 Retention of direct EU legislation**

[P2018/16/3 and drafting]

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

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



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

[P2018/16/4 and drafting]

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

## 9 Exceptions to savings and retention

[P2018/16/5 and drafting]

- (1) On and after exit day —

- (a) any retained EU law is to be construed and have effect subject to any Manx legislation or rule of law passed or made on or after exit day; and
  - (b) any Manx legislation or rule of law —
    - (i) passed or made before exit day; and
    - (ii) coming into operation before exit day,is to be construed and have effect subject to any retained EU law.
- (2) Subsection (1)(b) does not apply to any Manx legislation —
- (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.
- (6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after exit day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.

## 11 Review of retained direct EU legislation

- (1) In this section, “review period” means the period of 5 years beginning with exit day.
- (2) Before the end of the review period, the Council of Ministers must —
  - (a) cause a review to be carried out of each piece of retained direct EU legislation as in operation at the date of its review;
  - (b) set out the conclusions of the review in a report;
  - (c) lay the report before Tynwald;
  - (d) make recommendations in respect of each piece of retained direct EU legislation; and
  - (e) cause the report to be debated in Tynwald at the sitting at which the report is laid or the next following sitting.
- (3) A report must in particular —
  - (a) set out the objectives of the piece of retained direct EU legislation; and
  - (b) assess whether the piece of retained direct EU legislation continues to be the appropriate method to achieve those objectives in the Island.
- (4) If a piece of retained direct EU legislation has been repealed, a statement to that effect will be sufficient for the purposes of subsection (2)(a) and (b).

*Powers in connection with withdrawal***12 Dealing with deficiencies arising from withdrawal**

[P2018/16/8]

(1) The Council of Ministers may by regulations make such provision as it considers appropriate to prevent, remedy or mitigate—

- (a) any failure of retained EU law or other Manx legislation to operate effectively; or
- (b) any other deficiency in retained EU law or other Manx legislation, arising from the withdrawal of the United Kingdom from the EU.

Tynwald procedure – approval required.

(2) Deficiencies in retained EU law or other Manx legislation are where the Council of Ministers considers that retained EU law or other Manx legislation—

- (a) contains anything which has no practical application in relation to the Island or is otherwise redundant or substantially redundant;
- (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the Island or the United Kingdom (or any part of it);
- (c) makes provision for, or in connection with, reciprocal arrangements between—
  - (i) the Island or the United Kingdom (or any part of it) or a public authority in the Island or the United Kingdom; and
  - (ii) the EU, an EU entity, a member State or a public authority in a member State,

which no longer exist or are no longer appropriate as a result of the withdrawal of the United Kingdom from the EU;

- (d) makes provision for, or in connection with, other arrangements which—
  - (i) involve the EU, an EU entity, a member State or a public authority in a member State; or
  - (ii) are otherwise dependent upon the Island's or the United Kingdom's relationship with the EU,
 and which no longer exist or are no longer appropriate;
- (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the withdrawal of the United Kingdom from the EU;
- (f) does not contain any functions or restrictions which —

- (i) were in an EU directive and in operation immediately before exit day (including any power to make EU tertiary legislation); and
    - (ii) it is appropriate to retain; or
  - (g) contains EU references which are no longer appropriate.
- (3) There is also a deficiency in retained EU law or other Manx legislation where the Council of Ministers considers that there is –
- (a) anything in retained EU law or other Manx legislation which is of a similar kind to any deficiency which falls within subsection (2); or
  - (b) a deficiency in retained EU law or other Manx legislation of a kind described, or provided for, in regulations made by the Council of Ministers.
- Tynwald procedure – approval required.
- (4) But retained EU law and other Manx legislation is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into operation or only applies on or after exit day.
- (5) Regulations under subsection (1) may make any provision that could be made by an Act of Tynwald.
- (6) Regulations under subsection (1) may (among other things)–
- (a) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be –
    - (i) exercisable instead by a public authority (whether or not newly established or established for the purpose) in the Island or the United Kingdom; or
    - (ii) replaced, abolished or otherwise modified; or
  - (b) provide for the modification of any retained EU law or other Manx legislation.
- (7) Regulations under subsection (1) may modify any retained EU law or other Manx legislation so that it includes a provision authorising a Department or Statutory Board to make regulations and specifying the permissible content of such regulations.
- (8) Any provision mentioned in subsection (7) must specify the Tynwald procedure applicable to any regulations made under that provision.
- (9) But regulations under subsection (1) may not–
- (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence; or

- (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (10) The reference in subsection (1) to a failure or other deficiency arising from the withdrawal of the United Kingdom from the EU includes a reference to any failure or other deficiency arising from that withdrawal taken together with the operation of any provision, or the interaction between any provisions, made by or under this Act.
- (11) To avoid doubt, regulations under subsection (1) may prevent, remedy or mitigate any failure or other deficiency in retained EU law or other Manx legislation which does not fall within the scope of Protocol 3 as if such law or legislation did fall within the scope of Protocol 3.
- (12) The power of the Council of Ministers to make regulations under this section is in addition to any power of the Council of Ministers to make regulations under sections 15 to 19.
- (13) Before the end of the review period, the Council of Ministers must —
  - (a) cause a review to be carried out of each set of Regulations made under subsection (1);
  - (b) set out the conclusions of the review in a report; and
  - (c) lay the report before Tynwald.
- (14) A report must explain the reasons for each set of Regulations.
- (15) Subsection (13) does not apply to regulations made under subsection (1) to the extent that they relate to retained direct EU legislation.
- (16) In this section, “review period” has the same meaning as in section 11(1).
- (17) No regulations may be made under this section after the end of the period of 2 years beginning with exit day.

### **13 Complying with international obligations**

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

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) But regulations under this section may not—
  - (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence; or

- (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (4) No regulations may be made under this section after the end of the period of 5 years beginning with exit day.

## 14 Implementing the withdrawal agreement

[P2018/16/9]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate for the purposes of implementing any withdrawal agreement.  
Tynwald procedure – approval required.
- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald (including modifying this Act).
- (3) But regulations under this section may not –
  - (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence; or
  - (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (4) No regulations may be made under this section after the end of the period of 2 years beginning with exit day.

*Further powers operable on or after exit day*

## 15 Amendment of retained direct EU legislation and other rights etc.

- (1) The Council of Ministers may, by regulations, to the extent it considers appropriate –
  - (a) modify any retained direct EU legislation and anything which is retained EU law by virtue of section 8 so that it contains any modification of EU law which is adopted or notified, comes into operation or applies on or after exit day;
  - (b) modify any 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 or anything which is retained EU law by virtue of section 8 for the purpose of giving effect to such provisions in Manx law;
  - (d) repeal or revoke (either in its entirety or in part) any retained direct EU legislation or anything which is retained EU law by virtue of section 8;

- (e) modify any retained direct EU legislation and anything which is retained EU law by virtue of section 8 to make such retained direct EU legislation and anything which is retained EU law by virtue of section 8 correspond (subject to such modifications, exceptions or adaptations as the Council of Ministers considers appropriate) with the like legislation from time to time operating in the United Kingdom.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) But regulations under this section may not –
  - (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence; or
  - (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (4) Any regulations made under this section must not come into operation until on or after exit day.

## 16 Application and implementation of treaty provisions

- (1) The Council of Ministers may by regulations –
  - (a) apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations; or
  - (b) implement into Manx law and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation,

any provision contained in or arising under a treaty.

Tynwald procedure – approval required.

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

Tynwald procedure – approval required.

- (4) An agreement which may be declared by the Council of Ministers to be a treaty under subsection (3)(b) includes (but is not limited to) –



- (a) an agreement entered into between the United Kingdom and the EU in connection with the relationship between the United Kingdom and the EU on or after exit day;
  - (b) an agreement entered into by the Island or extended to the Island in connection with the withdrawal of the United Kingdom from the EU or any future relationship between the United Kingdom and the EU;
  - (c) an agreement amending any of the EU Treaties;
  - (d) an agreement entered into by the EU or by all of the member States and which relates to the EU.
- (5) Any regulations made under this section must not come into operation until on or after exit day.

## **17 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 21 (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
  - (b) must update the text if a person requests an updated text of the instrument applied by the regulations.
- (9) Any regulations made under this section may include a provision to the effect that the regulations are to be treated as “retained EU law”.
- (10) But regulations under this section may not —
  - (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence; or
  - (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (11) Any regulations made under this section must not come into operation until on or after exit day.

## **18 Application and implementation of previous direct EU legislation and EU law**

- (1) The Council of Ministers may by regulations —
  - (a) apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations, any EU regulation, EU decision or EU tertiary legislation which —
    - (i) had legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day; and
    - (ii) did not form part of Manx law on and after exit day by virtue of section 7;

- (b) implement any instrument applied to the Island under paragraph (a) and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation;
- (c) implement into Manx law any EU law which –
  - (i) had legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day; and
  - (ii) was not implemented into Manx law,and make such provisions as it considers appropriate to deal with any matters arising out of or related to any such implementation.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) Despite subsection (1)(a), if only part of an EU regulation, EU decision or piece of EU tertiary legislation had legal effect in Manx law by virtue of section 2(1) of the *European Communities (Isle of Man) Act 1973* immediately before exit day, the whole of that EU regulation, EU decision or piece of EU tertiary legislation may be applied to the Island under subsection (1)(a).
- (4) Any regulations under this section may be made retrospective and be deemed to have come into operation from such day or days as may be specified in the regulations.
- (5) But a provision made by such regulations may not –
  - (a) impose or increase taxation; or
  - (b) impose any civil or criminal liability,before the day on which the regulations themselves come into operation.
- (6) Any regulations made under subsection (1)(a) must have annexed to them a text of the instrument applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.
- (7) Any regulations made under this section may include a provision to the effect that the regulations are to be treated as “retained EU law”.
- (8) Any regulations made under this section may not amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (9) Any regulations made under this section must not themselves come into operation until on or after exit day.
- (10) No regulations may be made under this section after the end of the period of 5 years beginning with exit day.

## 19 Application to the Island of UK legislation

- (1) The Council of Ministers may by regulations 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 UK legislation to which this section applies.  
Tynwald procedure – approval required.
- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) This section applies to –
  - (a) any UK legislation which relates, directly or indirectly, to the withdrawal of the United Kingdom from the EU;
  - (b) any UK legislation which relates to the approval or implementation of any withdrawal agreement;
  - (c) any UK legislation which relates to the future relationship between the United Kingdom and the EU or any member State; or
  - (d) any instrument of a legislative character made, or having effect as if made, under any UK legislation mentioned in paragraphs (a) to (c).
- (4) Any regulations under subsection (1) must –
  - (a) specify the exceptions, adaptations and modifications subject to which the UK legislation applies to the Island; and
  - (b) have annexed to them a text of the UK legislation applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.
- (5) Subsections (6) and (7) apply if regulations made under subsection (1) provide that a reference in the regulations to any UK legislation is to be construed as a reference to the UK legislation as amended from time to time (see section 21 (ambulatory references to UK legislation)).
- (6) To avoid doubt, the text to be annexed under subsection (4) is the text of the UK legislation at the time the regulations are made.
- (7) However, the Council of Ministers –
  - (a) may update the text annexed under subsection (4) to reflect any amendment made to the UK legislation after the making of the regulations; and
  - (b) must update the text if a person requests an updated text of the UK legislation applied by the regulations.

## 20 Application to the Island of UK legislation and EU legislation by the Department of Environment, Food and Agriculture

- (1) The Department of Environment, Food and Agriculture (the “Department”) may by regulations 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 —
- (a) any UK legislation relating to —
    - (i) veterinary medicines;
    - (ii) veterinary surgeons and veterinarians;
    - (iii) animal health;
    - (iv) animal welfare;
    - (v) plant health;
    - (vi) pesticides, including plant protection products;
    - (vii) biocides;
    - (viii) marketing of seeds and seedlings and propagating materials;
    - (ix) food;
    - (x) feedingstuffs; and
    - (xi) quality and marketing standards of agricultural and fisheries products (including fish);
  - (b) any instrument of a legislative character made, or having effect as if made, under any UK legislation mentioned in paragraph (a);
  - (c) any EU instrument (whether operative before, on or after exit day) which relates, directly or indirectly, to anything mentioned in paragraph (a)(i) to (xi).

Tynwald procedure – approval required.

- (2) The Department may by regulations —
- (a) implement any EU instrument applied to the Island under subsection (1)(c) and make such provisions as it considers appropriate to deal with any matter arising out of or related to any such implementation;
  - (b) implement into Manx law any other EU law (whether operative before, on or after exit day) which relates, directly or indirectly, to anything mentioned in subsection (1)(a)(i) to (xi) and make such provision as it considers appropriate to deal with any matters arising out of or related to any such implementation.

Tynwald procedure – approval required.

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

- (4) Any regulations made under subsection (1) must –
- (a) specify the exceptions, adaptations and modifications subject to which the legislation or instrument applies to the Island; and
  - (b) have annexed to them a text of the legislation or instrument applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.
- (5) Subsections (6) and (7) apply if regulations made under subsection (1) provide that a reference in the regulations to any legislation or instrument is to be construed as a reference to the legislation or instrument as amended from time to time (see section 21 (ambulatory references to EU instruments and UK legislation)).
- (6) To avoid doubt, the text to be annexed under subsection (4) is the text of the legislation or instrument at the time the regulations are made.
- (7) However, the Department –
- (a) may update the text annexed under subsection (4) to reflect any amendment made to the legislation or instrument after the making of the regulations; and
  - (b) must update the text if a person requests an updated text of the legislation or instrument applied by the regulations.
- (8) But regulations under this section may not –
- (a) impose or increase taxation;
  - (b) make retrospective provision;
  - (c) create a relevant criminal offence;
  - (d) amend, repeal or revoke the *Human Rights Act 2001* or any statutory document made under it.
- (9) The Council of Ministers may by order amend subsection (1)(a) so as to modify the field of legislation referred to by –
- (a) adding a new field of legislation;
  - (b) removing a field of legislation; or
  - (c) amending a field of legislation.
- Tynwald procedure – approval required.

## 21 Ambulatory references to EU instruments and UK legislation

[1973/14/2C]

- (1) A statutory document to which this section applies may provide that a reference in it to an EU instrument or any UK legislation or a provision of an EU instrument or any UK legislation is to be construed as a reference to the instrument, legislation or provision as amended from time to time.
- (2) This section applies to –

- (a) a statutory document made under sections 13 to 20 or 23; or
  - (b) any statutory document made under any other provision of Manx legislation which is prescribed for the purposes of this section by regulations made under subsection (3).
- (3) The Council of Ministers may by regulations prescribe any Manx legislation or any provision of Manx legislation in respect of which a statutory document made under the prescribed Manx legislation or provision is a statutory document to which subsection (2) applies.
- Tynwald procedure – negative.
- (4) Any regulations made under subsection (3) must not come into operation until on or after exit day.

### *Trade Agreements*

## **22 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.

## **23 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).

## 24 Trade information

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

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) Such regulations may make provision about—
  - (a) when goods and services are exported from the Island;
  - (b) the type of information that may be requested;
  - (c) to whom a request for information may be made; and
  - (d) how a request may be made.

## 25 Disclosure of information by the Treasury

- (1) The Treasury may by regulations make such provision as it considers appropriate in relation to the disclosure of information for the purpose of —
  - (a) facilitating the exercise by the Treasury of the Treasury’s functions relating to trade; or
  - (b) facilitating the exercise by an international organisation or authority, or by any other body, of its public functions relating to trade.

Tynwald procedure – approval required.

- (2) Regulations under this section may make any provision that could be made by an Act of Tynwald.
- (3) Regulations under this section may (amongst other things) —
  - (a) make provision about the use of any information disclosed; or



- (b) make provision about the further disclosure of information.
- (4) Nothing in this section authorises the making of a disclosure which contravenes the data protection legislation.
- (5) In this section, “data protection legislation” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>1</sup>.

*General and final provisions*

**26 Rules of evidence**

[P2018/16/15 and drafting]

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

**27 Statutory documents**

[P2018/16/22 and drafting]

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

**28 Consequential and transitional provisions**

[P2018/16/23 and drafting]

- (1) The Council of Ministers may by regulations make such provision as it considers appropriate in consequence of this Act.  
Tynwald procedure – approval required.
- (2) Regulations under subsection (1) may make any provision that could be made by an Act of Tynwald.
- (3) Regulations under subsection (1) may not modify an Act of Tynwald passed after the end of the Session in which this Act is passed.
- (4) The Council of Ministers may by regulations make such incidental, supplemental, transitional, transitory or saving provisions as it considers appropriate in connection with the coming into operation of any provision of this Act (including its operation in connection with exit day).  
Tynwald procedure – affirmative.
- (5) Schedule 5 (which contains general consequential provisions) has effect.
- (6) Schedule 6 (which contains transitional, transitory and saving provisions) has effect.
- (7) Schedule 7 (which contains specific consequential amendments) has effect.

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<sup>1</sup> SD 2018/0145

- (8) The Manx legislation mentioned in Schedule 8 (which contains repeals not made elsewhere in this Act) is repealed to the extent specified.
- (9) The revocation of the European Union (Changes in Terminology) Order 2012 (SD0606/12) made under section 1A(1) of the *European Communities (Isle of Man) Act 1973*, by virtue of the repeal of that Act, does not affect the continuing operation of article 3(3) of that Order.

## SCHEDULE 1

[Section 3]

[P2018/16/20]

## INTERPRETATION

(1) In this Act—

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

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

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

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

“**EU decision**” means—

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

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

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

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

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

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

“**EU reference**” means—

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

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

“**EU tertiary legislation**” means—

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

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

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

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

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

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

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

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

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

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

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

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

- (a) on conviction on information, custody for 2 years, a fine, or both;
- (b) on summary conviction, custody for 12 months, a fine of level 5 on the standard scale (if not calculated on a daily basis) or a fine of £200 a day, or both;

“**retained case law**” means —

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

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

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

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

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

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

“**retained EU law**” means —

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

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

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

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

(c) are not excluded by section 9 or Schedule 2,  
(as those principles are modified by or under this Act or by other Manx law from time to time);

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

- (a) relate to –
- (i) anything to which section 6, 7 or 8 applies; or
  - (ii) any Manx legislation passed or made or operating before exit day for a purpose mentioned in section 2B(1)(a) or (b) of the *European Communities (Isle of Man) Act 1973*; and
- (b) are not excluded by section 9 or Schedule 2,  
(as those principles and decisions are modified by or under this Act or by other Manx law from time to time);

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

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

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

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

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

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

- (2) In this Act references to anything which is retained EU law by virtue of section 8 include references to any modifications, made by or under this Act or by other Manx law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.
- (3) For the purposes of this Act, section 9(1)(c) of the *Interpretation Act 2015* (which defines “Manx legislation”) does not include any EU laws that apply to the Island under section 2(1) of the *European Communities (Isle of Man) Act 1973*.
- (4) To avoid doubt, references in this Act to the withdrawal of the United Kingdom from the EU include a reference to the cessation of Protocol 3.

- (5) References in this Act to former Article 34(2)(c) of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon.
- (6) Any other reference in this Act to an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union includes a reference to that Article as applied by Article 106a of the Euratom Treaty.
- (7) See paragraph 2 of Schedule 7 for amendments made by this Act to the Schedule to the *Interpretation Act 2015*.

**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, any EU instrument was invalid.
- (2) Sub-paragraph (1) does not apply so far as —
  - (a) the European Court has decided before exit day that the instrument is invalid; or
  - (b) the challenge is of a kind described, or provided for, in regulations made by the Council of Ministers.  
Tynwald procedure – approval required.
- (3) Regulations under sub-paragraph (2)(b) may (among other things) provide for a challenge which would otherwise have been against an EU institution to be against a public authority in the Island.

**2 General principles of EU law**

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

**3 Rule in Francovich**

There is no right in Manx law on or after exit day to damages in accordance with the rule in Francovich<sup>2</sup>.

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<sup>2</sup> Cases C-6/90 and C-9/90 Francovich [1991] ECR I-5357



#### **4 Interpretation**

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

**SCHEDULE 3**

[Section 26]

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

**SCHEDULE 4**

[Section 27]

[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 28(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 28(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 28(4) includes the power to make consequential, incidental, supplemental, transitional, transitory or saving provision in connection with—
  - (a) the repeal of any provision of the *European Communities (Isle of Man) Act 1973*; or

- (b) the withdrawal of the United Kingdom from the EU,  
which is additional to that made by any provision of sections 6 to 10, or Schedule 2 or alters its effect in particular cases or descriptions of cases.
- (4) The power to make regulations under section 28(1) includes the power to make transitional, transitory or saving provision which—
  - (a) is in connection with any repeal or revocation made by any such regulations of any provision of Manx legislation in consequence of—
    - (i) the repeal of any provision of the *European Communities (Isle of Man) 1973*; or
    - (ii) the withdrawal of the United Kingdom from the EU; and
  - (b) is additional to that made by any provision of sections 6 to 10 or Schedule 2 or alters its effect in particular cases or descriptions of cases.
- (5) Provision of the kind mentioned in sub-paragraph (3) or (4) may (among other things) include further provision treating any provision of that kind as retained EU law for particular purposes or all purposes.

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

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

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

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

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

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

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

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

**6 Type of statutory document**

A statutory document made under this Act by way of regulations may (despite section 93 of the *Interpretation Act 2015*) 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.

**7 Tynwald procedure in certain urgent cases**

- (1) This paragraph applies to a statutory document to which section 30 of the *Legislation Act 2015* (“approval required”) applies by virtue of any provision of this Act.
- (2) If the statutory document contains a declaration that the Council of Ministers is of the opinion that, by reason of urgency, it is necessary to make the statutory document subject to the Tynwald procedure set out in section 31 of the *Legislation Act 2015* (“affirmative”), that procedure applies to the statutory document instead.

**SCHEDULE 5**

[Section 28(5)]

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

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

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

**2 Other existing ambulatory references**

- (1) Any reference which –
- (a) exists, immediately before exit day, in –
    - (i) any provision of Manx legislation;
    - (ii) any EU regulation, EU decision, EU tertiary legislation (including as adapted under the EEA agreement) which is to form part of Manx law by virtue of section 7; or
    - (iii) any document relating to anything falling within sub-paragraph (i) or (ii),
  - (b) is not a reference to which paragraph 1(1) applies; and
  - (c) is, immediately before exit day, a reference to, 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
  - (b) a power in retained direct EU legislation is not conferred before the date on which this Act is passed.



- (6) A power which, by virtue of sub-paragraph (1) or any Act of Tynwald passed before, and in the same Session as, this Act, is capable of being exercised to modify retained EU law is capable of being so exercised before exit day so as to come into operation on or after exit day.

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

- (1) Any power to make a statutory document which is conferred on or after the day on which this Act is passed may, so far as applicable and unless the contrary intention appears, be exercised so as to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything retained by virtue of section 8.
- (2) Sub-paragraph (1) 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.
- (3) For the purposes of sub-paragraph (1) —
- (a) a power is conferred whether or not it is in operation;
  - (b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed; and
  - (c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).
- (4) A power which, by virtue of sub-paragraph (1) or any Act of Tynwald passed after, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into operation on or after exit day.

#### **5 Human Rights Act 2001**

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

**SCHEDULE 6**

[Section 28(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 28(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 28(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.

### 4 Expiry of exercise of power

The prohibition on making regulations under section 13 or 14 after a particular time does not affect the continuation in operation of regulations made at or before that time (including the exercise after that time of any power conferred by regulations made at or before that time).

## SCHEDULE 7

[Section 28(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<sup>23</sup>, including any retained EU law,<sup>22</sup>;
- (b) after subsection (2) insert —
- <sup>23</sup> (2A) An order under this section may make any provision that could be made by an Act of Tynwald.<sup>22</sup>;
- (c) in subsection (3)(aa), after “(an Act of Parliament)” insert<sup>23</sup>, as amended from time to time<sup>22</sup>;
- (d) after subsection (3)(aa), insert —
- <sup>23</sup> (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;<sup>22</sup>;
- (e) in subsection (3)(b), for “paragraph (a) or (aa)” substitute<sup>23</sup> paragraphs (a), (aa) or (ab)<sup>22</sup>;
- (f) for subsection (3)(f) substitute —
- <sup>23</sup> (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<sup>22</sup>;
- (g) after subsection (3) insert —
- <sup>23</sup> (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.<sup>22</sup>.
- (3) In section 3 (public documents) —

(a) after subsection (3), insert —

**66** (3A) An order under section 1 may provide that a reference in it to an instrument referred to in section 1(3) or to a provision of such an instrument is to be construed as a reference to the instrument or provision as amended from time to time. **62**;

(b) in subsection (4), for “any legislation” substitute **66** any instrument **62**;

(c) after subsection (4), insert —

**66** (4A) If subsection (3A) applies, the text to be annexed under subsection (4) is the text of the instrument at the time the order is made.

(4B) However, the Treasury —

(a) may update the text to reflect any amendment made to the instrument after the making of the order; and

(b) must update the text if a person requests an updated text of the instrument applied by the order. **62**.

## 2 Interpretation Act 2015

(1) The *Interpretation Act 2015* is amended as follows.

(2) In section 5 (combined operation of this Act and the *Legislation Act 2015*) —

(a) in subsection (2), for “Both Acts apply” substitute **66** Subject to section 5A of this Act and section 4A of the *Legislation Act 2015*, both Acts apply **62**;

(b) in subsection (3), for “Subject to sections 6 and 7” substitute **66** Subject to sections 5A, 6 and 7 of this Act and section 4A of the *Legislation Act 2015* **62**.

(3) After section 5 (combined operation of the *Interpretation Act 2015* and the *Legislation 2015*) insert —

### **66** 5A 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*. **62**.

(4) In section 9(1) (“Manx legislation” and “statutory provision”), after paragraph (aa) insert —



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

- (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;



“**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. **22**.

### 3 Legislation Act 2015

- (1) The *Legislation Act 2015* is amended as follows.
- (2) In section 4 (combined operation of this Act and the Interpretation Act) —
  - (a) in subsection (2), for “Both Acts apply” substitute **43** Subject to section 4A of this Act and section 5A of the *Interpretation Act 2015*, both Acts apply **22**;
  - (b) in subsection (3), for “Manx legislation” substitute **43** Subject to section 4A of this Act and section 5A of the *Interpretation Act 2015*, Manx legislation **22**.
- (3) After section 4 (combined operation of this Act and the Interpretation Act), insert —

#### **43**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*. **22**.
- (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 **43** (other than retained direct EU legislation which is not subordinate legislation) **22**.
- (6) In section 44(1) (defence if Manx legislation not published) after “consisting of a contravention of any Manx legislation” insert **43** (other than retained direct EU legislation which is not subordinate legislation) **22**.

### 4 European Communities (Amendment) Act 1994

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

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

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

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

## SCHEDULE 8

[Section 28(8)]

## ADDITIONAL REPEALS

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

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