

Proposal for amendments to the Repeal Bill

Greener UK & Wildlife and Countryside Link

Scope of delegated powers

- (1) *[Provision granting delegated powers to make subordinate legislation to amend EU-derived law]*
- (2) The power to make subordinate legislation set under subsection (1) must be used, and may only be used, insofar as is necessary—
 - (a) to ensure that EU law and EU-derived UK law applying to the United Kingdom or any part of the United Kingdom immediately prior to the United Kingdom leaving the EU continues to operate with equivalent scope, purpose and effect as part of the United Kingdom's domestic law following the United Kingdom's exit from the EU
 - (b) to implement any obligations of the United Kingdom arising from an agreement with the EU in respect of the United Kingdom's exit from the EU.
- (3) The delegated powers under this Act will expire 6 months after the United Kingdom's exit from the EU.

Application of EU law

- (1) Where, following the United Kingdom's exit from the EU, no specific provision has been made in respect of an aspect of EU law applying to the United Kingdom or any part of the United Kingdom immediately prior to the United Kingdom's exit from the EU, that aspect of EU law shall continue to be effective and enforceable in the United Kingdom with equivalent scope, purpose and effect as immediately prior to the United Kingdom's exit from the EU.

Treatment of EU-derived UK law

- (1) Following the commencement of this Act, no amendment may be made to EU-derived UK law save by primary legislation, or by subordinate legislation made under this Act within six months of the UK's exit from the EU.
- (2) By regulation, the Minister may establish a Schedule listing provisions of EU-derived UK law that may be amended by subordinate legislation.
- (3) Regulations made under subsection (2) will be subject to an enhanced scrutiny procedure.
- (4) Regulations may only be made under subsection (2) to the extent that they have no detrimental impact for the UK environment.
- (5) Delegated powers may only be used to amend provisions of EU-derived UK law listed in any Schedule made under subsection (2) to the extent that such amendment will have no detrimental impact on the environment.

Scrutiny of statutory instruments

- (1) A Parliamentary Committee shall, in respect of every statutory instrument proposed to be made pursuant to this Act determine the form and duration of parliamentary and public scrutiny appropriate for the instrument.
- (2) Every statutory instrument proposed to be made pursuant to this Act shall be subject to public consultation unless the relevant Committee decides otherwise.
- (3) Where the relevant Committee decides that the statutory instrument will be subject to enhanced parliamentary scrutiny, the following powers will be available to the Committee —
 - (a) the power to require a draft of the proposed statutory instrument be laid before Parliament;
 - (b) the power to require the relevant minister to provide further evidence or explanation as to the purpose and necessity of the proposed instrument;
 - (c) the power to make recommendations to the relevant Minister of the Crown in relation to the text of the draft statutory instrument;
 - (d) the power to recommend to the House that “no further proceedings be taken” in relation to the draft statutory instrument.
- (4) Where an instrument is subject to enhanced scrutiny pursuant to this Section, the relevant Minister of the Crown must have regard to any recommendations made by the Parliamentary Committee pursuant to subparagraph (c) above before laying a revised draft instrument before each House of Parliament.
- (5) Where an instrument is subject to public consultation, the relevant Minister of the Crown must have regard to the results of the consultation before laying a revised draft instrument before each House of Parliament, or making a Written Statement explaining why no revision is necessary.
- (6) The statutory instrument may not be made unless the draft instrument has been laid before, and approved by a resolution of, each House of Parliament.

Institutional arrangements

- (1) The relevant Ministers must, before the UK's exit from the EU, make provision that all powers and functions relating to the UK that were carried out by an EU institution before the date of the UK leaving the EU will—
 - (a) continue to be carried out by an EU institution; or
 - (b) be carried out by an appropriate existing or newly created domestic body; or
 - (c) be carried out by an appropriate international body.
- (2) For the purposes of this section, powers and functions relating to the UK exercised by an EU institution may include, but are not limited to—
 - (a) monitoring and measuring compliance with legal requirements,
 - (b) reviewing and reporting on compliance with legal requirements,
 - (c) enforcement of legal requirements,
 - (d) setting standards or targets,
 - (e) co-ordinating action,
 - (f) publicising information including regarding compliance with environmental standards.
- (3) Within 12 months of the UK leaving the EU, the Government shall consult and bring forward proposals for domestic governance arrangements to ensure equivalent provision of the regulatory, monitoring, oversight, accountability, enforcement and other functions relating to the UK currently provided by EU institutions, by the creation by primary legislation of—
 - (a) a new independent body or bodies to be given powers and functions equivalent to those of the EU Institutions in relation to the environment; and
 - (b) a new domestic framework for environmental protection and improvement.
- (4) For the purposes of this section 'EU institution' includes but is not limited to—
 - (a) the European Commission;
 - (b) the European Environment Agency;
 - (c) the European Chemicals Agency; and
 - (a) the European Court of Auditors.
- (5) Responsibility for any functions or obligations arising from EU-derived UK law for which no specific provision has been made immediately after commencement of this Act will belong to the relevant Minister until such a time as specific provision for those functions or obligations has been made.

Principles of environmental law

- (1) In carrying out their duties and functions, public authorities must have regard to and apply the environmental principles in this section (“environmental principles”).
- (2) Any enactment passed or to be passed must be construed and have effect in a way that is compatible with the environmental principles, except as may be provided by any Act passed after this Act.
- (3) “Environmental principles” means—
 - (a) the need to contribute to sustainable development in the UK and overseas;
 - (b) the need to contribute to preserving, protecting and improving the environment;
 - (c) the need to contribute to protecting human health;
 - (d) the need to contribute to prudent and rational utilisation of natural resources;
 - (e) the need to contribute to promoting measures at the international level to deal with regional or worldwide environmental problems, and in particular combating climate change;
 - (f) the precautionary principle;
 - (g) the principle that preventive action should be taken;
 - (h) the principle that environmental damage should as a priority be rectified at source;
 - (i) the polluter pays principle;
 - (j) the need to guarantee participatory rights including access to information, public participation in decision making and access to justice in relation to environmental matters; and
 - (k) the integration principle.
- (4) The environmental principles are to be interpreted and construed in the same way as they were interpreted and construed within EU law immediately prior to the United Kingdom’s exit from the EU.
- (5) In carrying out their duties and functions under this section, public authorities shall take account of—
 - (a) available scientific and technical data; and
 - (b) environmental benefits and costs of action or lack of action
- (6) In this section “public authority” shall have the same meaning as in the Freedom of Information Act 2000 in relation to England, Wales and Northern Ireland, and the Freedom of Information (Scotland) Act 2002 in relation to Scotland.
- (7) The appropriate national authority, in their proposals concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts and the principle of non-regression in environmental protection.
- (8) Subsection (9) applies in any proceedings in which a court determines whether a provision of primary or subordinate legislation is compatible with the environmental principles.
- (9) If the court is satisfied that the provision is incompatible with the environmental principles, it may make a declaration of that incompatibility.

Definitions

“Delegated Powers”— the powers under this Act allowing the relevant Minister of the Crown to enact secondary legislation.

“EU law” — all law of the European Union applicable within the UK in force immediately prior to the UK’s exit from the EU, including:

- The full text (including preambles and recitals) of all Regulations, Directives, Decisions, Recommendations and Opinions within the meaning of Article 288 of the Treaty on the Functioning of the European Union;
- all EU law as given effect to by s2(1) of the European Communities Act 1972;
- all judgments from the Court of Justice of the European Union;
- all regulatory rulings from EU regulators;
- any other directly effective law (including all aspects of international law incorporated within EU law) that are in force immediately prior to the United Kingdom’s exit from the EU

“EU-Derived UK Law” — all law of the United Kingdom that has been introduced in order to comply with the UK’s obligations under the TEU, the TFEU or the ECA. This includes:

- all orders, rules, regulations and schemes enabled by s2(2) of the ECA, including those orders, rules, regulations and schemes also enabled by the power of an additional enabling Act;
- all orders, rules, regulations and schemes enabled by Acts other than the ECA that nevertheless make reference to any instrument of EU law or implement any of the UK’s obligations under the TEU, the TFEU or the ECA.