

THE IMPLEMENTATION PERIOD: BUSINESS AS USUAL?

GALINA WARD

What happens on 1st February?

DExEU Fact Sheet:

*As part of the Withdrawal Agreement, the UK and the EU agreed an implementation period in order to provide continuity and certainty. During this time, EU law will **generally** continue to apply in the UK as it does now. This will mean that UK businesses and individuals will be able to continue to access EU markets as they do now, and the same for EU businesses and individuals in the UK.*

*The Government intends to negotiate arrangements for the UK's future relationship with the EU during the implementation period. As a result there will only be one set of changes for businesses and individuals to respond to at the end of the implementation period. Both UK nationals in the EU and EU citizens in the UK, legally resident before the end of the implementation period, will enjoy **largely** the same rights as they did before exit day, and businesses will be able to continue to trade across EU markets as they do now during the implementation period.*

Key provisions of the 2020 Act (1)

- **Section 1:** Saving of European Communities Act for implementation period
- New section 1A in 2018 Act
- ECA continues to have effect in domestic law on and after exit day so far as provided by sub-sections 1A(3)-(5)

How far is that?

- ECA has effect on and after exit day as if:
- References to "the Treaties" and "the EU Treaties" include Part 4 of the withdrawal agreement (implementation period);
- Not in so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy; and
- Limited to anything which falls within those definitions as at immediately before exit day so far as it is not excluded by regulations made on or after exit day.

Further limitations

- The reference in section 2(2) ECA to the objects of the EU is to be read as a reference to those objects so far as they are applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement;
- Section 2(3) (payment of EU costs etc.) is omitted;
- In section 3 (decisions on, and proof of, EU Treaties and EU instruments etc.), references to the Treaties in subsections (1) and (2) included the withdrawal agreement, and the words brackets in subsection (1) (“if not referred to the European Court, be for determination as such in accordance with the principles laid down by and any relevant decision of the European Court”) only apply so far as they are in accordance with Part 4 of the withdrawal agreement

Further modifications of ECA

- References to common customs tariff, directly applicable provisions, exclusion of customs duties, EU arrangements and agricultural levies only so far as applicable to and in UK by virtue of withdrawal agreement;
- For the purposes of the expression “Member State” the UK is to be treated as if it were a member of the EU during the implementation period

Repeal on “IP completion day”

- Defined in s39(1) of 2020 Act: 31 December 2020 at 11pm
- May be amended by regulations if affected by “EU summertime arrangements” so that it expires at time transition or implementation period provided for by Part 4 of the withdrawal agreement is to end
- But new section 15A in 2018 Act (inserted by s33 of 2020 Act) prohibits Ministers agreeing to extension of the implementation period

Key provisions of the 2020 Act (2)

- **Section 2:** Saving for EU-derived domestic legislation for implementation period
- New section 1B in 2018 Act
- EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day
- To be read in accordance with section 1B(3)

Detail of 1B(3)

- References to EU law etc to be read as references to such thing so far as it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement;
- References to ECA to be read as references to that Act as it continues to have effect by virtue of s1A
- References to EU etc (including nationals) continue to include UK;
- Other modifications as made by regulations or as are necessary for any purpose of Part 4 of the withdrawal agreement and are capable of being ascertained from any such purpose or otherwise from that Part of that agreement;
- Also repealed on IP completion day.

Other relevant provisions of 2020 Act

- **Section 33:** prohibition on extending implementation period (new 15A)
- **Section 34:** only Ministers of the Crown may be co-chair of the Joint Committee (new 15B)
- **Section 29:** provision for Parliamentary oversight/debate of new EU laws raising matters of vital national interest – but no power to stop them coming into force

So what will change...?

- Superficially very little
- Four freedoms continue to apply in full
- Main difference is that UK no longer participating in EU institutions and governance

Thank you for listening

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