

ILLUSTRATION OF THE EUROPEAN COMMUNITIES ACT 1972
WITH AMENDMENTS PROPOSED BY EUROPEAN UNION BILL

Amendments shown in bold type excluding section headings

EUROPEAN COMMUNITIES ACT 1972
1972 CHAPTER 68

PART I GENERAL PROVISIONS

Royal Assent 17 October 1972

1 Short title and interpretation

(1) This Act may be cited as the European Communities Act 1972.

(2) In this Act ‘the Treaties’ or ‘the EU Treaties’ means the EU Treaty, taken with each of the following -

- (a) the Euratom Treaty, that is to say, the treaty establishing the European Atomic Energy Community signed at Rome on 25th March 1957, as modified and supplemented by or under the Community Treaties and the EU Treaty;**
- (b) the Act concerning the election of representatives of the European Parliament by direct universal suffrage which was annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20th September 1976, as it has effect, with modifications, under the EU Treaty;**
- (c) the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as they have effect on the entry into force of the EU Treaty;**
- (d) the Communities’ own resources decisions, as they have effect in accordance with the EU Treaty;**
- (e) every external or ancillary agreement;**

and the expressions defined in Schedule 1 to this Act have the meanings given by that Schedule.

(2A) In this Act ‘the EU Treaty’ means the treaty establishing a Constitution for Europe signed at Rome on 29th October 2004, except the common foreign and security policy provisions.

(2B) In subsection (2)(d) ‘the Communities’ own resources decisions’ means the following decisions on the Communities’ system of own resources-

- (a) the decisions of the Council of the Communities of 7th May 1985, 24th June 1988 and 31st October 1994; and**
- (b) the decision of the Council of the European Union of 29th September 2000.**

(2C) In subsection (2)(e) ‘external or ancillary agreement’ means any of the following-

- (a) a treaty, so far as still in force on the entry into force of the EU Treaty, which was entered into by the member States (with or without other countries) before 22nd January 1972 as ancillary to any one or more of the pre-accession treaties (as they had effect at the time);
- (b) a treaty, so far as still in force on the entry into force of the EU Treaty, which was previously entered into by the United Kingdom as ancillary to any one or more of the Community Treaties (as they had effect at the time);
- (c) a treaty, so far as still in force on the entry into force of the EU Treaty, which was previously entered into (with or without member States) by the Communities or by any of them;
- (d) so much of any treaty as has been or is entered into by the United Kingdom (whether before or after the entry into force of the EU Treaty) as ancillary to the EU Treaties or any of them;
- (e) so much of any treaty as is entered into, after the entry into force of the EU Treaty, by the European Union or Euratom (with or without member States) otherwise than in reliance on anything contained in the common foreign and security policy provisions.

(3) If Her Majesty by Order in Council declares that a treaty specified in the Order is to be regarded as one of the **EU Treaties** as herein defined, the Order shall be conclusive that it is to be so regarded; but a treaty entered into by the United Kingdom **after the entry into force of the EU Treaty** shall not be so regarded unless it is so specified, nor be so specified unless a draft of the Order in Council has been approved by resolution of each House of Parliament.

(4) For purposes of **subsections (2) to (3)** above, "treaty" includes any international agreement, and any protocol or annex to a treaty or international agreement.

2 General implementation of Treaties

(1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression "enforceable EU right" and similar expressions shall be read as referring to one to which this subsection applies.

(2) Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by **order, rules, regulations or scheme**, make provision--

- (a) for the purpose of implementing any **EU** obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or
- (b) for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above;

and in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the **objects of the European Union or of Euratom** and to any such obligation or rights as aforesaid.

In this subsection "designated Minister or department" means such Minister of the Crown or government department as may from time to time be designated by Order in Council in relation to any matter or for any purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council.

(3) There shall be charged on and issued out of the Consolidated Fund or, if so determined by the Treasury, the National Loans Fund the amounts required to meet any **EU** obligation to make payments to **the European Union, to Euratom or to any of the member States, to meet any EU** obligation in respect of contributions to the capital or reserves of the European investment Bank or in respect of loans to the Bank, or to redeem any notes or obligations issued or created in respect of any such **EU** obligation; and, except as otherwise provided by or under any enactment,-

(a) any other expenses incurred under or by virtue of the Treaties or this Act by any Minister of the Crown or government department may be paid out of moneys provided by Parliament; and

(b) any sums received under or by virtue of the Treaties or this Act by any Minister of the Crown or government department, save for such sums as may be required for disbursements permitted by any other enactment, shall be paid into the Consolidated Fund or, if so determined by the Treasury, the National Loans Fund.

(4) The provision that may be made under subsection (2) above includes, subject to Schedule 2 to this Act, any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this Part of this Act, shall be construed and have effect subject to the foregoing provisions of this section; but, except as may be provided by any Act passed after this Act, Schedule 2 shall have effect in connection with the powers conferred by this and the following sections of this Act to make Orders in Council **or orders, rules, regulations or schemes.**

(4A) In relation to—

(a) an Order in Council made under this section on the recommendation of the First Minister of the Scottish Executive, or

(b) any statutory instrument made under this section by the Scottish Ministers, the word 'designated' wherever occurring in subsection (2) shall be disregarded and references in this section to an Act of Parliament shall be read as references to an Act of the Scottish Parliament.

(5) . . . and the references in that subsection to a Minister of the Crown or government department and to a statutory power or duty shall include a Minister or department of the Government of Northern Ireland and a power or duty arising under or by virtue of an Act of the Parliament of Northern Ireland.

(6) A law passed by the legislature of any of the Channel Islands or of the Isle of Man, or a colonial law (within the meaning of the Colonial Laws Validity Act 1865) passed or made for Gibraltar, if expressed to be passed or made in the implementation of the Treaties and of the obligations of the United Kingdom thereunder, shall not be void or inoperative by reason of any inconsistency with or repugnancy to an Act of Parliament, passed or to be passed, that extends to the Island or Gibraltar or any provision having the force and effect of an Act there (but not including this section), nor by reason of its having some operation outside the Island or Gibraltar; and any such Act or provision that extends to the Island or Gibraltar shall be construed and have effect subject to the provisions of any such law.

3 Decisions on, and proof of, Treaties and EU instruments, etc

(1) For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any **EU instrument**, shall be treated as a question of law (and, 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 [...]).

(2) Judicial notice shall be taken of the Treaties, of the **Official Journal of the European Union** and of any decision of, or expression of opinion by, the European Court [...] on any such question as aforesaid; and the Official Journal shall be admissible as evidence of any instrument or other act thereby communicated of **the European Union, Euratom or any EU institution**.

(3) Evidence of any instrument issued by **an EU institution**, including any judgment or order of the European Court [...], or of any document in the custody of **an EU institution**, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(4) Evidence of any **EU instrument** may also be given in any legal proceedings--

(a) by production of a copy purporting to be printed by the Queen's Printer;

(b) where the instrument is in the custody of a government department (including a department of the Government of Northern Ireland), by production of a copy certified on behalf of the department to be a true copy by an officer of the department generally or specially authorised so to do;

and any document purporting to be such a copy as is mentioned in paragraph (b) above of an instrument in the custody of a department shall be received in evidence without proof of the official position or handwriting of the person signing the certificate, or of his authority to do so, or of the document being in the custody of the department.

(5) In any legal proceedings in Scotland evidence of any matter given in a manner authorised by this section shall be sufficient evidence of it.

(6) So far as may be necessary for purposes connected with recognising or giving effect to any jurisdiction or decision of the European Court in relation to the subject-matter of the common foreign and security policy provisions, references in this section—

- (a) to the Treaties, or**
- (b) to an EU instrument or EU institution,**

shall be construed as if those Treaties included those provisions.

4 General provision for repeal and amendment [Not amended]

5 Customs duties

(1) Subject to subsection (2) below, [...] there shall be charged, levied, collected and paid on goods imported into the United Kingdom such **EU customs duty**, if any, as is for the time being applicable in accordance with the Treaties [...].

(2) Where as regards goods imported into the United Kingdom provision may, in accordance with the Treaties, be made in derogation of the common customs tariff or of the exclusion of customs duties as between member States, the Treasury may by order make such provision as to the customs duties chargeable on the goods, or as to exempting the goods from any customs duty, as the Treasury may on the recommendation of the Secretary of State determine.

(3) Schedule 2 to this Act shall also have effect in connection with the **power to make orders under this section**.

(4)-(9) . . .

6 The common agricultural policy

(1) . . .

(2) . . .

(3) Sections 5 and 7 of the Agriculture Act 1957 (which make provision for the support of arrangements under section 1 of that Act for providing guaranteed prices or assured markets) shall apply in relation to any **EU arrangements** for or related to the regulation of the market for any agricultural produce as if references, in whatever terms, to payments made by virtue of section 1 were references to payments made by virtue of the **EU arrangements** by or on behalf of the relevant Minister and as if for every reference in section 5 to the Minister there were substituted a reference to the relevant Minister.

(4) Agricultural levies of the **European Union**, so far as they are charged on goods exported from the United Kingdom or shipped as stores, shall be paid to and recoverable by the relevant Minister; and the power of the relevant Minister to make orders under section 5 of the Agriculture Act 1957, as extended by this section, shall include power to make such provision supplementary to any directly applicable **EU provision** as the relevant Minister considers necessary for securing the payment of any agricultural levies so charged, including provision for the making of declarations or the giving of other information in respect of goods exported, shipped as stores,

warehoused or otherwise dealt with.

(4A) Section 9 of the Agriculture Act 1957 shall apply in relation to an order made under section 5 of that Act as extended by this section as if--

(a) in the case of an order made by the Scottish Ministers--

(i) for the references in subsection (3) of section 9 to Parliament and each House of Parliament there were substituted references to the Scottish Parliament; and

(ii) for the reference in that subsection to section 7(1) of the Statutory Instruments Act 1946 there were substituted a reference to article 13(1) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999;

(b) in the case of an order made by the National Assembly for Wales, subsection (3) of section 9 were omitted;

(c) in the case of an order made by the Department of Agriculture and Rural Development, for subsection (3) of section 9 there were substituted the following subsection--

"(3) Any order under any provision of this Part of this Act shall be laid before the Northern Ireland Assembly as soon as may be after it is made, and shall cease to have effect (without prejudice to anything previously done thereunder or to the making of a new order) on the expiration of the period of forty days beginning with the day on which it comes into force unless within that period it has been approved by resolution passed by the Northern Ireland Assembly."

; and

(d) in subsection (4) of section 9 for the reference to the Minister there were substituted a reference to the relevant Minister.

(4B) Section 35(2) of the Agriculture Act 1957 shall not apply in relation to an order made by the Department of Agriculture and Rural Development under section 5 of that Act as extended by this section.

(4C) Section 3(2) of the Agriculture Act 1967 shall apply in relation to section 5(1)(d) of the Agriculture Act 1957 as extended by this section as if the references in section 3(2) of the Act of 1967 to the Minister were references to the relevant Minister.

(5) Except as otherwise provided by or under any enactment, agricultural levies of the **European Union**, so far as they are charged on goods imported into the United Kingdom, shall be levied, collected and paid, and the proceeds shall be dealt with, as if they were **EU customs duties**, and in relation to those levies the following enactments shall apply as they would apply in relation to **EU customs duties**, that is to say:--

- (a) the Customs and Excise Management Act 1979 (as for the time being amended by any later Act) and any other statutory provisions for the time being in force relating generally to customs or excise duties on imported goods; and
- (b) sections 1, 3, 4, 5, 6 (including Schedule 1), 7, 8, 9, 12, 13, 15, 17 and 18 of the Customs and Excise Duties (General Reliefs) Act 1979 but so that--
 - (i) any references in section 1, 3 and 4 to the Secretary of State shall include the Ministers; and
 - (ii) the reference in section 15 to an application for an authorisation under regulations made under section 2 of that Act shall be read as a reference to an application for an authorisation under regulations made under section 2 (2) of this Act;

and if, in connection with any such **EU arrangements** as aforesaid, the Commissioners of Customs and Excise are charged or entrusted with the performance. . . of any duties in relation to the payment of refunds or allowances on goods exported or to be exported from the United Kingdom, then in relation to any such refund or allowance section 133 (except subsection (3) and the reference to that subsection in subsection (2)) and section 159 of the Customs and Excise Management Act 1979 shall apply as they apply in relation to a drawback of excise duties, and other provisions of that Act shall have effect accordingly.

(6) The enactments applied by subsection (5)(a) above shall apply subject to such exceptions and modification, if any, as the Commissioners of Customs and Excise may by regulations prescribe, and shall be taken to include section 10 of the Finance Act 1901 (which relates to changes in customs import duties in their effect on contracts), but shall not include section 126 of the Customs and Excise Management Act 1979 (charge of duty on manufactured or composite articles).

(7) . . .

(8) Expressions used in this section shall be construed as if contained in Part I of the Agriculture Act 1957; and in this section "agricultural levy" shall include any tax not being a customs duty, but of equivalent effect, that may be chargeable in accordance with any such **EU arrangements** as aforesaid, and "statutory provision" includes any provision having effect by virtue of any enactment and, in subsection (2), any enactment of the Parliament of Northern Ireland or provision having effect by virtue of such an enactment.

(9) In this section "the relevant Minister" means--

- (a) in relation to England, the Secretary of State;
- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Wales, the National Assembly for Wales; and
- (d) in relation to Northern Ireland, the Department of Agriculture and Rural

Development;

and, in the case of goods exported or to be exported from the United Kingdom or shipped or to be shipped as stores, the identity of the relevant Minister is determined by reference to the territory from which the goods are, or are to be, exported or shipped.

7 . . .

8 . . .

9 . . .

10 . . . [Sections 7 to 10 previously repealed]

11 EU offences

(1) A person who, in sworn evidence before the European Court [...], makes any statement which he knows to be false or does not believe to be true shall, whether he is a British subject or not, be guilty of an offence and may be proceeded against and punished--

(a) in England and Wales as for an offence against section 1(1) of the Perjury Act 1911; or

(b) in Scotland as for an offence against section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995; or

(c) in Northern Ireland as for an offence against Article 3(1) of the Perjury (Northern Ireland) Order 1979.

Where a report is made as to any such offence under the authority of the European Court [...], then a bill of indictment for the offence may, . . . in Northern Ireland, be preferred as in a case where a prosecution is ordered under . . . or Article 13 of the Perjury (Northern Ireland) Order 1979, but the report shall not be given in evidence on a person's trial for the offence.

(2) Where a person (whether a British subject or not) owing either--

(a) to his duties as a member of any Euratom institution or committee, or as an officer or servant of Euratom; or

(b) to his dealings in any capacity (official or unofficial) with any Euratom institution or installation or with any Euratom joint enterprise;

has occasion to acquire, or obtain cognisance of, any classified information, he shall be guilty of a misdemeanour if, knowing or having reason to believe that it is classified information, he

communicates it to any unauthorised person or makes any public disclosure of it, whether in the United Kingdom or elsewhere and whether before or after the termination of those duties or dealings; and for this purpose "classified information" means any facts, information, knowledge, documents or objects that are subject to the security rules of a member State or of any Euratom institution.

This subsection shall be construed, and the Official Secrets Acts 1911 to 1939 shall have effect, as if this subsection were contained in the Official Secrets Act 1911, but so that in that Act sections 10 and 11, except section 10(4), shall not apply.

(3) This section shall not come into force until the entry date.

12 Furnishing of information to EU institutions

Estimates, returns and information that may under section 9 of the Statistics of Trade Act 1947 or section 3 of the Agricultural Statistics Act 1979 be disclosed to a government department, the Scottish Ministers or Minister in charge of a government department may, in like manner, be disclosed in pursuance of **an EU obligation to an EU institution**.

SCHEDULES

SCHEDULE 1

DEFINITIONS

1. The following expressions have the following meanings—

‘common foreign and security policy provisions’ has the same meaning as in section 5 of the European Union Act 2005;

‘the Communities’ means the European Community, the European Coal and Steel Community and Euratom;

‘the Community Treaties’ means the Treaties that were Community Treaties for the purposes of this Act immediately before the commencement of section 1 of the European Union Act 2005;

‘enforceable EU right’ and similar expressions are to be construed in accordance with section 2(1) of this Act;

‘EU customs duty’, in relation to any goods, means such duty of customs as may from time to time be fixed for those goods by directly applicable EU provision as the duty chargeable on importation into member States;

‘EU institution’ means an institution of the European Union or of Euratom, or an institution which is common to them both;

‘EU instrument’ means an instrument issued by an EU institution;

‘EU obligation’ means an obligation created or arising by or under the EU Treaties (whether or not an enforceable EU obligation);

‘Euratom’ means the European Atomic Energy Community;

‘the Euratom Treaty’ has the meaning given by section 1(2)(a) of this Act;

‘the European Court’ means the Court of Justice of the European Union (including any court included in that court under Article I-29 of the EU Treaty);

‘the European Union’ means the European Union established under the EU Treaty;

‘member’, in the expression ‘member State’—

- (a) in relation to a time before the entry into force of the EU Treaty, refers to membership at that time of the Communities; and**

(b) in relation to any other time, refers to membership at that time of the European Union;

‘pre-accession treaties’ means the treaties which were pre-accession treaties for the purposes of this Act before the commencement of section 1 of the European Union Act 2005.

2 References, in relation to the European Union or to Euratom, to an institution or to a committee, officer or employee include references to an institution, committee, officer or employee that is common to them both, but only so far as it or he is acting for the Union or (as the case may be) for Euratom.

3(1) This paragraph applies to references to an institution, body, office or agency established or created under the EU Treaties if it is one the powers of which are exercisable at any time by its predecessor in accordance with Article IV-438(2) of that Treaty (succession and legal continuity of institutions etc.).

(2) A reference to such an institution, body, office or agency in relation to a time when its powers are so exercisable includes a reference to the predecessor.

SCHEDULE 2

PROVISIONS AS TO SUBORDINATE LEGISLATION

1(1) The powers conferred by section 2(2) of this Act to make provision for the purposes mentioned in section 2(2)(a) and (b) shall not include power--

- (a) to make any provision imposing or increasing taxation; or
- (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision; or
- (c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal; or
- (d) to create any new criminal offence punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than the prescribed term or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or with a fine of more than £100 a day.

(2) Sub-paragraph (1)(c) above shall not be taken to preclude the modification of a power to legislate conferred otherwise than under section 2(2), or the extension of any such power to purposes of the like nature as those for which it was conferred; and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of sub-paragraph (1)(c).

(2A) Sub-paragraph (1)(d) does not prevent the creation of an indictable offence punishable, on conviction on indictment, with imprisonment for a term of a particular length if—

- (a) an obligation created or arising by or under Article III-271(1) or (2) of the EU Treaty (minimum rules with regard to the definition of criminal offences and sanctions) requires the offence to be punishable with imprisonment for a term of that length;**
- (b) the offence may be committed in different circumstances in some of which such an obligation would require it to be so punishable; or**
- (c) the offence is one committed outside the United Kingdom which, if committed in the United Kingdom, or a part of it, would be punishable, on conviction on indictment, with imprisonment for a term of that length.**

(2B) For the purposes of sub-paragraph (2A) an obligation created or arising by or under Article III-271(1) or (2) of the EU Treaty—

- (a) requires an offence to be punishable with imprisonment for a term of a particular length, or**

(b) requires it to be so punishable in particular circumstances,

if that obligation requires the terms capable of being imposed for that offence, or of being so imposed in those circumstances, to include a term of that length, or to include a term falling in a range of lengths that includes that length.

(2C) Sub-paragraph (1)(d) above shall have effect in relation to provision which—

(a) implements an EU obligation created or arising by or under Article III-160 or III-322 of the EU Treaty (restrictions on capital movements and payments and interruptions and reductions of economic or financial relations), or enables such an obligation to be implemented,

(b) deals with matters arising out of or related to any such obligation, or

(c) deals with matters arising out of or related to the operation of section 2(1) of this Act in relation to provision made by or under either of those Articles,

as if for ‘two years’ there were substituted ‘ten years’.

(3) In sub-paragraph (1)(d), "the prescribed term" means--

**(a) in relation to England and Wales, where the offence is a summary offence,
51 weeks;**

(b) in relation to England and Wales, where the offence is triable either way, twelve months;

(c) in relation to Scotland and Northern Ireland, three months.

1A (1) Where-

(a) subordinate legislation makes provision for a purpose mentioned in section 2(2) of this Act,

(b) the legislation contains a reference to an EU instrument, and

(c) it appears to the person making the legislation that it is necessary or expedient (whether or not for that purpose) for the reference to be construed as a reference to the EU instrument as amended from time to time,

the subordinate legislation may make express provision to that effect.

(2) In this paragraph ‘subordinate legislation’ has the same meaning as in the European Union Act 2005.

2 (1) Subject to paragraph 3 below, the power to make orders, rules, regulations or schemes under section 2 or 6(6) of this Act shall be exercisable by statutory instrument.

(1A) Subject to sub-paragraph 1(E), an Order in Council or other statutory instrument containing (with or without other provision) any provision falling within sub-paragraph (1B) or (1C) may be made only if a draft of it has been—

(a) laid before Parliament; and

(b) approved by a resolution of each House.

(1B) Provision falls within this sub-paragraph if it --

- (a) makes conduct punishable with imprisonment for a term of more than two years in circumstances in which it would not have been so punishable apart from the Order or other instrument; or**
- (b) increases the term of imprisonment that may be imposed for an offence that is already punishable with imprisonment for a term of two years, or that is already punishable with imprisonment for a longer term.**

(1C) Provision falls within this sub-paragraph if (without being excluded from this paragraph by sub-paragraph (1D)) it—

- (a) implements an EU obligation created or arising by or under the provisions of Section 4 or 5 of Chapter IV of Title III of Part III of the EU Treaty (Articles III-270 to III-277 on judicial co-operation in criminal matters and police co-operation), or enables such an obligation to be implemented; or**
- (b) deals with matters arising out of or related to any such obligation.**

(1D) The provision excluded from sub-paragraph (1C) is any provision which (without falling within sub-paragraph (1B)) is made solely for or in connection with the implementation of an obligation created or arising under Article III -271(2) (minimum rules imposed for harmonisation purposes with regard to criminal offences and sanctions).

(1E) Sub-paragraph (1A) does not apply to any Order in Council or other statutory instrument which --

- (a) would (apart from this sub-paragraph) be subject to that sub-paragraph by reason only of provision contained in it by virtue of paragraph 1(2C) above; and**
- (b) contains a declaration by the person making it that the urgency of the matter makes it necessary for the Order or other instrument to be made without the approval required by sub-paragraph (1A) of this paragraph.**

(1F) But an Order in Council or other statutory instrument which for the purposes of this paragraph contains such a declaration—

- (a) must be laid before Parliament after being made; and**
- (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which it was made, shall cease to have effect at the end of that period.**

(1G) Where an Order in Council or other statutory instrument ceases to have effect in accordance with sub-paragraph (1F), that does not—

- (a) affect anything previously done under it; or**
- (b) prevent the making of a new Order or other new subordinate legislation to the same or similar effect.**

(2) Any statutory instrument containing an Order in Council or any order, rules, regulations or scheme made in the exercise of a power so conferred by section 2 or 6(6) of this Act, if

made without a draft having been approved by resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House.

(3) In sub-paragraph (1F) ‘40 days’ means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946.

(4) In relation to—

- (a) an Order in Council made under section 2 of this Act on the recommendation of the First Minister of the Scottish Executive, or**
- (b) any statutory instrument made under that section by the Scottish Ministers,**

references in this paragraph to Parliament, or to each or either House of Parliament, shall have effect as references to the Scottish Parliament and the reference in sub-paragraph (3) to section 7(1) of the Statutory Instruments Act 1946 shall have effect as a reference to Article 13(1) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999.

3(1) Nothing in paragraph 2 above shall apply to any Order in Council made by the Governor of Northern Ireland or to any **order, rules, regulations or scheme** made by a Minister or department of the Government of Northern Ireland; but where a provision contained in any section of this Act confers power to make such an Order in Council or **order, rules, regulations or scheme**, then any Order in Council or **order, rules, regulations or scheme** made in the exercise of that power, if made without a draft having been approved by resolution of each House of the Parliament of Northern Ireland, shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if the Order or **order, rules, regulations or scheme** were a statutory instrument within the meaning of that Act.

(2) Subject to sub-paragraph (6), regulations containing (with or without other provision) any provision falling within sub-paragraph (3) or (4) may be made only if a draft of them has been laid before and approved by the Northern Ireland Assembly.

(3) Provision falls within this sub-paragraph if it-

- (a) makes conduct punishable with imprisonment for a term of more than two years in circumstances in which it would not have been so punishable apart from the regulations; or**
- (b) increases the term of imprisonment that may be imposed for an offence that is already punishable with imprisonment for a term of two years, or that is already punishable with imprisonment for a longer term.**

(4) Provision falls within this sub-paragraph if (without being excluded from this sub-paragraph by sub-paragraph (5)) it-

- (a) implements an EU obligation created or arising by or under the provisions of Section 4 or 5 of Chapter IV of Title III of Part III of the EU Treaty (Articles III-270 to III-277 on judicial co-operation in criminal matters and police co-operation), or enables such an obligation to be implemented; or**
- (b) deals with matters arising out of or related to any such obligation.**

(5) The provision excluded from sub-paragraph (4) is any provision which (without falling within sub-paragraph (3)) is made solely for or in connection with the

implementation of an obligation created or arising under Article III-271(2) (minimum rules imposed for harmonisation purposes with regard to criminal offences and sanctions).

(6) Sub-paragraph (2) does not apply to any regulations which-

- (a) would (apart from this sub-paragraph) be subject to that sub-paragraph by reason only of provision contained in them by virtue of paragraph 1(2C) above; and**
- (b) contain a declaration by the person making the regulations that the urgency of the matter makes it necessary for them to be made without the approval required by sub-paragraph (2).**

(7) But regulations which for the purposes of this paragraph contain such a declaration-

- (a) must be laid before the Northern Ireland Assembly after being made; and**
- (b) if not approved by a resolution of the Assembly within the statutory period, beginning with the day on which the regulations were made, shall cease to have effect at the end of that period.**

(8) In sub-paragraph (7) ‘the statutory period’ has the meaning given by section 41(2) of the Interpretation Act (Northern Ireland) 1954 (1954 c.33 (N.I)).

(9) Where regulations cease to have effect in accordance with sub-paragraph (7), that does not-

- (a) affect anything previously done under them; or**
- (b) prevent the making of new regulations to the same or similar effect.**

(10) In sub-paragraphs (2) to (9) ‘regulations’ means any order, rules, regulations or scheme made by a Northern Ireland Minister or Northern Ireland department under a power conferred by this Act.

4(1) The power to make orders under section 5(1) or (2) of this Act shall be exercisable in accordance with the following provisions of this paragraph.

(2) The power to make such orders shall be exercisable by statutory instrument and includes power to amend or revoke any such order made in the exercise of that power.

(3) Any statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of the House of Commons except in a case falling within sub-paragraph (4) below.

(4) Subject to sub-paragraph (6) below, where an order imposes or increases any customs duty, or restricts any relief from customs duty under the said section 5, the statutory instrument containing the order shall be laid before the House of Commons after being made and, unless the order is approved by that House before the end of the period of 28 days beginning with the day on which it

was made, it shall cease to have effect at the end of that period, but without prejudice to anything previously done under the order or to the making of a new order.

In reckoning the said period of 28 days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.

(5) Where an order has the effect of altering the rate of duty on any goods in such a way that the new rate is not directly comparable with the old, it shall not be treated for the purposes of sub-paragraph (4) above as increasing the duty on those goods if it declares the opinion of the Treasury to be that, in the circumstances existing at the date of the order, the alteration is not calculated to raise the general level of duty on the goods.

(6) Sub-paragraph (4) above does not apply in the case of an instrument containing an order which states that it does not impose or increase any customs duty or restrict any relief from customs duty otherwise than in pursuance of **an EU obligation**.

5 As soon as may be after the end of each financial year the Secretary of State shall lay before each House of Parliament a report on the exercise during that year of the powers conferred by section 5(1) and (2) of this Act with respect to the imposition of customs duties and the allowance of exemptions and reliefs from duties so imposed (including the power to amend or revoke orders imposing customs duties or providing for any exemption or relief from duties so imposed).

SCHEDULE 3
REPEALS [not amended]

SCHEDULE 4
ENACTMENTS AMENDED [not amended]