Case No. UKSC 2018/0080

IN THE SUPREME COURT OF THE UNITED KINGDOM

BETWEEN

HER MAJESTY'S ATTORNEY GENERAL

-and-

HER MAJESTY'S ADVOCATE GENERAL FOR SCOTLAND

Applicants

-and-

THE LORD ADVOCATE

Respondent

-and-

(1) THE COUNSEL GENERAL TO THE WELSH GOVERNMENT

(2) THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Interested Parties

SUPPLEMENTARY CASE
FOR HER MAJESTY'S ATTORNEY GENERAL AND
HER MAJESTY'S ADVOCATE GENERAL FOR SCOTLAND

INTRODUCTION

1. This Supplementary Case is filed in respect of the reference which was made to this Court on 17 April 2018 by Her Majesty's Attorney General and Her Majesty's Advocate General for Scotland ("**the Applicants**") under s.33(1) of the Scotland Act 1998 ("**SA**") [App/1/MS4-23]. A Supplementary Case was filed on behalf of the Lord Advocate on 10 July 2018. This Supplementary Case adopts the same defined terms as the Applicants' Written Case.

2. On 26 June 2018, the UK Bill was given Royal Assent, and became the European Union (Withdrawal) Act 2018 ("**the UK Act"**) [A1/3/MS687-849]. A revised version of Annex C to the Written Case,[1] summarising the terms of the UK Act as passed and enacted, is attached to this Supplementary Case. Section 25 of the UK Act makes provision for commencement [MS715-716]. Some parts of the UK Act are brought into effect immediately upon Royal Assent. Others are to be brought into effect by secondary legislation at a later date (and some have now been: see the revised Annex C below). For example, s.1 of the UK Act repeals the ECA [MS687]: that is not yet in force. Section 12 amends the competence restriction in s.29(2)(d) SA in respect of EU law, through the insertion of a new s.30A into the SA [MS697-698]; that amendment is only in force for regulation-making purposes (see s.25(2) of the UK Act [MS716]). Section 11 [MS697] gives effect to various provisions in Schedule 2 to the UK Act [MS719-733] addressing the retention of EU law domestically under the devolution regimes, and those provisions came into force immediately (see s.25(1)(a) [MS715]).

3. Also coming into force upon Royal Assent is §21(2)(b) of Schedule 3 to the UK Act [MS746-747] (see s.25(1)(b) [MS716]).[2] It amends §1(2) of Schedule 4 to the SA to add the UK Act to the list of protected enactments which the Scottish Parliament does not have competence to modify.

[1] The original Annex C is at [App/3/MS90-94].

[2] §21(2)(a) of Schedule 3 to the UK Act will repeal the inclusion of the ECA in the list of protected enactments in Schedule 4, but that – along with the vast majority of the various amendments made by Schedule 3 to the devolution legislation – is not brought into force upon Royal Assent.

THE RELEVANCE OF §21(2)(b)

4. Both the Lord Advocate and the Attorney General for Northern Ireland ("**AGNI**") suggest in their Written Cases that this change in the law since the reference, and since the Applicants' Written Case, is a matter which may require consideration by the Court. In neither his Written nor Supplementary Case does the Lord Advocate commit to a submission on the legal relevance of the change in the law brought about by the UK Act, but he argues that it at least may be relevant: §§53 and 55 of the Written Case especially [App/4/MS123-125]. In his Supplementary Case, the Lord Advocate appears to accept that were the change in the law to be taken into account, ss.5, 7(2)(b), 7(3), 8(2) and 10(2) of the Scottish Bill would be outside of competence: §3. The AGNI submits that the subsequent enactment of §21(2)(b) is not relevant, and that the reference must be addressed by reference to the law when the Scottish Bill was passed: §4 [App/6/MS183-184].[3]

5. The Applicants submit, **first,** that the reference is to be determined on the basis of the law at the point when the Bill which is the subject of the reference was passed by the Scottish Parliament (or, which makes no difference in this case, at the date of the s.33 reference made to this Court). When addressing the issue of the jurisdiction of the Court under s.33(1) SA, that legislative competence falls to be considered *"at the point the Bill is passed and before it becomes law"* (§7) [App/3/MS46] (see also §§8, 74, 83, 85, 90 and 95 of the Written Case) [MS46, 68, 71-74]. Thus, the UK Act does not technically affect the correct legal answer to the questions referred to this Court.

6. These submissions were – and are – made in the context of an argument that the Scottish Parliament cannot properly legislate in anticipation of possible future changes to its competence, because it cannot know what changes will in fact occur and in what terms, and that restriction cannot be avoided by purporting to delay the effect of the legislation in question. That argument is consistent with principle and with the scheme of the SA as a whole. Legislation passed by the Scottish Parliament outside of competence is not law.

[3] The Counsel General does not address this issue.

7. A reference to the Supreme Court under s.33 must be made within a short time period after the passing of the Bill on the question of legislative competence. Under its s.33(1) jurisdiction, the question for this Court is "*whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament*" [MS429]. Nothing in the language of "*would be*" alters the nature of the question the Court must answer: it simply reflects that the Bill referred is not yet law, and that the Court is asking whether, if the Bill became an Act of the Scottish Parliament, that Act would be within competence. That language is not used in s.32A [MS428-429], and it would be surprising if a different approach was to be applied as between the two.

8. However, **secondly,** these points do not mean that a change in the law subsequent to a reference being made is irrelevant to the competence of the Bill referred. The amendment of §1(2) of Schedule 4 to the SA to add the UK Act to the list of protected enactments which the Scottish Parliament does not have competence to modify is now part of the law of the United Kingdom. It was made and brought into force immediately by Parliament.

9. Thus, to the extent that it renders the Scottish Bill outside competence, it might be considered by the Court to render academic the resolution of some or all of the questions referred.

10. In any event, a Bill of the Scottish Parliament is not law. A change in the competence of the Scottish Parliament prior to Royal Assent being given can render proposed legislation outside of competence. Situations in which there is a material change in the law between a reference being made and the outcome of that reference are likely to be rare. Where such situations do occur, there will be alternative methods by which the issue may be raised:

    (1) A Bill which is found at least in part to be outside of competence on a basis which has been referred must be given the opportunity of reconsideration by the Scottish Parliament: s.36(4) [MS432]. A reconsidered and approved (i.e. re-passed) Bill can be the subject of a further s.33 reference: s.33(2)(b) [MS429].

(2) In certain specific circumstances, the Secretary of State may make an Order under s.35 preventing the Bill being submitted for Royal Assent within four weeks of a reference having been decided by this Court: s.35(3)(c) [MS431].

(3) Following Royal Assent being given, a reference may be made directly to this Court by the Applicants (or by the Lord Advocate or AGNI) of any "*devolution issue*", which includes whether an ASP is "*within the legislative competence of the Parliament*": Schedule 6, §§1(a) and 34 [MS607, 623]

11. On the basis of the submissions set out below, in the context of the considerable importance of legal certainty as to the relationship between the Scottish Bill and the UK Act, and given the Lord Advocate's own acceptance that at least parts of the Scottish Bill would impermissibly modify the UK Act, it is likely that, if the issues are not already resolved, one or more of those routes set out above will require consideration.

MODIFICATION OF THE UK ACT

12. With effect from 26 June 2018, the Scottish Parliament has no competence to modify any part of the UK Act: s.29(2)(c) read with §4(1)(g) of Schedule 4 SA (as now amended).

13. The Lord Advocate accepts in his Supplementary Case that at least some provisions of the Scottish Bill would, if they were to be given Royal Assent, impermissibly modify the UK Act. He identifies provisions which are plainly directly inconsistent with the UK Act:

(1) Section 5 of the Scottish Bill [App/7/MS213] retains in Scots law the Charter of Fundamental Rights and the general principles of EU law, including causes of action based upon them. This modifies the contrary provisions made in s.5(4) [A1/3/MS690] and §3 of Schedule 1 to the UK Act [MS718].

(2) Sections 7(2)(b) and (3) of the Scottish Bill [App/7/MS214] provide for Scottish Ministers to permit a right of challenge after exit day to retained devolved EU

law on the basis of pre-exit day invalidity, and that the otherwise general prohibition on such challenges does not extend to rights of action accruing before exit day. These provisions modify §1 of Schedule 1 to the UK Act [A1/3/MS717], which does not permit such challenges after exit day. Although the Lord Advocate does not identify them, ss.9A-9B [App/7/MS215] are contingent on s.7(2)(b), and must fall outside competence with s.7(2)(b).

(3) Section 8(2) of the Scottish Bill [App/7/MS214] provides an exception to the prohibition on *Francovich* damages claims in respect of rights of action accruing before exit day. This modifies §4 of Schedule 1 to the UK Act [A1/3/MS718], which does not permit such a claim after exit day.

(4) Section 10(2) of the Scottish Bill [App/7/MS215] places a duty on courts and tribunals to have regard to post-exit day judgments of the CJEU and anything done by any EU institution. This modifies s.6(2) of the UK Act [A1/3/MS691], which provides a power and not a duty to have such regard.

14. The Applicants accordingly agree with the Lord Advocate that these provisions, on any view, modify the UK Act and are outside the legislative competence of the Scottish Parliament.

15. However, the Applicants submit, **first**, that the entirety of the Scottish Bill, should it become law upon Royal Assent, would modify the UK Act. The Scottish Bill's purported intent (to ensure the effective operation of Scots law upon and after the withdrawal of the UK from the EU (see s.1(1) [App/7/MS210])) is the same as the intent of the UK Act, save that the UK Act applies across the UK and is not restricted to matters otherwise within devolved competence. The Scottish Bill was expressly modelled on the form of the UK Bill, and its structure and approach, consequently, heavily overlaps with the UK Act.

16. The intention of Parliament in the UK Act was to create, and make provision for, a **single** body of retained EU law across the UK upon withdrawal from the EU. That is why it extends across the whole of the UK: s.24(1) [A1/3/MS715]. It contemplates, in s.12 and Schedule 2, subsequent variations to that body of retained EU law by action

on the part of the devolved legislatures. But it does not contemplate that there are to be separate bodies of retained EU law governed by separate legal regimes from the outset. Yet that would be effect of the enactment of the Scottish Bill.

17. On the Lord Advocate's own case, an impermissible modification is one where there is an inconsistency between the Scottish Bill and the UK Act, or a provision of the Scottish Bill which implicitly alters a provision in the UK Act: Written Case, §84 [App/4/MS141-142]. The Applicants submit this formulation creates too low a bar, but the Scottish Bill cannot meet even the Lord Advocate's test in respect of the UK Act. **The whole and evident purpose of inserting an enactment into the §1(2) of Schedule 4 list [A1/1/MS541] is so that the Scottish Parliament is not permitted to create its own version of the same regime**. It is why, for example, the Scottish Parliament could not enact its own 'devolved' human rights ASP: it would frustrate the intention of the sovereign Parliament that there be a single consistent human rights regime, statutory and jurisprudential, across the UK by the inclusion of the Human Rights Act 1998 in §1(2)(f) of Schedule 4. So too with the inclusion of the UK Act in §1(2).

18. This frustration, and modification, of the intention of Parliament and the scheme of the UK Act is underlined by comparing the Scottish Bill with Schedule 2 to the UK Act [A1/3/MS719-733]. Schedule 2 allocates to the devolved administrations powers to remedy deficiencies in retained EU law and to implement a withdrawal agreement, subject to a variety of controls and conditions. Those are fundamentally different from the scheme of the Scottish Bill.

19. For example, there is specifically no power given to the Scottish Ministers to modify retained direct EU law (i.e. retained under ss.3-4 of the UK Act) in breach of regulations made under s.12 of the UK Act: §§3(1) and 14(1) of Schedule 2 [MS720-722, 730-731]. That is not a restriction mirrored in s.11 of the Scottish Bill [App/7/MS217-219], which provides a regulation-making power given to Scottish Ministers to deal with deficiencies in any part of retained (devolved) EU law under that Bill, including all retained (devolved) direct EU legislation under s.3 of that Bill. The complications of the operation of both schemes are obvious. If the Scottish Bill were not an impermissible modification of the UK Act, is an EU regulation which addresses a

subject matter which would otherwise be within the competence of the Scottish Parliament retained as a result of s.3 of the Scottish Bill, or as a result of s.3 of the UK Act? If both regimes operate, the answer matters, because the Scottish Ministers would have the power to alter that retained regulation under s.11 of the Scottish Bill in the former case, but could be prohibited from doing so in the latter case by §§3(1) or 14(1) of Schedule 2 to the UK Act if relevant regulations were made under s.12.

20. Similarly, the enactment of the Scottish Bill is directly contrary to the amendments to the SA made by s.12 of the UK Act [A1/3/MS697-698]. If enacted, it would be breaching the prohibition in the inserted s.30A(1) to confer powers to modify specified retained EU law; the Scottish Bill has no regard to such restrictions.

21. **Secondly,** even if the Applicants were wrong as to the entirety of the Scottish Bill, a comparison of the core provisions of the Scottish Bill and the UK Act reveals obvious omissions from the Lord Advocate's list of conceded incompatibilities (and indeed supports the broader proposition that the Scottish Bill is incompetent at a fundamental level as a result of §21(2)(b)):

    (1) Sections 2-4 of the Scottish Bill [App/7/MS211-213] are materially identical to ss.2-4 of the UK Act [A1/3/MS688-689], save that s.4(4) of the Scottish Bill makes more extensive inconsistent provision for cases begun before exit day but concluded afterwards. Section 4(4) is, accordingly, analogous to the provisions identified by the Lord Advocate as impermissible.

    (2) Section 6 of the Scottish Bill [App/7/MS213-214] is materially identical to ss.5(1)-(3) of the UK Act [A1/3/MS690]. Sections 7(1), (2)(a) and (4) [App/7/MS214] are materially identical to §1 of Schedule 1 to the UK Act [A1/3/MS717]. Section 8(1) [App/7/MS214] is materially identical to §4 of Schedule 1 to the UK Act [A3/1/MS718]. Section 9 [App/7/MS214] is materially identical to §5 of Schedule 1 to the UK Act [A3/1/MS719], save that it is inconsistent with §5(1) as a result of the impermissible modifications identified by the Lord Advocate.

    (3) Sections 10(1), (3)(b), (4)(a), (5)-(7) and (9) of the Scottish Bill [App/7/MS215-217] are materially identical to s.6 of the UK Act [A1/3/MS690-692], but ss.10(3)(a)

omits retained general principles of EU law, and (4)(a) permits Scottish Ministers to disapply s.10(3). Those are effective textual modifications. Section 11 [App/7/MS217-219] is broadly similar to s.8 of the UK Act [A1/3/MS694-695], save that s.11(7) permits regulations to amend s.10(3) and there are material differences in the sub-paragraphs of ss.11(6) and (8).

(4) Section 12 of the Scottish Bill [App/7/MS219-220] is of a significantly different subject matter to any provision of the UK Act. It is not an analogue of s.9 of the UK Act [A1/3/MS696]; the latter concerns only implementing the withdrawal agreement, but the former concerns compliance with international obligations more generally. There is no analogue to s.13 of the Scottish Bill [App/7/MS220-222] in the UK Act at all, nor, accordingly, to s.13A [MS222]. There is no analogue to s.13B [MS222-223]. Sections 14-16 of the Scottish Bill [MS223-226] are in materially different form to the scrutiny provisions provided in Schedule 7 to the UK Act [A1/3/MS776-806]. There is no analogue to s.17 of the Scottish Bill [App/7/MS227] in the UK Act. It is inconsistent with the power given to UK Ministers under s.12 to make regulations concerning retained EU law in devolved areas, and it is inconsistent with the scheme of control over devolved administration action in respect of retained EU law as specified throughout Schedule 2 to the UK Act.

(5) Sections 18-22 of the Scottish Bill [App/7/MS227-229] are materially identical to s.14 of, and various provisions of Schedule 4 to, the UK Act [A1/3/MS705, 764-770]. Sections 23-26 [App/7/MS229-231] are materially identical to s.15 of and Schedule 5 to the UK Act [A1/3/MS706, 771-773]. Section 26A of the Scottish Bill [App/7/MS231-232] is similar in substance to, but differently worded from, s.16 of the UK Act [A1/3/MS706-707].

(6) The interpretation provision of s.27 of the Scottish Bill [App/7/MS232-234] reflects the inconsistencies in approach and terminology contained in the Bill generally, when compared with s.20 of the UK Act [A1/3/MS709-712]. The regulation-making powers and consequential provisions on those powers in ss.30-32, 34 of the Scottish Bill [App/7/MS235-237] are significantly different

from the mechanisms provided for in ss.22-23 of and Schedule 7 to the UK Act [A1/3/MS714, 776-805].

(7) Sections 33(1)-(2) of the Scottish Bill [App/7/MS237], which purport to repeal the EU law competence controls in s.29(2)(d) and s.57(2) SA, are materially inconsistent with the amendments made to those provisions by s.12(1)-(2) of and §1 of Schedule 3 to the UK Act [A1/3/MS697-698, 734-735], which amend the wording of those controls rather than simply repeal them. The amendments made to the SA by s.33(3) of and schedule 1 to the Scottish Bill [App/7/MS237, 240-241], are materially the same as amendments made by §§7-23 of Schedule 3 [A1/3/MS741-748].

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ANNEX C - REVISED

The Provisions of the UK Act

1. The UK Bill was introduced in the House of Commons on 13 July 2017. The European Union (Withdrawal) Act 2018 ("the UK Act") received Royal Assent on 26 June 2018 [A1/3/MS687-849.

2. The principal purpose of the UK Act is "*to provide a functioning statute book on the day the UK leaves the EU*": Explanatory Notes to the UK Bill, §10 [A10/81/MS3844]. §2 [MS3843] of those Explanatory Notes provided the following overview of what the UK Act will achieve:

> "*The Bill ends the supremacy of European Union (EU) law in UK law and converts EU law as it stands at the moment of exit into domestic law. It also creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left, so that the domestic legal system continues to function correctly outside the EU. The Bill also enables domestic law to reflect the content of a withdrawal agreement under Article 50 of the Treaty on European Union once the UK leaves the EU, subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal.*"

3. Section 1 of the UK Act provides that "*The European Communities Act 1972 is repealed on exit day*" [A1/3/MS687]. The term "*exit day*" is defined in section 20(1) to mean "*29 March 2019 at 11.00 p.m.*" [MS710]. Section 20(3)-(4) permits Ministers to amend the definition by regulations if the date or time at which the TEU and TFEU cease to apply to the UK in accordance with Article 50(3) TEU is different from the definition in section 20(1) [MS711]. As the Explanatory Notes to the UK Bill explained, the repeal of the ECA is "*to reflect the end of supremacy of EU law in domestic law and to remove the mechanism which enabled the flow of new EU law into UK law*": §74 [A10/81/MS3862].

4. In order to provide that, as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before, the UK Act:

   (1) Preserves all the laws which have been made in the UK to implement EU obligations (section 2) [A1/3/MS688];

(2) Converts directly applicable EU legislation (such as EU regulations) into UK law (section 3) [MS688-689];

(3) Incorporates any other rights which are currently available in domestic law by virtue of s.2(1) ECA that can currently be relied on directly in national law (section 4 [MS689]), with certain specified exceptions for the principle of supremacy of EU law, the Charter of Fundamental Rights (section 5 [MS690]), challenges for invalidity of EU law, challenges based on general principles and damages claims under the *Francovich* rule (Schedule 1) [MS717-719]; and

(4) Provides that pre-exit case law of the Court of Justice continues to apply, that it does not bind this Court or the High Court of Justiciary, but that it should be departed from by this Court applying the same test as when departing from a previous decision of the Supreme Court (section 6) [MS690-692].

5. The UK Act provides powers to Ministers of the Crown to make regulations, including:

(1) To prevent, remedy or mitigate a failure of retained EU law to operate effectively, or any other deficiency arising from withdrawal, for a period of two years after exit day (section 8) [MS694-695];

(2) For the purposes of implementing the withdrawal agreement, if the Minister considers such provision should be in force on or before exit day (section 9) [MS696]. This power is expressly subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal, and it may not be exercised after exit day. A "*withdrawal agreement*" is defined in 20(1) as an agreement, whether or not ratified, between the UK and the EU under Article 50(2) TEU setting out the arrangements for withdrawal [MS711].

6. The scrutiny of all regulation making powers in the UK Act is provided for in Schedule 7 [MS776-806].

7. Section 11 [A1/3/MS697] gives effect to Schedule 2, which "*confers powers to make regulations involving devolved authorities which correspond to the powers conferred by sections 8 and 9*". The devolved authorities are the Scottish Ministers, the Welsh Ministers and any Northern Ireland department. Parts 1 and 2 of Schedule 2 confer on the devolved authorities broadly equivalent powers as those conferred on Ministers of the Crown in sections 8 and 9. However, the Schedule 2 powers are subject to important limitations. The devolved authorities may not make regulations: (i) which modify any EU law retained by sections 3 or 4 and are in areas covered by regulations made under the amendments to the SA, GOWA and the Northern Ireland Act 1998 made by section 12; or (ii) which, when made, are inconsistent with any modification (whether in force or not) of any EU law retained by sections 3 or 4 made by the UK Act or a Minister of the Crown under the UK Act, unless the modification could be made by the devolved authority itself: §§3 and 14 of Schedule 2 [MS721-722, 730-731].

8. In relation to the devolution settlement, the UK Act also makes, in section 12 [MS697-702], provision to amend the SA, GOWA and the Northern Ireland Act 1998 to prohibit the devolved legislatures having competence to modify retained EU law of a description specified in regulations made by a Minister of the Crown. The restriction arising from any such regulations is a transitional position pending decisions as to whether common, UK-wide policy approaches are or are not needed in particular areas. Any regulations expire five years after they are made (if they are not revoked earlier) and the power to make regulations expires two years after exit day. Regulations may not be laid before either House until the devolved legislature has consented to the draft or refused to consent to the draft, or 40 days have passed without it making any such decision.

9. In relation to the SA, section 12(1) amends section 29(2)(d) SA by substituting, for the words "*with EU law*", the words "*in breach of the restriction in section 30A(1)*" [MS697]. Section 12(2) then inserts the following new section [MS698]:

> "***30A Legislative competence: restriction relating to retained EU law***
>
> *(1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.*

(2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the legislative competence of the Parliament.

(3) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under this section unless –

> *(a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or*
> *(b) the 40 day period has ended without the Parliament having made such a decision.*

(4) For the purposes of subsection (3) a consent decision is –

> *(a) a decision to agree a motion consenting to the laying of the draft,*
> *(b) a decision not to agree a motion consenting to the laying of the draft, or*
> *(c) a decision to agree a motion refusing to consent to the laying of the draft;*

and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must –

> *(a) provide a copy of the draft to the Scottish Ministers, and*
> *(b) inform the Presiding Officer that a copy has been so provided.*

(6) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Parliament).

(7) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.

(9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Scottish Parliament which receives Royal Assent after the end of that period.

(10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.

(11) In this section –

> *"the 40 day period" means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers,*

and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days."

10. This approach "*allows for the UK Government to work with the devolved administrations to establish areas where a common approach is or is not required, to help determine where UK frameworks might need to be kept after exit*": §41 of the Explanatory Notes to the UK Bill [A10/81/MS3853].

11. Schedule 3 to the UK Act [MS733-764], which is given effect by section 12 [MS701], makes corresponding changes to the provisions governing the executive competence of the devolved authorities, and other amendments to the devolution statutes which are required as a result of the UK's withdrawal from the EU.

12. Paragraph 1 of Schedule 3 amends section 57 SA in respect of executive competence in a materially identical manner to that made in respect of legislative competence in section 12 of the UK Act [MS734-735].

13. Other amendments to the SA are contained in paragraphs 6-26 of Schedule 3 [MS741-749]. Paragraph 21(2) amends paragraph 1(2) of Schedule 4 SA by repealing the listing of the ECA as a protected enactment – 21(2)(a) – and inserting the UK Act as a protected enactment, along with any regulations made under it: 21(2)(b) [MS747].

14. The commencement of the UK Act is addressed in section 25 [MS715-716]. Of the provisions highlighted in this Annex C, sections 8 and 9 came into force on Royal Assent, along with section 11 and Schedule 2 to which it gives effect: section 25(1)(a). Paragraph 21(2)(b) of Schedule 3 inserting the UK Act into Schedule 4 SA came into force on Royal Assent (but the repeal of the reference to the ECA in (2)(a) did not): section 25(1)(b). Section 12(2) came into force on Royal Assent only so as to permit the making of regulations under the new section 30A SA power, along with materially equivalent provision for paragraph 1 of Schedule 8: section 25(2)(a) and (3)(a). Other provisions are to be brought into force on a day appointed in regulations: section 25(4).

15. The first set of commencement regulations are The European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018 (SI 2018/808), which brought into effect various provisions of the UK Act on 4 July 2018, in many respects for regulation-making purposes.