
**EUROPEAN UNION (WITHDRAWAL AND
IMPLEMENTATION OF PROTOCOL) ORDINANCE
2020**

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**EUROPEAN UNION (WITHDRAWAL AND
IMPLEMENTATION OF PROTOCOL) ORDINANCE
2020**

An Ordinance to make provision to give effect to the Protocol to the Withdrawal Agreement relating to the Sovereign Base Areas, and to make other provision in connection with the end of the transition period following the United Kingdom's withdrawal from the European Union.

R. Thomson
ADMINISTRATOR

18 December 2020

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Introductory

Short title

1. This Ordinance may be cited as the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020.

Commencement

2. This Ordinance comes into force on 1 January 2021 at 1:00 a.m.

Interpretation

3. In this Ordinance—

“the European Court” means the Court of Justice of the European Union;

“the Protocol” means the Protocol to the Withdrawal Agreement relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;

“the Protocol measures” means—

- (a) the provisions of the Protocol; and
- (b) the provisions of EU law which, in accordance with the Protocol, are to apply to and in the Areas;

“relevant Protocol obligation” means any obligation created or arising by or under the Protocol measures, whether enforceable or not, and whether relating to the EU or the European Economic Area;

“Withdrawal Agreement” means the Agreement 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 (as that agreement is modified from time to time in accordance with any provision of it)(a).

PART 2

Implementation of Protocol

General implementation of Protocol

4. All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Protocol measures and all such remedies and procedures from time to time provided for by or under the Protocol measures, as in accordance with the Withdrawal Agreement, are without further enactment to be given legal effect or used in the Sovereign Base Areas shall be recognised and available in law, and be enforced, allowed and followed accordingly.

Exercise of public functions arising under the Protocol measures

5.—(1) A function of a public nature that is recognised and available in law in accordance with section 4 is either—

- (a) in the case of a function which arises by virtue of Article 2(7), 3 or 6 of the Protocol, a conferred function for the purposes of the Conferral of Protocol Functions on the Republic Ordinance 2020(b); or
- (b) in all other cases, conferred on the Chief Officer.

(2) To the extent that section 5 of the Conferral of Protocol Functions on the Republic Ordinance 2020 prevents a function referred to in subsection (1)(a) from being exercised by an officer of the Republic, the function is exercisable by the Chief Officer.

(a) See www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration

(b) Ordinance 46/2020.

Power to make regulations, orders and rules

6. The Administrator may by public instrument make regulations, orders and rules—
- (a) for the purpose of implementing any relevant Protocol obligation, 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 Protocol measures 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 section 4.

Exercise of powers and duties and construction of enactments

7.—(1) In the exercise of any power or duty conferred or imposed by or under any Ordinance, the person entrusted with the power or duty may have regard to any of the following—

- (a) the objects of the Protocol;
- (b) any relevant Protocol obligation;
- (c) any rights arising from the Protocol measures.

(2) Any enactment passed or to be passed, other than a provision of this Ordinance, shall be construed and has effect subject to this section.

Provision of information

8. Any information that may, in accordance with any enactment, be provided to an officer of the Administration or an officer of a department of the Republic, may be disclosed pursuant to a relevant Protocol obligation to an EU institution, in a like manner.

PART 3

Legal Proceedings

Legal proceedings

9.—(1) For the purposes of all legal proceedings, any question—

- (a) as to the meaning or effect of the Protocol, or
- (b) as to the validity, meaning or effect of any EU instrument,

is to be treated as a question of law.

(2) Any question referred to in subsection (1), if not referred to the European Court, is to be determined in accordance with the principles laid down by, and any relevant decision of, the European Court or any court attached to it.

(3) Judicial notice shall be taken by a court of the Areas of—

- (a) the Withdrawal Agreement;
- (b) any treaty of the EU;
- (c) the Official Journal of the EU; and
- (d) any decision of, or expression of opinion by, the European Court or any court attached to it on any question referred to in subsection (1).

(4) The Official Journal of the EU shall be admissible as evidence of any instrument or other act communicated by the EU or of any EU institution.

(5) Evidence of—

- (a) any instrument issued by an EU institution (including any judgment or order of the European Court or any court attached to it),
- (b) any document in the custody of an EU institution, or

(c) 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.

(6) Any document purporting to be a true copy as mentioned in subsection (5) shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(7) Evidence of any EU instrument may also be given in any legal proceeding in any of the following ways—

- (a) by production of a copy purporting to be printed by the Queen’s Printer or by the Government Printer of the Republic (by whatever name either is called);
- (b) where the instrument is in the custody of a department of Her Majesty’s Government, by production of a copy certified on behalf of the department to be a true copy by an officer of the department generally or specifically authorised to do so;
- (c) by production of a copy certified by a senior official of the Government department of the Republic which is responsible for the relevant law to which the document relates.

(8) Any document purporting to be a copy as mentioned in subsection (7) shall be received in evidence without proof of any of the following—

- (a) the official position or handwriting of the person signing the certificate; or
- (b) the person’s authority to do so; or
- (c) the document being in the custody of the department in question.

References to the European Court

10.—(1) In this section “order” means an order referring a question to the European Court for a preliminary ruling under article 234 of the Treaty on the Functioning of the European Union^(a).

(2) An order may be made by a court of the Areas on its own initiative at any stage of any proceedings or upon the application by a party before or at the trial or hearing of those proceedings.

(3) An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the court may give directions as to the manner and form in which the schedule is to be prepared.

(4) The proceedings in which an order is made shall, unless the court otherwise directs, be stayed until the European Court has given a preliminary ruling on the question referred to it.

(5) When an order has been made, the Senior Registrar must send a copy of it to the Registrar of the European Court (but see subsection (6) as to timing).

(6) Unless the court orders otherwise, the Senior Registrar must not send a copy of the order until—

- (a) the time for appealing against the order has expired; or
- (b) if an appeal is entered within that time, the appeal has been determined or otherwise disposed of.

(7) The Administrator, after consulting the Presiding Judge, may make rules of court in relation to the making of orders.

(a) This is defined for the purpose of all Ordinances by section 2 of the European Union Ordinance 2010 (Ordinance 23/2010).

PART 4

Repeals and amendments

Ordinances repealed

11. The following Ordinances are repealed—

- (a) the European Union (Protocol Measures) Ordinance 2004(a);
- (b) the European Communities (Protocol Measures) (Amendment) Ordinance 2009(b); and
- (c) the European Union (Withdrawal and Transition) Ordinance 2020(c).

Amendment of the European Union (Specified Measures) Ordinance 2005

12.—(1) Section 2 (interpretation) of the European Union (Specified Measures) Ordinance 2005(d) is amended in accordance with this section.

(2) For the definition of “the Protocol” substitute—

““the Protocol” means the Protocol to the Withdrawal Agreement relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.”

(3) Insert the following definition at the appropriate place —

““Withdrawal Agreement” means the Agreement between the United Kingdom and the European Union under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU (as that agreement is modified from time to time in accordance with any provision of it)(e).”

(4) For paragraph (b) of the definition of “specified EC measure” substitute—

“(b) is not a Protocol measure within the meaning given in section 3 of the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020(f); and”.

Amendment of the Euro Ordinance 2007

13. In section 2 (interpretation) of the Euro Ordinance 2007(g), for the definition of Protocol measures substitute—

““Protocol measures” has the same meaning as in the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020(h).”

Amendment of the European Union Ordinance 2010

14. In the European Union Ordinance 2010(i) omit section 4.

(a) Ordinance 11/2004. This Ordinance was renamed by Ordinance 23/2010.
(b) Ordinance 2/2009.
(c) Ordinance 1/2020.
(d) Ordinance 24/2005. The title was amended by Ordinance 23/2010.
(e) See www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration
(f) Ordinance 45/2020.
(g) Ordinance 18/2007. The definition of “Protocol measures” was inserted by Ordinance 7/2008.
(h) Ordinance 45/2020.
(i) Ordinance 23/2010.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The note should be read in conjunction with the Ordinance. It is not meant to be a comprehensive description of the Ordinance. Accordingly, not all sections are referred to in the note.

3. The purpose of the Ordinance is to make provision in connection with the end of the transition period following the United Kingdom’s withdrawal from the EU, and the coming into force of the Protocol to the Withdrawal Agreement relating to the Areas (“the Protocol”). The Protocol provides for certain areas of EU law to continue to apply to and in the Areas, with some modifications. These areas of EU law are some aspects of data protection law (article 1(3) of the Protocol), customs, common commercial policy and goods (article 2), excise duties and taxation (articles 3 and 4) and agriculture, fisheries, veterinary and phytosanitary (article 6). In addition, the Protocol makes provisions about immigration (article 7) and some other matters.

4. Section 4 gives general effect to the Protocol. It provides a conduit into domestic law for relevant EU law which is intended to be directly applicable (e.g. EU regulations) or to have direct effect. It relates solely to the Protocol and the provisions of EU law which the Protocol provides are still to apply to and in the Areas.

5. Section 5 makes provision about who may exercise functions of a public nature which are brought into domestic law by virtue of section 4. In some cases this is the Chief Officer of the Areas. In other cases functions are conferred on officials of the government of the Republic, in accordance with the Conferral of Protocol Functions on the Republic Ordinance 2020.

6. Section 6 gives the Administrator power to make subordinate legislation to make further provision to implement any aspects of the Protocol, or in connection with it.

7. Section 7 makes provision about the interpretation of other statutory provisions, and provides that anyone exercising any statutory function may take into account the Protocol, its objectives and any rights of obligations arising from it. Section 8 permits certain information to be disclosed to EU institutions pursuant to provisions of the Protocol.

8. Section 9 makes provision about legal proceedings in the courts of the Areas, and provides for the admissibility of a wide range of EU-related documents. It also provides that questions about the interpretation of the Protocol or of EU instruments are to be treated as questions of law. Section 10 makes provision about how a court of the Areas may make a preliminary reference to the Court of Justice of the EU under Article 234 of the Treaty on the Functioning of the EU.

9. Part 4 of the Ordinance repeals the European Union (Protocol Measures) Ordinance 2004, which acted as the conduit into domestic law for Protocol 3 to the Republic of Cyprus’s Treaty of Accession to the EU. Protocol 3 was the document which set out which aspects of EU law applied to and in the Areas following the Republic of Cyprus’s accession to the EU. At the end of the transition period following the UK’s withdrawal from the EU, Protocol 3 will cease to apply to the Areas. Part 4 also makes some minor consequential amendments to several other Ordinance.

SBA/AG/2/EU646
