

SCHEDULES

SCHEDULE 2

Section 11

CORRESPONDING POWERS INVOLVING DEVOLVED AUTHORITIES

PART 1

DEALING WITH DEFICIENCIES ARISING FROM WITHDRAWAL

Power to deal with deficiencies

- 1 (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate to prevent, remedy or mitigate—
- (a) any failure of retained EU law to operate effectively, or
 - (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate to prevent, remedy or mitigate—
- (a) any failure of retained EU law to operate effectively, or
 - (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (3) Section 8(2) to (9) apply for the purposes of this Part as they apply for the purposes of section 8 (including the references to the Minister in section 8(2) and (3) (but not the reference to a Minister of the Crown in section 8(3)(b)) being read as references to the devolved authority or (as the case may be) the Minister acting jointly with the devolved authority and the references to section 8(1) being read as references to sub-paragraph (1) or (2) above).
- (4) Regulations under sub-paragraph (1) above are subject to paragraphs 2 to 7.

No power to make provision outside devolved competence

- 2 (1) No provision may be made by a devolved authority acting alone in regulations under this Part unless the provision is within the devolved competence of the devolved authority.
- (2) See paragraphs 8 to 11 for the meaning of “devolved competence” for the purposes of this Part.

No power to modify retained direct EU legislation or confer certain functions

- 3 (1) No provision may be made by the Scottish Ministers acting alone in regulations under this Part so far as the provision—

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- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 30A(1) of the Scotland Act 1998 if the provision were made in an Act of the Scottish Parliament, or
 - (ii) the restriction in section 57(4) of the Act of 1998 if section 57(5)(b) of that Act so far as relating to this Schedule were ignored.
- (2) No provision may be made by the Welsh Ministers acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 80(8) of the Government of Wales Act 2006 if section 80(8A)(b) of that Act so far as relating to this Schedule were ignored, or
 - (ii) the restriction in section 109A(1) of that Act if the provision were made in an Act of the National Assembly for Wales.
- (3) No provision may be made by a Northern Ireland department acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 6A(1) of the Northern Ireland Act 1998 if the provision were made in an Act of the Northern Ireland Assembly, or
 - (ii) the restriction in section 24(3) of the Act of 1998 if section 24(4)(b) of that Act so far as relating to this Schedule were ignored.
- (4) No provision may be made by a devolved authority acting alone in regulations under this Part so far as, when made, the provision is inconsistent with any modification (whether or not in force) which—
- (a) is a modification of any retained direct EU legislation or anything which is retained EU law by virtue of section 4,
 - (b) is made by this Act or a Minister of the Crown under this Act, and
 - (c) could not be made by the devolved authority by virtue of sub-paragraph (1), (2) or (as the case may be) (3).
- (5) For the purposes of sub-paragraphs (1)(b), (2)(b) and (3)(b), sections 30A and 57(4) to (15) of the Scotland Act 1998, sections 80(8) to (8L) and 109A of the Government of Wales Act 2006 and sections 6A and 24(3) to (15) of the Northern Ireland Act 1998, and any regulations made under them and any related provision, are to be assumed to be wholly in force so far as that is not otherwise the case.
- (6) References in this paragraph to section 80(8) of the Government of Wales Act 2006 are to be read as references to the new section 80(8) of that Act provided for by paragraph 2 of Schedule 3 to this Act.

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Requirement for consultation in certain circumstances

- 4 No regulations may be made under this Part by a devolved authority acting alone so far as the regulations—
- (a) are to come into force before exit day, or
 - (b) remove (whether wholly or partly) reciprocal arrangements of the kind mentioned in section 8(2)(c) or (e),
- unless the regulations are, to that extent, made after consulting with the Secretary of State.

Requirement for consent where it would otherwise be required

- 5 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers acting alone in regulations under this Part so far as that provision, if contained in an Act of the National Assembly for Wales, would require the consent of a Minister of the Crown.
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under this Part so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State.
- (3) Sub-paragraph (1) or (2) does not apply if—
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and
 - (b) no such consent would be required in that case.
- (4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority acting alone in regulations under this Part so far as that provision, if contained in—
- (a) subordinate legislation made otherwise than under this Act by the devolved authority, or
 - (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by (in the case of Scotland) the First Minister or Lord Advocate acting alone or (in the case of Northern Ireland) a Northern Ireland devolved authority acting alone,
- would require the consent of a Minister of the Crown.
- (5) Sub-paragraph (4) does not apply if—
- (a) the provision could be contained in—
 - (i) an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly, or
 - (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b) and of a devolved authority acting alone or (as the case may be) other person acting alone, and
 - (b) no such consent would be required in that case.

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Requirement for joint exercise where it would otherwise be required

- 6 (1) No regulations may be made under this Part by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or
 - (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations may be made under this Part by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (3) No regulations may be made under this Part by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
 - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in—
- (a) an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
 - (b) different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone.

Requirement for consultation where it would otherwise be required

- 7 (1) No regulations may be made under this Part by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of the National Assembly for Wales, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (2) No regulations may be made under this Part by the Scottish Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (3) No regulations may be made under this Part by the Welsh Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the

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Welsh Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.

- (4) No regulations may be made under this Part by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (5) Sub-paragraph (2), (3) or (4) does not apply if—
- (a) the provision could be contained in an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.
- (6) Sub-paragraph (2), (3) or (4) does not apply if—
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

Meaning of devolved competence: Part 1

- 8 (1) A provision is within the devolved competence of the Scottish Ministers for the purposes of this Part if—
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law), or
 - (b) it meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
 - (i) amends or revokes subordinate legislation made before exit day by the Scottish Ministers, the First Minister or the Lord Advocate acting alone, or
 - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
 - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
 - (c) the provision only forms part of the law of Scotland,
 - (d) the provision does not confer or remove functions exercisable otherwise than in or as regards Scotland, and

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- (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of paragraph 1, 4 or 5 of Schedule 4 to the Scotland Act 1998, be modified by an Act of the Scottish Parliament.
- 9 (1) A provision is within the devolved competence of the Welsh Ministers for the purposes of this Part if—
- (a) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (ignoring section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with the consent of a Minister of the Crown), or
 - (b) it meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
 - (i) amends or revokes subordinate legislation made before exit day by the Welsh Ministers acting alone or the National Assembly for Wales constituted by the Government of Wales Act 1998, or
 - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
 - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
 - (c) the provision only forms part of the law of England and Wales,
 - (d) the provision does not confer or remove functions exercisable otherwise than in relation to Wales or the Welsh zone, and
 - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of paragraph 5, 6 or 7 of Schedule 7B to the Government of Wales Act 2006, be modified by an Act of the National Assembly for Wales.
- 10 (1) A provision is within the devolved competence of a Northern Ireland department for the purposes of this Part if—
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly—
 - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
 - (ii) would not require the consent of the Secretary of State,
 - (b) the provision—
 - (i) amends or repeals Northern Ireland legislation, and
 - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998) and require the consent of the Secretary of State, or
 - (c) the provision meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
 - (i) amends or revokes subordinate legislation made before exit day by a Northern Ireland devolved authority acting alone, or

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- (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
 - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
 - (c) the provision only forms part of the law of Northern Ireland,
 - (d) the provision does not confer or remove functions exercisable otherwise than in or as regards Northern Ireland,
 - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of section 7 of the Northern Ireland Act 1998, be modified by an Act of the Northern Ireland Assembly, and
 - (f) the provision does not deal with, or otherwise relate to, a matter to which paragraph 22 of Schedule 2, or paragraph 42 of Schedule 3, to the Northern Ireland Act 1998 applies.
- 11 References in paragraphs 8 to 10, in connection with the making of regulations under this Part, to the subject-matter of any provision or subordinate legislation are to be read as references to the subject-matter of the provision or subordinate legislation when the regulations concerned are made.

PART 2

IMPLEMENTING THE WITHDRAWAL AGREEMENT

Power to implement withdrawal agreement

- 12 (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate for the purposes of implementing the withdrawal agreement if the devolved authority considers that such provision should be in force on or before exit day.
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate for the purposes of implementing the withdrawal agreement if they consider that such provision should be in force on or before exit day.
- (3) Regulations under this Part may make any provision that could be made by an Act of Parliament.
- (4) But regulations under this Part may not—
- (a) impose or increase taxation or fees,
 - (b) make retrospective provision,
 - (c) create a relevant criminal offence,
 - (d) establish a public authority,
 - (e) modify this Act,
 - (f) modify any subordinate legislation made under this Act unless the regulations—
 - (i) are modifying any subordinate legislation made by the devolved authority concerned, or
 - (ii) are made by a Minister of the Crown acting jointly with a devolved authority, or

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- (g) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it.
- (5) No regulations may be made under this Part after exit day.
- (6) Regulations under sub-paragraph (1) are also subject to paragraphs 13 to 16.

No power to make provision outside devolved competence

- 13 (1) No provision may be made by a devolved authority acting alone in regulations under this Part unless the provision is within the devolved competence of the devolved authority.
- (2) See paragraphs 17 to 19 for the meaning of “devolved competence” for the purposes of this Part.

No power to modify retained direct EU legislation etc.

- 14 (1) No provision may be made by the Scottish Ministers acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 30A(1) of the Scotland Act 1998 if the provision were made in an Act of the Scottish Parliament, or
 - (ii) the restriction in section 57(4) of the Act of 1998 if section 57(5)(b) of that Act so far as relating to this Schedule were ignored.
- (2) No provision may be made by the Welsh Ministers acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 80(8) of the Government of Wales Act 2006 if section 80(8A)(b) of that Act so far as relating to this Schedule were ignored, or
 - (ii) the restriction in section 109A(1) of that Act if the provision were made in an Act of the National Assembly for Wales.
- (3) No provision may be made by a Northern Ireland department acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 6A(1) of the Northern Ireland Act 1998 if the provision were made in an Act of the Northern Ireland Assembly, or
 - (ii) the restriction in section 24(3) of the Act of 1998 if section 24(4)(b) of that Act so far as relating to this Schedule were ignored.

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- (4) No provision may be made by a devolved authority acting alone in regulations under this Part so far as, when made, the provision is inconsistent with any modification (whether or not in force) which—
- (a) is a modification of any retained direct EU legislation or anything which is retained EU law by virtue of section 4,
 - (b) is made by this Act or a Minister of the Crown under this Act, and
 - (c) could not be made by the devolved authority by virtue of sub-paragraph (1), (2) or (as the case may be) (3).
- (5) For the purposes of sub-paragraphs (1)(b), (2)(b) and (3)(b), sections 30A and 57(4) to (15) of the Scotland Act 1998, sections 80(8) to (8L) and 109A of the Government of Wales Act 2006 and sections 6A and 24(3) to (15) of the Northern Ireland Act 1998, and any regulations made under them and any related provision, are to be assumed to be wholly in force so far as that is not otherwise the case.
- (6) References in this paragraph to section 80(8) of the Government of Wales Act 2006 are to be read as references to the new section 80(8) of that Act provided for by paragraph 2 of Schedule 3 to this Act.

Requirement for consultation in certain circumstances

- 15 (1) No regulations may be made under this Part by a devolved authority acting alone, so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements, unless the regulations are, to that extent, made after consulting with the Secretary of State.
- (2) In sub-paragraph (1) “quota arrangements” means any arrangements for, or in connection with, the division of responsibility within the United Kingdom or an area including the United Kingdom for—
- (a) an international obligation, or
 - (b) any right or other benefit arising from such an obligation,
- where the obligation is to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise) or (as the case may be) the benefit is so defined.

Certain requirements for consent, joint exercise or consultation

- 16 Paragraphs 5 to 7 apply for the purposes of this Part as they apply for the purposes of Part 1.

Meaning of devolved competence: Part 2

- 17 A provision is within the devolved competence of the Scottish Ministers for the purposes of this Part if—
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law), or
 - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone (ignoring section 57(2) of the Scotland Act 1998 so far as relating to EU law and section 57(4) of that Act).

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- 18 A provision is within the devolved competence of the Welsh Ministers for the purposes of this Part if—
- (a) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (ignoring section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with the consent of a Minister of the Crown), or
 - (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone (ignoring section 80(8) of the Government of Wales Act 2006).
- 19 A provision is within the devolved competence of a Northern Ireland department for the purposes of this Part if—
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly—
 - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
 - (ii) would not require the consent of the Secretary of State,
 - (b) the provision—
 - (i) amends or repeals Northern Ireland legislation, and
 - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998) and require the consent of the Secretary of State, or
 - (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone (ignoring section 24(1)(b) and (3) of the Northern Ireland Act 1998).