

SCHEDULES

SCHEDULE 2

CORRESPONDING POWERS INVOLVING DEVOLVED AUTHORITIES

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
 - (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.

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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.
- (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

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- (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).
- 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

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- (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).