

SCHEDULES

SCHEDULE 3

FURTHER AMENDMENTS OF DEVOLUTION LEGISLATION AND REPORTING REQUIREMENT

PART 1

CORRESPONDING PROVISION IN RELATION TO EXECUTIVE COMPETENCE

Scotland Act 1998

- 1 In section 57 of the Scotland Act 1998 (EU law and Convention rights)—
- (a) in subsection (2) (no power for members of the Scottish Government to make subordinate legislation, or otherwise act, incompatibly with EU law) omit “or with EU law”, and
 - (b) after subsection (3) insert—
 - “(4) A member of the Scottish Government has no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law and the modification is of a description specified in regulations made by a Minister of the Crown.
 - (5) But subsection (4) does not apply—
 - (a) so far as the modification would be within the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or
 - (b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act 2018.
 - (6) 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 subsection (4) 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.
 - (7) For the purposes of subsection (6) 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;

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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).

- (8) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (6) 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.
- (9) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under subsection (4) including a duty to explain any decision to lay a draft without the consent of the Parliament).
- (10) No regulations may be made under subsection (4) after the end of the period of two years beginning with exit day.
- (11) Subsection (10) does not affect the continuation in force of regulations made under subsection (4) at or before the end of the period mentioned in subsection (10).
- (12) Any regulations under subsection (4) 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 the making, confirming or approving of subordinate legislation after the end of that period.
- (13) Subsections (6) to (11) do not apply in relation to regulations which only relate to a revocation of a specification.
- (14) The restriction in subsection (4) is in addition to any restriction in section 7 of the European Union (Withdrawal) Act 2018 or elsewhere on the power of a member of the Scottish Government to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.
- (15) 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.”

Government of Wales Act 2006

- 2 In section 80 of the Government of Wales Act 2006 (EU law) for subsection (8) (no power for the First Minister, the Counsel General or the Welsh Ministers to make, confirm or approve subordinate legislation, or otherwise act, incompatibly with EU law etc.) substitute—

“(8) The Welsh Ministers have no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law

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and the modification is of a description specified in regulations made by a Minister of the Crown.

- (8A) But subsection (8) does not apply—
- (a) so far as the modification would be within the Assembly’s legislative competence if it were included in an Act of the Assembly, or
 - (b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act 2018.
- (8B) No regulations are to be made under subsection (8) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (8C) A Minister of the Crown must not lay a draft as mentioned in subsection (8B) unless—
- (a) the Assembly has made a consent decision in relation to the laying of the draft, or
 - (b) the 40 day period has ended without the Assembly having made such a decision.
- (8D) For the purposes of subsection (8C) 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 Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).
- (8E) In subsection (8C)—
- “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 Welsh Ministers,
- and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.
- (8F) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (8B) must—
- (a) provide a copy of the draft to the Welsh Ministers, and
 - (b) inform the Presiding Officer that a copy has been so provided.
- (8G) See also section 157ZA (duty to make explanatory statement about regulations under subsection (8) including a duty to explain any decision to lay a draft without the consent of the Assembly).
- (8H) No regulations may be made under subsection (8) after the end of the period of two years beginning with exit day.
- (8I) Subsection (8H) does not affect the continuation in force of regulations made under subsection (8) at or before the end of the period mentioned in subsection (8H).

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- (8J) Any regulations under subsection (8) 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 the making, confirming or approving of subordinate legislation after the end of that period.
- (8K) Subsections (8C) to (8I) do not apply in relation to regulations which only relate to a revocation of a specification.
- (8L) The restriction in subsection (8) is in addition to any restriction in section 7 of the European Union (Withdrawal) Act 2018 or elsewhere on the power of the Welsh Ministers to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.”

Northern Ireland Act 1998

- 3 In section 24 of the Northern Ireland Act 1998 (EU law, Convention rights etc.)—
- (a) omit subsection (1)(b) (no power for the First Minister, the deputy First Minister, a Northern Ireland Minister or a Northern Ireland department to make, confirm or approve subordinate legislation, or otherwise act, incompatibly with EU law), and
 - (b) after subsection (2) insert—
 - “(3) A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law and the modification is of a description specified in regulations made by a Minister of the Crown.
 - (4) But subsection (3) does not apply—
 - (a) so far as the modification would be within the legislative competence of the Assembly if it were included in an Act of the Assembly, or
 - (b) to the making of regulations under Schedule 2 or 4 to the European Union (Withdrawal) Act 2018.
 - (5) A Minister of the Crown must not lay for approval before each House of the Parliament a draft of a statutory instrument containing regulations under subsection (3) unless—
 - (a) the Assembly has made a consent decision in relation to the laying of the draft, or
 - (b) the 40 day period has ended without the Assembly having made such a decision.
 - (6) For the purposes of subsection (5) 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;

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

- (7) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (5) must—
- (a) provide a copy of the draft to the relevant Northern Ireland department, and
 - (b) inform the Presiding Officer that a copy has been so provided.
- (8) See also section 96A (duty to make explanatory statement about regulations under subsection (3) including a duty to explain any decision to lay a draft without the consent of the Assembly).
- (9) No regulations may be made under subsection (3) after the end of the period of two years beginning with exit day.
- (10) Subsection (9) does not affect the continuation in force of regulations made under subsection (3) at or before the end of the period mentioned in subsection (9).
- (11) Any regulations under subsection (3) 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 the making, confirming or approving of subordinate legislation after the end of that period.
- (12) Subsections (5) to (10) do not apply in relation to regulations which only relate to a revocation of a specification.
- (13) Regulations under subsection (3) may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Minister of the Crown making them considers appropriate.
- (14) The restriction in subsection (3) is in addition to any restriction in section 7 of the European Union (Withdrawal) Act 2018 or elsewhere on the power of a Minister or Northern Ireland department to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.
- (15) In this section—
- “the relevant Northern Ireland department” means such Northern Ireland department as the Minister of the Crown concerned considers appropriate;
 - “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 relevant Northern Ireland department,
- and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.”