

SCHEDULES

SCHEDULE 7

REGULATIONS

PART 3

GENERAL PROVISION ABOUT POWERS UNDER ACT

Scope and nature of powers: general

- 20 (1) Any power to make regulations under this Act—
- (a) so far as exercisable by a Minister of the Crown or by a Minister of the Crown acting jointly with a devolved authority, is exercisable by statutory instrument,
 - (b) so far as exercisable by the Welsh Ministers or by the Welsh Ministers acting jointly with a Minister of the Crown, is exercisable by statutory instrument, and
 - (c) so far as exercisable by a Northern Ireland department (other than when acting jointly with a Minister of the Crown), is exercisable by statutory rule for the purposes of the [Statutory Rules \(Northern Ireland\) Order 1979 \(SI 1979/1573 \(NI 12\)\)](#) (and not by statutory instrument).
- (2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#) (Scottish statutory instruments).
- 21 Any power to make regulations under this Act—
- (a) may be exercised so as to—
 - (i) modify retained EU law, or
 - (ii) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and
 - (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way).
- 22 The fact that a power to make regulations is conferred by this Act does not affect the extent of any other power to make regulations under this Act.

Scope of consequential and transitional powers

- 23 (1) The fact that anything continues to be, or forms part of, domestic law by virtue of any provision of sections 2 to 6 or Schedule 1 does not prevent it from being modified by regulations made under section 23(1) in consequence of any other provision made by or under this Act.

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- (2) Accordingly, any retained EU law may, for example, be modified by regulations made under section 23(1) in consequence of the repeal of any enactment contained in the European Communities Act 1972.
- (3) The power to make regulations under section 23(6) includes the power to make transitional, transitory or saving provision in connection with—
- (a) the repeal of any enactment contained in the European Communities Act 1972, or
 - (b) the withdrawal of the United Kingdom from the EU,
- which is additional to that made by any provision of sections 2 to 6 or Schedule 1 or alters its effect in particular cases or descriptions of case.
- (4) The power to make regulations under section 23(1) includes the power to make transitional, transitory or saving provision which—
- (a) is in connection with any repeal or revocation made by any such regulations of an enactment in consequence of—
 - (i) the repeal of any enactment contained in the European Communities Act 1972, or
 - (ii) the withdrawal of the United Kingdom from the EU, and
 - (b) is additional to that made by any provision of sections 2 to 6 or Schedule 1 or alters its effect in particular cases or descriptions of case.
- (5) Provision of the kind mentioned in sub-paragraph (3) or (4) may (among other things) include further provision treating any provision of that kind as retained EU law for particular purposes or all purposes.

Anticipatory exercise of powers in relation to retained EU law

- 24 Any power to make regulations under this Act which modify retained direct EU legislation, anything which is retained EU law by virtue of section 4 or any other retained EU law is capable of being exercised before exit day so that the regulations come into force on or after exit day.

Scope of appointed day powers

- 25 Any power of a Minister of the Crown under this Act to appoint a day includes a power to appoint a time on that day if the Minister considers it appropriate to do so.

Effect of certain provisions in Schedule 8 on scope of powers

- 26 The modifications made by Part 1 of Schedule 8 and paragraphs 18 to 22 and 31 to 35 of that Schedule do not prevent or otherwise limit the making of different provision, in particular cases or descriptions of case, in regulations under section 23(1) or in any other regulations under this Act.

Disapplication of certain review provisions

- 27 Section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply in relation to any power to make regulations conferred by this Act.

Explanatory statements for certain powers: appropriateness, equalities etc.

- 28 (1) This paragraph applies where—
- (a) a statutory instrument containing regulations under section 8(1), 9 or 23(1) or paragraph 1(2) or 12(2) of Schedule 2, or
 - (b) a draft of such an instrument,
- is to be laid before each House of Parliament.
- (2) Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that in the Minister’s opinion the instrument or draft does no more than is appropriate.
- (3) Before the instrument or draft is laid, the relevant Minister must make a statement as to why, in the Minister’s opinion—
- (a) there are good reasons for the instrument or draft, and
 - (b) the provision made by the instrument or draft is a reasonable course of action.
- (4) Before the instrument or draft is laid, the relevant Minister must make a statement—
- (a) as to whether the instrument or draft amends, repeals or revokes any provision of equalities legislation, and
 - (b) if it does, explaining the effect of each such amendment, repeal or revocation.
- (5) Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that, in relation to the instrument or draft, the Minister has, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- (6) Before the instrument or draft is laid, the relevant Minister must make a statement otherwise explaining—
- (a) the instrument or draft,
 - (b) its purpose,
 - (c) the law before exit day which is relevant to it, and
 - (d) its effect (if any) on retained EU law.
- (7) Where an instrument or draft creates a criminal offence, the statement required by sub-paragraph (3) must (among other things) include an explanation of why, in the relevant Minister’s opinion, there are good reasons for creating the offence and for the penalty provided in respect of it.
- (8) If the relevant Minister fails to make a statement required by sub-paragraph (2), (3), (4), (5) or (6) before the instrument or draft is laid, a Minister of the Crown must make a statement explaining why the relevant Minister has failed to do so.
- (9) A statement under sub-paragraph (2), (3), (4), (5), (6) or (8) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (10) For the purposes of this paragraph, where an instrument or draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.
- (11) This paragraph does not apply in relation to any laying before each House of Parliament of an instrument or draft instrument where an equivalent draft instrument

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(ignoring any differences relating to procedure) has previously been laid before both Houses.

(12) In this paragraph—

“equalities legislation” means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts;

“the relevant Minister” means the Minister of the Crown who makes, or is to make, the instrument.

29 (1) This paragraph applies where—

- (a) a Scottish statutory instrument containing regulations under Part 1 or 2 of Schedule 2, or
- (b) a draft of such an instrument,

is to be laid before the Scottish Parliament.

(2) Before the instrument or draft is laid, the Scottish Ministers must make a statement to the effect that in the Scottish Ministers’ opinion the instrument or draft does no more than is appropriate.

(3) Before the instrument or draft is laid, the Scottish Ministers must make a statement as to why, in the Scottish Ministers’ opinion—

- (a) there are good reasons for the instrument or draft, and
- (b) the provision made by the instrument or draft is a reasonable course of action.

(4) Before the instrument or draft is laid, the Scottish Ministers must make a statement—

- (a) as to whether the instrument or draft amends, repeals or revokes any provision of equalities legislation, and
- (b) if it does, explaining the effect of each such amendment, repeal or revocation.

(5) Before the instrument or draft is laid, the Scottish Ministers must make a statement to the effect that, in relation to the instrument or draft, the Scottish Ministers have, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

(6) Before the instrument or draft is laid, the Scottish Ministers must make a statement otherwise explaining—

- (a) the instrument or draft,
- (b) its purpose,
- (c) the law before exit day which is relevant to it, and
- (d) its effect (if any) on retained EU law.

(7) Where an instrument or draft creates a criminal offence, the statement required by sub-paragraph (3) must (among other things) include an explanation of why, in the Scottish Ministers’ opinion, there are good reasons for creating the offence and for the penalty provided in respect of it.

(8) If the Scottish Ministers fail to make a statement required by sub-paragraph (2), (3), (4), (5) or (6) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.

(9) A statement under sub-paragraph (2), (3), (4), (5), (6) or (8) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

- (10) In this paragraph “equalities legislation” means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts.

Further explanatory statements in certain sub-delegation cases

- 30 (1) This paragraph applies where—
- (a) a statutory instrument containing regulations under section 8(1) or 9 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or
 - (b) a draft of such an instrument,
- is to be laid before each House of Parliament.
- (2) Before the instrument or draft is laid, the relevant Minister must make a statement explaining why it is appropriate to create a relevant sub-delegated power.
- (3) If the relevant Minister fails to make a statement required by sub-paragraph (2) before the instrument or draft is laid, a Minister of the Crown must make a statement explaining why the relevant Minister has failed to do so.
- (4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (5) Sub-paragraphs (10) and (11) of paragraph 28 apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (6) For the purposes of this paragraph references to creating a relevant sub-delegated power include (among other things) references to—
- (a) amending a power to legislate which is exercisable by statutory instrument by a relevant UK authority so that it becomes a relevant sub-delegated power, or
 - (b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.
- (7) In this paragraph—
- “the relevant Minister” means the Minister of the Crown who makes, or is to make, the instrument;
 - “relevant sub-delegated power” means a power to legislate which—
 - (a) is not exercisable by any of the following—
 - (i) statutory instrument,
 - (ii) Scottish statutory instrument, or
 - (iii) statutory rule, or
 - (b) is so exercisable by a public authority other than a relevant UK authority;
 - “relevant UK authority” means a Minister of the Crown, a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or a Northern Ireland devolved authority.
- 31 (1) This paragraph applies where—

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- (a) a Scottish statutory instrument containing regulations under Part 1 or 2 of Schedule 2 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or
 - (b) a draft of such an instrument,
- is to be laid before the Scottish Parliament.
- (2) Before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why it is appropriate to create a relevant sub-delegated power.
- (3) If the Scottish Ministers fail to make a statement required by sub-paragraph (2) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.
- (4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.
- (5) For the purposes of this paragraph references to creating a relevant sub-delegated power include (among other things) references to—
- (a) amending a power to legislate which is exercisable by Scottish statutory instrument by a member of the Scottish Government so that it becomes a relevant sub-delegated power, or
 - (b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.
- (6) In this paragraph “relevant sub-delegated power” means a power to legislate which—
- (a) is not exercisable by Scottish statutory instrument, or
 - (b) is so exercisable by a public authority other than a member of the Scottish Government.

Annual reports in certain sub-delegation cases

- 32 (1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by a Minister of the Crown under section 8(1) or 9 or paragraph 1 of Schedule 4 must—
- (a) if the power has been exercised during a relevant year, and
 - (b) as soon as practicable after the end of the year,
- prepare a report on how the power has been exercised during the year.
- (2) The person must—
- (a) lay the report before each House of Parliament, and
 - (b) once laid—
 - (i) provide a copy of it to a Minister of the Crown, and
 - (ii) publish it in such manner as the person considers appropriate.
- (3) In this paragraph—
- “relevant sub-delegated power” has the same meaning as in paragraph 30;
 - “relevant year” means—
 - (a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and
 - (b) in any other case, the calendar year.

- 33 (1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by the Scottish Ministers by Scottish statutory instrument under Part 1 or 2 of Schedule 2 or paragraph 1 of Schedule 4 must—
- (a) if the power has been exercised during a relevant year, and
 - (b) as soon as practicable after the end of the year,
- prepare a report on how the power has been exercised during the year.
- (2) The person must—
- (a) lay the report before the Scottish Parliament, and
 - (b) once laid—
 - (i) send a copy of it to the Scottish Ministers, and
 - (ii) publish it in such manner as the person considers appropriate.
- (3) In this paragraph—
- “relevant sub-delegated power” has the same meaning as in paragraph 31;
 - “relevant year” means—
 - (a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and
 - (b) in any other case, the calendar year.

Further explanatory statements in urgency cases

- 34 (1) This paragraph applies where a statutory instrument containing regulations under this Act is to be made by virtue of paragraph 5(2) or 19(2).
- (2) The Minister of the Crown who is to make the instrument must make a statement in writing explaining the reasons for the Minister’s opinion that, by reason of urgency, it is necessary to make the regulations without a draft of the instrument containing them being laid before, and approved by a resolution of, each House of Parliament.
- (3) A statement under sub-paragraph (2) must be published before, or at the same time as, the instrument as made is laid before each House of Parliament.
- (4) If the Minister—
- (a) fails to make the statement required by sub-paragraph (2) before the instrument is made, or
 - (b) fails to publish it as required by sub-paragraph (3),
- a Minister of the Crown must make a statement explaining the failure.
- (5) A statement under sub-paragraph (4) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (6) For the purposes of this paragraph, where an instrument is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.
- 35 (1) This paragraph applies where regulations are to be made by the Scottish Ministers under this Act by virtue of paragraph 6(2) (whether or not as applied by paragraph 19(7)).
- (2) The Scottish Ministers must make a statement in writing explaining the reasons for the Scottish Ministers’ opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to the affirmative procedure.

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- (3) A statement under sub-paragraph (2) must be published before, or at the same time as, the regulations as made are laid before the Scottish Parliament.
- (4) If the Scottish Ministers—
 - (a) fail to make the statement required by sub-paragraph (2) before the regulations are made, or
 - (b) fail to publish it as required by sub-paragraph (3),they must make a statement explaining the failure.
- (5) A statement under sub-paragraph (4) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

Hybrid instruments

- 36 If an instrument, or a draft of an instrument, containing regulations under this Act would, apart from this paragraph, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

Procedure on re-exercise of certain powers

- 37 (1) A power to make regulations which, under this Schedule, is capable of being exercised subject to different procedures may (in spite of section 14 of the Interpretation Act 1978) be exercised, when revoking, amending or re-enacting an instrument made under the power, subject to a different procedure from the procedure to which the instrument was subject.
- (2) For the purposes of sub-paragraph (1) in its application to regulations under section 23(6) no procedure is also a procedure.

Combinations of instruments

- 38 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made or its approval after it is made.
- (2) The statutory instrument may also include regulations under this Act or another enactment which are made by statutory instrument which is subject to a procedure before Parliament that provides for the annulment of the instrument after it has been made.
- (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument is the procedure mentioned in sub-paragraph (1) and not the procedure mentioned in sub-paragraph (2).
- (4) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the National Assembly for Wales as they apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to the National Assembly for Wales.
- (5) Sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument but as if the references to Parliament were references to the Northern Ireland Assembly.

- (6) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as well as a procedure before Parliament as they apply to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to Parliament and the Scottish Parliament, the National Assembly for Wales or (as the case may be) the Northern Ireland Assembly.
- (7) This paragraph does not prevent the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act (and, accordingly, references in this Schedule to an instrument containing regulations are to be read as references to an instrument containing (whether alone or with other provision) regulations).