

Status: Point in time view as at 19/05/2020.

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SCHEDULES

SCHEDULE 2

CORRESPONDING POWERS INVOLVING DEVOLVED AUTHORITIES

[^{F1}PART 1B

PROVISION IN CONNECTION WITH CERTAIN OTHER SEPARATION ISSUES

Textual Amendments

F1 Sch. 2 Pt. 1B inserted (19.5.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), ss. 19, 42(7) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/518, reg. 2(h)

Powers in connection with Part 3 of withdrawal agreement and EEA EFTA separation agreement

- 11G (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate—
- (a) to implement Part 3 of the withdrawal agreement (separation provisions),
 - (b) to supplement the effect of section 7A in relation to that Part, or
 - (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7A and that Part).
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate—
- (a) to implement Part 3 of the withdrawal agreement (separation provisions),
 - (b) to supplement the effect of section 7A in relation to that Part, or
 - (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7A and that Part).
- (3) A devolved authority may by regulations make such provision as the devolved authority considers appropriate—
- (a) to implement Part 3 of the EEA EFTA separation agreement (separation provisions),
 - (b) to supplement the effect of section 7B in relation to that Part, or
 - (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7B and that Part).
- (4) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate—
- (a) to implement Part 3 of the EEA EFTA separation agreement (separation provisions),
 - (b) to supplement the effect of section 7B in relation to that Part, or

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- (c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7B and that Part).
- (5) Regulations under this Part may make any provision that could be made by an Act of Parliament.
- (6) Regulations under this Part may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of—
 - (a) section 7A above and Part 3 of the withdrawal agreement, or
 - (b) section 7B above and Part 3 of the EEA EFTA separation agreement.
- (7) 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) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
 - (f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).
- (8) Regulations under sub-paragraph (1) or (3) are also subject to paragraphs 11H and 11I.
- (9) In this paragraph references to Part 3 of the withdrawal agreement or of the EEA EFTA separation agreement include references to any provision of EU law which is applied by, or referred to in, that Part (to the extent of the application or reference).

No power to make provision outside devolved competence

- 11H (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 11J to 11L for the meaning of “devolved competence” for the purposes of this Part.

Certain requirements for consent, joint exercise or consultation

- 11I 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 1B

- 11J 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

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- (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).
- 11K 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).
- 11L 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).]

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