

SCHEDULES

SCHEDULE 5

CONSEQUENTIAL AND TRANSITIONAL PROVISION ETC.

PART 1

GENERAL CONSEQUENTIAL PROVISION

Subordinate legislation with commencement by reference to exit day

- 1 (1) Any provision in subordinate legislation made before exit day under—
 - (a) any provision of the European Union (Withdrawal) Act 2018 (or any provision made under any such provision), or
 - (b) any other enactment,which provides, by reference to exit day (however expressed), for all or part of that or any other subordinate legislation to come into force immediately before exit day, on exit day or at any time after exit day is to be read instead as providing for the subordinate legislation or (as the case may be) the part to come into force immediately before IP completion day, on IP completion day or (as the case may be) at the time concerned after IP completion day.
 - (2) Sub-paragraph (1) does not apply so far as it is expressly disapplied by the subordinate legislation that provides as mentioned in that sub-paragraph.
 - (3) An appropriate authority may by regulations—
 - (a) provide for sub-paragraph (1) not to apply to any extent in particular cases or descriptions of case, or
 - (b) make different provision in particular cases or descriptions of case to that made by sub-paragraph (1).
 - (4) But see paragraph 2 for further provision about the power of a devolved authority acting alone to make regulations under sub-paragraph (3).
 - (5) No regulations may be made under sub-paragraph (3) after the end of the period of one year beginning with IP completion day.
 - (6) In this paragraph “appropriate authority” means—
 - (a) a Minister of the Crown,
 - (b) a devolved authority, or
 - (c) a Minister of the Crown acting jointly with a devolved authority.
- 2 (1) No provision may be made by a devolved authority acting alone in regulations under paragraph 1(3) so far as those regulations relate to the coming into force of regulations under section 23(1) or (6) of, or paragraph 1(2)(b) of Schedule 1 to, the European Union (Withdrawal) Act 2018.

Status: This is the original version (as it was originally enacted).

- (2) Subject to this, no provision may be made by a devolved authority acting alone in regulations under paragraph 1(3) relating to the coming into force of all or part of any subordinate legislation unless—
- (a) the devolved authority acting alone otherwise than under paragraph 1(3) made the provision for the coming into force of the subordinate legislation or part and either—
 - (i) the regulations provide for paragraph 1(1) not to apply to the subordinate legislation or part, or
 - (ii) the devolved authority acting alone otherwise than under paragraph 1(3) could provide for the subordinate legislation or part to come into force at the same time as is provided for by virtue of the regulations, or
 - (b) the devolved authority acting alone could make provision corresponding to that made by the subordinate legislation or part and could provide for that provision to come into force at the same time as is provided for by virtue of the regulations.
- (3) Where the test in sub-paragraph (2)(a) or (b) is (to any extent) only met by a devolved authority acting alone with the consent of a Minister of the Crown, the consent of a Minister of the Crown is required before the regulations under paragraph 1(3) may be made by the devolved authority acting alone.
- (4) Except where sub-paragraph (3) applies, no provision may be made under paragraph 1(3) by a devolved authority acting alone unless the devolved authority has consulted a Minister of the Crown.

Devolved preparatory legislation of a kind mentioned in paragraph 41(3) to (5) of Schedule 8 to EUWA 2018

- 3 (1) Any provision of primary legislation which—
- (a) is made before exit day by virtue of any of sub-paragraphs (3) to (5) of paragraph 41 of Schedule 8 to the European Union (Withdrawal) Act 2018, and
 - (b) provides, by reference to exit day (however expressed), for itself or any other provision so made to come into force on exit day or at any time after exit day, is to be read instead as providing for the provision to come into force on IP completion day or (as the case may be) at that time after IP completion day.
- (2) But a relevant devolved authority may, by regulations and subject to sub-paragraphs (4) to (7)—
- (a) provide for sub-paragraph (1) not to apply to any extent in particular cases or descriptions of case,
 - (b) make different provision in particular cases or descriptions of case to that made by sub-paragraph (1), or
 - (c) make such provision as the relevant devolved authority considers appropriate in consequence of sub-paragraph (1) (including provision restating the effect of that sub-paragraph).
- (3) The power to make regulations under sub-paragraph (2) may (among other things) be exercised by modifying any provision made by or under an enactment.

- (4) No provision may be made by the Scottish Ministers in regulations under sub-paragraph (2) unless it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.
- (5) No provision may be made by the Welsh Ministers in regulations under sub-paragraph (2) unless it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (including any provision that could be made only with the consent of a Minister of the Crown).
- (6) No provision may be made by a Northern Ireland department in regulations under sub-paragraph (2) unless it would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of the Assembly (including any provision that could be made only with the consent of the Secretary of State).
- (7) No regulations may be made under sub-paragraph (2) after the end of the period of one year beginning with IP completion day.
- (8) In this paragraph “relevant devolved authority” means—
 - (a) in relation to any provision of an Act of the Scottish Parliament, the Scottish Ministers,
 - (b) in relation to any provision of an Act of the National Assembly for Wales, the Welsh Ministers, and
 - (c) in relation to any provision of an Act of the Northern Ireland Assembly, a Northern Ireland department.

Power to make consequential regulations under EUWA 2018

- 4 (1) The power of a Minister of the Crown under section 23(1) of the European Union (Withdrawal) Act 2018 to make such provision as the Minister considers appropriate in consequence of that Act includes the power to make such provision as the Minister considers appropriate in consequence of that Act as modified, or to be modified, by or under this Act (and references in the Act of 2018 to the power under section 23(1) of that Act are to be read accordingly).
- (2) Sub-paragraph (1) does not limit the power conferred by section 41(1) above.
- (3) The reference in sub-paragraph (1) to any modification by or under this Act of the European Union (Withdrawal) Act 2018 includes a reference to any modification made by or under this Act of a provision of another Act which was inserted into that other Act or otherwise modified by the Act of 2018.