

SCHEDULES

SCHEDULE 2

INDEPENDENT MONITORING AUTHORITY FOR THE CITIZENS’ RIGHTS AGREEMENTS

PART 2

FUNCTIONS OF THE IMA ETC.

General duties

- 22 (1) The IMA must monitor the implementation and application in the United Kingdom of Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement.
- (2) The duty in sub-paragraph (1) includes keeping under review the adequacy and effectiveness of—
- (a) the legislative framework which implements or otherwise deals with matters arising out of, or related to, Part 2, and
 - (b) the exercise by relevant public authorities of functions in relation to Part 2.
- (3) In this Schedule—
- “Part 2” means Part 2 of the withdrawal agreement or (as the case may be) Part 2 of the EEA EFTA separation agreement, so far as the Part in question applies to and in the United Kingdom;
 - “relevant public authority” means the Secretary of State or any other person who exercises functions of a public nature, apart from—
 - (a) a court or tribunal;
 - (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament;
 - (c) the devolved legislatures or a person exercising functions in connection with proceedings in any of the devolved legislatures.
- 23 (1) The IMA must promote the adequate and effective implementation and application in the United Kingdom of Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement.
- (2) For related functions see—
- (a) paragraph 27 (reports following an inquiry), and
 - (b) paragraph 30 (instituting or intervening in legal proceedings).
- 24 In exercising its functions, the IMA must have regard to the importance of addressing general or systemic failings in the implementation or application of Part 2.

Inquiries

- 25 (1) Subject to sub-paragraph (3), the IMA may carry out an inquiry—
- (a) in response to a request from the Secretary of State,
 - (b) in response to a request from the Scottish Ministers relating to a relevant public authority which is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),
 - (c) in response to a request from the Welsh Ministers relating to a relevant public authority which is a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006,
 - (d) in response to a request from the Executive Office in Northern Ireland relating to a relevant public authority—
 - (i) which exercises functions only in or as regards Northern Ireland, and
 - (ii) whose functions are wholly or mainly functions which relate to transferred matters (within the meaning of the Northern Ireland Act 1998),
 - (e) following a complaint by a person under paragraph 29, or
 - (f) on its own initiative.
- (2) The purposes of an inquiry are for the IMA—
- (a) to decide whether—
 - (i) the United Kingdom has failed to comply with Part 2, or
 - (ii) a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right (see paragraph 41(1)), and
 - (b) to identify any recommendations that it considers appropriate to be made to a relevant public authority to promote the adequate and effective implementation or application of Part 2.
- (3) The IMA may not carry out an inquiry under sub-paragraph (1)(e) or (f) unless satisfied that there are reasonable grounds to believe that the inquiry may conclude—
- (a) that the United Kingdom has failed to comply with Part 2, or
 - (b) that a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right.
- (4) The IMA may decide not to carry out an inquiry even if satisfied as mentioned in sub-paragraph (3).
- (5) Among the reasons the IMA may decide not to carry out an inquiry is if it considers that there are no reasonable grounds to believe that the inquiry may identify general or systemic failings in the implementation or application of Part 2.
- 26 (1) The IMA must publish its intention to carry out an inquiry.
- (2) Where an inquiry is about matters raised in a complaint by a person under paragraph 29(1)(a) or (b), the IMA must invite representations from—
- (a) the person,
 - (b) any relevant public authority about which the person is complaining, and
 - (c) any other person the IMA considers appropriate.
- (3) In any other inquiry, the IMA must invite representations from any person it considers appropriate.

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

- (4) The IMA must publish information about how and when a person may submit representations in relation to an inquiry.
- (5) The IMA must consider any representations which are submitted accordingly.

Reports following an inquiry

- 27 (1) When the IMA has carried out an inquiry under paragraph 25, it must—
 - (a) prepare a written report of its conclusions, and
 - (b) include in the report any recommendations it considers appropriate to be made to a relevant public authority to promote the adequate and effective implementation or application of Part 2.
- (2) The IMA must publish a report as soon as reasonably practicable after preparing it.
- (3) Before publishing a report that contains material relating to border security or terrorism (including material about individual cases), the IMA must give the Secretary of State an opportunity to require the IMA to remove from the report any material which, in the opinion of the Secretary of State, should not be published on the grounds that its publication—
 - (a) is undesirable for reasons of national security, or
 - (b) might jeopardise an individual’s safety.
- (4) As soon as reasonably practicable after publishing a report, the IMA must send it to—
 - (a) the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland,
 - (b) any relevant public authority which was invited to make representations in relation to the inquiry,
 - (c) any relevant public authority to which a recommendation is made in the report, and
 - (d) any other relevant public authority the IMA considers appropriate.
- 28 (1) Where a report under paragraph 27 includes recommendations to a relevant public authority, the authority must—
 - (a) have regard to the recommendations, and
 - (b) publish a response to the recommendations expeditiously and, in any event, within the period of 3 months beginning with the day on which the IMA published its report.
- (2) The authority’s response must explain—
 - (a) what, if anything, it proposes to do in response to each recommendation, and
 - (b) its reasons.

Complaints

- 29 (1) A person who claims to have a relevant right may complain to the IMA that—
 - (a) the United Kingdom has failed to comply with Part 2;
 - (b) a relevant public authority has acted or is proposing to act in a way that prevents the person exercising the right in question.
- (2) The IMA must carry out a preliminary review of each complaint in order to decide whether to carry out an inquiry under paragraph 25 in relation to it.

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- (3) In deciding whether to carry out an inquiry in response to a complaint, the IMA must consider whether it would be more appropriate for the person who made the complaint to deal with its subject matter by other means (for example, court proceedings) than for the IMA to carry out an inquiry.
- (4) If the IMA decides not to carry out an inquiry, the IMA—
 - (a) must inform the person who made the complaint, and
 - (b) may advise the person about other ways of dealing with the subject matter of the complaint.

Applying for review or intervening in legal proceedings

- 30 (1) The IMA may, if it considers it appropriate to do so in order to promote the adequate and effective implementation or application of Part 2—
 - (a) make an application for review, or
 - (b) intervene in any legal proceedings (including proceedings on an application for review).
- (2) For the purposes of sub-paragraph (1), the IMA is to be treated as having title and interest in relation to the subject matter of any application which it may make, or of any legal proceedings in which it may intervene, in Scotland.
- (3) Sub-paragraph (1) does not create a cause of action.
- (4) In this paragraph, “application for review” means—
 - (a) in relation to England and Wales or Northern Ireland, an application for judicial review, and
 - (b) in relation to Scotland, an application to the supervisory jurisdiction of the Court of Session.

Annual reports for specialised committee etc.

- 31 (1) The IMA must provide annual reports on the implementation and application of Part 2 of the withdrawal agreement to the specialised committee on citizens’ rights established by Article 165(1)(a) of that agreement.
- (2) The IMA must provide annual reports on the implementation and application of Part 2 of the EEA EFTA separation agreement to the Joint Committee established by Article 65(1) of that agreement.
- (3) The annual reports must contain information on—
 - (a) measures taken by relevant public authorities to implement or comply with Part 2,
 - (b) the number and nature of complaints made to the IMA under paragraph 29(1), and
 - (c) the exercise by the IMA of its functions in relation to Part 2.
- (4) The annual reports may contain any other information which the IMA considers appropriate.
- (5) The first annual reports must relate to the period of 12 months beginning with IP completion day.
- (6) Subsequent annual reports must relate to each successive period of 12 months.

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- (7) The IMA must provide annual reports to the committees mentioned in sub-paragraphs (1) and (2) as soon as reasonably practicable after the end of the period to which they relate.
- (8) The IMA must, at the same time as providing an annual report to the committees mentioned in sub-paragraphs (1) and (2), provide it to—
 - (a) the Secretary of State,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers, and
 - (d) the Executive Office in Northern Ireland.
- (9) The Secretary of State must, as soon as reasonably practicable after receiving an annual report, lay it before Parliament.
- (10) The Secretary of State must publish the annual report as soon as reasonably practicable after laying it before Parliament.
- (11) As soon as reasonably practicable after receiving an annual report, the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland must lay the report before the appropriate devolved legislature.

Guidance

- 32 (1) The IMA must publish guidance on how it will exercise its functions under paragraphs 22 to 30.
- (2) The guidance must explain how the IMA will give effect to the importance of addressing general or systemic failings in the implementation and application of Part 2.
- (3) In preparing the guidance, the IMA must have regard to—
 - (a) the way in which the European Commission exercises its functions of monitoring and enforcement in relation to citizens’ rights under EU law, and
 - (b) any guidance or other publications issued by the European Commission about how it exercises such functions.
- (4) The IMA must first publish guidance within the period of 3 months beginning with the day on which the membership of the IMA is first constituted in accordance with paragraph 2(1).

Gibraltar

- 33 The IMA is to exercise any function in relation to Gibraltar which—
 - (a) the Gibraltar legislature confers on it, and
 - (b) corresponds to a function which the IMA has in relation to the United Kingdom by virtue of this Schedule.

Supplementary power

- 34 (1) Subject to sub-paragraph (2), the IMA may do anything which it thinks necessary or expedient for the purposes of, or in connection with, the exercise of its functions.
- (2) The IMA may not—

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- (a) borrow money;
- (b) accept gifts of money, land or other property.

Cooperation by relevant public authorities

- 35 A relevant public authority must, so far as reasonably practicable, comply with a request by the IMA to cooperate with it in the exercise of the IMA's functions (including a request to provide information or documents).