

Status: Point in time view as at 19/05/2020.

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 11

CORRESPONDING POWERS INVOLVING DEVOLVED AUTHORITIES

PART 1

DEALING WITH DEFICIENCIES ARISING FROM WITHDRAWAL

Power to deal with deficiencies

- 1 (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate to prevent, remedy or mitigate—
- (a) any failure of retained EU law to operate effectively, or
 - (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate to prevent, remedy or mitigate—
- (a) any failure of retained EU law to operate effectively, or
 - (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (3) Section 8(2) to (9) apply for the purposes of this Part as they apply for the purposes of section 8 (including the references to the Minister in section 8(2) and (3) (but not the reference to a Minister of the Crown in section 8(3)(b)) being read as references to the devolved authority or (as the case may be) the Minister acting jointly with the devolved authority and the references to section 8(1) being read as references to sub-paragraph (1) or (2) above).
- (4) Regulations under sub-paragraph (1) above are subject to paragraphs 2 to 7.

No power to make provision outside devolved competence

- 2 (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 8 to 11 for the meaning of “devolved competence” for the purposes of this Part.

No power to modify retained direct EU legislation or confer certain functions

- 3 (1) No provision may be made by the Scottish Ministers acting alone in regulations under this Part so far as the provision—

Status: Point in time view as at 19/05/2020.

Changes to legislation: *European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 30A(1) of the Scotland Act 1998 if the provision were made in an Act of the Scottish Parliament, or
 - (ii) the restriction in section 57(4) of the Act of 1998 if section 57(5)(b) of that Act so far as relating to this Schedule were ignored.
- (2) No provision may be made by the Welsh Ministers acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 80(8) of the Government of Wales Act 2006 if section 80(8A)(b) of that Act so far as relating to this Schedule were ignored, or
 - (ii) the restriction in section 109A(1) of that Act if the provision were made in an Act of the National Assembly for Wales.
- (3) No provision may be made by a Northern Ireland department acting alone in regulations under this Part so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 or confers functions which correspond to functions to make EU tertiary legislation, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 6A(1) of the Northern Ireland Act 1998 if the provision were made in an Act of the Northern Ireland Assembly, or
 - (ii) the restriction in section 24(3) of the Act of 1998 if section 24(4)(b) of that Act so far as relating to this Schedule were ignored.
- (4) No provision may be made by a devolved authority acting alone in regulations under this Part so far as, when made, the provision is inconsistent with any modification (whether or not in force) which—
- (a) is a modification of any retained direct EU legislation or anything which is retained EU law by virtue of section 4,
 - (b) is made by this Act or a Minister of the Crown under this Act, and
 - (c) could not be made by the devolved authority by virtue of sub-paragraph (1), (2) or (as the case may be) (3).
- (5) For the purposes of sub-paragraphs (1)(b), (2)(b) and (3)(b), sections 30A and 57(4) to (15) of the Scotland Act 1998, sections 80(8) to (8L) and 109A of the Government of Wales Act 2006 and sections 6A and 24(3) to (15) of the Northern Ireland Act 1998, and any regulations made under them and any related provision, are to be assumed to be wholly in force so far as that is not otherwise the case.
- (6) References in this paragraph to section 80(8) of the Government of Wales Act 2006 are to be read as references to the new section 80(8) of that Act provided for by paragraph 2 of Schedule 3 to this Act.

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Requirement for consultation in certain circumstances

- 4 No regulations may be made under this Part by a devolved authority acting alone so far as the regulations—
- (a) are to come into force before [^{F1}IP completion day], or
 - (b) remove (whether wholly or partly) reciprocal arrangements of the kind mentioned in section 8(2)(c) or (e),
- unless the regulations are, to that extent, made after consulting with the Secretary of State.

Textual Amendments

- F1** Words in Sch. 2 para. 4(a) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), ss. 27(7)(a), 42(7) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)

Requirement for consent where it would otherwise be required

- 5 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers acting alone in regulations under this Part so far as that provision, if contained in an Act of the National Assembly for Wales, would require the consent of a Minister of the Crown.
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under this Part so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State.
- (3) Sub-paragraph (1) or (2) does not apply if—
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and
 - (b) no such consent would be required in that case.
- (4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority acting alone in regulations under this Part so far as that provision, if contained in—
- (a) subordinate legislation made otherwise than under this Act by the devolved authority, or
 - (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by (in the case of Scotland) the First Minister or Lord Advocate acting alone or (in the case of Northern Ireland) a Northern Ireland devolved authority acting alone,
- would require the consent of a Minister of the Crown.
- (5) Sub-paragraph (4) does not apply if—
- (a) the provision could be contained in—
 - (i) an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly, or
 - (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b) and of a devolved authority acting alone or (as the case may be) other person acting alone, and

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) no such consent would be required in that case.

Requirement for joint exercise where it would otherwise be required

- 6 (1) No regulations may be made under this Part by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or
 - (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations may be made under this Part by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (3) No regulations may be made under this Part by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
 - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in—
- (a) an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
 - (b) different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone.

Requirement for consultation where it would otherwise be required

- 7 (1) No regulations may be made under this Part by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of the National Assembly for Wales, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (2) No regulations may be made under this Part by the Scottish Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) No regulations may be made under this Part by the Welsh Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (4) No regulations may be made under this Part by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (5) Sub-paragraph (2), (3) or (4) does not apply if—
- (a) the provision could be contained in an Act of the Scottish Parliament, an Act of the National Assembly for Wales or (as the case may be) an Act of the Northern Ireland Assembly, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.
- (6) Sub-paragraph (2), (3) or (4) does not apply if—
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

Meaning of devolved competence: Part 1

- 8 (1) 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
 - (b) it meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
 - (i) amends or revokes subordinate legislation made before [F²IP completion day] by the Scottish Ministers, the First Minister or the Lord Advocate acting alone, or
 - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
 - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
 - (c) the provision only forms part of the law of Scotland,

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (d) the provision does not confer or remove functions exercisable otherwise than in or as regards Scotland, and
- (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of paragraph 1, 4 or 5 of Schedule 4 to the Scotland Act 1998, be modified by an Act of the Scottish Parliament.

Textual Amendments

F2 Words in Sch. 2 para. 8(2)(a)(i) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), ss. [27\(7\)\(b\)](#), [42\(7\)](#) (with s. [38\(3\)](#), Sch. [5 para. 66](#)); S.I. 2020/75, reg. [4\(k\)](#)

- 9 (1) 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 meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
 - (i) amends or revokes subordinate legislation made before [^{F3}IP completion day] by the Welsh Ministers acting alone or the National Assembly for Wales constituted by the Government of Wales Act 1998, or
 - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
 - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
 - (c) the provision only forms part of the law of England and Wales,
 - (d) the provision does not confer or remove functions exercisable otherwise than in relation to Wales or the Welsh zone, and
 - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of paragraph 5, 6 or 7 of Schedule 7B to the Government of Wales Act 2006, be modified by an Act of the National Assembly for Wales.

Textual Amendments

F3 Words in Sch. 2 para. 9(2)(a)(i) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), ss. [27\(7\)\(c\)](#), [42\(7\)](#) (with s. [38\(3\)](#), Sch. [5 para. 66](#)); S.I. 2020/75, reg. [4\(k\)](#)

- 10 (1) 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,

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the provision—
 - (i) amends or revokes subordinate legislation made before [^{F4}IP completion day] by a Northern Ireland devolved authority acting alone, or
 - (ii) makes supplementary, incidental, consequential, transitional, transitory or saving provision in connection with any such amendment or revocation,
 - (b) the subject-matter of the provision does not go beyond the subject-matter of the subordinate legislation concerned,
 - (c) the provision only forms part of the law of Northern Ireland,
 - (d) the provision does not confer or remove functions exercisable otherwise than in or as regards Northern Ireland,
 - (e) the provision does not modify any enactment so far as the enactment cannot, by virtue of section 7 of the Northern Ireland Act 1998, be modified by an Act of the Northern Ireland Assembly, and
 - (f) the provision does not deal with, or otherwise relate to, a matter to which paragraph 22 of Schedule 2, or paragraph 42 of Schedule 3, to the Northern Ireland Act 1998 applies.

Textual Amendments

- F4** Words in Sch. 2 para. 10(2)(a)(i) substituted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 27\(7\)\(d\), 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/75, reg. 4(k)

- 11 References in paragraphs 8 to 10, in connection with the making of regulations under this Part, to the subject-matter of any provision or subordinate legislation are to be read as references to the subject-matter of the provision or subordinate legislation when the regulations concerned are made.

[^{F5}PART 1A

PROVISION IN CONNECTION WITH IMPLEMENTATION PERIOD

Textual Amendments

- F5** Sch. 2 Pt. 1A inserted (23.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 4, 42\(6\)\(a\)](#) (with s. 38(3), Sch. 5 para. 66)

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Supplementary power in connection with implementation period

- 11A (1) A devolved authority may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f)(i) (whether applying in all cases or particular cases or descriptions of case),
 - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
 - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section, or
 - (d) make such provision not falling within paragraph (a), (b) or (c) as the devolved authority considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f)(i) (whether applying in all cases or particular cases or descriptions of case),
 - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
 - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section, or
 - (d) make such provision not falling within paragraph (a), (b) or (c) as they consider appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (3) The power to make regulations under this Part may (among other things) be exercised by modifying any provision made by or under an enactment.
- (4) In sub-paragraph (3) “enactment” does not include primary legislation passed or made after IP completion day.
- (5) No regulations may be made under this Part after the end of the period of two years beginning with IP completion day.
- (6) Regulations under sub-paragraph (1) are also subject to paragraphs 11B and 11C.

No power to make provision outside devolved competence

- 11B (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 11D to 11F for the meaning of “devolved competence” for the purposes of this Part.

Certain requirements for consent, joint exercise or consultation

- 11C 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 1A

- 11D A provision is within the devolved competence of the Scottish Ministers for the purposes of this Part if—

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring, in the case of regulations made under this Part before exit day, section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law), or
 - (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, in the case of regulations made under this Part before exit day, section 57(2) of the Scotland Act 1998 so far as relating to EU law).
- 11E 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, in the case of regulations made under this Part before exit day, section 108A(2) (e) of the Government of Wales Act 2006 so far as relating to 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, in the case of regulations made under this Part before exit day, section 80(8) of the Government of Wales Act 2006 so far as relating to EU law).
- 11F 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, in the case of regulations made under this Part before exit day, section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law), 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, in the case of regulations made under this Part before exit day, section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law) 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, in the case of regulations made under this Part before exit day, section 24(1)(b) of the Northern Ireland Act 1998).]

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[F6]PART 1B

PROVISION IN CONNECTION WITH CERTAIN OTHER SEPARATION ISSUES

Textual Amendments

F6 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
 - (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.

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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
 - (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

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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).]

[^{F7}PART 1C

PROVISION IN CONNECTION WITH PROTOCOL ON IRELAND/NORTHERN IRELAND

Textual Amendments

F7 Sch. 2 Pt. 1C inserted (19.5.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 22, 42\(7\)](#) (with s. 38(3), Sch. 5 para. 66); S.I. 2020/518, reg. 2(j)

Power in connection with Protocol on Ireland/Northern Ireland

- 11M (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate—
- (a) to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement,
- (b) to supplement the effect of section 7A in relation to the Protocol, or
- (c) otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 7A and the Protocol).
- (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 the Protocol on Ireland/Northern Ireland in the withdrawal agreement,
- (b) to supplement the effect of section 7A in relation to the Protocol, or
- (c) otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 7A and the Protocol).

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Regulations under this Part may make any provision that could be made by an Act of Parliament.
- (4) Regulations under this Part may (among other things) make provision facilitating the access to the market within Great Britain of qualifying Northern Ireland goods.
- (5) Such provision may (among other things) include provision about the recognition within Great Britain of technical regulations, assessments, registrations, certificates, approvals and authorisations issued by—
 - (a) the authorities of a member State, or
 - (b) bodies established in a member State,in respect of qualifying Northern Ireland goods.
- (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 section 7A and the Protocol.
- (7) Regulations under sub-paragraph (1) are also subject to paragraphs 11N and 11O.
- (8) In this paragraph any reference to the Protocol on Ireland/Northern Ireland includes a reference to—
 - (a) any other provision of the withdrawal agreement so far as applying to the Protocol, and
 - (b) any provision of EU law which is applied by, or referred to in, the Protocol (to the extent of the application or reference),but does not include the second sentence of Article 11(1) of the Protocol (which provides that the United Kingdom and the Republic of Ireland may continue to make new arrangements that build on the provisions of the Belfast Agreement in other areas of North-South cooperation on the island of Ireland).

No power to make provision outside devolved competence

- 11N (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 11P to 11R for the meaning of “devolved competence” for the purposes of this Part.

Certain requirements for consent, joint exercise or consultation

- 11O 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 1C

- 11P 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), or
 - (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

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(ignoring section 57(2) of the Scotland Act 1998 so far as relating to EU law).

11Q 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 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 so far as relating to EU law).

11R 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 so far as relating to EU law), 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 so far as relating to EU law) 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) of the Northern Ireland Act 1998).]

F8 PART 2

IMPLEMENTING THE WITHDRAWAL AGREEMENT

Textual Amendments

F8 Sch. 2 Pt. 2 repealed (23.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), ss. 36\(d\), 42\(6\)\(c\)](#) (with s. 38(3), Sch. 5 para. 66)

Power to implement withdrawal agreement

12

No power to make provision outside devolved competence

13

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

Changes to legislation: European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

No power to modify retained direct EU legislation etc.

14

Requirement for consultation in certain circumstances

15

Certain requirements for consent, joint exercise or consultation

16

Meaning of devolved competence: Part 2

17

18

19

Status:

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

Changes to legislation:

European Union (Withdrawal) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.