

Status: Point in time view as at 31/03/2022.

Changes to legislation: European Union (Withdrawal) Act 2018, Part 1 is up to date with all changes known to be in force on or before 19 June 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

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.

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F1 ...

Textual Amendments

- F1** Sch. 2 para. 3 and cross-heading omitted (31.3.2022) by virtue of [The European Union \(Withdrawal\) Act 2018 \(Repeal of EU Restrictions in Devolution Legislation, etc.\) Regulations 2022 \(S.I. 2022/357\)](#), regs. 1(1), **6(3)(a)(i)**

F13

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 [^{F2}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

- F2** 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

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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
 - (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.

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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.
 - (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^{F3} ..., or
 - (b) it meets the conditions in sub-paragraph (2).
 - (2) The conditions are—

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- (a) the provision—
 - (i) amends or revokes subordinate legislation made before [^{F4}IP 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,
- (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

- F3** Words in Sch. 2 para. 8(1)(a) omitted (31.3.2022) by virtue of [The European Union \(Withdrawal\) Act 2018 \(Repeal of EU Restrictions in Devolution Legislation, etc.\) Regulations 2022 \(S.I. 2022/357\)](#), regs. 1(1), **6(3)(a)(ii)**
- F4** 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 (^{F5}... 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 [^{F6}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.

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Textual Amendments

- F5** Words in Sch. 2 para. 9(1)(a) omitted (31.3.2022) by virtue of [The European Union \(Withdrawal\) Act 2018 \(Repeal of EU Restrictions in Devolution Legislation, etc.\) Regulations 2022 \(S.I. 2022/357\)](#), regs. 1(1), **6(3)(a)(iii)**
- F6** 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, ^{F7}..., 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 ^{F8}... 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 [^{F9}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

- F7** Words in Sch. 2 para. 10(1)(a)(i) omitted (31.3.2022) by virtue of [The European Union \(Withdrawal\) Act 2018 \(Repeal of EU Restrictions in Devolution Legislation, etc.\) Regulations 2022 \(S.I. 2022/357\)](#), regs. 1(1), **6(3)(a)(iv)**

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| <p>F8 Words in Sch. 2 para. 10(1)(b)(ii) omitted (31.3.2022) by virtue of The European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022 (S.I. 2022/357), regs. 1(1), 6(3)(a)(iv)</p> <p>F9 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)</p> |
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- 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.

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