

Status: Point in time view as at 03/07/2019.

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SCHEDULES

SCHEDULE 4

Section 14(1)

POWERS IN CONNECTION WITH FEES AND CHARGES

PART 1

CHARGING IN CONNECTION WITH CERTAIN NEW FUNCTIONS

Power to provide for fees or charges

- 1 (1) An appropriate authority may by regulations make provision for, or in connection with, the charging of fees or other charges in connection with the exercise of a function (“the relevant function”) which a public authority has by virtue of provision made under—
- (a) section 8 or Part 1 of Schedule 2 (powers to deal with deficiencies arising from withdrawal), or
 - (b) section 9 or Part 2 of Schedule 2 (powers to implement the withdrawal agreement).
- (2) Where there is more than one appropriate authority in relation to the relevant function, two or more of the appropriate authorities may make regulations under this paragraph jointly.
- (3) Regulations under this paragraph may (among other things)—
- (a) prescribe the fees or charges or make provision as to how they are to be determined;
 - (b) provide for the recovery or disposal of any sums payable under the regulations;
 - (c) confer power on the public authority to make, by subordinate legislation, any provision that the appropriate authority may make under this paragraph in relation to the relevant function.

Meaning of “appropriate authority”

- 2 (1) A Minister of the Crown is an “appropriate authority” for the purposes of paragraph 1.
- (2) The Scottish Ministers are an “appropriate authority” for the purposes of paragraph 1—
- (a) if the Scottish Ministers (whether acting jointly or alone) made the provision, as mentioned in paragraph 1(1), by virtue of which the public authority has the relevant function,
 - (b) if the relevant function is a function of the Scottish Ministers, the First Minister or the Lord Advocate, or

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- (c) if the provision by virtue of which the public authority has the relevant function, if it were included in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law).
- (3) The Welsh Ministers are an “appropriate authority” for the purposes of paragraph 1—
- (a) if the Welsh Ministers (whether acting jointly or alone) made the provision, as mentioned in paragraph 1(1), by virtue of which the public authority has the relevant function,
 - (b) if the relevant function is a function of the Welsh Ministers, or
 - (c) if the provision by virtue of which the public authority has the relevant function, if it were included in an Act of the National Assembly for Wales, would be within the legislative competence of that 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 consent of a Minister of the Crown).
- (4) A Northern Ireland department is an “appropriate authority” for the purposes of paragraph 1—
- (a) if a Northern Ireland department (whether acting jointly or alone) made the provision, as mentioned in paragraph 1(1), by virtue of which the public authority has the relevant function,
 - (b) if the relevant function is a function of a Northern Ireland devolved authority, or
 - (c) if the provision by virtue of which the public authority has the relevant function, if it were included in an Act of the Northern Ireland Assembly—
 - (i) would be within the legislative competence of that Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
 - (ii) would not require the consent of the Secretary of State.

Requirements for consent

- 3
- (1) A Minister of the Crown may only make regulations under paragraph 1 with the consent of the Treasury.
- (2) A devolved authority may only make regulations under paragraph 1 with the consent of a Minister of the Crown if—
- (a) the relevant function is a function of a Minister of the Crown, or
 - (b) the public authority that has the relevant function—
 - (i) in the case of the Scottish Ministers, has any functions that can be exercised otherwise than in or as regards Scotland,
 - (ii) in the case of the Welsh Ministers, has any functions that can be exercised otherwise than in relation to Wales or the Welsh zone, or
 - (iii) in the case of a Northern Ireland department, has any functions that can be exercised otherwise than in or as regards Northern Ireland and is not an implementation body.
- (3) In sub-paragraph (2)(b)(iii) “implementation body” has the same meaning as in section 55 of the Northern Ireland Act 1998 (see subsection (3) of that section).

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Minister of the Crown power in relation to devolved authorities

- 4 A Minister of the Crown may by regulations—
- (a) prescribe circumstances in which, or functions in relation to which, a devolved authority is to be regarded as being an appropriate authority for the purposes of paragraph 1;
 - (b) provide that a devolved authority that is regarded as being an appropriate authority under regulations made under paragraph (a) may only make regulations under paragraph 1, by virtue of being so regarded, with the consent of a Minister of the Crown;
 - (c) prescribe circumstances in which, or functions in relation to which, a devolved authority may, despite paragraph 3(2), make regulations under paragraph 1 without the consent of a Minister of the Crown.

Time limit for making certain provision

- 5 (1) Subject to sub-paragraph (2), no regulations may be made under paragraph 1 after the end of the period of two years beginning with exit day.
- (2) After the end of that period, regulations may be made under paragraph 1 for the purposes of—
- (a) revoking any provision made under that paragraph,
 - (b) altering the amount of any of the fees or charges that are to be charged under any provision made under that paragraph,
 - (c) altering how any of the fees or charges that are to be charged under any provision made under that paragraph are to be determined, or
 - (d) otherwise altering the fees or charges that may be charged in relation to anything in respect of which fees or charges may be charged under any provision made under that paragraph.
- (3) This paragraph does not affect the continuation in force of any regulations made at or before the end of the period mentioned in sub-paragraph (1) (including the exercise after the end of that period of any power conferred by regulations made under that paragraph at or before the end of that period).

Relationship to other powers

- 6 This Part does not affect the powers under section 8 or 9 or Schedule 2, or any other power exercisable apart from this Part, to require the payment of, or to make other provision in relation to, fees or other charges.

PART 2

MODIFYING PRE-EXIT FEES OR CHARGES

Power to modify pre-exit fees or charges

- 7 (1) Sub-paragraph (2) applies where any subordinate legislation contains provision (“the charging provision”) for, or in connection with, the charging of fees or other charges that—
- (a) was made under section 2(2) of the European Communities Act 1972, section 56 of the Finance Act 1973 or this Part, and

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(b) forms part of retained EU law.

- (2) Any appropriate authority may by regulations make provision (“the proposed modification”) modifying the subordinate legislation for the purposes of—
- (a) revoking the charging provision,
 - (b) altering the amount of any of the fees or charges that are to be charged,
 - (c) altering how any of the fees or charges are to be determined, or
 - (d) otherwise altering the fees or charges that may be charged in relation to anything in respect of which fees or charges may be charged under the charging provision.

Meaning of “appropriate authority”

- 8 In this Part an “appropriate authority” means a Minister of the Crown, or devolved authority, that could have made the proposed modification—
- (a) under section 2(2) of the European Communities Act 1972 immediately before the repeal of that section by section 1, or
 - (b) under section 56 of the Finance Act 1973 immediately before the amendment of that section by paragraph 17 of Schedule 8.

Restriction on exercise of power

- 9 (1) Where the charging provision consists solely of 1972 Act provision, regulations under this Part may not impose or increase taxation.
- (2) In sub-paragraph (1) “1972 Act provision” means—
- (a) provision that is made under section 2(2) of the European Communities Act 1972 and not under section 56 of the Finance Act 1973, including such provision as modified under this Part, or
 - (b) provision that is made under this Part and is incidental to, or supplements or replaces, provision within paragraph (a).

Requirement for consent

- 10 If a Minister of the Crown—
- (a) is an appropriate authority, and
 - (b) immediately before the amendment of section 56 of the Finance Act 1973 by paragraph 17 of Schedule 8 could only have made the proposed modification under that section,
- the Minister may only make that modification under this Part with the consent of the Treasury.

Relationship to other powers

- 11 This Part does not affect the powers under section 8 or 9 or Schedule 2, or any other power exercisable apart from this Part, to require the payment of, or to make other provision in relation to, fees or other charges.

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