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## SCHEDULES

### SCHEDULE 7

Section 22

#### REGULATIONS

#### PART 1

##### SCRUTINY OF POWERS TO DEAL WITH DEFICIENCIES

*Scrutiny of regulations made by Minister of the Crown or devolved authority acting alone*

- 1 (1) A statutory instrument containing regulations under section 8(1) which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Provision falls within this sub-paragraph if it—
  - (a) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
  - (b) relates to a fee in respect of a function exercisable by a public authority in the United Kingdom,
  - (c) creates, or widens the scope of, a criminal offence, or
  - (d) creates or amends a power to legislate.
- (3) Any other statutory instrument containing regulations under section 8(1) is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) See paragraph 3 for restrictions on the choice of procedure under sub-paragraph (3).
- (5) A statutory instrument containing regulations under section 8 (3)(b) (including as applied by paragraph 1(3) of Schedule 2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Regulations under Part 1 of Schedule 2 of the Scottish Ministers which contain provision falling within sub-paragraph (2) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (7) Any other regulations under Part 1 of Schedule 2 of the Scottish Ministers are (if they have not been subject to the affirmative procedure) subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

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- (8) A statutory instrument containing regulations under Part 1 of Schedule 2 of the Welsh Ministers which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (9) Any other statutory instrument containing regulations under Part 1 of Schedule 2 of the Welsh Ministers is (if a draft of the instrument has not been laid before, and approved by a resolution of, the National Assembly for Wales) subject to annulment in pursuance of a resolution of the Assembly.
- (10) See paragraph 4 for restrictions on the choice of procedure under sub-paragraph (9).
- (11) Regulations under Part 1 of Schedule 2 of a Northern Ireland department which contain provision falling within sub-paragraph (2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (12) Any other regulations under Part 1 of Schedule 2 of a Northern Ireland department are (if a draft of the regulations has not been laid before, and approved by a resolution of, the Northern Ireland Assembly) subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (13) This paragraph—
  - (a) does not apply to regulations to which paragraph 2 applies, and
  - (b) is subject to paragraphs 5 to 8.

*Scrutiny of regulations made by Minister of the Crown and devolved authority acting jointly*

- 2 (1) This paragraph applies to regulations under Part 1 of Schedule 2 of a Minister of the Crown acting jointly with a devolved authority.
- (2) The procedure provided for by sub-paragraph (3) or (4) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned.
- (3) A statutory instrument containing regulations to which this paragraph applies which contain provision falling within paragraph 1(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any other statutory instrument containing regulations to which this paragraph applies is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers and contain provision falling within paragraph 1(2) are subject to the affirmative procedure.
- (6) Any other regulations to which this paragraph applies which are made jointly with the Scottish Ministers are (if they have not been subject to the affirmative procedure) subject to the negative procedure.

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- (7) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (affirmative procedure) applies in relation to regulations to which sub-paragraph (5) or (6) applies and which are subject to the affirmative procedure as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (8) Sections 28(2), (3) and (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) apply in relation to regulations to which sub-paragraph (6) applies and which are subject to the negative procedure as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (9) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (5) or (6) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).
- (10) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers and contain provision falling within paragraph 1(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (11) Any other statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers is (if a draft of the instrument has not been laid before, and approved by a resolution of, the National Assembly for Wales) subject to annulment in pursuance of a resolution of the Assembly.
- (12) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department and contain provision falling within paragraph 1(2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (13) Any other regulations to which this paragraph applies which are made jointly with a Northern Ireland department are (if a draft of the regulations has not been laid before, and approved by a resolution of, the Northern Ireland Assembly) subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (14) If in accordance with sub-paragraph (4), (6), (11) or (13)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument be annulled, or
  - (b) a relevant devolved legislature resolves that an instrument be annulled,nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (15) In sub-paragraph (14) “relevant devolved legislature” means—
  - (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament,
  - (b) in the case of regulations made jointly with the Welsh Ministers, the National Assembly for Wales, and

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- (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly.
- (16) Sub-paragraph (14) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (17) Sub-paragraphs (14) and (15) apply in place of provision made by any other enactment about the effect of such a resolution.

*Parliamentary committee to sift certain deficiencies regulations of a Minister of the Crown*

- 3 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make a statutory instrument to which paragraph 1(3) applies is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) The Minister may not make the instrument so that it is subject to that procedure unless—
  - (a) condition 1 is met, and
  - (b) either condition 2 or 3 is met.
- (3) Condition 1 is that a Minister of the Crown—
  - (a) has made a statement in writing to the effect that in the Minister's opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (b) has laid before each House of Parliament—
    - (i) a draft of the instrument, and
    - (ii) a memorandum setting out the statement and the reasons for the Minister's opinion.
- (4) Condition 2 is that a committee of the House of Commons charged with doing so and a committee of the House of Lords charged with doing so have, within the relevant period, each made a recommendation as to the appropriate procedure for the instrument.
- (5) Condition 3 is that the relevant period has ended without condition 2 being met.
- (6) Sub-paragraph (7) applies if—
  - (a) a committee makes a recommendation as mentioned in sub-paragraph (4) within the relevant period,
  - (b) the recommendation is that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made, and
  - (c) the Minister who is to make the instrument is nevertheless of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Before the instrument is made, the Minister must make a statement explaining why the Minister does not agree with the recommendation of the committee.
- (8) If the Minister fails to make a statement required by sub-paragraph (7) before the instrument is made, a Minister of the Crown must make a statement explaining why the Minister has failed to do so.

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- (9) A statement under sub-paragraph (7) or (8) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (10) In this paragraph “the relevant period” means the period—
- (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft instrument was laid before each House as mentioned in sub-paragraph (3)(b)(i), and
  - (b) ending with whichever of the following is the later—
    - (i) the end of the period of 10 Commons sitting days beginning with that first day, and
    - (ii) the end of the period of 10 Lords sitting days beginning with that first day.
- (11) For the purposes of sub-paragraph (10)—
- (a) where a draft of an instrument is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
  - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and
  - (c) “Lords sitting day” means a day on which the House of Lords is sitting,
- and, for the purposes of sub-paragraph (10) and this sub-paragraph, a day is only a day on which the House of Commons or the House of Lords is sitting if the House concerned begins to sit on that day.
- (12) Nothing in this paragraph prevents a Minister of the Crown from deciding at any time before a statutory instrument to which paragraph 1(3) applies is made that another procedure should apply in relation to the instrument (whether under paragraph 1(3) or 5).
- (13) Section 6(1) of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply in relation to any statutory instrument to which this paragraph applies.

*Committee of the National Assembly for Wales to sift  
certain deficiencies regulations of Welsh Ministers*

- 4 (1) Sub-paragraph (2) applies if the Welsh Ministers are to make a statutory instrument to which paragraph 1(9) applies and are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (2) The Welsh Ministers may not make the instrument so that it is subject to that procedure unless—
- (a) condition 1 is met, and
  - (b) either condition 2 or 3 is met.
- (3) Condition 1 is that the Welsh Ministers—
- (a) have made a statement in writing to the effect that in their opinion the instrument should be subject to annulment in pursuance of a resolution of the National Assembly for Wales, and
  - (b) have laid before the Assembly—
    - (i) a draft of the instrument, and

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- (ii) a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.
- (4) Condition 2 is that a committee of the National Assembly for Wales charged with doing so has made a recommendation as to the appropriate procedure for the instrument.
- (5) Condition 3 is that the period of 14 days beginning with the first day after the day on which the draft instrument was laid before the National Assembly for Wales as mentioned in sub-paragraph (3) has ended without any recommendation being made as mentioned in sub-paragraph (4).
- (6) In calculating the period of 14 days, no account is to be taken of any time during which the National Assembly for Wales is—
  - (a) dissolved, or
  - (b) in recess for more than four days.
- (7) Nothing in this paragraph prevents the Welsh Ministers from deciding at any time before a statutory instrument to which paragraph 1(9) applies is made that another procedure should apply to the instrument (whether under paragraph 1(9) or 7).
- (8) Section 6(1) of the Statutory Instruments Act 1946 as applied by section 11A of that Act (alternative procedure for certain instruments laid in draft before the Assembly) does not apply in relation to any statutory instrument to which this paragraph applies.
- (9) The references in this paragraph to paragraph 1(9) do not include references to paragraph 1(9) as applied by paragraph 10(5) (for which see paragraph 18).

*Scrutiny procedure in certain urgent deficiencies cases: Ministers of the Crown*

- 5 (1) Sub-paragraph (2) applies to—
  - (a) a statutory instrument to which paragraph 1(1) applies, or
  - (b) a statutory instrument to which paragraph 1(3) applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament.
- (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
- (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before each House of Parliament.
- (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (5) In calculating the period of 28 days, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—

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- (a) affect the validity of anything previously done under the regulations, or
- (b) prevent the making of new regulations.

(7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 1(3) applies where the Minister of the Crown who is to make the instrument is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Paragraph 3 does not apply in relation to the instrument if the instrument contains a declaration that the Minister is of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.

*Scrutiny procedure in certain urgent deficiencies cases: devolved authorities*

- 6
- (1) This paragraph applies to—
    - (a) regulations to which paragraph 1(6) applies, or
    - (b) regulations to which paragraph 1(7) applies which would not otherwise be made without being subject to the affirmative procedure.
  - (2) The regulations may be made without being subject to the affirmative procedure if the regulations contain a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to that procedure.
  - (3) After regulations are made in accordance with sub-paragraph (2), they must be laid before the Scottish Parliament.
  - (4) Regulations made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by resolution of the Scottish Parliament.
  - (5) In calculating the period of 28 days, no account is to be taken of any time during which the Scottish Parliament is—
    - (a) dissolved, or
    - (b) in recess for more than four days.
  - (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
    - (a) affect the validity of anything previously done under the regulations, or
    - (b) prevent the making of new regulations.
  - (7) The references in this paragraph to paragraph 1(6) or (7) do not include references to paragraph 1(6) or (7) as applied by paragraph 10(5) (for which see paragraph 19(7)).
- 7
- (1) Sub-paragraph (2) applies to—
    - (a) a statutory instrument to which paragraph 1(8) applies, or
    - (b) a statutory instrument to which paragraph 1(9) applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, the National Assembly for Wales.
  - (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, the National Assembly for Wales if it contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.

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- (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before the National Assembly for Wales.
  - (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of the National Assembly for Wales.
  - (5) In calculating the period of 28 days, no account is to be taken of any time during which the National Assembly for Wales is—
    - (a) dissolved, or
    - (b) in recess for more than four days.
  - (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
    - (a) affect the validity of anything previously done under the regulations, or
    - (b) prevent the making of new regulations.
  - (7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 1(9) applies where the Welsh Ministers are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
  - (8) Paragraph 4 does not apply in relation to the instrument if the instrument contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.
  - (9) The references in this paragraph to paragraph 1(8) or (9) do not include references to paragraph 1(8) or (9) as applied by paragraph 10(5) (for which see paragraph 19(7)).
- 8
- (1) This paragraph applies to—
    - (a) regulations to which paragraph 1(11) applies, or
    - (b) regulations to which paragraph 1(12) applies which would not otherwise be made without a draft of the regulations being laid before, and approved by a resolution of, the Northern Ireland Assembly.
  - (2) The regulations may be made without a draft of the regulations being laid before, and approved by a resolution of, the Northern Ireland Assembly if they contain a declaration that the Northern Ireland department concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
  - (3) After regulations are made in accordance with sub-paragraph (2), they must be laid before the Northern Ireland Assembly.
  - (4) Regulations made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by a resolution of the Northern Ireland Assembly.
  - (5) In calculating the period of 28 days, no account is to be taken of any time during which the Northern Ireland Assembly is—
    - (a) dissolved,
    - (b) in recess for more than four days, or



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- (c) adjourned for more than six days.
- (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
  - (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.
- (7) The references in this paragraph to paragraph 1(11) or (12) do not include references to paragraph 1(11) or (12) as applied by paragraph 10(5) (for which see paragraph 19(7)).

## PART 2

### SCRUTINY OF OTHER POWERS UNDER ACT

#### *Power to enable challenges to validity of retained EU law*

- 9 (1) A statutory instrument containing regulations under paragraph 1(2)(b) of Schedule 1 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) This paragraph is subject to paragraph 19.

#### *Power to implement withdrawal agreement*

- 10 (1) A statutory instrument containing regulations under section 9 which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Provision falls within this sub-paragraph if it—
  - (a) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
  - (b) relates to a fee in respect of a function exercisable by a public authority in the United Kingdom,
  - (c) creates, or widens the scope of, a criminal offence, or
  - (d) creates or amends a power to legislate.
- (3) Any other statutory instrument containing regulations under section 9 is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) See paragraph 17 for restrictions on the choice of procedure under sub-paragraph (3).
- (5) Paragraphs 1(6) to (13)(a) and 2 apply to regulations under Part 2 of Schedule 2 as they apply to regulations under Part 1 of that Schedule except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision falling within sub-paragraph (2) above.
- (6) This paragraph is subject to paragraph 19.

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*Power to repeal provisions relating to retained EU law restrictions*

- 11 A statutory instrument containing regulations under section 12(9) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

*Powers in connection with fees and charges*

- 12 (1) A statutory instrument containing regulations of a Minister of the Crown under Schedule 4 which contain provision which does not relate to altering the amount of a fee or charge to reflect changes in the value of money may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Any other statutory instrument containing regulations under Schedule 4 of a Minister of the Crown is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Paragraphs 1(6) to (13)(a) and 2 apply to regulations under Schedule 4 as they apply to regulations under Part 1 of Schedule 2 except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision made under Schedule 4 which does not relate to altering the amount of a fee or charge to reflect changes in the value of money.
- (4) This paragraph is subject to paragraph 19.

*Power to make provision about judicial notice and admissibility*

- 13 A statutory instrument containing regulations under paragraph 4 of Schedule 5 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

*Power to amend the definition of “exit day”*

- 14 A statutory instrument containing regulations under section 20(4) <sup>[F1]</sup> is subject to annulment in pursuance of a resolution of either] House of Parliament.

**Textual Amendments**

- F1** Words in Sch. 7 para. 14 substituted (8.4.2019) by [European Union \(Withdrawal\) Act 2019 \(c. 16\)](#), ss. 2, 3(2)

*Power to make consequential provision*

- 15 (1) A statutory instrument containing regulations under section 23(1) is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) See paragraph 17 for restrictions on the choice of procedure under sub-paragraph (1).

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*Power to make transitional, transitory or saving provision*

- 16 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make regulations under section 23(6) considers that—
- (a) it is not appropriate for the statutory instrument containing them to be subject to no parliamentary procedure, and
  - (b) it is appropriate for that statutory instrument to be subject to the parliamentary procedure in sub-paragraph (2).
- (2) The statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Sub-paragraph (4) applies if a Minister of the Crown who is to make regulations under section 23(6) considers that—
- (a) it is not appropriate for the statutory instrument containing them to be subject to no parliamentary procedure, and
  - (b) it is appropriate for that statutory instrument to be subject to the parliamentary procedure in sub-paragraph (4).
- (4) The statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

*Parliamentary committee to sift certain implementation or consequential regulations of a Minister of the Crown*

- 17 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make a statutory instrument to which paragraph 10(3) or 15 applies is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) The Minister may not make the instrument so that it is subject to that procedure unless—
- (a) condition 1 is met, and
  - (b) either condition 2 or 3 is met.
- (3) Condition 1 is that a Minister of the Crown—
- (a) has made a statement in writing to the effect that in the Minister's opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (b) has laid before each House of Parliament—
    - (i) a draft of the instrument, and
    - (ii) a memorandum setting out the statement and the reasons for the Minister's opinion.
- (4) Condition 2 is that a committee of the House of Commons charged with doing so and a committee of the House of Lords charged with doing so have, within the relevant period, each made a recommendation as to the appropriate procedure for the instrument.
- (5) Condition 3 is that the relevant period has ended without condition 2 being met.
- (6) Sub-paragraph (7) applies if—

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- (a) a committee makes a recommendation as mentioned in sub-paragraph (4) within the relevant period,
  - (b) the recommendation is that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made, and
  - (c) the Minister who is to make the instrument is nevertheless of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Before the instrument is made, the Minister must make a statement explaining why the Minister does not agree with the recommendation of the committee.
- (8) If the Minister fails to make a statement required by sub-paragraph (7) before the instrument is made, a Minister of the Crown must make a statement explaining why the Minister has failed to do so.
- (9) A statement under sub-paragraph (7) or (8) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (10) In this paragraph “the relevant period” means the period—
- (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft instrument was laid before each House of Parliament as mentioned in sub-paragraph (3)(b)(i), and
  - (b) ending with whichever of the following is the later—
    - (i) the end of the period of 10 Commons sitting days beginning with that first day, and
    - (ii) the end of the period of 10 Lords sitting days beginning with that first day.
- (11) For the purposes of sub-paragraph (10)—
- (a) where a draft of an instrument is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
  - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and
  - (c) “Lords sitting day” means a day on which the House of Lords is sitting,
- and, for the purposes of sub-paragraph (10) and this sub-paragraph, a day is only a day on which the House of Commons or the House of Lords is sitting if the House concerned begins to sit on that day.
- (12) Nothing in this paragraph prevents a Minister of the Crown from deciding at any time before a statutory instrument to which paragraph 10(3) or 15 applies is made that another procedure should apply in relation to the instrument (whether under that paragraph or paragraph 19).
- (13) Section 6(1) of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply in relation to any statutory instrument to which this paragraph applies.

*Status: Point in time view as at 08/04/2019.*

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*Committee of the National Assembly for Wales to sift  
certain implementation regulations of Welsh Ministers*

- 18 Paragraph 4 applies to regulations under Part 2 of Schedule 2 as it applies to regulations under Part 1 of that Schedule but as if—
- (a) the references to paragraph 1(9) were references to paragraph 1(9) as applied by paragraph 10(5),
  - (b) the reference to paragraph 7 were a reference to that paragraph as applied by paragraph 19(7), and
  - (c) paragraph 4(9) were omitted.

*Scrutiny procedure for certain powers to which this Part applies in urgent cases*

- 19 (1) Sub-paragraph (2) applies to—
- (a) a statutory instrument to which paragraph 9(1), 10(1) or 12(1) applies, or
  - (b) a statutory instrument to which paragraph 10(3), 12(2) or 15 applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament.
- (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
- (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before each House of Parliament.
- (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (5) In calculating the period of 28 days, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
- (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.
- (7) Paragraphs 6 to 8 apply to regulations under Part 2 of Schedule 2 as they apply to regulations under Part 1 of that Schedule but as if—
- (a) the references to paragraphs 1(6), (7), (8), (9), (10) or (11) were references to those provisions as applied by paragraph 10(5),
  - (b) the reference in paragraph 7(8) to paragraph 4 were a reference to that paragraph as applied by paragraph 18, and
  - (c) paragraphs 6(7), 7(9) and 8(7) were omitted.
- (8) Sub-paragraph (9) applies to a statutory instrument to which paragraph 10(3) or 15 applies where the Minister of the Crown who is to make the instrument is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (9) Paragraph 17 does not apply in relation to the instrument if the instrument contains a declaration that the Minister is of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.

### PART 3

#### GENERAL PROVISION ABOUT POWERS UNDER ACT

##### *Scope and nature of powers: general*

- 20 (1) Any power to make regulations under this Act—
- (a) so far as exercisable by a Minister of the Crown or by a Minister of the Crown acting jointly with a devolved authority, is exercisable by statutory instrument,
  - (b) so far as exercisable by the Welsh Ministers or by the Welsh Ministers acting jointly with a Minister of the Crown, is exercisable by statutory instrument, and
  - (c) so far as exercisable by a Northern Ireland department (other than when acting jointly with a Minister of the Crown), is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)) (and not by statutory instrument).
- (2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments).
- 21 Any power to make regulations under this Act—
- (a) may be exercised so as to—
    - (i) modify retained EU law, or
    - (ii) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and
  - (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way).

#### **Modifications etc. (not altering text)**

- C1** Sch. 7 para. 21 applied (with modifications) (26.10.2018) by [The Financial Regulators Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\)](#), regs. 1(2), **3(3)**

- 22 The fact that a power to make regulations is conferred by this Act does not affect the extent of any other power to make regulations under this Act.

##### *Scope of consequential and transitional powers*

- 23 (1) The fact that anything continues to be, or forms part of, domestic law by virtue of any provision of sections 2 to 6 or Schedule 1 does not prevent it from being modified by regulations made under section 23(1) in consequence of any other provision made by or under this Act.

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- (2) Accordingly, any retained EU law may, for example, be modified by regulations made under section 23(1) in consequence of the repeal of any enactment contained in the European Communities Act 1972.
- (3) The power to make regulations under section 23(6) includes the power to make transitional, transitory or saving provision in connection with—
  - (a) the repeal of any enactment contained in the European Communities Act 1972, or
  - (b) the withdrawal of the United Kingdom from the EU,which is additional to that made by any provision of sections 2 to 6 or Schedule 1 or alters its effect in particular cases or descriptions of case.
- (4) The power to make regulations under section 23(1) includes the power to make transitional, transitory or saving provision which—
  - (a) is in connection with any repeal or revocation made by any such regulations of an enactment in consequence of—
    - (i) the repeal of any enactment contained in the European Communities Act 1972, or
    - (ii) the withdrawal of the United Kingdom from the EU, and
  - (b) is additional to that made by any provision of sections 2 to 6 or Schedule 1 or alters its effect in particular cases or descriptions of case.
- (5) Provision of the kind mentioned in sub-paragraph (3) or (4) may (among other things) include further provision treating any provision of that kind as retained EU law for particular purposes or all purposes.

*Anticipatory exercise of powers in relation to retained EU law*

- 24 Any power to make regulations under this Act which modify retained direct EU legislation, anything which is retained EU law by virtue of section 4 or any other retained EU law is capable of being exercised before exit day so that the regulations come into force on or after exit day.

*Scope of appointed day powers*

- 25 Any power of a Minister of the Crown under this Act to appoint a day includes a power to appoint a time on that day if the Minister considers it appropriate to do so.

*Effect of certain provisions in Schedule 8 on scope of powers*

- 26 The modifications made by Part 1 of Schedule 8 and paragraphs 18 to 22 and 31 to 35 of that Schedule do not prevent or otherwise limit the making of different provision, in particular cases or descriptions of case, in regulations under section 23(1) or in any other regulations under this Act.

*Disapplication of certain review provisions*

- 27 Section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply in relation to any power to make regulations conferred by this Act.

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*Explanatory statements for certain powers: appropriateness, equalities etc.*

- 28 (1) This paragraph applies where—
- (a) a statutory instrument containing regulations under section 8(1), 9 or 23(1) or paragraph 1(2) or 12(2) of Schedule 2, or
  - (b) a draft of such an instrument,
- is to be laid before each House of Parliament.
- (2) Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that in the Minister's opinion the instrument or draft does no more than is appropriate.
- (3) Before the instrument or draft is laid, the relevant Minister must make a statement as to why, in the Minister's opinion—
- (a) there are good reasons for the instrument or draft, and
  - (b) the provision made by the instrument or draft is a reasonable course of action.
- (4) Before the instrument or draft is laid, the relevant Minister must make a statement—
- (a) as to whether the instrument or draft amends, repeals or revokes any provision of equalities legislation, and
  - (b) if it does, explaining the effect of each such amendment, repeal or revocation.
- (5) Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that, in relation to the instrument or draft, the Minister has, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- (6) Before the instrument or draft is laid, the relevant Minister must make a statement otherwise explaining—
- (a) the instrument or draft,
  - (b) its purpose,
  - (c) the law before exit day which is relevant to it, and
  - (d) its effect (if any) on retained EU law.
- (7) Where an instrument or draft creates a criminal offence, the statement required by sub-paragraph (3) must (among other things) include an explanation of why, in the relevant Minister's opinion, there are good reasons for creating the offence and for the penalty provided in respect of it.
- (8) If the relevant Minister fails to make a statement required by sub-paragraph (2), (3), (4), (5) or (6) before the instrument or draft is laid, a Minister of the Crown must make a statement explaining why the relevant Minister has failed to do so.
- (9) A statement under sub-paragraph (2), (3), (4), (5), (6) or (8) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (10) For the purposes of this paragraph, where an instrument or draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.
- (11) This paragraph does not apply in relation to any laying before each House of Parliament of an instrument or draft instrument where an equivalent draft instrument (ignoring any differences relating to procedure) has previously been laid before both Houses.



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(12) In this paragraph—

“equalities legislation” means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts;

“the relevant Minister” means the Minister of the Crown who makes, or is to make, the instrument.

29 (1) This paragraph applies where—

(a) a Scottish statutory instrument containing regulations under Part 1 or 2 of Schedule 2, or

(b) a draft of such an instrument,

is to be laid before the Scottish Parliament.

(2) Before the instrument or draft is laid, the Scottish Ministers must make a statement to the effect that in the Scottish Ministers' opinion the instrument or draft does no more than is appropriate.

(3) Before the instrument or draft is laid, the Scottish Ministers must make a statement as to why, in the Scottish Ministers' opinion—

(a) there are good reasons for the instrument or draft, and

(b) the provision made by the instrument or draft is a reasonable course of action.

(4) Before the instrument or draft is laid, the Scottish Ministers must make a statement—

(a) as to whether the instrument or draft amends, repeals or revokes any provision of equalities legislation, and

(b) if it does, explaining the effect of each such amendment, repeal or revocation.

(5) Before the instrument or draft is laid, the Scottish Ministers must make a statement to the effect that, in relation to the instrument or draft, the Scottish Ministers have, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

(6) Before the instrument or draft is laid, the Scottish Ministers must make a statement otherwise explaining—

(a) the instrument or draft,

(b) its purpose,

(c) the law before exit day which is relevant to it, and

(d) its effect (if any) on retained EU law.

(7) Where an instrument or draft creates a criminal offence, the statement required by sub-paragraph (3) must (among other things) include an explanation of why, in the Scottish Ministers' opinion, there are good reasons for creating the offence and for the penalty provided in respect of it.

(8) If the Scottish Ministers fail to make a statement required by sub-paragraph (2), (3), (4), (5) or (6) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.

(9) A statement under sub-paragraph (2), (3), (4), (5), (6) or (8) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

(10) In this paragraph “equalities legislation” means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts.

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*Further explanatory statements in certain sub-delegation cases*

- 30 (1) This paragraph applies where—
- (a) a statutory instrument containing regulations under section 8(1) or 9 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or
  - (b) a draft of such an instrument,
- is to be laid before each House of Parliament.
- (2) Before the instrument or draft is laid, the relevant Minister must make a statement explaining why it is appropriate to create a relevant sub-delegated power.
- (3) If the relevant Minister fails to make a statement required by sub-paragraph (2) before the instrument or draft is laid, a Minister of the Crown must make a statement explaining why the relevant Minister has failed to do so.
- (4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (5) Sub-paragraphs (10) and (11) of paragraph 28 apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (6) For the purposes of this paragraph references to creating a relevant sub-delegated power include (among other things) references to—
- (a) amending a power to legislate which is exercisable by statutory instrument by a relevant UK authority so that it becomes a relevant sub-delegated power, or
  - (b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.
- (7) In this paragraph—
- “the relevant Minister” means the Minister of the Crown who makes, or is to make, the instrument;
- “relevant sub-delegated power” means a power to legislate which—
- (a) is not exercisable by any of the following—
    - (i) statutory instrument,
    - (ii) Scottish statutory instrument, or
    - (iii) statutory rule, or
  - (b) is so exercisable by a public authority other than a relevant UK authority;
- “relevant UK authority” means a Minister of the Crown, a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or a Northern Ireland devolved authority.
- 31 (1) This paragraph applies where—
- (a) a Scottish statutory instrument containing regulations under Part 1 or 2 of Schedule 2 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or
  - (b) a draft of such an instrument,
- is to be laid before the Scottish Parliament.

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- (2) Before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why it is appropriate to create a relevant sub-delegated power.
- (3) If the Scottish Ministers fail to make a statement required by sub-paragraph (2) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.
- (4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.
- (5) For the purposes of this paragraph references to creating a relevant sub-delegated power include (among other things) references to—
  - (a) amending a power to legislate which is exercisable by Scottish statutory instrument by a member of the Scottish Government so that it becomes a relevant sub-delegated power, or
  - (b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.
- (6) In this paragraph “relevant sub-delegated power” means a power to legislate which—
  - (a) is not exercisable by Scottish statutory instrument, or
  - (b) is so exercisable by a public authority other than a member of the Scottish Government.

*Annual reports in certain sub-delegation cases*

- 32 (1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by a Minister of the Crown under section 8(1) or 9 or paragraph 1 of Schedule 4 must—
  - (a) if the power has been exercised during a relevant year, and
  - (b) as soon as practicable after the end of the year, prepare a report on how the power has been exercised during the year.
- (2) The person must—
  - (a) lay the report before each House of Parliament, and
  - (b) once laid—
    - (i) provide a copy of it to a Minister of the Crown, and
    - (ii) publish it in such manner as the person considers appropriate.
- (3) In this paragraph—

“relevant sub-delegated power” has the same meaning as in paragraph 30;

“relevant year” means—

  - (a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and
  - (b) in any other case, the calendar year.
- 33 (1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by the Scottish Ministers by Scottish statutory instrument under Part 1 or 2 of Schedule 2 or paragraph 1 of Schedule 4 must—
  - (a) if the power has been exercised during a relevant year, and
  - (b) as soon as practicable after the end of the year,

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prepare a report on how the power has been exercised during the year.

- (2) The person must—
- (a) lay the report before the Scottish Parliament, and
  - (b) once laid—
    - (i) send a copy of it to the Scottish Ministers, and
    - (ii) publish it in such manner as the person considers appropriate.
- (3) In this paragraph—
- “relevant sub-delegated power” has the same meaning as in paragraph 31;
- “relevant year” means—
- (a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and
  - (b) in any other case, the calendar year.

*Further explanatory statements in urgency cases*

- 34 (1) This paragraph applies where a statutory instrument containing regulations under this Act is to be made by virtue of paragraph 5(2) or 19(2).
- (2) The Minister of the Crown who is to make the instrument must make a statement in writing explaining the reasons for the Minister's opinion that, by reason of urgency, it is necessary to make the regulations without a draft of the instrument containing them being laid before, and approved by a resolution of, each House of Parliament.
- (3) A statement under sub-paragraph (2) must be published before, or at the same time as, the instrument as made is laid before each House of Parliament.
- (4) If the Minister—
- (a) fails to make the statement required by sub-paragraph (2) before the instrument is made, or
  - (b) fails to publish it as required by sub-paragraph (3),
- a Minister of the Crown must make a statement explaining the failure.
- (5) A statement under sub-paragraph (4) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (6) For the purposes of this paragraph, where an instrument is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.
- 35 (1) This paragraph applies where regulations are to be made by the Scottish Ministers under this Act by virtue of paragraph 6(2) (whether or not as applied by paragraph 19(7)).
- (2) The Scottish Ministers must make a statement in writing explaining the reasons for the Scottish Ministers' opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to the affirmative procedure.
- (3) A statement under sub-paragraph (2) must be published before, or at the same time as, the regulations as made are laid before the Scottish Parliament.
- (4) If the Scottish Ministers—

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- (a) fail to make the statement required by sub-paragraph (2) before the regulations are made, or
  - (b) fail to publish it as required by sub-paragraph (3),
- they must make a statement explaining the failure.
- (5) A statement under sub-paragraph (4) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

#### *Hybrid instruments*

- 36 If an instrument, or a draft of an instrument, containing regulations under this Act would, apart from this paragraph, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

#### *Procedure on re-exercise of certain powers*

- 37 (1) A power to make regulations which, under this Schedule, is capable of being exercised subject to different procedures may (in spite of section 14 of the Interpretation Act 1978) be exercised, when revoking, amending or re-enacting an instrument made under the power, subject to a different procedure from the procedure to which the instrument was subject.
- (2) For the purposes of sub-paragraph (1) in its application to regulations under section 23(6) no procedure is also a procedure.

#### *Combinations of instruments*

- 38 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made or its approval after it is made.
- (2) The statutory instrument may also include regulations under this Act or another enactment which are made by statutory instrument which is subject to a procedure before Parliament that provides for the annulment of the instrument after it has been made.
- (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument is the procedure mentioned in sub-paragraph (1) and not the procedure mentioned in sub-paragraph (2).
- (4) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the National Assembly for Wales as they apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to the National Assembly for Wales.
- (5) Sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument but as if the references to Parliament were references to the Northern Ireland Assembly.
- (6) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as well as a procedure before Parliament as they apply to a statutory instrument

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containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to Parliament and the Scottish Parliament, the National Assembly for Wales or (as the case may be) the Northern Ireland Assembly.

- (7) This paragraph does not prevent the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act (and, accordingly, references in this Schedule to an instrument containing regulations are to be read as references to an instrument containing (whether alone or with other provision) regulations).

**Status:**

Point in time view as at 08/04/2019.

**Changes to legislation:**

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