

## SCHEDULES

### SCHEDULE 8

#### CONSEQUENTIAL, TRANSITIONAL, TRANSITORY AND SAVING PROVISION

##### PART 1

##### GENERAL CONSEQUENTIAL PROVISION

##### *Existing ambulatory references to retained direct EU legislation*

- 1 (1) Any reference which, immediately before exit day—
- (a) exists in—
    - (i) any enactment,
    - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
    - (iii) any document relating to anything falling within sub-paragraph (i) or (ii), and
  - (b) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3,
- is to be read, on or after exit day, as a reference to the EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement as it forms part of domestic law by virtue of section 3 and, unless the contrary intention appears, as modified by domestic law from time to time.
- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subordinate legislation so far as the power to make the subordinate legislation—
- (a) continues to be part of domestic law by virtue of section 2, and
  - (b) is subject to a procedure before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

##### *Other existing ambulatory references*

- 2 (1) Any reference which—
- (a) exists, immediately before exit day, in—
    - (i) any enactment,
    - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or

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- (iii) any document relating to anything falling within sub-paragraph (i) or (ii),
  - (b) is not a reference to which paragraph 1(1) applies, and
  - (c) is, immediately before exit day, a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,
- is to be read, on or after exit day, as a reference to the EU Treaty, instrument or document as it has effect immediately before exit day.
- (2) Sub-paragraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subordinate legislation so far as the power to make the subordinate legislation—
    - (a) continues to be part of domestic law by virtue of section 2, and
    - (b) is subject to a procedure before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
  - (3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

*Existing powers to make subordinate legislation etc.*

- 3 (1) Any power to make, confirm or approve subordinate legislation which—
  - (a) was conferred before the day on which this Act is passed, and
  - (b) is capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in primary legislation,

is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.

  - (2) But sub-paragraph (1) does not apply if the power to make, confirm or approve subordinate legislation is only capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in Northern Ireland legislation which is an Order in Council.
- 4 (1) Any subordinate legislation which—
  - (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
  - (b) amends or revokes any retained direct principal EU legislation,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.

  - (2) Any subordinate legislation which—
    - (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
    - (b) either—
      - (i) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct principal EU legislation, or
      - (ii) modifies (otherwise than as a connected modification) anything which is retained EU law by virtue of section 4,

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is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.

- (3) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
  - (b) amends or revokes any retained direct minor EU legislation,
- is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.
- (4) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
  - (b) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct minor EU legislation,
- is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.
- (5) Any subordinate legislation which—
- (a) is, or is to be, made, confirmed or approved by virtue of paragraph 3, and
  - (b) modifies as a connected modification any retained direct EU legislation or anything which is retained EU law by virtue of section 4,
- is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to the modification to which it is connected.
- (6) Any provision which may be made, confirmed or approved by virtue of paragraph 3 may be included in the same instrument as any other provision which may be so made, confirmed or approved.
- (7) Where more than one procedure of a kind falling within sub-paragraph (8) would otherwise apply in the same legislature for an instrument falling within sub-paragraph (6), the higher procedure is to apply in the legislature concerned.
- (8) The order of procedures is as follows (the highest first)—
- (a) a procedure which requires a statement of urgency before the instrument is made and the approval of the instrument after it is made to enable it to remain in force,
  - (b) a procedure which requires the approval of the instrument in draft before it is made,
  - (c) a procedure not falling within paragraph (a) which requires the approval of the instrument after it is made to enable it to come into, or remain in, force,
  - (d) a procedure which provides for the annulment of the instrument after it is made,
  - (e) a procedure not falling within any of the above paragraphs which provides for the laying of the instrument after it is made,
  - (f) no procedure.

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- (9) The references in this paragraph to amending or repealing an enactment contained in primary legislation or amending or revoking an enactment contained in subordinate legislation do not include references to amending or repealing or (as the case may be) amending or revoking an enactment contained in any Northern Ireland legislation which is an Order in Council.
- (10) In this paragraph “connected modification” means a modification which is supplementary, incidental, consequential, transitional or transitory, or a saving, in connection with—
- (a) another modification under the power of retained direct EU legislation or anything which is retained EU law by virtue of section 4, or
  - (b) anything else done under the power.
- 5 (1) This paragraph applies to any power to make, confirm or approve subordinate legislation—
- (a) which was conferred before the day on which this Act is passed, and
  - (b) is not capable of being exercised as mentioned in paragraph 3(1)(b) or is only capable of being so exercised in relation to Northern Ireland legislation which is an Order in Council.
- (2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) is to be read—
- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
  - (b) so far as the context permits or requires,
- as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.
- (3) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct principal EU legislation, or
  - (b) anything which is retained EU law by virtue of section 4,
- so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of subparagraph (2).
- (4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct EU legislation, or
  - (b) anything which is retained EU law by virtue of section 4.
- 6 Any subordinate legislation which is, or is to be, made, confirmed or approved by virtue of paragraph 5(2), (3) or (4) is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were doing anything else under the power.
- 7 Any power to make, confirm or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only

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compatibly with EU law is to be read on or after exit day without that restriction or any corresponding restriction in relation to compatibility with retained EU law.

- 8 (1) Paragraphs 3 to 7 and this paragraph—
- (a) do not prevent the conferral of wider powers,
  - (b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after exit day), and
  - (c) are subject to any other provision made by or under this Act or any other enactment.
- (2) For the purposes of paragraphs 3 and 5—
- (a) a power is conferred whether or not it is in force, and
  - (b) a power in retained direct EU legislation is not conferred before the day on which this Act is passed.
- (3) A power which, by virtue of paragraph 3 or 5 or any Act of Parliament passed before, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day.

#### *Review provisions in existing subordinate legislation*

- 9 (1) In carrying out a review of a provision of subordinate legislation on or after exit day (whether under provision made in accordance with section 28 of the Small Business, Enterprise and Employment Act 2015 or otherwise), a person is not required, by any pre-exit enactment, to have regard to how any former EU obligation is implemented elsewhere than in the United Kingdom.
- (2) In this paragraph—
- “former EU obligation” means an obligation by which the United Kingdom is, as a result of the United Kingdom’s withdrawal from the EU, no longer bound at the time of the review;
  - “pre-exit enactment” means an Act passed, or subordinate legislation made, before exit day;
  - “subordinate legislation” does not include an instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales.

#### *Future powers to make subordinate legislation*

- 10 (1) This paragraph applies to any power to make, confirm or approve subordinate legislation which is conferred on or after the day on which this Act is passed.
- (2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may—
- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and
  - (b) so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

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- (3) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct principal EU legislation, or
  - (b) anything which is retained EU law by virtue of section 4,
- so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).
- (4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—
- (a) any retained direct EU legislation, or
  - (b) anything which is retained EU law by virtue of section 4.
- 11 (1) Sub-paragraph (2) applies to any power to make, confirm or approve subordinate legislation which—
- (a) is conferred on or after the day on which this Act is passed, and
  - (b) is capable of being exercised to amend or revoke (or, as the case may be, result in the amendment or revocation of) any retained direct principal EU legislation.
- (2) The power may, so far as applicable and unless the contrary intention appears, be exercised—
- (a) to modify otherwise than by way of amendment or revocation (or, as the case may be, result in such modification of) any retained direct principal EU legislation, or
  - (b) to modify (or, as the case may be, result in the modification of) anything which is retained EU law by virtue of section 4.
- 12 (1) Paragraphs 10 and 11 and this paragraph—
- (a) do not prevent the conferral of wider powers,
  - (b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after exit day), and
  - (c) are subject to any other provision made by or under this Act or any other enactment.
- (2) For the purposes of paragraphs 10 and 11—
- (a) a power is conferred whether or not it is in force,
  - (b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed, and
  - (c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).
- (3) A power which, by virtue of paragraph 10 or 11 or any Act of Parliament passed after, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day.

*Affirmative procedure for instruments which amend or revoke subordinate legislation made under section 2(2) of the ECA (including subordinate legislation implementing EU directives)*

- 13 (1) A statutory instrument which—
- (a) is to be made on or after exit day by a Minister of the Crown under a power conferred before the beginning of the Session in which this Act is passed,
  - (b) is not to be made jointly with any person who is not a Minister of the Crown,
  - (c) amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, and
  - (d) would otherwise be subject to a lower procedure before each House of Parliament and no procedure before any other legislature,
- 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) Sub-paragraph (1) has effect instead of any other provision which would otherwise apply in relation to the procedure for such an instrument before each House of Parliament but does not affect any other requirements which apply in relation to making, confirming or approving the instrument.
- (3) Any provision which—
- (a) may be made under the power mentioned in sub-paragraph (1)(a),
  - (b) is not provision which falls within sub-paragraph (1)(c), and
  - (c) is subject to a lower procedure than the procedure provided for by sub-paragraph (1),
- may be included in an instrument to which sub-paragraph (1) applies (and is accordingly subject to the procedure provided for by that sub-paragraph instead of the lower procedure).
- (4) If a draft of a statutory instrument which—
- (a) is to be made on or after exit day by a Minister of the Crown under a power conferred before the beginning of the Session in which this Act is passed,
  - (b) is not to be made jointly with any person who is not a Minister of the Crown,
  - (c) amends or revokes any provision, made otherwise than under section 2(2) of the European Communities Act 1972 (whether or not by way of amendment), of subordinate legislation made under that section, and
  - (d) would otherwise be subject to a lower procedure before each House of Parliament and no procedure before any other legislature,
- is laid before, and approved by a resolution of, each House of Parliament, then the instrument is not subject to the lower procedure.
- (5) This paragraph applies to an instrument which is subject to a procedure before the House of Commons only as it applies to an instrument which is subject to a procedure before each House of Parliament but as if the references to each House of Parliament were references to the House of Commons only.
- (6) For the purposes of this paragraph, the order of procedures is as follows (the highest first)—
- (a) a procedure which requires a statement of urgency before the instrument is made and the approval of the instrument after it is made to enable it to remain in force,
  - (b) a procedure which requires the approval of the instrument in draft before it is made,

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- (c) a procedure not falling within paragraph (a) which requires the approval of the instrument after it is made to enable it to come into, or remain in, force,
  - (d) a procedure which provides for the annulment of the instrument after it is made,
  - (e) a procedure not falling within any of the above paragraphs which provides for the laying of the instrument after it is made,
  - (f) no procedure.
- (7) For the purposes of this paragraph a power is conferred whether or not it is in force.
- (8) References in this paragraph, other than in sub-paragraph (4), to subordinate legislation made under section 2(2) of the European Communities Act 1972—
- (a) do not include references to any provision of such legislation which is made (whether or not by way of amendment) otherwise than under section 2(2) of that Act, and
  - (b) do include references to subordinate legislation made otherwise than under section 2(2) of that Act so far as that legislation is amended by provision made under that section (but do not include references to any primary legislation so far as so amended).
- (9) This paragraph is subject to any other provision made by or under this Act or any other enactment.

*Enhanced scrutiny procedure for instruments which amend or revoke subordinate legislation under section 2(2) of the ECA (including subordinate legislation implementing EU directives)*

- 14 (1) This paragraph applies where, on or after exit day—
- (a) a statutory instrument which—
    - (i) amends or revokes subordinate legislation made under section 2(2) of the European Communities Act 1972, and
    - (ii) is made under a power conferred before the beginning of the Session in which this Act is passed, or
  - (b) a draft of such an instrument,
- is to be laid before each House of Parliament and subject to no procedure before any other legislature.
- (2) The relevant authority must publish, in such manner as the relevant authority considers appropriate, a draft of the instrument at least 28 days before the instrument or draft is laid.
- (3) The relevant authority must make a scrutiny statement before the instrument or draft is laid.
- (4) A scrutiny statement is a statement—
- (a) setting out the steps which the relevant authority has taken to make the draft instrument published in accordance with sub-paragraph (2) available to each House of Parliament,
  - (b) containing information about the relevant authority’s response to—
    - (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and
    - (ii) any other representations made to the relevant authority about the published draft instrument, and



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- (c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
- (5) A scrutiny statement must be in writing and must be published in such manner as the relevant authority considers appropriate.
- (6) Sub-paragraphs (2) to (5) do not apply if the relevant authority—
- (a) makes a statement in writing to the effect that the relevant authority is of the opinion that, by reason of urgency, sub-paragraphs (2) to (5) should not apply, and
  - (b) publishes the statement in such manner as the relevant authority considers appropriate.
- (7) 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.
- (8) This paragraph applies to an instrument which is subject to a procedure before the House of Commons only as it applies to an instrument which is subject to a procedure before each House of Parliament but as if references to each or either House of Parliament, or both Houses, were references to the House of Commons only.
- (9) For the purposes of this paragraph—
- (a) a power is conferred whether or not it is in force,
  - (b) the draft instrument published under sub-paragraph (2) need not be identical to the final version of the instrument or draft instrument as laid,
  - (c) 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, and
  - (d) in calculating the period of 28 days, no account is to be taken of any time during which—
    - (i) Parliament is dissolved or prorogued, or
    - (ii) either House of Parliament is adjourned for more than four days.
- (10) Sub-paragraph (8) of paragraph 13 applies for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (11) In this paragraph “the relevant authority” means—
- (a) in the case of an Order in Council or Order of Council, the Minister of the Crown who has responsibility in relation to the instrument,
  - (b) in the case of any other statutory instrument which is not to be made by a Minister of the Crown, the person who is to make the instrument, and
  - (c) in any other case, the Minister of the Crown who is to make the instrument.
- (12) This paragraph is subject to any other provision made by or under this Act or any other enactment.

*Explanatory statements for instruments amending or revoking regulations etc. under section 2(2) of the ECA*

- 15 (1) This paragraph applies where, on or after exit day—

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- (a) a statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, or
    - (b) a draft of such an instrument,

is to be laid before each House of Parliament or before the House of Commons only.
  - (2) Before the instrument or draft is laid, the relevant authority must make a statement as to why, in the opinion of the relevant authority, there are good reasons for the amendment or revocation.
  - (3) Before the instrument or draft is laid, the relevant authority must make a statement otherwise explaining—
    - (a) the law which is relevant to the amendment or revocation, and
    - (b) the effect of the amendment or revocation on retained EU law.
  - (4) If the relevant authority fails to make a statement required by sub-paragraph (2) or (3) before the instrument or draft is laid—
    - (a) a Minister of the Crown, or
    - (b) where the relevant authority is not a Minister of the Crown, the relevant authority,

must make a statement explaining why the relevant authority has failed to make the statement as so required.
  - (5) A statement under sub-paragraph (2), (3) or (4) must be made in writing and be published in such manner as the person making it considers appropriate.
  - (6) 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.
  - (7) This paragraph applies in relation to instruments whether the power to make them is conferred before, on or after exit day including where the power is conferred by regulations under this Act (but not where it is conferred by this Act).
  - (8) This paragraph does not apply in relation to any laying before each House of Parliament, or before the House of Commons only, of an instrument or draft instrument where an equivalent draft instrument (ignoring any differences relating to procedure) has previously been laid before both Houses or before the House of Commons only.
  - (9) Sub-paragraph (8) of paragraph 13 applies for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1) of that paragraph.
  - (10) In this paragraph “the relevant authority” means—
    - (a) in the case of an Order in Council or Order of Council, the Minister of the Crown who has responsibility in relation to the instrument,
    - (b) in the case of any other statutory instrument which is not made by a Minister of the Crown, the person who makes, or is to make, the instrument, and
    - (c) in any other case, the Minister of the Crown who makes, or is to make, the instrument.
- 16 (1) This paragraph applies where, on or after exit day—
- (a) a Scottish statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, or

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- (b) a draft of such an instrument,  
is to be laid before the Scottish Parliament.
- (2) Before the instrument or draft is laid, the relevant authority must make a statement as to why, in the opinion of the relevant authority, there are good reasons for the amendment or revocation.
- (3) Before the instrument or draft is laid, the relevant authority must make a statement otherwise explaining—
  - (a) the law which is relevant to the amendment or revocation, and
  - (b) the effect of the amendment or revocation on retained EU law.
- (4) If the relevant authority fails to make a statement required by sub-paragraph (2) or (3) before the instrument or draft is laid, the relevant authority must make a statement explaining why the relevant authority has failed to make the statement as so required.
- (5) A statement under sub-paragraph (2), (3) or (4) must be made in writing and be published in such manner as the relevant authority considers appropriate.
- (6) This paragraph applies in relation to instruments whether the power to make them is conferred before, on or after exit day including where the power is conferred by regulations under this Act (but not where it is conferred by this Act).
- (7) Sub-paragraph (8) of paragraph 13 applies for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (8) In this paragraph “the relevant authority” means—
  - (a) in the case of a Scottish statutory instrument which is not made by the Scottish Ministers, other than an Order in Council, the person who makes, or is to make, the instrument, and
  - (b) in any other case, the Scottish Ministers.