

Status: Point in time view as at 23/01/2020.

Changes to legislation: There are currently no known outstanding effects for the European Union (Withdrawal Agreement) Act 2020, SCHEDULE 4. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Section 40

REGULATIONS UNDER THIS ACT

PART 1

PROCEDURE

Rights in relation to entry and residence

- 1 (1) A statutory instrument containing—
 - (a) the first regulations under section 7(1)(b), (c), (d), (e), (f) or (g), 8(1) or 9, or
 - (b) regulations under section 7, 8 or 9 which amend, repeal or revoke primary legislation or retained direct principal EU legislation,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 section 7, 8 or 9 is subject to annulment in pursuance of a resolution of either House of Parliament.
- 2 (1) A statutory instrument containing the first regulations under section 11—
 - (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the period of 40 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.
- (2) Any other statutory instrument containing regulations under section 11 which amend, repeal or revoke—
 - (a) primary legislation, or
 - (b) retained direct principal EU legislation,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) A statutory instrument containing regulations under section 11, other than a statutory instrument to which sub-paragraph (1) or (2) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In calculating the period of 40 days for the purposes of sub-paragraph (1) 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.
- (5) If regulations cease to have effect as a result of sub-paragraph (1) that—
 - (a) does not affect the validity of anything previously done under the regulations, and

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- (b) does not prevent the making of new regulations.

Powers under sections 12, 13 and 14: sole exercise

- 3 (1) A statutory instrument containing regulations under section 12, 13 or 14 of a Minister of the Crown acting alone which amend, repeal or revoke—
- (a) primary legislation, or
 - (b) retained direct principal EU legislation,
- 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 section 12, 13 or 14 of a Minister of the Crown acting alone is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations under section 12, 13 or 14 of the Scottish Ministers acting alone which amend, repeal or revoke—
- (a) primary legislation, or
 - (b) retained direct principal EU legislation,
- are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (4) Any other regulations under section 12, 13 or 14 of the Scottish Ministers acting alone are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (5) A statutory instrument containing regulations under section 12, 13 or 14 of the Welsh Ministers acting alone which amend, repeal or revoke—
- (a) primary legislation, or
 - (b) retained direct principal EU legislation,
- 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.
- (6) Any other statutory instrument containing regulations under section 12, 13 or 14 of the Welsh Ministers acting alone is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (7) Regulations under section 12, 13 or 14 of a Northern Ireland department acting alone which amend, repeal or revoke—
- (a) primary legislation, or
 - (b) retained direct principal EU legislation,
- may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (8) Any other regulations under section 12, 13 or 14 of a Northern Ireland department acting alone are 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.

Powers under sections 12, 13 and 14: joint exercise

- 4 (1) This paragraph applies to regulations under section 12, 13 or 14 of a Minister of the Crown acting jointly with a devolved authority.

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- (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 amend, repeal or revoke—
 - (a) primary legislation, or
 - (b) retained direct principal EU legislation,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 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 amend, repeal or revoke—
 - (a) primary legislation, or
 - (b) retained direct principal EU legislation,are subject to the affirmative procedure.
- (6) Any other regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the negative procedure.
- (7) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (affirmative procedure) applies in relation to regulations to which sub-paragraph (5) applies 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 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 amend, repeal or revoke—
 - (a) primary legislation, or
 - (b) retained direct principal EU legislation,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 subject to annulment in pursuance of a resolution of the National Assembly for Wales.

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- (12) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department and amend, repeal or revoke—
- (a) primary legislation, or
 - (b) retained direct principal EU legislation,
- 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 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
 - (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) to (16) apply in place of provision made by any other enactment about the effect of such a resolution.

Power to amend definition of “IP completion day”

- 5 A statutory instrument containing regulations under section 39(4) is subject to annulment in pursuance of a resolution of either House of Parliament.

Consequential provision

- 6 A statutory instrument containing regulations under section 41(1) is subject to annulment in pursuance of a resolution of either House of Parliament.

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- 7 A statutory instrument containing regulations under paragraph 39 or 40 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.

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Power under paragraph 1(3) of Schedule 5: sole exercise

- 8
- (1) A statutory instrument containing regulations made by a Minister of the Crown acting alone under paragraph 1(3) of Schedule 5 on or after exit day is subject to annulment in pursuance of a resolution of either House of Parliament.
 - (2) Regulations made by the Scottish Ministers acting alone under paragraph 1(3) of Schedule 5 on or after exit day are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
 - (3) A statutory instrument containing regulations made by the Welsh Ministers acting alone under paragraph 1(3) of Schedule 5 on or after exit day is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
 - (4) Regulations made by a Northern Ireland department acting alone under paragraph 1(3) of Schedule 5 on or after exit day are 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.

Power under paragraph 1(3) of Schedule 5: joint exercise

- 9
- (1) This paragraph applies to regulations under paragraph 1(3) of Schedule 5 of a Minister of the Crown acting jointly with a devolved authority.
 - (2) The procedure provided for by sub-paragraph (3) 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 are made on or after exit day is subject to annulment in pursuance of a resolution of either House of Parliament.
 - (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers on or after exit day are subject to the negative procedure.
 - (5) 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 (4) applies 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).
 - (6) 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 (4) 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).
 - (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers on or after exit day is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
 - (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department on or after exit day are 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.

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- (9) If in accordance with this paragraph—
- (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.
- (10) In sub-paragraph (9) “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
 - (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly.
- (11) Sub-paragraph (9) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (12) Sub-paragraphs (9) to (11) apply in place of provision made by any other enactment about the effect of such a resolution.

Power under paragraph 3(2) of Schedule 5

- 10 (1) Regulations made by the Scottish Ministers under paragraph 3(2) of Schedule 5 on or after exit day are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (2) A statutory instrument containing regulations made by the Welsh Ministers under paragraph 3(2) of Schedule 5 on or after exit day is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (3) Regulations made by a Northern Ireland department under paragraph 3(2) of Schedule 5 on or after exit day are 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.

PART 2

GENERAL PROVISION ABOUT POWERS UNDER ACT

Scope and nature of powers: general

- 11 (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

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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).

- 12 Any power to make regulations under this Act—
- (a) may be exercised so as to 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.
- 13 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.

Anticipatory exercise of powers in relation to withdrawal agreement etc.

- 14 Any power to make regulations under this Act in relation to the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement, or any modification of any of them which requires ratification, is capable of being exercised before the agreement or (as the case may be) modification concerned is ratified.

Scope of appointed day power

- 15 The power of a Minister of the Crown under section 42(7) to appoint a day includes a power to appoint a time on that day if the Minister considers it appropriate to do so.

Hybrid instruments

- 16 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.

Combinations of instruments

- 17 (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

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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 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).

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