

Changes to legislation: There are currently no known outstanding effects for the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 6(8)

FURTHER PROVISION ABOUT THE SCOPE OF THE POWER UNDER SECTION 6

PART 1

SCOPE OF THE POWER OF A MINISTER OF THE CROWN ACTING ALONE OR JOINTLY

- 1 No provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament may be made—
- (a) by the Secretary of State or the Treasury acting alone, or
 - (b) by a Minister of the Crown acting jointly with a Northern Ireland department,
- in regulations under section 6, unless that provision is merely incidental to, or consequential on, provision that would be outside that legislative competence.

Commencement Information

I1 Sch. 2 para. 1 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

- 2 In considering, for the purposes of paragraph 1, whether a provision would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, no account is to be taken of section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law.

Commencement Information

I2 Sch. 2 para. 2 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

PART 2

SCOPE OF THE POWER OF A NORTHERN IRELAND DEPARTMENT ACTING ALONE

No power to make provision outside devolved competence

- 3 No provision may be made by a Northern Ireland department acting alone in regulations under section 6 unless the provision is within the devolved competence of the Northern Ireland department.

Commencement Information

I3 Sch. 2 para. 3 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

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- 4 A provision is within the devolved competence of a Northern Ireland department for the purposes of this Schedule if—
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly—
 - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law), and
 - (ii) would not require the consent of the Secretary of State,
 - (b) the provision—
 - (i) amends or repeals Northern Ireland legislation, and
 - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law) and require the consent of the Secretary of State, or
 - (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone (ignoring section 24(1)(b) of the Northern Ireland Act 1998).

Commencement Information

I4 Sch. 2 para. 4 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

Requirement for consent where it would otherwise be required

- 5 (1) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under section 6 so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State.
- (2) Sub-paragraph (1) does not apply if—
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by a Northern Ireland devolved authority acting alone, and
 - (b) no such consent would be required in that case.
- (3) The consent of a Minister of the Crown is required before any provision is made by a Northern Ireland department acting alone in regulations under section 6 so far as that provision, if contained in—
- (a) subordinate legislation made otherwise than under this Act by the Northern Ireland department, or
 - (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by a Northern Ireland devolved authority acting alone,
- would require the consent of a Minister of the Crown.
- (4) Sub-paragraph (3) does not apply if—
- (a) the provision could be contained in—
 - (i) an Act of the Northern Ireland Assembly, or
 - (ii) different subordinate legislation of the kind mentioned in sub-paragraph (3)(a) or (b) and of a Northern Ireland department acting

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alone or, as the case may be, a Northern Ireland devolved authority acting alone, and

(b) no such consent would be required in that case.

Commencement Information

I5 Sch. 2 para. 5 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

Requirement for joint exercise where it would otherwise be required

- 6 (1) No regulations may be made under section 6 by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
 - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) Sub-paragraph (1) does not apply if the provision could be contained in—
- (a) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
 - (b) different subordinate legislation made otherwise than under this Act by a Northern Ireland devolved authority acting alone.

Commencement Information

I6 Sch. 2 para. 6 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

Requirement for consultation where it would otherwise be required

- 7 (1) No regulations may be made under section 6 by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (2) Sub-paragraph (1) does not apply if—
- (a) the provision could be contained in an Act of the Northern Ireland Assembly, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.
- (3) Sub-paragraph (1) does not apply if—
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by a Northern Ireland devolved authority acting alone, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

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Commencement Information

17 Sch. 2 para. 7 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

Interpretation

- 8 In this Part of this Schedule—
- “Northern Ireland devolved authority” means—
- (a) the First Minister and deputy First Minister in Northern Ireland acting jointly,
 - (b) a Northern Ireland Minister, or
 - (c) a Northern Ireland department;
- “subordinate legislation” means any instrument made under primary legislation.

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Commencement Information

18 Sch. 2 para. 8 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

PART 3

TRANSITIONAL PROVISION

Transitional exception

- 9 Section 24(1)(b) of the Northern Ireland Act 1998 (restriction on acting incompatibly with EU law) does not apply to the making of regulations under section 6.

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Commencement Information

19 Sch. 2 para. 9 in force at 14.11.2020 by [S.I. 2020/1279](#), [reg. 2\(c\)](#)

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