

## SCHEDULES

### SCHEDULE 1

Section 1

#### REPEAL OF THE MAIN RETAINED EU LAW RELATING TO FREE MOVEMENT ETC.

#### PART 1

##### EU-DERIVED DOMESTIC LEGISLATION

- 1 Section 7 of the Immigration Act 1988 (exemption from requirement for leave to enter or remain for persons exercising EU rights etc.) is omitted.
- 2 (1) Section 109 of the Nationality, Immigration and Asylum Act 2002 (power to make regulations about appeals against immigration decisions in respect of persons having, or claiming to have, EU rights) is omitted.  
(2) The Immigration (European Economic Area) Regulations 2016 ([S.I. 2016/1052](#)), made under section 2(2) of the European Communities Act 1972 as well as under section 109 of the 2002 Act, are revoked.  
(3) In consequence of the repeal made by sub-paragraph (1), in the following provisions of the 2002 Act, omit “or by virtue of section 109”—
  - (a) section 106(3) and (4);
  - (b) section 107(3).
- 3 In the Provision of Services Regulations 2009 ([S.I. 2009/2999](#)), in regulation 5 (general exclusions and savings), after paragraph (2) insert—

“(2A) Nothing in these Regulations affects the interpretation, application or operation of any provision made by or under the Immigration Acts.”

#### PART 2

##### RETAINED DIRECT EU LEGISLATION

- 4 (1) Article 1 of the Workers Regulation is omitted.  
(2) Articles 2 to 10 of the Workers Regulation cease to apply so far as—
  - (a) they are inconsistent with any provision made by or under the Immigration Acts (including, and as amended by, this Act), or
  - (b) they are otherwise capable of affecting the interpretation, application or operation of any such provision.
- (3) In this paragraph, “the Workers Regulation” means [Regulation \(EU\) No 492/2011](#) of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

### PART 3

#### EU-DERIVED RIGHTS ETC.

- 5 (1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—
- (a) continue to be recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and
  - (b) are derived from Articles 1, 2, 3(1) to (4), 4, 6, 7, 12, 13, 17(b), 20, 23 or 24 of Annex 1 of the Swiss free movement agreement (or, so far as relating to any of those Articles of that Annex, Articles 3 to 6 of the agreement),
- cease to be recognised and available in domestic law.
- (2) In sub-paragraph (1), “the Swiss free movement agreement” means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (done at Luxembourg on 21 June 1999).
- 6 (1) Any other EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures cease to be recognised and available in domestic law so far as—
- (a) they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, any provision made by or under the Immigration Acts (including, and as amended by, this Act), or
  - (b) they are otherwise capable of affecting the exercise of functions in connection with immigration.
- (2) The reference in sub-paragraph (1) to any other EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures is a reference to any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—
- (a) continue to be recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (including as they are modified by domestic law from time to time), and
  - (b) are not those described in paragraph 5 of this Schedule.
- (3) The reference in sub-paragraph (1) to provision made by or under the Immigration Acts includes provision made after that sub-paragraph comes into force.

## 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,

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- in regulations under section 6, unless that provision is merely incidental to, or consequential on, provision that would be outside that legislative competence.
- 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.

## 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.
- 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).

#### *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.

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- (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 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.

*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.

*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—

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- (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.

### *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.

## **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.

## SCHEDULE 3

Section 6(9)

### REGULATIONS UNDER SECTION 6

## **PART 1**

### STATUTORY INSTRUMENTS

- 1 Any power to make regulations under section 6—
- (a) so far as exercisable by the Secretary of State or the Treasury, or by a Minister of the Crown acting jointly with a Northern Ireland department, is exercisable by statutory instrument, and
  - (b) 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).

## PART 2

### SCRUTINY OF REGULATIONS UNDER SECTION 6

#### *Scrutiny where sole exercise*

- 2 (1) A statutory instrument containing regulations of the Secretary of State or the Treasury under section 6 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) Regulations of a Northern Ireland department under section 6 may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (3) This paragraph does not apply to regulations to which paragraph 3 applies (Minister of the Crown and a Northern Ireland department acting jointly).

#### *Scrutiny where joint exercise*

- 3 Regulations under section 6 of a Minister of the Crown acting jointly with a Northern Ireland department may not be made unless—
- (a) a draft of the statutory instrument containing those regulations has been laid before, and approved by a resolution of, each House of Parliament, and
- (b) a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

#### *Combination of instruments*

- 4 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under section 6 which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made.
- (2) The statutory instrument may also include regulations under another Act 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—
- (a) is the procedure mentioned in sub-paragraph (1), and
- (b) is not the procedure mentioned in sub-paragraph (2).
- (4) Sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument but as if—
- (a) the references to Parliament were references to the Northern Ireland Assembly, and
- (b) the reference to another Act in sub-paragraph (2) included Northern Ireland legislation.
- (5) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under section 6 which is subject to a procedure before the Northern Ireland Assembly as well as a procedure before Parliament as they apply to a statutory instrument containing regulations under section 6 which is subject to a procedure before Parliament but as if the references to Parliament were references to Parliament and the Northern Ireland Assembly.

- (6) This paragraph does not prevent the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under section 6 (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).