

## SCHEDULES

### SCHEDULE 6

Section 2

#### REGULATIONS UNDER SECTION 2

##### *Restrictions on power to make regulations*

- 1 (1) Regulations under section 2 may not include—
  - (a) provision that confers power to legislate by means of regulations, orders, rules or other subordinate instrument (other than rules of procedure for courts or tribunals);
  - (b) provision that creates an offence punishable by imprisonment.
- (2) Sub-paragraph (1)(a) does not prevent the modification of a power to legislate conferred otherwise than under section 2, or the extension of any such power to purposes of a similar kind to those for which it was conferred.
- (3) A power to give practice directions or other directions regarding matters of administration is not a power to legislate for the purposes of sub-paragraph (1)(a).

##### *Consultation*

- 2 Before the Secretary of State makes regulations under section 2, the Secretary of State must consult such persons as the Secretary of State thinks appropriate.

##### *Regulations to be made by statutory instrument or statutory rule*

- 3 The power to make regulations under section 2—
  - (a) is exercisable by statutory instrument, in the case of regulations made by the Secretary of State;
  - (b) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), in the case of regulations made by a Northern Ireland department.

##### *Parliamentary or assembly procedure*

- 4 (1) This paragraph applies to a statutory instrument containing regulations made by the Secretary of State under section 2.
- (2) If the instrument contains (whether alone or with other provision)—
  - (a) provision made for the purpose of implementing or applying, in relation to the United Kingdom or a particular part of the United Kingdom, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section 2 or otherwise),
  - (b) provision made for the purpose of giving effect, in relation to the United Kingdom or a particular part of the United Kingdom, to any relevant arrangements that relate to a particular territory and have not previously been

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- the subject of any such provision (whether made by regulations under that section or otherwise),
- (c) provision that creates or extends, or increases the penalty for, a criminal offence,
  - (d) provision that amends primary legislation, or
  - (e) provision made under section 2(6),
- it may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
- (3) In this Schedule “relevant arrangements” means arrangements of the kind mentioned in section 2(3).
- (4) If sub-paragraph (2) does not apply to the instrument, it is subject to annulment in pursuance of a resolution of either House of Parliament.
- 5 (1) This paragraph applies to regulations made by the Scottish Ministers under section 2.
- (2) The regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)) if they contain (whether alone or with other provision)—
- (a) provision made for the purpose of implementing or applying, in relation to Scotland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section 2 or otherwise),
  - (b) provision made for the purpose of giving effect, in relation to Scotland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),
  - (c) provision that creates or extends, or increases the penalty for, a criminal offence,
  - (d) provision that amends primary legislation, or
  - (e) provision made under section 2(6).
- (3) If sub-paragraph (2) does not apply to the regulations, they are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- 6 (1) A Northern Ireland department may not make regulations under section 2 that contain (whether alone or with other provision)—
- (a) provision made for the purpose of implementing or applying, in relation to Northern Ireland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section 2 or otherwise),
  - (b) provision made for the purpose of giving effect, in relation to Northern Ireland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),
  - (c) provision that creates or extends, or increases the penalty for, a criminal offence,
  - (d) provision that amends primary legislation, or
  - (e) provision made under section 2(6),

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unless a draft of the regulations has been laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.

- (2) Regulations under section 2 made by a Northern Ireland department are subject to negative resolution, within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954, if a draft of the regulations was not required to be laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.
- (3) Section 41(3) of that Act applies for the purposes of sub-paragraph (1) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

### *Interpretation*

7 In this Schedule—

“amend” includes repeal or revoke;

“primary legislation” means any provision of—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“relevant arrangements” has the meaning given in paragraph 4(3);

“relevant international agreement” has the same meaning as in section 2.