



# United Kingdom Internal Market Act 2020

CHAPTER 27

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# United Kingdom Internal Market Act 2020

## CHAPTER 27

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# United Kingdom Internal Market Act 2020

## 2020 CHAPTER 27

An Act to make provision in connection with the internal market for goods and services in the United Kingdom (including provision about the recognition of professional and other qualifications); to make provision in connection with provisions of the Northern Ireland Protocol relating to trade and state aid; to authorise the provision of financial assistance by Ministers of the Crown in connection with economic development, infrastructure, culture, sport and educational or training activities and exchanges; to make regulation of the provision of distortive or harmful subsidies a reserved or excepted matter; and for connected purposes. [17th December 2020]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### UK MARKET ACCESS: GOODS

##### *Introductory*

#### **1 Purpose of Part 1**

- (1) This Part promotes the continued functioning of the internal market for goods in the United Kingdom by establishing the United Kingdom market access principles.
- (2) The United Kingdom market access principles are—
  - (a) the mutual recognition principle for goods (see sections 2 to 4), and
  - (b) the non-discrimination principle for goods (see sections 5 to 9).

- (3) Those principles have no direct legal effect except as provided by this Part.

*Mutual recognition: goods*

**2 The mutual recognition principle for goods**

- (1) The mutual recognition principle for goods is the principle that goods which—
- (a) have been produced in, or imported into, one part of the United Kingdom (“the originating part”), and
  - (b) can be sold there without contravening any relevant requirements that would apply to their sale,
- should be able to be sold in any other part of the United Kingdom, free from any relevant requirements that would otherwise apply to the sale.
- (2) Where goods are to be sold in a particular way in the other part of the United Kingdom, the condition in subsection (1)(b) has effect as if the reference to “their sale” were a reference to their sale in that particular way. So, for example, if goods are to be sold by auction, the condition is met if (and only if) they can be sold by auction in the originating part without contravening any applicable relevant requirements there.
- (3) Where the principle applies in relation to a sale of goods in a part of the United Kingdom because the conditions in subsection (1)(a) and (b) are met, any relevant requirements there do not apply in relation to the sale.

**3 Relevant requirements for the purposes of section 2**

- (1) This section defines “relevant requirement” for the purposes of the mutual recognition principle for goods as it applies in relation to a particular sale of goods in a part of the United Kingdom.
- (2) A statutory requirement in the part of the United Kingdom concerned which—
- (a) prohibits the sale of the goods or, in the case of an obligation or condition, results in their sale being prohibited if it is not complied with, and
  - (b) is within the scope of the mutual recognition principle,
- is a relevant requirement in relation to the sale unless excluded from being a relevant requirement by any provision of this Part.
- (3) A statutory requirement is within the scope of the mutual recognition principle if it relates to any one or more of the following—
- (a) characteristics of the goods themselves (such as their nature, composition, age, quality or performance);
  - (b) any matter connected with the presentation of the goods (such as the name or description applied to them or their packaging, labelling, lot-marking or date-stamping);
  - (c) any matter connected with the production of the goods or anything from which they are made or is involved in their production, including the place at which, or the circumstances in which, production or any step in production took place;
  - (d) any matter relating to the identification or tracing of an animal (such as marking, tagging or micro-chipping or the keeping of particular records);

- (e) the inspection, assessment, registration, certification, approval or, authorisation of the goods or any other similar dealing with them;
  - (f) documentation or information that must be produced or recorded, kept, accompany the goods or be submitted to an authority;
  - (g) anything not falling within paragraphs (a) to (f) which must (or must not) be done to, or in relation to, the goods before they are allowed to be sold.
- (4) A manner of sale requirement is not within the scope of the mutual recognition principle unless subsection (6) applies.
- (5) For this purpose a “manner of sale requirement” is a statutory requirement that governs any aspect of the circumstances or manner in which the goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold).
- (6) A statutory requirement that –
- (a) is worded as a manner of sale requirement, but
  - (b) appears to be designed artificially to avoid the operation of the mutual recognition principle in relation to what would otherwise be a requirement within the scope of that principle,
- is to be regarded as a relevant requirement, despite subsection (4).  
This subsection would apply, for example, where a manner of sale requirement involves an unusually restrictive condition such that it would be impossible to comply with the condition and have a practical chance of selling the goods.
- (7) A statutory requirement which requires the person selling or acquiring the goods to keep or submit, after the sale takes place, any documentation or information required to be produced or recorded beforehand is to be treated as a relevant requirement relating to the sale.
- (8) In this Part “statutory requirement” means an obligation, a condition or a prohibition (however described) imposed by legislation (including legislation imposing mandatory terms into contracts for the sale of goods).

#### **4 Exclusion of certain requirements existing before commencement**

- (1) A statutory requirement in a part of the United Kingdom (“the relevant part”) which –
- (a) applies in relation to a particular sale of goods in that part of the United Kingdom, and
  - (b) would otherwise fall within section 3 as a relevant requirement,
- is not a relevant requirement (so far as relating to the sale) for the purposes of the mutual recognition principle where the conditions in subsection (2) are met.
- (2) The conditions are that, on the relevant day –
- (a) the same statutory requirement would have applied in relation to the sale if it had taken place on that day, and
  - (b) there was no corresponding requirement in force in each of the other three parts of the United Kingdom.
- (3) For the purposes of subsection (2) “the relevant day” is the day before the day on which this section comes into force.

- (4) The re-enactment (without substantive change) of a statutory requirement does not affect its continuity for the purposes of subsection (2)(a).
- (5) For the purposes of subsection (2)(b) “corresponding requirement”, in relation to the statutory requirement in the relevant part of the United Kingdom, means a statutory requirement in another part of the United Kingdom that would have had the same effect in relation to the sale (if it had taken place there on the relevant day).
- (6) For the purposes of subsections (2) and (5) a statutory requirement is to be regarded as the same as another statutory requirement, or having the same effect, if any differences between them are not substantive.

*Non-discrimination: goods*

## 5 The non-discrimination principle for goods

- (1) The non-discrimination principle for goods is the principle that the sale of goods in one part of the United Kingdom should not be affected by relevant requirements that directly or indirectly discriminate against goods that have a relevant connection with another part of the United Kingdom.
- (2) For the purposes of the application of that principle in any given case—
  - (a) the part of the United Kingdom where sale should not be affected is referred to as the “destination part”;
  - (b) the goods that have a relevant connection with another part of the United Kingdom are referred to as the “incoming goods”;
  - (c) that other part is referred to as the “originating part”.
- (3) A relevant requirement (see section 6) is of no effect in the destination part if, and to the extent that, it directly or indirectly discriminates against the incoming goods (see sections 7 and 8).
- (4) Goods have a relevant connection with a part of the United Kingdom if they or any of their components—
  - (a) are produced in that part,
  - (b) are produced by a business based in that part, or
  - (c) come from, or pass through, that part before reaching the destination part.
- (5) For the purposes of this Part—
  - (a) “components” includes parts, ingredients and constituent materials;
  - (b) a business is “based”—
    - (i) where its registered office is,
    - (ii) if it does not have a registered office, where its head office is, or
    - (iii) if it has neither a registered office nor a head office, where its principal place of business is.

## 6 Relevant requirements for the purposes of the non-discrimination principle

- (1) This section defines “relevant requirement” for the purposes of the non-discrimination principle for goods.
- (2) A relevant requirement, for the purposes of the principle as it has effect in relation to a part of the United Kingdom, is a statutory provision that—

- (a) applies in that part of the United Kingdom to, or in relation to, goods sold in that part, and
  - (b) is within the scope of the non-discrimination principle.
- (3) A statutory provision is within the scope of the non-discrimination principle if it relates to any one or more of the following—
  - (a) the circumstances or manner in which goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold);
  - (b) the transportation, storage, handling or display of goods;
  - (c) the inspection, assessment, registration, certification, approval or authorisation of the goods or any similar dealing with them;
  - (d) the conduct or regulation of businesses that engage in the sale of certain goods or types of goods.
- (4) A statutory provision is not a relevant requirement—
  - (a) to the extent that it is a relevant requirement for the purposes of the mutual recognition principle for goods (see section 3), or
  - (b) if section 9 (exclusion of certain existing provisions) so provides.
- (5) The Secretary of State may by regulations amend subsection (3) so as to add, vary or remove a paragraph of that subsection.
- (6) Regulations under subsection (5) are subject to affirmative resolution procedure.
- (7) Before making regulations under subsection (5) the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (8) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (9) If regulations are made in reliance on subsection (8), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (10) In this section “statutory provision” means provision contained in legislation.

## **7 The non-discrimination principle: direct discrimination**

- (1) A relevant requirement directly discriminates against incoming goods if, for the reason that the goods have the relevant connection with the originating part, the requirement applies to, or in relation to, the incoming goods in a way—
  - (a) in which it does not or would not apply to local goods, and
  - (b) that puts the incoming goods at a disadvantage compared to local goods.
- (2) Goods are put at a disadvantage if it is made in any way more difficult, or less attractive, to sell or buy the goods or do anything in connection with their sale.
- (3) “Local goods”, for the purposes of this section, are actual or hypothetical goods that—

- (a) lack the relevant connection of the incoming goods with the originating part, but
  - (b) otherwise are materially the same as, and share the material circumstances of, the incoming goods.
- (4) Goods (“the other goods”) lack the relevant connection of the incoming goods with the originating part—
- (a) where the incoming goods have a relevant connection within section 5(4)(a), if the other goods, or (as the case may be) their components, were produced in the destination part;
  - (b) where the incoming goods have a relevant connection within section 5(4)(b), if the other goods, or (as the case may be) their components, were produced by a business based in the destination part;
  - (c) where the incoming goods have a relevant connection within section 5(4)(c), if the other goods, or (as the case may be) their components, came from the destination part and did not pass through anywhere outside that part.

## 8 The non-discrimination principle: indirect discrimination

- (1) A relevant requirement indirectly discriminates against incoming goods if—
- (a) it does not directly discriminate against the goods,
  - (b) it applies to, or in relation to, the incoming goods in a way that puts them at a disadvantage,
  - (c) it has an adverse market effect, and
  - (d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.
- (2) Goods are put at a disadvantage if it is made in any way more difficult, or less attractive, to sell or buy the goods or do anything in connection with their sale than if the requirement did not apply.
- (3) A requirement has an adverse market effect if, because it—
- (a) puts at a disadvantage the incoming goods (and any comparable goods that also have a relevant connection with the originating part and are also put at that disadvantage), but
  - (b) does not put at that disadvantage (at all or to the same extent) some or all comparable goods that have a relevant connection with the destination part and no other part of the United Kingdom,
- it causes a significant adverse effect on competition in the market for such goods in the United Kingdom.
- (4) “Comparable goods” means like goods or interchangeable goods; and—
- (a) “like goods” are goods that are alike the incoming goods in all respects, or otherwise have characteristics closely resembling those of the incoming goods;
  - (b) “interchangeable goods” are goods that, from the point of view of a purchaser of the goods, could reasonably be said to be interchangeable with the incoming goods.
- (5) The application of subsection (3) is to be determined with regard both to the content of the requirement and to the way in which it operates, or is administered, in practice (as a whole or in particular classes of case).
- (6) “Legitimate aim” means one, or a combination, of the following aims—

- (a) the protection of the life or health of humans, animals or plants;
  - (b) the protection of public safety or security.
- (7) The Secretary of State may by regulations amend subsection (6) so as to add, vary or remove an aim.
- (8) Regulations under subsection (7) are subject to affirmative resolution procedure.
- (9) Before making regulations under subsection (7), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (12) The application of subsection (1)(d) is to be determined with regard, in particular, to—
  - (a) the effects of the requirement in all the circumstances, and
  - (b) the availability of alternative means of achieving the aim in question.

## **9 Exclusion of certain provision existing before commencement**

- (1) Statutory provision is not a relevant requirement for the purposes of the non-discrimination principle for goods if the same provision was in force in the part of the United Kingdom concerned on the day before the day on which this section comes into force.
- (2) The re-enactment (without substantive change) of statutory provision does not affect its continuity for the purposes of subsection (1).
- (3) For the purposes of subsection (1) the same provision is to be regarded as in force on the day concerned if any differences are not substantive.
- (4) In this section “statutory provision” has the same meaning as in section 6.

### *Exclusions from market access principles*

## **10 Further exclusions from market access principles**

- (1) Schedule 1 contains provision excluding the application of the United Kingdom market access principles in certain cases.
- (2) The Secretary of State may by regulations amend that Schedule.
- (3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—
  - (a) forms part of a common framework agreement, and
  - (b) provides that certain cases, matters, requirements or provision should be excluded from the application of the market access principles.

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- (4) A “common framework agreement” is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day.
  - (5) References in this section to devolved or transferred matters include reference to corresponding matters in England.
  - (6) When determining whether a matter is a devolved or transferred matter for the purposes of this section, the following provisions are to be ignored –
    - (a) section 30A of the Scotland Act 1998;
    - (b) section 109A of the Government of Wales Act 2006;
    - (c) section 6A of the Northern Ireland Act 1998.
  - (7) In making regulations under subsection (2), the Secretary of State must have regard to the importance of facilitating the access to the market within Great Britain of qualifying Northern Ireland goods.
  - (8) Regulations under subsection (2) are subject to affirmative resolution procedure.
  - (9) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
  - (10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
  - (11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
  - (12) In this section –
    - “devolved administrations” means –
      - (a) the Scottish Ministers,
      - (b) the Welsh Ministers, and
      - (c) a Northern Ireland department;
    - “qualifying Northern Ireland goods” has the same meaning as in section 47.

### *Supplementary*

## **11 Modifications in connection with the Northern Ireland Protocol**

- (1) The United Kingdom market access principles for goods apply, in relation to the sale of goods in a part of the United Kingdom other than Northern Ireland, with the following modifications.

(For provision affecting the application of those principles in relation to the sale of goods in Northern Ireland, see, in particular, the Northern Ireland Protocol and sections 7A, 7C and 8C of the European Union (Withdrawal) Act 2018.)

- (2) The mutual recognition principle for goods applies in relation to all qualifying Northern Ireland goods as if they were produced in, or imported into, Northern Ireland.
- (3) That principle does not apply in relation to goods produced in, or imported into, Northern Ireland that are not qualifying Northern Ireland goods, unless subsection (4) applies.
- (4) If goods falling within subsection (3) are moved in a way that would, but for the fact that Northern Ireland is a part of the United Kingdom, amount for the purposes of the mutual recognition principle for goods to the importation of the goods into England, Scotland or Wales, the goods are to be regarded for the purposes of that principle as having been so imported.
- (5) Goods that are not qualifying Northern Ireland goods do not have a relevant connection with Northern Ireland for the purposes of the non-discrimination principle for goods (despite section 5(4)).
- (6) Subsection (7) applies for the purposes of paragraph 1 of Schedule 1 in a case where Northern Ireland is the “affected part” within the meaning of sub-paragraph (2) of that paragraph.
- (7) In determining whether the condition in sub-paragraph (3) of that paragraph is met, a pest or disease is to be taken to be present in Northern Ireland if it is, or may be, present in qualifying Northern Ireland goods (including when the goods are in Great Britain).
- (8) In this section “qualifying Northern Ireland goods” has the same meaning as in section 47.

## 12 Guidance relating to Part 1

- (1) The Secretary of State may issue guidance on any matter relating to—
  - (a) the practical operation of the United Kingdom market access principles, or
  - (b) the effect of any provision of this Part.
- (2) Guidance may be directed towards the public generally or towards any description of persons (such as traders, persons with enforcement functions or a class of such traders or persons).
- (3) In subsection (2) “enforcement function” means a function relating to the enforcement of anything which is (or is capable of being) a relevant requirement for the purposes of either of the market access principles for goods.
- (4) The power of the Secretary of State under subsection (1) includes power to revise or withdraw (in whole or part) any guidance previously issued.
- (5) Before issuing, revising or withdrawing guidance under subsection (1), the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (6) The Secretary of State must arrange for the publication of—
  - (a) any guidance that has been issued, as revised from time to time;
  - (b) any revisions made under subsection (4);
  - (c) notice of the withdrawal of any guidance under subsection (4).

- (7) In this section “guidance” means guidance under subsection (1).

### **13 Duty to review the use of Part 1 amendment powers**

- (1) In this section “the Part 1 amendment powers” are the powers conferred by sections 6(5), 8(7) and 10(2) (powers to amend certain provisions of Part 1).
- (2) The Secretary of State must, during the permitted period –
- (a) carry out a review of any use that has been made of the Part 1 amendment powers,
  - (b) prepare a report of the review, and
  - (c) lay a copy of the report before Parliament.
- (3) In carrying out the review the Secretary of State must –
- (a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland,
  - (b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4, and
  - (c) assess the impact and effectiveness of any changes made under the Part 1 amendment powers.
- (4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.
- (5) If any Part 1 amendment power has not been used by the time the review is carried out, this section has effect –
- (a) as if the report required by subsection (2), so far as relating to that power, is a report containing –
    - (i) a statement to the effect that the power has not been used since it came into force, and
    - (ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and
  - (b) as if the requirements of subsection (3) did not apply in relation to that power.

### **14 Sale of goods complying with local law**

Nothing in this Part prevents goods produced in or imported into a part of the United Kingdom from being sold in another part of the United Kingdom if (apart from this Part) the sale complies with any requirements applicable in that other part of the United Kingdom (or there are no such requirements).

### **15 Interpretation of references to “sale” in Part 1**

- (1) This section explains the meaning in this Part of references to the sale of goods (however expressed).
- (2) “Sale” does not include a sale which –
- (a) is not made in the course of a business, or
  - (b) is made in the course of a business but only for the purpose of performing a function of a public nature.
- (3) Subsection (2)(b) does not exclude a sale which is –
- (a) made by a public body or authority for commercial purposes, and

- (b) not made for the purpose of performing a function of a public nature (other than a function relating to the carrying on of commercial activities).
- (4) “Sale” includes –
  - (a) agreement to sell,
  - (b) offering or exposing for sale, or
  - (c) having in possession or holding for sale.
- (5) This Part applies in relation to a supply of goods other than a sale as it applies in relation to a sale (and any reference to “sale”, outside this subsection, is to be read accordingly).
- (6) For this purpose “supply of goods” means the transfer of possession or property in goods (whether or not under or by virtue of a contract), and includes, for example, supply by way of –
  - (a) barter or exchange,
  - (b) the leasing or hiring out of goods, hire-purchase, or bailment of goods, or
  - (c) gift (or anything else done free of charge).

## 16 Interpretation of other expressions used in Part 1

- (1) This section applies for the purposes of this Part.
- (2) “Goods” means any tangible movable, or corporeal moveable, thing (including any packaging or label), but not water or gas that is not offered for sale in a limited volume or set quantity.
- (3) Goods are to be regarded as “produced in” a part of the United Kingdom (if not wholly produced there) if the most recent significant production step which is a regulated step has occurred there.
- (4) A production step occurring in a part of the United Kingdom is “regulated” for the purposes of subsection (3) if –
  - (a) it is the subject of any statutory requirement in that part of the United Kingdom, or
  - (b) it is a step that could materially affect a person’s ability to sell the goods without contravening –
    - (i) any relevant requirement for the purposes of the mutual recognition principle for goods, or
    - (ii) any statutory requirement that is excluded from being a relevant requirement by section 4(1),that would be applicable to a sale of the goods in that part of the United Kingdom (being a sale of a kind for which the goods are being produced).
- (5) A production step is “significant” for the purposes of subsection (3) if it is significant in terms of the character of the goods being produced and the purposes for which they are to be sold or used (but see subsections (6) and (7)).
- (6) A production step falling within any of the following descriptions is not significant (whether or not it is regulated) –
  - (a) activities carried out specifically to ensure goods do not deteriorate before being sold (such as maintaining them at or below a particular temperature);

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- (b) activities carried out solely for purposes relevant to their presentation for sale (such as cleaning or pressing fabrics or sorting different coloured items for packaging together);
  - (c) activities involving a communication of any kind with a regulatory or trade body (such as registering the goods or notifying the goods or anything connected with them or their production);
  - (d) activities carried out for the purpose of testing or assessing any characteristic of the goods (such as batch testing a pharmaceutical product).
- (7) A production step involving the packaging, labelling or marking of goods is not significant (whether or not it is regulated) unless the step is fundamental to the character of the goods and the purposes for which they are to be sold or used.
- (8) Goods are “imported into” a part of the United Kingdom only if they are imported into that part from outside the United Kingdom.  
For this purpose the Isle of Man is outside the United Kingdom.
- (9) Goods are to be regarded as imported –
- (a) for goods brought by sea, when the ship carrying them enters the limits of the port at which they are discharged;
  - (b) for goods brought by air, when they are unloaded;
  - (c) for goods brought by land, when they enter the United Kingdom.
- In this subsection “port” and “ship” have the same meaning as in the Customs and Excise Management Act 1979 (see section 1 of that Act).
- (10) Goods produced in, or imported into, a part of the United Kingdom (“the original part of the United Kingdom”) which are –
- (a) exported to a place outside the United Kingdom, and
  - (b) re-imported back into any other part of the United Kingdom,
- are, despite the re-importation, to continue to be regarded as goods produced in, or imported into, the original part of the United Kingdom.
- (11) A reference (however expressed) to the production of anything includes –
- (a) cultivation, harvesting and similar activities (in relation to plants or fungi) and
  - (b) rearing, keeping, handling, killing and similar activities (in relation to livestock or other animals).
- (12) A reference (however expressed) to law in a part of the United Kingdom is a reference to –
- (a) the law of England and Wales as it applies in (or in relation to) England,
  - (b) the law of England and Wales as it applies in (or in relation to) Wales,
  - (c) the law of Scotland, or
  - (d) the law of Northern Ireland.
- (13) “Contravening” includes failing to comply.
- (14) “Statutory requirement” has the meaning given by section 3(8).

## PART 2

### UK MARKET ACCESS: SERVICES

#### 17 Services: overview

- (1) This Part governs the regulation of service providers in the United Kingdom.
- (2) It makes provision that limits the application and effect of authorisation requirements and regulatory requirements.
- (3) An authorisation requirement is a legislative requirement that a service provider must have the permission of a regulator before carrying on a business of providing particular services.
- (4) A regulatory requirement is a legislative requirement that would if not satisfied (whether at a particular point or on a continuing basis) prevent a service provider from carrying on a business of providing particular services.
- (5) The following are neither authorisation requirements nor regulatory requirements for the purposes of this Part—
  - (a) relevant requirements as defined for the purposes of the mutual recognition principle for goods (see section 3);
  - (b) provision of the sort described in section 24(1) or 28(1) (professional qualifications and regulation) to the extent it has the effect described there;
  - (c) a requirement that—
    - (i) is in force, or otherwise has effect, on the day before the day on which this section comes into force and has not been substantively changed after that day, or
    - (ii) comes into force, or otherwise takes effect, on or after the day on which this section comes into force if it re-enacts or replicates (without substantive change) a legislative requirement in force or having effect immediately before that day;
  - (d) a requirement that applies to a service provider, but which also applies to persons who do not provide services (for example, a requirement imposing duties on employers);
  - (e) a requirement to notify, or register with, a regulator;
  - (f) a requirement to provide evidence of being authorised to provide services in a part of the United Kingdom other than the part in which the requirement applies.
- (6) Subsection (5)(c) does not exclude (and, accordingly, references to authorisation requirements do include) an authorisation requirement that applies in a part of the United Kingdom if, after the relevant day, a corresponding authorisation requirement in another part of the United Kingdom is substantively changed.
- (7) For the purposes of subsection (6)—
  - (a) an authorisation requirement corresponds to another authorisation requirement if it relates to the same, or substantially the same, services;
  - (b) the “relevant day” is the day before the day on which this section comes into force.
- (8) For the purposes of this section, an authorisation requirement is substantively changed if a legislative requirement that would, if not satisfied, prevent a

service provider from satisfying the authorisation requirement is substantively changed.

- (9) In this Part –
- “service provider” means a person –
- (a) that provides, or intends to provide, services in the course of the person’s business, and
  - (b) that has a permanent establishment in the United Kingdom through which that business is wholly or partly carried on;
- “permanent establishment” –
- (a) in relation to a company, is to be read in accordance with Chapter 2 of Part 24 of the Corporation Tax Act 2010, and
  - (b) in relation to any other person, is to be read in accordance with that Chapter but as if references in that Chapter to a company were references to that person.

## 18 Services: exclusions

- (1) Schedule 2 contains –
- (a) a list of services specified in the first column of the table in Part 1 of that Schedule, to which section 19 (mutual recognition) does not apply;
  - (b) a list of services specified in the first column of the table in Part 2 of that Schedule, to which sections 20 and 21 (non-discrimination) do not apply;
  - (c) a list of authorisation requirements in Part 3 of that Schedule, to which section 19 does not apply;
  - (d) a list of regulatory requirements in Part 4 of that Schedule, to which sections 20 and 21 do not apply.
- (2) The Secretary of State must keep Schedule 2 under review, and may by regulations –
- (a) remove entries in the tables in Part 1 or Part 2 of that Schedule or entries in the lists in Part 3 or Part 4 of that Schedule;
  - (b) amend entries in those tables or lists;
  - (c) add entries to those tables or lists.
- (3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that –
- (a) forms part of a common framework agreement, and
  - (b) provides that certain cases, matters, requirements or provision should be excluded from the application of this Part.
- (4) A “common framework agreement” is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day.
- (5) References in this section to devolved or transferred matters include reference to corresponding matters in England.
- (6) When determining whether a matter is a devolved or transferred matter for the purposes of this section, the following provisions are to be ignored –
- (a) section 30A of the Scotland Act 1998;
  - (b) section 109A of the Government of Wales Act 2006;

- (c) section 6A of the Northern Ireland Act 1998.
- (7) Regulations under subsection (2) are subject to affirmative resolution procedure.
- (8) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (9) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (10) If regulations are made in reliance on subsection (9), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (11) In this section “devolved administrations” means –
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) a Northern Ireland department.

## **19 Services: mutual recognition of authorisation requirements**

- (1) An authorisation requirement in relation to the provision of services in one part of the United Kingdom does not apply to a person who is authorised to provide those services in another part of the United Kingdom.
- (2) A person is authorised to provide services in a part of the United Kingdom if they have the permission of a regulator that exercises regulatory functions in relation to the whole of that part to carry on a business of providing those services in that part.
- (3) But, for the purposes of this section, a person is not to be treated as authorised to provide services in a part of the United Kingdom where the permission to provide those services only relates to their provision in relation to particular premises or to a particular place or piece of infrastructure.
- (4) Subsection (1) does not apply to an authorisation requirement to the extent it can reasonably be justified as a response to a public health emergency.

## **20 Direct discrimination in the regulation of services**

- (1) A regulatory requirement that directly discriminates against a service provider is of no effect in relation to that service provider.
- (2) A regulatory requirement directly discriminates against a service provider if –
  - (a) it has, or would have, the effect of treating the service provider less favourably than other service providers, and
  - (b) the reason for that less favourable treatment is the service provider’s relevant connection, or lack of relevant connection, to a part of the United Kingdom.
- (3) A regulatory requirement is not to be taken to directly discriminate against a service provider to the extent the requirement can reasonably be justified as a response to a public health emergency.

- (4) For the purposes of this section, a service provider has a relevant connection to a part of the United Kingdom if the service provider –
- (a) has a registered office, place of business or residence in that part,
  - (b) provides services from that part, or
  - (c) has members, partners, officers or staff with a registered office, place of business, or residence in that part.

## 21 Indirect discrimination in the regulation of services

- (1) A regulatory requirement that indirectly discriminates against an incoming service provider is of no effect in relation to that incoming service provider.
- (2) A regulatory requirement indirectly discriminates against an incoming service provider if –
- (a) it does not directly discriminate against the incoming service provider (within the meaning of section 20),
  - (b) it puts the incoming service provider at a relevant disadvantage,
  - (c) it has an adverse market effect, and
  - (d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.
- (3) A regulatory requirement puts an incoming service provider at a relevant disadvantage if –
- (a) it puts the incoming service provider at a disadvantage in relation to the provision of services in the part of the United Kingdom in which the requirement applies, and
  - (b) it does not put, or would not put, each local service provider at that disadvantage in relation to the provision of those services in that part (at all or to the same extent).
- (4) A regulatory requirement puts a service provider at a disadvantage in relation to the provision of services in a part of the United Kingdom if it makes it in any way more difficult, or less attractive, for the service provider to provide the services in that part.
- (5) A regulatory requirement has an adverse market effect if, by putting an incoming service provider (or incoming service providers) at a relevant disadvantage in relation to the provision of services, it has a significant adverse effect on competition in the market for those services in the United Kingdom.
- (6) For the purposes of subsections (1) to (5) –
- (a) an “incoming service provider” is a service provider that –
    - (i) provides the services in the part of the United Kingdom in which the regulatory requirement applies, but
    - (ii) does not have a relevant connection to that part;
  - (b) a “local service provider” is a service provider that –
    - (i) provides the services in the part of the United Kingdom in which the regulatory requirement applies,
    - (ii) has a relevant connection to that part, and
    - (iii) does not have a relevant connection to another part of the United Kingdom;
  - (c) a service provider has a “relevant connection” to a part of the United Kingdom if the service provider –

- (i) has a registered office, place of business or residence in that part, or
  - (ii) provides the services from that part.
- (7) In this section “legitimate aim” means one, or a combination of any, of the following aims –
  - (a) the protection of the life or health of humans, animals or plants;
  - (b) the protection of public safety or security;
  - (c) the efficient administration of justice.
- (8) The Secretary of State may by regulations amend subsection (7) so as to add, vary or remove a legitimate aim.
- (9) Regulations under subsection (8) are subject to affirmative resolution procedure.
- (10) Before making regulations under subsection (8), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (11) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (12) If regulations are made in reliance on subsection (11), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (13) The application of subsection (2)(d) is to be determined with regard, in particular, to –
  - (a) the effects of the requirement in all the circumstances, and
  - (b) the availability of alternative means of achieving the aim in question.

## **22 Duty to review the use of Part 2 amendment powers**

- (1) In this section “the Part 2 amendment powers” are the powers conferred by sections 18(2) and 21(8) (powers to amend certain provisions of Part 2).
- (2) The Secretary of State must, during the permitted period –
  - (a) carry out a review of any use that has been made of the Part 2 amendment powers,
  - (b) prepare a report of the review, and
  - (c) lay a copy of the report before Parliament.
- (3) In carrying out the review the Secretary of State must –
  - (a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland,
  - (b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4, and
  - (c) assess the impact and effectiveness of any changes made under the Part 2 amendment powers.
- (4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.

- (5) If either of the Part 2 amendment powers has not been used by the time the review is carried out, this section has effect—
- (a) as if the report required by subsection (2), so far as relating to that power, is a report containing—
    - (i) a statement to the effect that the power has not been used since it came into force, and
    - (ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and
  - (b) as if the requirements of subsection (3) did not apply in relation to that power.

## 23 Interpretation of Part 2

- (1) In this Part—
- “authorisation requirement” has the meaning given by section 17(3);
  - “legislative requirement” means a requirement imposed by, or by virtue of, legislation;
  - “public health emergency” means an event or a situation that is reasonably considered to pose an extraordinary threat to human health;
  - “regulator” means a person exercising regulatory functions, and includes—
    - (a) a Minister of the Crown,
    - (b) the Scottish Ministers,
    - (c) the Welsh Ministers, and
    - (d) a Northern Ireland department;
  - “regulatory requirement” has the meaning given by section 17(4).
- (2) If a function conferred by legislation may only be exercised in a way that would impose a regulatory requirement in respect of which section 20(1) or 21(1) applies, the function is to be treated as though it were a regulatory requirement for the purposes of those sections (and ignoring section 17(5)).
- (3) Subsection (2) does not affect the continuation in force or the continuing effect of a requirement of the sort described in section 17(5)(c) and not preserved by section 17(6) (existing requirements).
- (4) Any effect of section 5, 20 or 21 (direct and indirect discrimination for goods and services) is to be disregarded when considering whether a person is authorised to provide services in another part of the United Kingdom for the purposes of section 19 (mutual recognition for services).

## PART 3

### UK MARKET ACCESS: PROFESSIONAL QUALIFICATIONS AND REGULATION

## 24 Access to professions on grounds of qualifications or experience

- (1) Subsection (2) applies in relation to provision applying in a part of the United Kingdom (“the relevant part”) that limits the ability to practise a profession in that part to individuals who have certain qualifications or experience.
- (2) A qualified UK resident (see section 25) is to be treated for the purposes of the provision (and any related provision) as if the qualified UK resident had the qualifications or experience required to be able to practise the profession.

- (3) Provision does not fall within subsection (1) by making the ability of an individual to continue to practise a particular profession, having started to do so on a fully qualified basis, subject to continuing requirements as to training, learning or other forms of experience.
- (4) Subsections (1) and (2) are subject to sections 26 and 27.

## **25 Meaning of “qualified” UK resident**

- (1) A UK resident is “qualified” in relation to a profession for the purposes of section 24(2) if, in any part of the United Kingdom other than the relevant part (“the other part”), the resident is qualified (within the meaning of subsections (3) to (5)) to undertake the full range of corresponding activity.
- (2) In this section –
  - (a) “corresponding activity” means activity that is the same as, or substantially corresponds to, relevant professional activity;
  - (b) “the full range” of corresponding activity is a range of corresponding activity that substantially corresponds to the full range of relevant professional activity;
  - (c) “relevant professional activity” means activity that, in the relevant part, ordinarily comprises the practice of the profession in question.
- (3) To the extent that –
  - (a) corresponding activity is ordinarily undertaken by practitioners of a particular profession in the other part, and
  - (b) provision applying in the other part limits the ability to practise that profession to individuals who have certain qualifications or experience,a UK resident is qualified to undertake the corresponding activity if the resident has the qualifications or experience required to be able to practise the profession in the other part.
- (4) To the extent that –
  - (a) the position is not as described in subsection (3)(a) and (b), and
  - (b) provision applying in the other part limits the ability to undertake corresponding activity to individuals who have certain qualifications or experience,a UK resident is qualified to undertake the corresponding activity if the resident has the qualifications or experience required to do so in the other part.
- (5) To the extent that the position is not as described in subsection (3)(a) and (b) or (4)(b), any UK resident is qualified to undertake corresponding activity in the other part.
- (6) For the purposes of subsection (3) –
  - (a) it does not matter that corresponding activity may also be undertaken by individuals who are not practitioners of a profession;
  - (b) to the extent that corresponding activity is ordinarily undertaken by practitioners of more than one profession regulated as mentioned in subsection (3)(b), a UK resident is qualified in relation to that activity only if the resident has qualifications or experience required to be able to practise whichever of those professions most closely corresponds to the profession in the relevant part.
- (7) For the purposes of subsections (3) and (4) –

- (a) qualifications may be relied on only if they were obtained in the United Kingdom, and
- (b) experience may be relied on only if it was obtained mainly in the United Kingdom.

## **26 Exception from section 24 where individual assessment offered**

- (1) Section 24(2) does not apply in a case where the qualified UK resident –
  - (a) is able to seek, or has sought, to be able to practise the profession in the relevant part by way of a process that satisfies the requirements of this section, and
  - (b) has not lawfully practised the profession in the relevant part at any time before being able to seek that ability by way of that process.
- (2) The process must have the result that, if the regulatory body so decides on an application by the qualified UK resident, the resident becomes able to practise the profession –
  - (a) despite the limitation referred to in section 24(1), and
  - (b) without further assessment of the resident’s qualifications, experience, knowledge or skills (except in connection with the sort of provision referred to in section 24(3)).
- (3) The process must require the application to be dealt with in accordance with the principles set out in subsection (4).
- (4) The principles are that, in connection with the ability to practise a profession in the relevant part –
  - (a) qualifications or experience obtained in any other part of the United Kingdom should have the same effect as qualifications or experience obtained in the relevant part, to the extent that the former demonstrate the like knowledge and skills to substantially the same standard as the latter;
  - (b) the applicant should be able to rely on any qualifications or experience obtained in any other part of the United Kingdom in order to demonstrate the necessary knowledge and skills, so far as those qualifications or experience are reasonably capable of demonstrating them;
  - (c) to the extent that the applicant cannot, on application of the principles set out in paragraphs (a) and (b), demonstrate the necessary knowledge and skills to the satisfaction of the regulatory body, the applicant should (subject to subsection (5)) have an opportunity to do so by way of a test or assessment the demands of which are proportionate to the deficiency;
  - (d) if the applicant can, on application of the principles set out in paragraphs (a) to (c), demonstrate the necessary knowledge and skills to the satisfaction of the regulatory body, the regulatory body should decide as mentioned in subsection (2).
- (5) The process may, without contravening the principle set out in subsection (4)(c), allow the regulatory body in a case to which this subsection applies to decline the application without the applicant first being offered a test or assessment as described in that principle.
- (6) Subsection (5) applies if the test or assessment would (having regard to the knowledge and skills demonstrated by the applicant in accordance with the

principles set out in subsection (4)(a) and (b)) be similarly demanding to obtaining so much of the usual qualifications or experience as the applicant lacks.

- (7) The process must require the regulatory body to inform the applicant of its decision within a reasonable time from the receipt of the application.
- (8) Subsection (1) ceases to apply in the case of an applicant if, before the regulatory body informs the applicant of its decision—
- (a) the regulatory body accepts in writing, or
  - (b) a court determines in legal proceedings,
- that the regulatory body has failed to satisfy the requirement referred to in subsection (7).
- (9) A regulatory body that administers a process to which this section applies must publish information about—
- (a) the procedure for making an application within the process, and
  - (b) the way in which the principles set out in subsection (4) will be given effect in the context of the profession concerned.

But a failure to comply with this duty does not mean that the process does not comply with the requirements of this section.

- (10) In this section—
- “the usual qualifications or experience” means the qualifications or experience that are, under the provision that falls within section 24(1), required in order to be able to practise the profession concerned in the relevant part;
  - “the necessary knowledge and skills” means the knowledge and skills that are demonstrated by the usual qualifications or experience;
  - “regulatory body” means—
    - (a) the person, if any, responsible for determining whether a person has the qualifications or experience referred to in section 24(1), or
    - (b) if there is no such person, the responsible administration;
  - “responsible administration” means—
    - (a) if the relevant part is Scotland and the provision that falls within section 24(1)—
      - (i) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, or
      - (ii) is provision which could be made in subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone,the Scottish Ministers;
    - (b) if the relevant part is Wales and the provision that falls within section 24(1)—
      - (i) would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given), or
      - (ii) is provision which could be made in subordinate legislation by the Welsh Ministers acting alone,the Welsh Ministers;

- (c) if the relevant part is Northern Ireland and the provision that falls within section 24(1) –
  - (i) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly,
  - (ii) is contained in, or was made under, Northern Ireland legislation, and would be within the legislative competence of the Northern Ireland Assembly, and would require the consent of the Secretary of State, if contained in an Act of that Assembly, or
  - (iii) is provision which could be made in subordinate legislation by the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department,
    - a Northern Ireland department;
- (d) in any other case, the Secretary of State.

## **27 Other exceptions from section 24**

- (1) Section 24(2) does not apply to existing provision (subject to subsection (3)).
- (2) In subsection (1) “existing provision” means –
  - (a) provision that is in force on the date that this Act is passed, or
  - (b) provision that comes into force after that date so far as it is, in substance, a re-enactment or replication of provision within paragraph (a).
- (3) Subsection (1) does not apply (and section 24(2) accordingly does apply) if, after the date on which this Act is passed, provision comes into force in a part of the United Kingdom other than the relevant part that changes the circumstances in which individuals are qualified in relation to the profession concerned.
- (4) In subsection (3) –
  - (a) “relevant part” is to be read in accordance with section 24(1);
  - (b) “qualified” is to be read in accordance with section 25.
- (5) Section 24(2) does not apply in relation to provision that limits the ability to practise a legal profession.
- (6) In subsection (5) “legal profession” means –
  - (a) in relation to England or Wales, the profession of barrister, solicitor, notary, chartered legal executive, costs lawyer, licensed conveyancer or licensed CLC practitioner (see section 53 of the Courts and Legal Services Act 1990);
  - (b) in relation to Scotland, the profession of advocate, solicitor, notary, conveyancing practitioner (see section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990), executry practitioner (see section 18 of that Act) or commercial attorney;
  - (c) in relation to Northern Ireland, the profession of barrister, solicitor or notary;
  - (d) in relation to any part of the United Kingdom, the profession of patent attorney or trade mark attorney.

- (7) Section 24(2) does not apply in relation to provision that limits the ability to practise the profession, or any profession, of school teaching.

## **28 Professional regulation not within section 24: equal treatment**

- (1) This section applies in relation to provision that –
- (a) is not of the sort described in section 24(1),
  - (b) makes the ability to practise a particular profession in a part of the United Kingdom (“the relevant part”) subject to a requirement or restriction, and
  - (c) applies differently to individuals according to –
    - (i) where any qualifications or experience of an individual were obtained, or
    - (ii) what qualifications or experience an individual has.
- (2) “Requirement or restriction” includes, for example, a requirement as to registration, monitoring, insurance or continuing professional development, or a restriction on the undertaking of particular activities in the course of practising the profession.
- (3) Subsection (4) applies to the extent that –
- (a) the differential application is within subsection (1)(c)(i), and
  - (b) because of that differential application, the provision has the effect of imposing a more onerous requirement or restriction on an externally qualified UK practitioner than it would have the effect of imposing on a locally qualified practitioner.
- (4) The externally qualified UK practitioner is to be treated for the purposes of the provision (and any related provision) as if the practitioner’s external UK qualifications or experience had been obtained in the relevant part.
- (5) Subsection (6) applies to the extent that –
- (a) the differential application is within subsection (1)(c)(ii),
  - (b) because of that differential application, the provision has the effect of imposing a more onerous requirement or restriction on an externally qualified UK practitioner than it would have the effect of imposing on a locally qualified practitioner, and
  - (c) the external UK qualifications or experience are of a sort that cannot be obtained in the relevant part.
- (6) The externally qualified UK practitioner is to be treated for the purposes of the provision (and any related provision) as if the practitioner’s external UK qualifications or experience were the nearest equivalent qualifications or experience that can be obtained in the relevant part.
- (7) Subsection (6) does not apply if the more onerous requirement or restriction can reasonably be justified on the grounds of differences between the external UK qualifications or experience and the nearest equivalent qualifications or experience.
- (8) In this section –
- “locally qualified practitioner” means a UK resident all of whose qualifications and experience were obtained in the relevant part;

“externally qualified UK practitioner” means a UK resident any of whose qualifications or experience was obtained in a part of the United Kingdom other than the relevant part;

“external UK qualifications or experience” means the qualifications or experience by virtue of which a UK resident is an externally qualified UK practitioner.

## 29 Interpretation of Part 3

- (1) References in this Part to the ability to practise a profession include reference to the ability –
  - (a) to undertake activities that comprise the practice of a profession,
  - (b) to use a particular professional title, or
  - (c) to be registered, licensed or similarly authorised, where that is required in order to undertake such activities or use such a title.
- (2) Provision that limits the ability referred to in subsection (1)(a) to individuals with certain qualifications or experience falls within section 24(1) only if the activities affected by the provision are, in a significant number of cases, essential to the practice of the profession in question.
- (3) Subsection (4) applies if provision applying in a part of the United Kingdom –
  - (a) enables individuals to practise a profession –
    - (i) on the basis of certain qualifications or experience, or not on the basis of any particular qualifications or experience, only following an individual assessment, and
    - (ii) on the basis of certain qualifications or experience, without the need for an individual assessment, or
  - (b) generally enables individuals to practise a profession only following an individual assessment, but provides for a less demanding assessment in some cases than in others according to what qualifications or experience an individual has.
- (4) References in section 24 to the ability to practise a profession are to be read, in relation to the profession to which the provision relates, as references to the ability to practise the profession –
  - (a) if the provision is within subsection (3)(a), without the need for an individual assessment, or
  - (b) if the provision is within subsection (3)(b), following an individual assessment of the least demanding sort provided for.
- (5) In subsections (3) and (4), “individual assessment” means an assessment of the individual’s qualifications, experience, knowledge or skills.
- (6) For the purposes of this Part a qualification is “obtained” in the place where the body that issues it is based.  
A body is “based” –
  - (a) where its registered office is,
  - (b) if it does not have a registered office, where its head office is, or
  - (c) if it does not have a registered office or a head office, where its principal place of operation is.
- (7) References in this Part (however expressed) to the effect of “provision” are to the effect that it would have disregarding this Part.

- (8) In this Part—
- “profession” includes—
    - (a) an occupation or trade, and
    - (b) any subdivision of, or distinct specialism within, a profession;
  - “provision” means—
    - (a) provision contained in legislation, or
    - (b) provision not of a legislative character but made under, and given effect by, legislation;
  - “qualification” means any record, issued by a body whose ordinary activities include the issuing of such records, of having attained a particular standard following a course of study or training;
  - “UK resident” means an individual who is lawfully resident in the United Kingdom; and for this purpose an individual is not lawfully resident in the United Kingdom if the individual requires leave to enter or remain in the United Kingdom but does not have it.

#### PART 4

##### INDEPENDENT ADVICE ON AND MONITORING OF UK INTERNAL MARKET

###### *General provision about functions under Part 4*

### 30 Functions of the CMA under Part 4: general provisions

- (1) A regulatory provision is within the scope of this Part so far as it meets the conditions in subsections (2) and (4).
- (2) The first condition is that the regulatory provision—
- (a) imposes a relevant requirement, as defined for the purposes of the mutual recognition principle for goods as that principle applies in relation to a sale of goods in a part of the United Kingdom (see section 3),
  - (b) imposes a relevant requirement, as defined for the purposes of the non-discrimination principle for goods as that principle has effect in relation to a part of the United Kingdom (see section 6),
  - (c) imposes an authorisation requirement within the meaning given by subsection (3) of section 17 (services: overview),
  - (d) imposes a regulatory requirement within the meaning given by subsection (4) of that section, or
  - (e) comprises provision—
    - (i) of the sort described in section 24(1) (access to professions on grounds of qualifications or experience), or
    - (ii) to which section 28 (professional regulation not within section 24: equal treatment) applies.
- (3) In its application for the purposes of section 34 (advising etc on proposed regulatory provisions on request) subsection (2) has effect as if—
- (a) for each occurrence of “imposes” there were substituted “imposes, varies, or revokes”;
  - (b) in paragraph (e) for “comprises” there were substituted “comprises, varies, repeals or revokes”.

- (4) The second condition is that the regulatory provision applies to one or more of England, Wales, Scotland and Northern Ireland but does not apply to the whole of the United Kingdom.
- (5) In subsection (2)(c) the reference to an authorisation requirement does not include an authorisation requirement to which section 19 does not apply by virtue of section 18(1)(c).
- (6) In subsection (2)(d) the reference to a regulatory requirement does not include a regulatory requirement to which sections 20 and 21 do not apply by virtue of section 18(1)(d).
- (7) For the purposes of the law relating to defamation, absolute privilege attaches to any advice given, or report made, by the CMA (or a person acting on the CMA's behalf) in the exercise of any functions of the CMA under this Part.
- (8) In this Part “regulatory provision” means a provision –
  - (a) contained in legislation, or
  - (b) not of a legislative character but made under, and given effect by, legislation.
- (9) But a provision is not a “regulatory provision” so far as it contains anything that is necessary to give effect to the Northern Ireland Protocol.
- (10) In this Part “the CMA” means the Competition and Markets Authority.

### **31 Objective and general functions**

- (1) In carrying out its functions under this Part the CMA must have regard to the objective in subsection (2).
- (2) The objective is to support, through the application of economic and other technical expertise, the effective operation of the internal market in the United Kingdom (with particular reference to the purposes of Parts 1, 2 and 3).
- (3) That objective includes, in particular, supporting the operation of the internal market –
  - (a) in the interests of all parts of the United Kingdom, and
  - (b) in the interests of consumers of goods and services as well as other classes of person with an interest in its operation.
- (4) The CMA must also, in carrying out its functions under this Part, have regard to the need to act even-handedly as respects the relevant national authorities.
- (5) The following do not apply in relation to the carrying out of the CMA's functions under this Part –
  - (a) section 25(3) of the Enterprise and Regulatory Reform Act 2013 (duty to seek to promote competition), and
  - (b) sections 6(1)(b) (function of giving information or advice to the public) and 7 (provision of information and advice to Ministers etc) of the Enterprise Act 2002.
- (6) The CMA may give information or advice to the Secretary of State on matters relating to any of its functions under this Part.

### **32 Office for the Internal Market panel and task groups**

- (1) The CMA may authorise an Office for the Internal Market task group constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to do anything required or authorised to be done by the CMA under this Part (and such an authorisation may include authorisation to exercise the power conferred on the CMA by this subsection).
- (2) Schedule 3 contains provision about the Office for the Internal Market panel and Office for the Internal Market task groups.

#### *Reporting, advisory and monitoring functions*

### **33 Monitoring and reporting on the operation of the UK internal market**

- (1) The CMA may from time to time undertake a review of any matter it considers relevant to assessing or promoting the effective operation of –
  - (a) the internal market in the United Kingdom;
  - (b) provisions of Parts 1 to 3 (for example with regard to particular sectors of the internal market, or trade in different parts of the United Kingdom).
- (2) The CMA may receive and consider any proposals that may be made or referred to it for undertaking a review in exercise of its powers under subsection (1).
- (3) The CMA may prepare and publish a report on any matter falling within subsection (1).
- (4) Any report published by the CMA under subsection (3) is to be published in such manner as it considers appropriate.
- (5) The CMA must, no later than 31 March 2023 and at least once in every relevant 12-month period, prepare a report on –
  - (a) the operation of the internal market in the United Kingdom, and
  - (b) developments as to the effectiveness of the operation of that market.
- (6) The CMA must, no later than 31 March 2023 and at least once in every relevant 5-year period, prepare a report on –
  - (a) the effectiveness of the operation of provisions of Parts 1 to 3,
  - (b) the impact of the operation of those Parts on the operation and development of the internal market in the United Kingdom,
  - (c) any interaction between the operation of those Parts and common framework agreements, and
  - (d) the impact of common framework agreements on the operation and development of the internal market in the United Kingdom.
- (7) The CMA must arrange for a copy of the report prepared under subsection (5) or (6) for any period to be laid before –
  - (a) each House of Parliament,
  - (b) the Scottish Parliament,
  - (c) Senedd Cymru, and
  - (d) the Northern Ireland Assembly.

- (8) So far as a report under this section is concerned with the effective operation of the internal market in the United Kingdom, the report may consider (among other things) –
- (a) developments in the operation of the internal market, for example as regards –
    - (i) competition,
    - (ii) access to goods and services,
    - (iii) volumes of trade (or of trade in any direction) between participants in different parts of the United Kingdom, and
  - (b) the practical implications of differences of approach embodied in regulatory provisions, falling within the scope of this Part, that apply to different parts of the United Kingdom.
- (9) In this section –
- “common framework agreements” has the meaning given by section 10;
  - “relevant 12-month period” means –
    - (a) the period of 12 months beginning with 1 April 2023, and
    - (b) each successive period of 12 months;
  - “relevant 5-year period” means –
    - (a) the period of 5 years beginning with 1 April 2023, and
    - (b) each successive period of 5 years.

### **34 Advising etc on proposed regulatory provisions on request**

- (1) Where the condition in subsection (3) is met, the CMA may at the request of a relevant national authority give advice, or provide a report, to the authority with respect to a qualifying proposal.
- (2) In subsection (1) “qualifying proposal” means a proposal of –
- (a) the requesting authority, or
  - (b) a person or body on whose behalf the requesting authority makes the request,
- that a regulatory provision applying to the relevant part of the United Kingdom should be passed or made.
- (3) The condition is that it appears to the requesting authority that –
- (a) the regulatory provision to which the proposal relates would fall within the scope of this Part and be within relevant competence, and
  - (b) the proposal should be further considered in the light of the significance of its potential effects on the operation of the internal market in the United Kingdom.
- (4) Advice given, or a report provided, under this section may consider among other things the potential economic effects of the proposed regulatory provision on the effective operation of the internal market in the United Kingdom, including –
- (a) indirect or cumulative effects;
  - (b) distortion of competition or trade;
  - (c) impacts on prices, the quality of goods and services or choice for consumers.

- (5) Subsections (1) to (3) apply in relation to two or more relevant national authorities acting jointly as those subsections apply in relation to a single relevant national authority.
- (6) A request under subsection (1) must set out the reasons for making it.
- (7) If the CMA declines to provide a report requested under subsection (1) it must—
  - (a) give to the requesting authority (or if more than one, to each of them simultaneously) a notice of its reasons for doing so, and
  - (b) publish the notice in such manner as it considers appropriate.
- (8) Where the CMA gives advice or reasons, or provides a report, under this section to two or more relevant national authorities acting jointly, the CMA must give the advice or reasons, or provide the report, to each of them simultaneously.
- (9) Where the CMA has on a particular day (“day 1”) given advice, or provided a report, under subsection (1) the CMA must provide a copy of the advice or report to each relevant national authority who did not request the advice or report—
  - (a) as soon as reasonably practicable after the requesting authority (or each requesting authority) has informed the CMA that it may do so, or
  - (b) (if sooner), by the end of the 15th day after day 1.
- (10) Where the CMA provides a report under this section it must, as soon as reasonably practicable after it has fully complied with subsection (9), publish the report in such manner as it considers appropriate.
- (11) In this section “relevant part of the United Kingdom”, in relation to a relevant national authority, means—
  - (a) in the application of this section to the Scottish Ministers as relevant national authority, Scotland;
  - (b) in the application of this section to the Welsh Ministers as relevant national authority, Wales;
  - (c) in the application of this section to a Northern Ireland department as relevant national authority, Northern Ireland;
  - (d) in the application of this section to the Secretary of State as relevant national authority, any part of the United Kingdom.

### **35 Provision of report on request after regulatory provision is passed or made**

- (1) The CMA may, at the request of a relevant national authority, provide a report to the authority on the impact on the effective operation of the internal market in the United Kingdom of a regulatory provision specified in the request which—
  - (a) is passed or made after the day on which this section comes into force,
  - (b) falls within the scope of this Part, and
  - (c) applies to the relevant part of the United Kingdom and is within relevant competence.
- (2) A relevant national authority may not request a report from the CMA under subsection (1) unless the authority has considered whether any other person or body is qualified to provide an independent report on the matter.

- (3) Subsections (1) and (2) apply in relation to two or more relevant national authorities acting jointly as those subsections apply in relation to a single relevant national authority.
- (4) A request under subsection (1) must set out the reasons for making it.
- (5) If the CMA declines to provide a report requested under subsection (1) it must—
  - (a) give the requesting authority a notice of its reasons for doing so, and
  - (b) publish the notice in such manner as it considers appropriate.
- (6) Where the CMA provides a report under this section—
  - (a) if the report was requested by two or more relevant national authorities acting jointly, the CMA must provide the report to each of them simultaneously;
  - (b) the CMA must, as soon as reasonably practicable after complying with paragraph (a), publish the report in such manner as it considers appropriate.
- (7) In this section “the relevant part of the United Kingdom” means—
  - (a) in the application of this section to a relevant national authority who is the Scottish Ministers, Scotland;
  - (b) in the application of this section to a relevant national authority who is the Welsh Ministers, Wales;
  - (c) in the application of this section to a relevant national authority who is a Northern Ireland department, Northern Ireland;
  - (d) in the application of this section to a relevant national authority who is the Secretary of State, any part of the United Kingdom.

### **36 Report on request on provision considered to have detrimental effects**

- (1) The CMA may, at the request of a relevant national authority, provide a report to the authority on the economic impact of a regulatory provision passed or made after the day on which this section comes into force, where—
  - (a) the regulatory provision falls within the scope of this Part, and
  - (b) the requesting authority considers that the operation of the regulatory provision is, or may come to be, detrimental to the effective operation of the internal market in the United Kingdom.
- (2) The CMA’s function under subsection (1) is exercisable regardless of whether or not a relevant national authority has exercised the power under section 34(1) in relation to the regulatory provision in question.
- (3) A relevant national authority may not request a report from the CMA under subsection (1) unless it has considered whether any other person or body is qualified to provide an independent report on the matter.
- (4) Subsections (1) to (3) apply in relation to the making of a request by two or more relevant national authorities acting jointly as they apply in relation to the making of a request by a single relevant national authority.
- (5) A request under subsection (1) must set out the reasons for making it.
- (6) If the CMA declines to provide a report requested under subsection (1) it must—

- (a) give the requesting authority (or each of them simultaneously, if more than one) a notice of its reasons for doing so, and
  - (b) publish the notice in such manner as it considers appropriate.
- (7) Where the CMA provides a report under subsection (1) –
  - (a) it must provide a copy of the report to each relevant national authority who did not request the report, and
  - (b) the provision of the report to the requesting authority (or each requesting authority) and each recipient mentioned in paragraph (a) must be simultaneous.
- (8) As soon as reasonably practicable after the condition in subsection (9) has been met, but in any case no later than the end of the period of 6 months beginning with the day on which the CMA complies with subsection (7), the CMA must arrange for a copy of the report to be laid before –
  - (a) each House of Parliament,
  - (b) the Scottish Parliament,
  - (c) Senedd Cymru, and
  - (d) the Northern Ireland Assembly.
- (9) The condition mentioned in subsection (8) is that each relevant national authority has notified the CMA that it does not require any further time for private consideration of the report provided or copied to it under this section.
- (10) The CMA must publish the report in such manner as it considers appropriate, but may not do so until it has made the arrangements mentioned in subsection (8) and the report has been laid in accordance with one or more of paragraphs (a) to (d) of that subsection.

### **37 Statements on reports under section 36**

- (1) Subsection (2) applies where a report (or copy of it) relating to a regulatory provision has been laid before each House of Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly in accordance with section 36(8).
- (2) The following authorities must make a statement on the report to Parliament –
  - (a) the responsible authority for each affected part of the United Kingdom;
  - (b) the appropriate authority in relation to each relevant national authority which requested the CMA’s report.
- (3) In subsection (2) “to Parliament” means –
  - (a) where the responsible authority or (as the case may be) appropriate authority is the Scottish Ministers, to the Scottish Parliament;
  - (b) where the responsible authority or (as the case may be) appropriate authority is the Welsh Ministers, to Senedd Cymru;
  - (c) where the responsible authority or (as the case may be) appropriate authority is the First Minister and deputy First Minister acting jointly, to the Northern Ireland Assembly.
- (4) A duty of the Secretary of State under subsection (2) to make a statement to Parliament is to be discharged by laying a copy of the statement before each House of Parliament.
- (5) In this section –

“affected part of the United Kingdom”, in relation to a regulatory provision, means a part of the United Kingdom to which the provision applies;

“appropriate authority”, in relation to a relevant national authority who is the Secretary of State, the Scottish Ministers or the Welsh Ministers, means that relevant national authority;

“appropriate authority”, in relation to a relevant national authority who is a Northern Ireland department, means the First Minister and deputy First Minister acting jointly.

- (6) In this section “responsible authority”, in relation to Scotland, means –
- (a) if the regulatory provision is not within Scottish devolved competence, the Secretary of State;
  - (b) otherwise, the Scottish Ministers.
- (7) In this section “responsible authority”, in relation to Wales, means –
- (a) if the regulatory provision is not within Welsh devolved competence, the Secretary of State;
  - (b) otherwise, the Welsh Ministers.
- (8) In this section “responsible authority”, in relation to Northern Ireland, means –
- (a) if the regulatory provision is not within Northern Ireland devolved competence, the Secretary of State;
  - (b) otherwise, the First Minister and deputy First Minister acting jointly.
- (9) In this section “responsible authority”, in relation to England, means the Secretary of State.

### **38 Reports under Part 4**

Where under this Part the CMA publishes (or arranges for the publication of) a report it may exclude from the report –

- (a) any information the disclosure of which the CMA thinks is contrary to the public interest;
- (b) commercial information the disclosure of which the CMA thinks might significantly harm the legitimate business interests of any person;
- (c) information relating to the private affairs of an individual the disclosure of which the CMA thinks might significantly harm the individual’s interests.

### **39 General advice and information with regard to exercise of functions**

- (1) The CMA must prepare and publish general advice and information about how it expects to approach the exercise of its functions under sections 33 to 36.
- (2) Advice (or information) published by virtue of subsection (1) may include advice (or information) about the factors the CMA may take into account in considering whether to exercise a function conferred by any of those sections, including –
  - (a) in cases where a person or body has requested the exercise of the function in accordance with the section concerned, and
  - (b) in other cases.
- (3) The CMA may at any time publish revised, or new, advice or information.

- (4) Any advice or information published by the CMA under this section must be published in such manner as it considers appropriate.

#### **40 Laying of annual documents before devolved legislatures**

- (1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority) is amended as follows.
- (2) In paragraph 12(3) (annual plan to be laid before Parliament), for “Parliament” substitute “—
  - (a) Parliament,
  - (b) the Scottish Parliament,
  - (c) Senedd Cymru, and
  - (d) the Northern Ireland Assembly”.
- (3) In paragraph 13(2) (proposals for annual plan to be laid before Parliament), for “Parliament” substitute “—
  - (a) Parliament,
  - (b) the Scottish Parliament,
  - (c) Senedd Cymru, and
  - (d) the Northern Ireland Assembly”.
- (4) In paragraph 14(3)(a) (performance report to be laid before Parliament), for “Parliament” substitute “—
  - (i) Parliament,
  - (ii) the Scottish Parliament,
  - (iii) Senedd Cymru, and
  - (iv) the Northern Ireland Assembly”.

#### *Information-gathering powers*

#### **41 Information-gathering powers**

- (1) The powers under this section may be exercised for the purpose of assisting the CMA in carrying out any of its functions under —
  - (a) section 33, 34, 35 or 36; or
  - (b) section 5 of the Enterprise Act 2002 (acquisition of information etc) in connection with a matter in relation to which the CMA proposes to undertake a review, prepare a report, or give advice under any of the sections mentioned in paragraph (a).
- (2) The CMA may by notice in writing require a person to produce any document which—
  - (a) is specified or otherwise identified in the notice; and
  - (b) is in that person’s custody or under that person’s control.
- (3) The CMA may by notice in writing require any person who carries on a business to provide such estimates, forecasts, returns or other information as may be specified or otherwise described in the notice.
- (4) A notice under subsection (2) or (3) may specify—
  - (a) the time and place at which,
  - (b) the form and manner in which, and

- (c) the person to whom,  
a document or information is to be produced or provided.
- (5) A notice under subsection (2) or (3) may require the provision of a legible and intelligible copy of information which is recorded otherwise than in legible form.
- (6) A notice under subsection (2) or (3) must –
  - (a) state the purpose for which the notice is given, including which of the functions mentioned in subsection (1) is relevant; and
  - (b) include information about the potential consequences of not complying with the notice.
- (7) The person to whom any document is produced in accordance with a notice under subsection (2) or (3) may copy the document.
- (8) A notice under subsection (2) or (3) may not require a person –
  - (a) to produce or provide any document or information which the person could not be compelled to produce, or give in evidence, in civil proceedings before the court; or
  - (b) to go more than 10 miles from the person’s place of residence, unless the person’s necessary travelling expenses are paid or offered to them.
- (9) In this section “the court” means –
  - (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.
- (10) In Schedule 14 to the Enterprise Act 2002 (disclosure of information: specified functions) at the appropriate place insert –  
 “Part 4 of the United Kingdom Internal Market Act 2020.”.

## **42 Enforcement**

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 41, it may impose a penalty in accordance with section 43.
- (2) Where the CMA considers that a person has intentionally obstructed or delayed any person in the exercise of the power under section 41(7), it may impose a penalty in accordance with section 43.
- (3) In deciding whether and, if so, how to proceed under subsection (1) or (2), the CMA must have regard to the statement of policy which was most recently published under subsection (6) or (8) at the time the failure or (as the case may be) the obstruction or delay concerned occurred.
- (4) Subject to subsection (5), no penalty may be imposed by virtue of subsection (1) or (2) after the end of the period of 4 weeks beginning with –
  - (a) where the penalty is imposed in connection with the exercise of the CMA’s functions under section 33 –
    - (i) if that exercise involves the publication of a report in accordance with subsection (3) of that section, the day on which the report is published,
    - (ii) if that exercise involves arranging for a copy of a report to be laid in accordance with subsection (7) of that section, the day on

- which the laying mentioned in paragraphs (a) to (d) of that subsection is fully accomplished, or
- (iii) in the case of a review under subsection (1) of that section which does not involve the publication or laying of a report as mentioned in sub-paragraph (i) or (ii), the day on which the review is concluded,
  - (b) where the penalty is imposed in connection with the exercise of the CMA's functions under section 34, the day on which the advice or report is given or provided in accordance with subsection (1) of that section,
  - (c) where the penalty is imposed in connection with the exercise of the CMA's functions under section 35, the day on which the report is provided in accordance with subsection (1) of that section,
  - (d) where the penalty is imposed in connection with the exercise of the CMA's functions under section 36, the day on which the report is provided in accordance with subsection (1) of that section, or
  - (e) where the penalty is imposed in connection with the exercise of the CMA's functions under section 5 of the Enterprise Act 2002 in the circumstances mentioned in section 41(1)(b), the day on which the CMA finally concludes the carrying out of those functions.
- (5) Subsection (4) does not apply in relation to any variation or substitution of the penalty which is permitted by virtue of section 43(11).
  - (6) The CMA must prepare and publish a statement of policy in relation to the enforcement of notices given under section 41.
  - (7) The statement must include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under subsection (1) or (2).
  - (8) The CMA may revise its statement of policy under subsection (6) and, where it does so, it must publish the revised statement.
  - (9) The CMA must consult –
    - (a) each relevant national authority, and
    - (b) such other persons as it considers appropriate,when preparing or revising its statement of policy under subsection (6) or (8).
  - (10) Any statement or revised statement published by the CMA under this section is to be published in such manner as the CMA considers appropriate.

### **43 Penalties**

- (1) A penalty imposed under section 42(1) or (2) may be of such amount as the CMA considers appropriate.
- (2) The amount of a penalty imposed under section 42(1) may be –
  - (a) a fixed amount,
  - (b) an amount calculated by reference to a daily rate, or
  - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The amount of a penalty imposed under section 42(2) must be a fixed amount.
- (4) A penalty imposed under section 42(1) may not exceed –

- (a) in the case of a fixed amount, such amount as the Secretary of State may specify in regulations,
  - (b) in the case of an amount calculated by reference to a daily rate, such amount per day as the Secretary of State may so specify, and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day as the Secretary of State may so specify.
- (5) A penalty imposed under section 42(2) may not exceed such amount as the Secretary of State may specify in regulations.
- (6) Regulations under subsection (4) or (5) may not specify –
- (a) in the case of a fixed amount, an amount exceeding £30,000,
  - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000, and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (7) Regulations under subsection (4) or (5) are subject to negative resolution procedure.
- (8) Before making regulations under subsection (4) or (5) the Secretary of State must consult –
- (a) the CMA,
  - (b) each other relevant national authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (9) In imposing a penalty by reference to a daily rate –
- (a) no account is to be taken of any days before the service on the person concerned of notice of the penalty under section 112 of the Enterprise Act 2002 (as applied by subsection (11)), and
  - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (10).
- (10) The days mentioned in subsection (9) are –
- (a) the day on which the requirement of the notice concerned under section 41 is satisfied;
  - (b) the day referred to in paragraph (a)(i), (a)(ii), or (a)(iii), (b), (c), (d) or (e) (as the case may be) of section 42(4).
- (11) Sections 112 to 115 of the Enterprise Act 2002 (procedural requirements, appeals etc in relation to penalties) apply in relation to a penalty imposed under section 42(1) or (2) as they apply in relation to a penalty imposed under section 110(1) of that Act.

#### *Review*

#### **44 Duty to review arrangements for carrying out Part 4 functions**

- (1) The Secretary of State must, within the permitted period –
- (a) carry out a review of the appropriateness, for the purpose of securing the most effective and efficient performance of the Part 4 functions, of –

- (i) the provision made by section 32(1) and the amendments made by Schedule 3, and
    - (ii) any arrangements made under or in connection with that provision and those amendments;
  - (b) prepare a report of the review (see subsection (4) for specific requirements relating to the report), and
  - (c) lay a copy of the report before Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.
- (2) The review must, among other things, assess –
- (a) the way in which Part 4 functions have been carried out by the CMA through Office for the Internal Market task groups authorised under section 32(1), and
  - (b) any advantages or disadvantages of continuing with –
    - (i) the provision made by section 32 and the amendments made by Schedule 3, and
    - (ii) the arrangements made under or in connection with that provision or those amendments,as compared with other possible ways of providing for the Part 4 functions to be carried out (including possible arrangements not involving the CMA).
- (3) In carrying out the review the Secretary of State must consult the other relevant national authorities.
- (4) Before finalising the report required by subsection (1)(b) the Secretary of State must –
- (a) send a draft of the proposed report to each of the other relevant national authorities, inviting the authority to make representations as to the content of the proposed report within a period specified by the Secretary of State, and
  - (b) consider any representations duly made in response to that invitation and determine whether to alter the report in the light of that consideration.
- (5) The Secretary of State need not consult the devolved authorities further if the draft is altered as mentioned in subsection (4)(b) (but is free to do so if the Secretary of State thinks fit).
- (6) The permitted period for the review is the period beginning with the third anniversary of the day on which section 32 comes into force (or first comes into force to any extent) and ending with the fifth anniversary.
- (7) In this section “Part 4 functions” means functions of the CMA under this Part.

#### *Interpretation*

#### **45 Interpretation of Part 4**

- (1) This section applies for the purposes of this Part.
- (2) “The CMA” has the meaning given by section 30(10).
- (3) References to the “operation of the internal market in the United Kingdom” are to be read as including a reference to aspects of its operation, for example its

- operation in relation to a particular description of goods or services or in a particular area or region of the United Kingdom.
- (4) “Regulatory provision” has the meaning given by section 30(8).
- (5) “Relevant competence” means –
- (a) in relation to the Scottish Ministers, Scottish devolved competence;
  - (b) in relation to the Welsh Ministers, Welsh devolved competence;
  - (c) in relation to a Northern Ireland department, Northern Ireland devolved competence;
  - (d) in relation to the Secretary of State, reserved competence.
- (6) “Relevant national authority” means any of the following –
- (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) a Northern Ireland department.
- (7) “Scottish devolved competence”, “Welsh devolved competence”, “Northern Ireland devolved competence” and “reserved competence” are to be interpreted in accordance with subsections (8) to (11).
- (8) A regulatory provision, so far as applying to Scotland –
- (a) is within Scottish devolved competence if it –
    - (i) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, or
    - (ii) is provision which could be made in subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone;
  - (b) otherwise, is within reserved competence.
- (9) A regulatory provision, so far as applying to Wales –
- (a) is within Welsh devolved competence if it –
    - (i) would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given), or
    - (ii) is provision which could be made in subordinate legislation by the Welsh Ministers acting alone;
  - (b) otherwise, is within reserved competence.
- (10) A regulatory provision, so far as applying to Northern Ireland –
- (a) is within Northern Ireland devolved competence if it –
    - (i) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly,
    - (ii) is contained in, or was made under, Northern Ireland legislation, and would be within the legislative competence of the Northern Ireland Assembly, and would require the consent of the Secretary of State, if contained in an Act of that Assembly, or
    - (iii) is provision which could be made in subordinate legislation by the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;

- (b) otherwise, is within reserved competence.
- (11) A regulatory provision, so far as applying to England, is within reserved competence.

## PART 5

### NORTHERN IRELAND PROTOCOL

#### *Northern Ireland's place in the UK internal market and customs territory*

#### **46 Northern Ireland's place in the UK internal market and customs territory**

- (1) An appropriate authority must have special regard to the following matters when exercising any function for a relevant purpose –
- (a) the need to maintain Northern Ireland's integral place in the United Kingdom's internal market;
  - (b) the need to respect Northern Ireland's place as part of the customs territory of the United Kingdom; and
  - (c) the need to facilitate the free flow of goods between Great Britain and Northern Ireland with the aim of –
    - (i) streamlining trade between Great Britain and Northern Ireland, and
    - (ii) maintaining and strengthening the integrity and smooth operation of the internal market in the United Kingdom.
- (2) A function is exercised for “a relevant purpose” if it is exercised for –
- (a) the purpose of –
    - (i) implementing, or
    - (ii) otherwise dealing with matters arising out of, or related to, the Northern Ireland Protocol,
  - (b) the purpose of enabling or facilitating a purpose described in paragraph (a) to be achieved, or
  - (c) a purpose relating to movement of goods within the United Kingdom (including movement that involves movement in a country or territory outside the United Kingdom).
- (3) In this section “appropriate authority” means –
- (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;
  - (e) any other person who exercises functions of a public nature.

#### *Unfettered access*

#### **47 Unfettered access to UK internal market for Northern Ireland goods**

- (1) On or after IP completion day, an appropriate authority must not exercise any function in a way that would –

- 
- (a) result in an existing kind of NI-GB check, control or administrative process being used –
      - (i) for the first time, or
      - (ii) for a new purpose or to a new extent; or
    - (b) result in a new kind of NI-GB check, control or administrative process –
      - (i) being introduced, or
      - (ii) being used.
  - (2) This section does not prevent the exercise of a function if the exercise –
    - (a) is necessary for the administration of arrangements which have the purpose of facilitating access for qualifying Northern Ireland goods to the internal market in the United Kingdom,
    - (b) is necessary to secure compliance with, or to give effect to, any international obligation or arrangement to which the United Kingdom is a party (whenever the United Kingdom becomes a party to it),
    - (c) is necessary where goods have been declared for a voluntary customs procedure,
    - (d) is necessary for the purposes of VAT or excise duty in consequence of the Northern Ireland Protocol,
    - (e) is necessary for the purpose of dealing with a threat to biosecurity in Great Britain, or
    - (f) is necessary for the purpose of dealing with a threat to food or feed safety in Great Britain.
  - (3) Subsection (2)(b) authorises (in particular) the exercise of a function in relation to a check, control or administrative process if the exercise is necessary to secure compliance with, or to give effect to, Article 6(1) of the Northern Ireland Protocol.
  - (4) For the purposes of this section the exercise of a function “is necessary for the purposes of VAT or excise duty in consequence of the Northern Ireland Protocol” if –
    - (a) the appropriate authority exercising the functions is the Treasury, the Commissioners for Her Majesty’s Revenue and Customs, or the Director of Border Revenue,
    - (b) the function is exercised for the purposes of VAT or excise duty (including for the purposes of preventing double taxation, partial or complete non-taxation, or evasion), and
    - (c) the appropriate authority exercising the function considers that the exercise is necessary in consequence of the Northern Ireland Protocol.
  - (5) For the purposes of this section the exercise of a function “is necessary for the purpose of dealing with a threat to biosecurity in Great Britain” if the exercise of the function consists of –
    - (a) the making, or operation, of legislation which satisfies the conditions set out in paragraph 1 of Schedule 1, or
    - (b) any other activity which satisfies the conditions set out in paragraph 1(2), (3), (4) and (6) of Schedule 1 (reading any reference in those conditions to “legislation” as a reference to the activity in question).
  - (6) In determining for the purposes of subsection (5)(b) whether the condition in paragraph 1(3) of Schedule 1 is met, a pest or disease is to be taken to be present

- in Northern Ireland if it is, or may be, present in qualifying Northern Ireland goods (including when the goods are in Great Britain).
- (7) For the purposes of this section the exercise of a function “is necessary for the purpose of dealing with a threat to food or feed safety in Great Britain” if the exercise of the function consists of –
- (a) the making, or operation, of legislation which satisfies the conditions set out in paragraph 2 of Schedule 1, or
  - (b) any other activity which satisfies the conditions set out in paragraph 2(2), (3), (4) and (6) of Schedule 1 (reading any reference in those conditions to “legislation” as a reference to the activity in question).
- (8) For the purposes of this section –
- (a) an “NI-GB” check, control or administrative process is one applicable to the direct movement of qualifying Northern Ireland goods from Northern Ireland to Great Britain;
  - (b) an “existing kind” of NI-GB check, control or administrative process is one that –
    - (i) was in use or available for use immediately before IP completion day, or
    - (ii) is the same as, or substantially similar to, one that was in use or available for use immediately before IP completion day (the “predecessor”);
  - (c) a “new kind of” NI-GB check, control or administrative process is one that is not of an existing kind;
  - (d) where an NI-GB check, control or administrative process is of an existing kind because of paragraph (b)(ii), that check, control or administrative process and the predecessor are to be treated as a single function for the purpose of determining whether subsection (1)(a) prevents its exercise;
  - (e) the purpose for which, or extent to which, a function would be used is “new” if the function has not been used for that purpose, or to that extent, before IP completion day.
- (9) A Minister of the Crown may by regulations amend this section so that it applies to a type of movement instead of, or in addition to, a type of movement to which it already applies (whether that type of movement is direct movement or another type of movement provided for by regulations under this subsection).
- (10) Regulations under subsection (9) are subject to affirmative resolution procedure.
- (11) In this section –
- “appropriate authority” means –
- (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;
  - (e) any other person who exercises functions of a public nature;

- “declared for a voluntary customs procedure” means declared, in accordance with the Taxation (Cross-border Trade) Act 2018, for a special Customs procedure or temporary storage;
- “direct movement” means movement that does not involve movement by land in a country or territory other than the United Kingdom;
- “excise duty” means any excise duty under –
- (a) the Alcoholic Liquor Duties Act 1979,
  - (b) the Hydrocarbon Oil Duties Act 1979, or
  - (c) the Tobacco Products Duty Act 1979;
- “qualifying Northern Ireland goods” –
- (a) has the same meaning that it has in the European Union (Withdrawal) Act 2018, including any meaning defined for the purposes of that Act from time to time by regulations made under the power conferred by section 8C(6) of that Act (and, if those regulations provide for different meanings to be defined for different purposes of that Act, regulations under section 8C(6) may make provision about the meaning or meanings that are to apply for the purposes of this section);
  - (b) is to be taken to have had, immediately before IP completion day, the same meaning that it has (under paragraph (a)) at the time when this section comes into force.

#### *State aid*

#### **48 Guidance on Article 10 of the Northern Ireland Protocol**

- (1) The Secretary of State must publish guidance on the practical application of Article 10 of the Northern Ireland Protocol (state aid).
- (2) For that purpose Article 10 is to be read in the light of –
  - (a) any relevant decision or recommendation of the Joint Committee, and
  - (b) any relevant declaration that is made in the Joint Committee by either party, of which the other party takes note.
- (3) The guidance must be published before the end of the period of one month beginning with the day on which this section comes into force.
- (4) A person with public functions relating to the implementation of Article 10 (including functions involving the provision of financial assistance or other subsidies) must have regard to the guidance when exercising such functions.
- (5) The Secretary of State may –
  - (a) revise or replace the guidance;
  - (b) if satisfied it is no longer necessary, withdraw the guidance.
- (6) In this section “Joint Committee” means the committee established by Article 164(1) of the EU withdrawal agreement.

#### **49 Notification of state aid for the purposes of the Northern Ireland Protocol**

- (1) No public authority apart from the Secretary of State may comply with a requirement of a provision of EU law applied to the United Kingdom by Article 10 of the Northern Ireland Protocol (state aid) to give the European Commission a notification or information relating to aid.

- (2) In subsection (1), “public authority” means a person who exercises functions of a public nature.

## PART 6

### FINANCIAL ASSISTANCE

#### 50 Power to provide financial assistance for economic development etc

- (1) A Minister of the Crown may, out of money provided by Parliament, provide financial assistance to any person for, or in connection with, any of the following purposes –
- (a) promoting economic development in the United Kingdom or any area of the United Kingdom;
  - (b) providing infrastructure at places in the United Kingdom (including infrastructure in connection with any of the other purposes mentioned in this section);
  - (c) supporting cultural activities, projects and events that the Minister considers directly or indirectly benefit the United Kingdom or particular areas of the United Kingdom;
  - (d) supporting activities, projects and events relating to sport that the Minister considers directly or indirectly benefit the United Kingdom or particular areas of the United Kingdom;
  - (e) supporting international educational and training activities and exchanges;
  - (f) supporting educational and training activities and exchanges within the United Kingdom.
- (2) In this section –
- “infrastructure” includes –
    - (a) water, electricity, gas, telecommunications, sewerage or other services (for example, the provision of heat),
    - (b) railway facilities (including rolling stock), roads or other transport facilities,
    - (c) health, educational, cultural or sports facilities,
    - (d) court or prison facilities, and
    - (e) housing;
  - “promoting”, in relation to economic development, includes taking any measure likely to contribute directly or indirectly to economic development (which might include, for example, measures relating to social inclusion);
  - “providing”, in relation to infrastructure, includes acquiring, designing, constructing, converting, improving, operating and repairing infrastructure;
  - “sport” includes any physical recreation.

#### 51 Financial assistance: supplementary

- (1) Financial assistance under section 50 –
- (a) may be provided by way of grants, loans, guarantees or indemnities or in any other form;

- (b) may be provided subject to conditions (which may include conditions about repayment with or without interest or other return);
  - (c) may be provided under a contract;
  - (d) may be provided to an investment fund for onward investment or administrative costs relating to onward investment.
- (2) The power to provide financial assistance under section 50 is in addition to (and does not limit or replace) any other power of a Minister of the Crown to provide financial assistance.

## PART 7

### SUBSIDY CONTROL

#### 52 Regulation of distortive or harmful subsidies

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations), under Head C (trade and industry), at the end insert –

**“C16. Distortive or harmful subsidies**

Regulation of the provision of subsidies which are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business.

*Interpretation*

“Public authority” means a person who exercises functions of a public nature.

“Subsidy” includes assistance provided to a person directly or indirectly by way of income or price support, grant, loan, guarantee, indemnity, the provision of goods or services and any other kind of assistance, whether financial or otherwise and whether actual or contingent.

A subsidy is provided “by a public authority” if it is provided by that authority directly or indirectly.

A subsidy is “distortive or harmful” if it distorts competition between, or otherwise causes harm or injury to, persons supplying goods or services in the course of a business, whether or not those persons are established in the United Kingdom.”

- (2) In Schedule 2 to the Northern Ireland Act 1998 (excepted matters), after paragraph 16 insert –

“16A Regulation of the provision of subsidies which are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business.

In this paragraph –

“Public authority” means a person who exercises functions of a public nature.

“Subsidy” includes assistance provided to a person directly or indirectly by way of income or price support, grant, loan, guarantee, indemnity, the provision of goods or services and any other kind of assistance, whether financial or otherwise and whether actual or contingent.

A subsidy is provided “by a public authority” if it is provided by that authority directly or indirectly.

A subsidy is “distortive or harmful” if it distorts competition between, or otherwise causes harm or injury to, persons supplying goods or services in the course of a business, whether or not those persons are established in the United Kingdom.”

- (3) In Part 2 of Schedule 7A to the Government of Wales Act 2006 (specific reservations), under Head C (trade and industry), at the end insert –

**“C18. Distortive or harmful subsidies**

Regulation of the provision of subsidies which are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business.

*Interpretation*

“Public authority” means a person who exercises functions of a public nature.

“Subsidy” includes assistance provided to a person directly or indirectly by way of income or price support, grant, loan, guarantee, indemnity, the provision of goods or services and any other kind of assistance, whether financial or otherwise and whether actual or contingent.

A subsidy is provided “by a public authority” if it is provided by that authority directly or indirectly.

A subsidy is “distortive or harmful” if it distorts competition between, or otherwise causes harm or injury to, persons supplying goods or services in the course of a business, whether or not those persons are established in the United Kingdom.”

**53 UK subsidy control consultation: engagement with the devolved authorities on the Government response**

- (1) For the purposes of this section –
- (a) “the UK subsidy control consultation” is the consultation announced by the Secretary of State for Business, Energy and Industrial Strategy in a written Ministerial statement made in the House of Commons on 9 September 2020 (consultation on whether the United Kingdom should go further than its existing international commitments in relation to subsidy control, including whether legislation is necessary);
  - (b) a “relevant report” is a report containing the whole or part of the Government’s response to that consultation (and for this purpose “response” includes any conclusions and proposals, resulting from that consultation, as to arrangements in the United Kingdom for controlling the provision by public authorities of subsidies which are or may be distortive or harmful);
  - (c) subsidies are “distortive or harmful” if they distort competition between, or otherwise cause harm or injury to, persons supplying goods or services in the course of a business, whether or not established in the United Kingdom;
  - (d) the “devolved authorities” are the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

- (2) The Secretary of State must, before publishing any relevant report relating to the UK subsidy control consultation—
  - (a) provide a draft of the proposed Government response to each devolved authority, inviting it to make representations about the proposed response within a period specified by the Secretary of State, and
  - (b) consider any representations duly made by any of the devolved authorities in response to that invitation and determine whether to alter the report in the light of that consideration.
- (3) The Secretary of State need not consult the devolved authorities further if the draft is altered as mentioned in subsection (2)(b) (but is free to do so if the Secretary of State thinks fit).
- (4) The consultation required by subsection (2) is in addition to any engagement with the devolved authorities in the course of the UK subsidy control consultation.

## PART 8

### FINAL PROVISIONS

#### 54 Protection of Act against modification

- (1) In Schedule 4 to the Scotland Act 1998 (enactments etc. protected from modification), after paragraph 1(2)(g) insert “, and
  - (h) the United Kingdom Internal Market Act 2020.”
- (2) In paragraph 5(1) of Schedule 7B to the Government of Wales Act 2006 (protected enactments), in the table after the entry for the European Union (Withdrawal) Act 2018 insert—

“The United Kingdom Internal Market Act 2020 | The whole Act.”

- (3) In section 7(1) of the Northern Ireland Act 1998 (entrenched enactments)—
  - (a) omit the “and” at the end of paragraph (d), and
  - (b) after paragraph (e) insert “; and
    - (f) the United Kingdom Internal Market Act 2020.”
- (4) No power to make subordinate legislation contained in primary legislation passed or made before this section comes into force may be exercised so as to amend, repeal or otherwise modify the operation of this Act.

#### 55 Further provision in connection with the Northern Ireland Protocol

- (1) The following provisions cease to have effect when Articles 5 to 10 of the Northern Ireland Protocol cease to apply—
  - (a) section 11 and Part 5, and
  - (b) section 8C(5A) of the European Union (Withdrawal) Act 2018 (as inserted by subsection (3)).
- (2) Nothing in this Act except the amendment made by subsection (3) (including, in particular, section 54(4)) limits—

- (a) the power to make provision under section 8C of the European Union (Withdrawal) Act 2018 (regulations in connection with the Protocol) (including as that power may be used to modify this Act), or
  - (b) the effect of any regulations under that section.
- (3) In section 8C of the European Union (Withdrawal) Act 2018, after subsection (5) insert –
- “(5A) Regulations under subsection (1) may not amend, repeal or otherwise modify the operation of section 47 of the United Kingdom Internal Market Act 2020 (“the 2020 Act”), except by making –
- (a) provision of the sort that is contemplated by section 47(2) of the 2020 Act (permitted checks);
  - (b) provision under subsection (6);
  - (c) provision of the sort described in paragraph 21(b) of Schedule 7 (supplementary and transitional provision etc) in connection with –
    - (i) provision within either of the preceding paragraphs;
    - (ii) Articles 5 to 10 of the Northern Ireland Protocol ceasing to apply (and the resulting operation of section 55(1) of the 2020 Act).”

## 56 Regulations: general

- (1) Any power to make regulations under this Act is exercisable by statutory instrument.
- (2) Any power to make regulations under this Act includes power –
- (a) to amend, repeal or otherwise modify legislation;
  - (b) to make different provision for different purposes;
  - (c) to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision made in reliance on paragraph (a)).
- (3) This section does not apply to regulations under section 59(3).

## 57 Regulations: references to parliamentary procedures

- (1) Where regulations under this Act are subject to affirmative resolution procedure, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (2) Where regulations under this Act are subject to made affirmative procedure –
- (a) the statutory instrument containing them must be laid before Parliament as soon as reasonably practicable after being made; and
  - (b) the regulations cease to have effect at the end of the period of 40 days beginning with the day on which they are made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (3) In calculating the period of 40 days, no account is to be taken of any time during which –
- (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.

- (4) Where regulations cease to have effect as a result of subsection (3) that does not –
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (5) Subsections (2) to (4) do not apply to regulations if a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Where regulations under this Act are subject to negative resolution procedure the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Any provision that may be made by regulations under this Act subject to negative resolution procedure may be made in regulations subject to affirmative resolution procedure or made affirmative procedure.

## 58 Interpretation: general

In this Act –

“affirmative resolution procedure” is to be construed in accordance with section 57(1);

“legislation” means primary legislation, subordinate legislation and retained direct EU legislation;

“made affirmative resolution procedure” is to be construed in accordance with section 57(2);

“Minister of the Crown” has the same meaning as the Ministers of the Crown Act 1975 (see section 8(1) of that Act);

“negative resolution procedure” is to be construed in accordance with section 57(6);

“Northern Ireland Protocol” means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

“part of the United Kingdom” means England, Wales, Scotland or Northern Ireland;

“primary legislation” means –

- (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;

“subordinate legislation” means an instrument made under primary legislation or retained direct EU legislation.

## 59 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This section comes into force on the day on which this Act is passed.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Regulations under subsection (3) may –
  - (a) appoint different days for different purposes;

- (b) make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) This Act may be cited as the United Kingdom Internal Market Act 2020.

## SCHEDULES

### SCHEDULE 1

Section 10

#### EXCLUSIONS FROM MARKET ACCESS PRINCIPLES

##### *Threats to human, animal or plant health*

- 1 (1) The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) legislation so far as it satisfies the conditions set out in this paragraph.
- (2) The first condition is that the aim of the legislation is to prevent or reduce the movement of a pest or disease into the part of the United Kingdom in which the legislation applies (“the restricting part”) from another part of the United Kingdom (“the affected part”).
- (3) The second condition is that it is reasonable to believe that the pest or disease –
  - (a) is present in the affected part, and
  - (b) is not present, or is significantly less prevalent, in the restricting part.
- (4) The third condition is that the potential movement of that pest or disease into the restricting part from the affected part poses (or would in the absence of the legislation pose) a serious threat to the health of humans, animals or plants in the restricting part.
- (5) The fourth condition is that the responsible administration has provided to the other administrations an assessment of the available evidence in relation to –
  - (a) the threat referred to in sub-paragraph (4), and
  - (b) the likely effectiveness of the legislation in addressing that threat.
- (6) The fifth condition is that the legislation can reasonably be justified as necessary in order to address the threat referred to in sub-paragraph (4).
- (7) In determining whether the fifth condition is met the following consideration is to be taken into account: whether the legislation, taken together with any similar legislation applying in the restricting part, imposes measures of similar severity arising from the potential movement of the pest or disease into, or within, the restricting part (wherever those threats originate).
- (8) In this paragraph “pest or disease” includes any organism or agent that is liable to cause a disease or other harm to the health of humans, animals or plants.

- 2 (1) The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) legislation so far as it satisfies the conditions set out in this paragraph.
  - (2) The first condition is that the aim of the legislation is to prevent or reduce the movement of unsafe food or feed into the part of the United Kingdom in which the legislation applies (“the restricting part”) from another part of the United Kingdom (“the affected part”).
  - (3) The second condition is that it is reasonable to believe that the food or feed affected by the legislation is, is likely to be, or is at particular risk of being unsafe in a particular respect.
  - (4) The third condition is the potential movement of food or feed that is unsafe in that respect into the restricting part from the affected part poses (or would in the absence of the legislation pose) a serious threat to the health of humans or animals in the restricting part.
  - (5) The fourth condition is that the responsible administration has provided to the other administrations an assessment of the available evidence in relation to –
    - (a) the threat referred to in sub-paragraph (4), and
    - (b) the likely effectiveness of the legislation in addressing that threat.
  - (6) The fifth condition is that the legislation can reasonably be justified as necessary in order to address the threat referred to in sub-paragraph (4).
  - (7) In this paragraph –
    - “food” and “feed” have the same meaning as in Regulation (EC) No 178/2002 (see Articles 2 and 3);
    - “unsafe” –
      - (a) in relation to food, has the same meaning as in Article 14 of Regulation (EC) No 178/2002;
      - (b) in relation to feed, means “unsafe for its intended use” within the meaning given by Article 15(2) of Regulation (EC) No 178/2002;
    - “Regulation (EC) No 178/2002” means Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law (etc), as it forms part of retained EU law on IP completion day.
- 3 Where a decision is taken to exercise powers conferred by legislation in a particular way for the purpose referred to in paragraph 1(2) or 2(2), references to “legislation” in paragraph 1 or 2 (except in paragraph 1(1) or 2(1)) are to be read as references to the use of the legislation in that way.
  - 4 (1) In paragraphs 1 and 2, “responsible administration” is to be interpreted in accordance with sub-paragraphs (2) to (5).
  - (2) The responsible administration is the Scottish Ministers if –
    - (a) the restricting part is Scotland, and
    - (b) the provision contained in the legislation in question, so far as it applies in Scotland –
      - (i) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, or

- (ii) is provision which could be made in subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone.
  - (3) The responsible administration is the Welsh Ministers if –
    - (a) the restricting part is Wales, and
    - (b) the provision contained in the legislation in question, so far as it applies in Wales –
      - (i) would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given), or
      - (ii) is provision which could be made in subordinate legislation by the Welsh Ministers acting alone.
  - (4) The responsible administration is a Northern Ireland department if –
    - (a) the restricting part is Northern Ireland, and
    - (b) the provision contained in the legislation in question, so far as it applies in Northern Ireland –
      - (i) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly,
      - (ii) is contained in, or was made under, Northern Ireland legislation, and would be within the legislative competence of the Northern Ireland Assembly, and would require the consent of the Secretary of State, if contained in an Act of that Assembly,
      - (iii) is provision which could be made in subordinate legislation by the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department.
  - (5) In any other case the responsible administration is the Secretary of State.
  - (6) In paragraphs 1 and 2, “the other administrations” means each of the Scottish Ministers, the Welsh Ministers, a Northern Ireland department and the Secretary of State, other than the responsible administration.
- 5
- (1) A relevant requirement is not to be taken to directly discriminate against incoming goods for the purposes of section 7 to the extent that it can reasonably be justified as a response to a public health emergency.
  - (2) In this paragraph –
    - “public health emergency” means an event or a situation that is reasonably considered to pose an extraordinary threat to human health in the destination part;
    - “relevant requirement”, “incoming goods” and “destination part” have the meanings they have in relation to the non-discrimination principle for goods (see sections 5 and 6).

### *Chemicals*

- 6 An authorisation under Chapter 2 of Title 7 of the REACH Regulation is to be disregarded in determining (for the purposes of the mutual recognition principle for goods) whether goods can be sold as mentioned in section 2(1)(b).

- 7 The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) –
  - (a) Article 67 of the REACH Regulation, or
  - (b) a restriction imposed in accordance with Article 129 of that Regulation.
- 8 In paragraphs 6 and 7, “the REACH Regulation” means Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (etc), as it forms part of retained EU law.

*Fertilisers and pesticides*

- 9 The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) any of the following –
  - (a) a prohibition or condition imposed in accordance with Article 15(1) of Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers, as it forms part of retained EU law;
  - (b) regulations under section 74A(1) of the Agriculture Act 1970, to the extent that such regulations can reasonably be justified as a response to a risk to –
    - (i) the health or safety of humans, animals or plants, or
    - (ii) the environment.
- 10 The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) any of the following –
  - (a) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market (etc), as it forms part of retained EU law;
  - (b) the Plant Protection Products Regulations 2011 (S.I. 2011/2131);
  - (c) the Plant Protection Products Regulations (Northern Ireland) 2011 (S.R. (N.I.) 2011 No. 295).

*Taxation*

- 11 The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) any legislation so far as it imposes, or relates to the imposition of, any tax, rate, duty or similar charge.

*Provision having effect in more than one part of the United Kingdom*

- 12 (1) A relevant requirement is not to be taken indirectly to discriminate against goods for the purposes of section 8 if –
  - (a) it is statutory provision contained in, or in subordinate legislation made under, an Act of Parliament,
  - (b) the same, or substantially the same, statutory provision applies in the originating part,
  - (c) the statutory provision that applies in the originating part is also contained in, or in subordinate legislation made under, an Act of Parliament, and
  - (d) no substantive change to the statutory provision has come into force –

- (i) in the destination part but not the originating part, or
  - (ii) in the originating part but not the destination part.
- (2) In sub-paragraph (1), “relevant requirement”, “statutory provision”, “originating part” and “destination part” have the meanings they have in relation to the non-discrimination principle for goods (see sections 5 and 6).

## SCHEDULE 2

Section 18

### SERVICES EXCLUSIONS

#### PART 1

#### SERVICES TO WHICH SECTION 19 (MUTUAL RECOGNITION) DOES NOT APPLY

<i>Services</i>	<i>(examples of those services)</i>
Audiovisual services	terrestrial, cable or satellite television, video on demand, film services, radio services, video sharing services, video recording services, video games services
Debt collection services	services of bailiffs, messengers-at-arms and sheriff officers
Electronic communications services and networks, and associated facilities and services	
Financial services	banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice
Gambling services	accepting bets, operating a lottery or providing facilities for gambling
Healthcare services	healthcare services provided in hospitals, other healthcare facilities or at other places, xenotransplantation, human genetics, human fertilisation, embryology, services in connection with surrogacy
Legal services	provision of legal advice, litigation services
Notarial services	
Private security services	
Services of temporary work agencies	services of employment businesses within the meaning given by section 13(3) of the Employment Agencies Act 1973

<i>Services</i>	<i>(examples of those services)</i>
Services provided by a person exercising functions of a public nature or by a person acting on behalf of such a person in connection with the exercise of functions of a public nature	
Social services relating to social housing, childcare, adult social care and support of families and persons permanently or temporarily in need	
Transport services	railways, operation of ports, air transport, air traffic services, road transport of goods and passengers, ancillary services

## PART 2

## SERVICES TO WHICH SECTIONS 20 AND 21 (NON-DISCRIMINATION) DO NOT APPLY

<i>Services</i>	<i>(examples of those services)</i>
Audiovisual services	terrestrial, cable or satellite television, video on demand, film services, radio services, video sharing services, video recording services, video games services
Debt collection services	services of bailiffs, messengers-at-arms and sheriff officers
Electronic communications services and networks, and associated facilities and services	
Financial services	banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice
Gambling services	accepting bets, operating a lottery or providing facilities for gambling
Healthcare services	healthcare services provided in hospitals, other healthcare facilities or at other places, xenotransplantation, human genetics, human fertilisation, embryology, services in connection with surrogacy
Notarial services	

<i>Services</i>	<i>(examples of those services)</i>
Postal services	delivery of letters and parcels by post, sorting and collection of letters and parcels for delivery by post
Private security services	
Services connected with the supply of natural gas through pipelines or production or storage of natural gas	transportation of gas, retail supply, operation of a gas interconnector
Services connected with the supply or production of electricity	distribution or transmission of electricity, retail supply, operation of an electricity interconnector
Services of a statutory auditor within the meaning of Part 42 of the Companies Act 2006	
Services of temporary work agencies	services of employment businesses within the meaning given by section 13(3) of the Employment Agencies Act 1973
Services provided by a person exercising functions of a public nature or by a person acting on behalf of such a person in connection with the exercise of functions of a public nature	
Social Services relating to social housing, childcare, adult social care and support of families and persons permanently or temporarily in need	
Transport services	railways, operation of ports, air transport, air traffic services, road transport of goods and passengers, ancillary services
Waste services	disposal of waste, importation or exportation of waste, waste processing
Water supply and sewerage services	

## PART 3

AUTHORISATION REQUIREMENTS TO WHICH SECTION 19 (MUTUAL RECOGNITION) DOES NOT APPLY

Any authorisation requirement in connection with taxation

## PART 4

## REGULATORY REQUIREMENTS TO WHICH SECTIONS 20 AND 21 (NON-DISCRIMINATION) DO NOT APPLY

Any regulatory requirement in connection with taxation

## SCHEDULE 3

Section 32

## CONSTITUTION ETC OF OFFICE FOR THE INTERNAL MARKET PANEL AND TASK GROUPS

- 1 Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority) is amended as follows.
- 2 (1) Paragraph 1 is amended as follows.
  - (2) In sub-paragraph (1)(b) –
    - (a) in the words before paragraph (i), for “to membership of” substitute “as follows”;
    - (b) in paragraph (i), at the beginning insert “persons appointed to membership of”;
    - (c) in paragraph (ii), at the beginning insert “persons appointed to membership of”;
    - (d) in paragraph (iii), at the beginning insert “persons appointed to membership of”;
    - (e) after paragraph (iii) insert –
      - “(iv) a person (the “OIM panel chair”) appointed to chair the Office for the Internal Market panel and to membership of the CMA Board;
      - (v) other persons appointed to membership of the Office for the Internal Market panel (“the OIM panel”) (see Part 3A).”
  - (3) After sub-paragraph (2) insert –
    - “(2A) In making appointments under paragraphs (iv) and (v) of sub-paragraph (1)(b), the Secretary of State must have regard to the desirability of securing that –
      - (a) a variety of skills, knowledge and experience is available among the members of the OIM panel, and
      - (b) there is an appropriate balance among the members of that panel of persons who have skills, knowledge or experience relating to the operation of the United Kingdom internal market in different parts of the United Kingdom.
    - (2B) Before making an appointment under paragraph (iv) or (v) of sub-paragraph (1)(b), the Secretary of State must seek the consent of –
      - (a) the Scottish Ministers,
      - (b) the Welsh Ministers, and

- (c) the Department for the Economy in Northern Ireland.
- (2C) Sub-paragraph (2D) applies if consent to an appointment is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority.
- (2D) In that event the Secretary of State –
- (a) may make the appointment without the consent of the authority or authorities concerned, and
  - (b) must, if the appointment is made, inform each authority which did not give consent of the reasons for the decision to proceed with the appointment.”
- 3 (1) Paragraph 3 is amended as follows.
- (2) After sub-paragraph (2), insert –
- “(2A) Appointment to membership of the OIM panel under paragraph 1(1)(b) is to be for a term of not more than eight years.”
- (3) At the end insert –
- “(4) Where at the beginning of a person’s term of appointment to membership of the CMA panel the person has already begun (and continues) to hold office as a member of the OIM panel, the term of the person’s appointment to membership of the CMA panel is to be treated for the purposes of sub-paragraph (2) as beginning when the person’s term of appointment to membership of the OIM panel began.
  - (5) Where at the beginning of a person’s term of appointment to membership of the OIM panel the person has already begun (and continues) to hold office as a member of the CMA panel, the term of the person’s appointment to membership of the OIM panel is to be treated for the purposes of sub-paragraph (2A) as beginning when the person’s term of appointment to membership of the CMA panel began.”
- 4 (1) Paragraph 4 is amended as follows.
- (2) After sub-paragraph (1), insert –
- “(1A) A person who has been appointed to membership of the OIM panel may be re-appointed to membership of the OIM panel only for the purpose of continuing to act as a member of a group constituted under paragraph 58B before the expiry of the person’s term of office.”
- (3) In sub-paragraph (2), for “sub-paragraph (1)” substitute “sub-paragraphs (1) and (1A)”.
- 5 (1) Paragraph 6 is amended as follows.
- (2) In sub-paragraph (2), for “of either the CMA Board or the CMA panel (but not of both)” substitute “of one, but not more than one, of the CMA Board, the CMA panel and the OIM panel,”.
- (3) In sub-paragraph (3) –
- (a) in the words before paragraph (a), after “panel” insert “or both the CMA panel and the OIM panel”;

- (b) for paragraph (a) substitute –
  - “(a) resign from one of those memberships (without resigning from the other), or”.
- (4) After sub-paragraph (3) insert –
  - “(4) The OIM panel chair may at any time resign from membership of the CMA by giving written notice to this effect to the Secretary of State (and may not resign from the OIM panel, or any other office to which the person is appointed by virtue of paragraph 1(1)(b)(iv), except in accordance with this sub-paragraph).”
- 6 In paragraph 9(2) –
  - (a) omit “or” at the end of paragraph (a);
  - (b) after paragraph (b) insert “, or
  - (c) a member of the OIM panel.”
- 7 In paragraph 10(2)(b), at the end insert “or the OIM panel”.
- 8 After Part 3 insert –

“PART 3A

THE OIM PANEL

*The OIM panel*

- 58A (1) The OIM panel is a panel of persons available for selection as members of a group constituted in accordance with this Part of this Schedule.
- (2) The OIM panel is to consist of –
  - (a) the OIM panel chair appointed under paragraph 1(1)(b)(iv), and
  - (b) the other members of the panel appointed under paragraph 1(1)(b)(v).

*Constitution of OIM task groups*

- 58B (1) The OIM panel chair may at any time constitute a group in accordance with this Part of this Schedule for the purpose of carrying out on the CMA’s behalf functions of the CMA under Part 4 of the United Kingdom Internal Market Act 2020.
- (2) A group constituted as mentioned in sub-paragraph (1) is to be known as an Office for the Internal Market task group (or “OIM task group”).

*Membership of OIM task groups*

- 58C (1) The members of an OIM task group are to be selected by the OIM panel chair.
- (2) Each OIM task group is to consist of at least three members of the OIM panel.

- (3) The OIM panel chair must appoint one of the members of an OIM task group to chair the group (“the task group chair”).

- 58D The validity of anything done by an OIM task group is not affected by –
- (a) a vacancy;
  - (b) a defective appointment.

*Termination of person’s membership of an OIM task group*

- 58E A member of the OIM panel may at any time resign from an OIM task group by giving written notice to this effect to the OIM panel chair.
- 58F (1) Sub-paragraph (2) applies if the OIM panel chair considers that –
- (a) a member of an OIM task group will be unable, for a substantial period, to perform their duties as a member of the group, or
  - (b) because of a particular interest of a member of an OIM task group, it is inappropriate for that person to remain a member of the group.
- (2) The OIM panel chair may remove the person in question from membership of the task group.
- 58G A person ceases to be a member of an OIM task group on ceasing to be a member of the OIM panel.

*Replacement of a member of an OIM task group*

- 58H (1) Sub-paragraph (2) applies if a person ceases to be a member of an OIM task group, whether by being removed under paragraph 58F, or otherwise.
- (2) The OIM panel chair may select a replacement member of the group from the OIM panel.

*Continuity on removal or replacement*

- 58I (1) A person’s ceasing to be a member of an OIM task group, whether by being removed under paragraph 58F, or otherwise, does not prevent –
- (a) the group from continuing with anything begun before the person ceased to be a member of it;
  - (b) any decision made or direction given by the person while a member of the group from having effect after they have ceased to be a member of the group.
- (2) Sub-paragraph (1) applies whether or not a replacement member of the group is selected under paragraph 58H.

*Powers of chair pending group’s constitution and first meeting*

- 58J (1) While an OIM task group is being constituted, the OIM panel chair may take such steps as the OIM panel chair considers appropriate to facilitate the work of the group once it has been constituted.

- (2) The steps taken must be steps that it would be within the power of the group to take, had it already been constituted.

*Independence of OIM task groups*

- 58K (1) In exercising functions which they are authorised to exercise by virtue of any enactment, OIM task groups must act independently of the CMA Board.
- (2) Nothing in sub-paragraph (1) prevents –
- (a) the CMA Board giving information in its possession to an OIM task group, or
  - (b) an OIM task group giving information in its possession to the CMA Board.

*Casting votes*

- 58L If an OIM task group’s vote on any decision is tied, the task group chair is to have a casting vote.

*Procedure of OIM task groups*

- 58M (1) An OIM task group may determine its own procedure (including determining its quorum).
- (2) In determining its procedure under sub-paragraph (1), an OIM task group must have regard to any guidance issued by the CMA Board.”



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