

SCHEDULES

SCHEDULE 5

Section 38

REGULATIONS UNDER THIS ACT

PART 1

PROCEDURE

Criminal records

- 1 (1) A statutory instrument containing regulations under section 6(3) of the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Regulations under section 6(3) of the Scottish Ministers are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (3) Regulations under section 6(3) of the Department of Justice in Northern Ireland are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.

Passenger name record data

- 2 A statutory instrument containing regulations under paragraph 18 of Schedule 2 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Administrative co-operation on VAT and mutual assistance on tax debts

- 3 A statutory instrument containing regulations under section 22(7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

Implementation power: before IP completion day

- 4 (1) A statutory instrument which—
- (a) contains regulations under section 31 of a Minister of the Crown acting alone, and
 - (b) is to be made before IP completion day,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Regulations which are to be made—

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- (a) under section 31 by the Scottish Ministers acting alone, and
 - (b) before IP completion day,

are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
 - (3) A statutory instrument which—
 - (a) contains regulations under section 31 of the Welsh Ministers acting alone, and
 - (b) is to be made before IP completion day,

may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
 - (4) Regulations which are to be made—
 - (a) under section 31 by a Northern Ireland department acting alone, and
 - (b) before IP completion day,

may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
 - (5) This paragraph is subject to paragraphs 14 to 17 (urgency procedures for regulations to which this paragraph applies).
- 5 (1) This paragraph applies to regulations under section 31 of a Minister of the Crown acting jointly with a devolved authority which are to be made before IP completion day.
- (2) The procedure provided for by sub-paragraph (3) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned.
 - (3) A statutory instrument containing regulations to which this paragraph applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
 - (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the affirmative procedure.
 - (5) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (affirmative procedure) applies in relation to regulations to which sub-paragraph (4) applies as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
 - (6) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (4) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).
 - (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

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- (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

Implementation power: on or after IP completion day

- 6 (1) A statutory instrument which—
- (a) contains regulations under section 31 of a Minister of the Crown acting alone which contain provision falling within sub-paragraph (2), and
 - (b) is to be made on or after IP completion day,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Provision falls within this sub-paragraph if it—
- (a) amends, repeals or revokes primary legislation or retained direct principal EU legislation, or
 - (b) creates a power to legislate.
- (3) Any other statutory instrument which—
- (a) contains regulations under section 31 of a Minister of the Crown acting alone, and
 - (b) is made on or after IP completion day,
- is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) See paragraph 8 for certain restrictions on the choice of procedure under sub-paragraph (3).
- (5) Regulations under section 31 of the Scottish Ministers acting alone which—
- (a) contain provision falling within sub-paragraph (2), and
 - (b) are to be made on or after IP completion day,
- are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (6) Any other regulations under section 31 of the Scottish Ministers acting alone which are made on or after IP completion day are (if they have not been subject to the affirmative procedure) subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (7) A statutory instrument which—
- (a) contains regulations under section 31 of the Welsh Ministers acting alone which contain provision falling within sub-paragraph (2), and
 - (b) is to be made on or after IP completion day,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (8) Any other statutory instrument which—
- (a) contains regulations under section 31 of the Welsh Ministers acting alone, and
 - (b) is made on or after IP completion day,

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is (if a draft of the instrument has not been laid before, and approved by a resolution of, Senedd Cymru) subject to annulment in pursuance of a resolution of Senedd Cymru.

- (9) See paragraph 9 for certain restrictions on the choice of procedure under sub-paragraph (8).
 - (10) Regulations under section 31 of a Northern Ireland department acting alone which—
 - (a) contain provision falling within sub-paragraph (2), and
 - (b) are to be made on or after IP completion day,
 may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
 - (11) Any other regulations under section 31 of a Northern Ireland department acting alone which are made on or after IP completion day are (if a draft of the regulations has not been laid before, and approved by a resolution of, the Northern Ireland Assembly) subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
 - (12) This paragraph is subject to paragraphs 14 to 17 (urgency procedures for regulations to which this paragraph applies).
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- (1) This paragraph applies to regulations under section 31 of a Minister of the Crown acting jointly with a devolved authority which are made, or (as the case may be) are to be made, on or after IP completion day.
 - (2) The procedure provided for by sub-paragraph (3) or (4) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned.
 - (3) A statutory instrument containing regulations to which this paragraph applies which contain provision falling within paragraph 6(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
 - (4) Any other statutory instrument containing regulations to which this paragraph applies is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
 - (5) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers and contain provision falling within paragraph 6(2) are subject to the affirmative procedure.
 - (6) Any other regulations to which this paragraph applies which are made jointly with the Scottish Ministers are (if they have not been subject to the affirmative procedure) subject to the negative procedure.
 - (7) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (affirmative procedure) applies in relation to regulations to which sub-paragraph (5) or (6) applies and which are subject to the affirmative procedure as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).

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- (8) Sections 28(2), (3) and (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) apply in relation to regulations to which sub-paragraph (6) applies and which are subject to the negative procedure as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (9) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (5) or (6) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).
- (10) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers and contain provision falling within paragraph 6(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (11) Any other statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers is (if a draft of the instrument has not been laid before, and approved by a resolution of, Senedd Cymru) subject to annulment in pursuance of a resolution of Senedd Cymru.
- (12) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department and contain provision falling within paragraph 6(2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (13) Any other regulations to which this paragraph applies which are made jointly with a Northern Ireland department are (if a draft of the regulations has not been laid before, and approved by a resolution of, the Northern Ireland Assembly) subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (14) If in accordance with sub-paragraph (4),(6), (11) or (13)—
 - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument be annulled, or
 - (b) a relevant devolved legislature resolves that an instrument be annulled,nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (15) In sub-paragraph (14) “relevant devolved legislature” means—
 - (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament,
 - (b) in the case of regulations made jointly with the Welsh Ministers, Senedd Cymru, and
 - (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly.
- (16) Sub-paragraph (14) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (17) Sub-paragraphs (14) to (16) apply in place of provision made by any other enactment about the effect of such a resolution.

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- 8 (1) Sub-paragraph (2) applies if a Minister of the Crown, who is to make within the period of two years beginning with IP completion day a statutory instrument to which paragraph 6(3) applies, is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) The Minister may not make the instrument so that it is subject to that procedure unless—
- (a) condition 1 is met, and
 - (b) either condition 2 or 3 is met.
- (3) Condition 1 is that a Minister of the Crown—
- (a) has made a statement in writing to the effect that in the Minister's opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament, and
 - (b) has laid before each House of Parliament—
 - (i) a draft of the instrument, and
 - (ii) a memorandum setting out the statement and the reasons for the Minister's opinion.
- (4) Condition 2 is that a committee of the House of Commons charged with doing so and a committee of the House of Lords charged with doing so have, within the relevant period, each made a recommendation as to the appropriate procedure for the instrument.
- (5) Condition 3 is that the relevant period has ended without condition 2 being met.
- (6) Sub-paragraph (7) applies if—
- (a) a committee makes a recommendation as mentioned in sub-paragraph (4) within the relevant period,
 - (b) the recommendation is that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made, and
 - (c) the Minister who is to make the instrument is nevertheless of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Before the instrument is made, the Minister must make a statement explaining why the Minister does not agree with the recommendation of the committee.
- (8) If the Minister fails to make a statement required by sub-paragraph (7) before the instrument is made, a Minister of the Crown must make a statement explaining why the Minister has failed to do so.
- (9) A statement under sub-paragraph (7) or (8) must be made in writing and be published in such manner as the Minister making it considers appropriate.
- (10) In this paragraph “the relevant period” means the period—
- (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft instrument was laid before each House as mentioned in sub-paragraph (3)(b)(i), and
 - (b) ending with whichever of the following is the later—
 - (i) the end of the period of 10 Commons sitting days beginning with that first day, and

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- (ii) the end of the period of 10 Lords sitting days beginning with that first day.
 - (11) For the purposes of sub-paragraph (10)—
 - (a) where a draft of an instrument is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
 - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and
 - (c) “Lords sitting day” means a day on which the House of Lords is sitting,and, for the purposes of sub-paragraph (10) and this sub-paragraph, a day is only a day on which the House of Commons or the House of Lords is sitting if the House concerned begins to sit on that day.
 - (12) Nothing in this paragraph prevents a Minister of the Crown from deciding at any time before a statutory instrument to which paragraph 6(3) applies is made that another procedure should apply in relation to the instrument (whether under paragraph 6(3) or 14).
 - (13) Section 6(1) of the Statutory Instruments Act 1946 (alternative procedure for certain instruments laid in draft before Parliament) does not apply in relation to any statutory instrument to which this paragraph applies.
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- (1) Sub-paragraph (2) applies if the Welsh Ministers are to make within the period of two years beginning with IP completion day a statutory instrument to which paragraph 6(8) applies and are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of Senedd Cymru.
 - (2) The Welsh Ministers may not make the instrument so that it is subject to that procedure unless—
 - (a) condition 1 is met, and
 - (b) either condition 2 or 3 is met.
 - (3) Condition 1 is that the Welsh Ministers—
 - (a) have made a statement in writing to the effect that in their opinion the instrument should be subject to annulment in pursuance of a resolution of Senedd Cymru, and
 - (b) have laid before Senedd Cymru—
 - (i) a draft of the instrument, and
 - (ii) a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.
 - (4) Condition 2 is that a committee of Senedd Cymru charged with doing so has made a recommendation as to the appropriate procedure for the instrument.
 - (5) Condition 3 is that the period of 14 days beginning with the first day after the day on which the draft instrument was laid before Senedd Cymru as mentioned in sub-paragraph (3)(b)(i) has ended without any recommendation being made as mentioned in sub-paragraph (4).
 - (6) In calculating the period of 14 days, no account is to be taken of any time during which Senedd Cymru is—
 - (a) dissolved, or
 - (b) in recess for more than four days.

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- (7) Nothing in this paragraph prevents the Welsh Ministers from deciding at any time before a statutory instrument to which paragraph 6(8) applies is made that another procedure should apply to the instrument (whether under paragraph 6(8) or 16).
- (8) Section 6(1) of the Statutory Instruments Act 1946 as applied by section 11A of that Act (alternative procedure for certain instruments laid in draft before Senedd Cymru) does not apply in relation to any statutory instrument to which this paragraph applies.

Powers relating to the start of agreements

- 10 (1) A statutory instrument containing regulations under section 32 of a Minister of the Crown acting alone may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Regulations under section 32 of the Scottish Ministers acting alone are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (3) A statutory instrument containing regulations under section 32 of the Welsh Ministers acting alone may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (4) Regulations under section 32 of a Northern Ireland department acting alone may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (5) This paragraph is subject to paragraphs 14 to 17 (urgency procedures for regulations to which this paragraph applies).
- 11 (1) This paragraph applies to regulations under section 32 of a Minister of the Crown acting jointly with a devolved authority.
- (2) The procedure provided for by sub-paragraph (3) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned.
- (3) A statutory instrument containing regulations to which this paragraph applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the affirmative procedure.
- (5) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (affirmative procedure) applies in relation to regulations to which sub-paragraph (4) applies as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (6) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (4) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).

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- (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

Powers relating to the functioning of agreements

- 12 (1) A statutory instrument containing regulations under section 33 of a Minister of the Crown acting alone which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Provision falls within this sub-paragraph if it amends, repeals or revokes—
 - (a) primary legislation, or
 - (b) retained direct principal EU legislation.
- (3) Any other statutory instrument containing regulations under section 33 of a Minister of the Crown acting alone is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations under section 33 of the Scottish Ministers acting alone which contain provision falling within sub-paragraph (2) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (5) Any other regulations under section 33 of the Scottish Ministers acting alone are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (6) A statutory instrument containing regulations under section 33 of the Welsh Ministers acting alone which contain provision falling within sub-paragraph (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (7) Any other statutory instrument containing regulations under section 33 of the Welsh Ministers acting alone is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (8) Regulations under section 33 of a Northern Ireland department acting alone which contain provision falling within sub-paragraph (2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (9) Any other regulations under section 33 of a Northern Ireland department acting alone are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (10) This paragraph is subject to paragraphs 14 to 17 (urgency procedures for regulations to which this paragraph applies).
- 13 (1) This paragraph applies to regulations under section 33 of a Minister of the Crown acting jointly with a devolved authority.

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- (2) The procedure provided for by sub-paragraph (3) or (4) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned.
- (3) A statutory instrument containing regulations to which this paragraph applies which contain provision falling within paragraph 12(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any other statutory instrument containing regulations to which this paragraph applies is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers and contain provision falling within paragraph 12(2) are subject to the affirmative procedure.
- (6) Any other regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the negative procedure.
- (7) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (affirmative procedure) applies in relation to regulations to which sub-paragraph (5) applies as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (8) Sections 28(2), (3) and (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) apply in relation to regulations to which sub-paragraph (6) applies as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (9) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (5) or (6) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).
- (10) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers and contain provision falling within paragraph 12(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (11) Any other statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (12) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department and contain provision falling within paragraph 12(2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (13) Any other regulations to which this paragraph applies which are made jointly with a Northern Ireland department are subject to negative resolution within the meaning

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of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.

- (14) If in accordance with sub-paragraph (4), (6), (11) or (13)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument be annulled, or
 - (b) a relevant devolved legislature resolves that an instrument be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (15) In sub-paragraph (14) “relevant devolved legislature” means—
- (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament,
 - (b) in the case of regulations made jointly with the Welsh Ministers, Senedd Cymru, and
 - (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly.
- (16) Sub-paragraph (14) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (17) Sub-paragraphs (14) to (16) apply in place of provision made by any other enactment about the effect of such a resolution.

Implementation and other powers: certain urgent cases

- 14 (1) Sub-paragraph (2) applies to—
- (a) a statutory instrument to which paragraph 4(1) or 6(1) applies,
 - (b) a statutory instrument to which paragraph 6(3) applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament, or
 - (c) a statutory instrument to which paragraph 10(1) or 12(1) applies.
- (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
- (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before each House of Parliament.
- (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (5) In calculating the period of 28 days, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
- (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.

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- (7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 6(3) applies where the Minister of the Crown who is to make the instrument is of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (8) Paragraph 8 does not apply in relation to the instrument if the instrument contains a declaration that the Minister is of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.
- 15 (1) Sub-paragraph (2) applies to—
- (a) regulations to which paragraph 4(2) or 6(5) applies,
 - (b) regulations to which paragraph 6(6) applies which would not otherwise be made without being subject to the affirmative procedure, or
 - (c) regulations to which paragraph 10(2) or 12(4) applies.
- (2) The regulations may be made without being subject to the affirmative procedure if the regulations contain a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to that procedure.
 - (3) After regulations are made in accordance with sub-paragraph (2), they must be laid before the Scottish Parliament.
 - (4) Regulations made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by resolution of the Scottish Parliament.
 - (5) In calculating the period of 28 days, no account is to be taken of any time during which the Scottish Parliament is—
 - (a) dissolved, or
 - (b) in recess for more than four days.
 - (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
 - (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
- 16 (1) Sub-paragraph (2) applies to—
- (a) a statutory instrument to which paragraph 4(3) or 6(7) applies,
 - (b) a statutory instrument to which paragraph 6(8) applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, Senedd Cymru, or
 - (c) a statutory instrument to which paragraph 10(3) or 12(6) applies.
- (2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, Senedd Cymru if it contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
 - (3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before Senedd Cymru.

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- (4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of Senedd Cymru.
 - (5) In calculating the period of 28 days, no account is to be taken of any time during which Senedd Cymru is—
 - (a) dissolved, or
 - (b) in recess for more than four days.
 - (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
 - (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
 - (7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 6(8) applies where the Welsh Ministers are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of Senedd Cymru.
 - (8) Paragraph 9 does not apply in relation to the instrument if the instrument contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.
- 17
- (1) Sub-paragraph (2) applies to—
 - (a) regulations to which paragraph 4(4) or 6(10) applies,
 - (b) regulations to which paragraph 6(11) applies which would not otherwise be made without a draft of the regulations being laid before, and approved by a resolution of, the Northern Ireland Assembly, or
 - (c) regulations to which paragraph 10(4) or 12(8) applies.
 - (2) The regulations may be made without a draft of the regulations being laid before, and approved by a resolution of, the Northern Ireland Assembly if they contain a declaration that the Northern Ireland department concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
 - (3) After regulations are made in accordance with sub-paragraph (2), they must be laid before the Northern Ireland Assembly.
 - (4) Regulations made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by a resolution of the Northern Ireland Assembly.
 - (5) In calculating the period of 28 days, no account is to be taken of any time during which the Northern Ireland Assembly is—
 - (a) dissolved,
 - (b) in recess for more than four days, or
 - (c) adjourned for more than six days.
 - (6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—
 - (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.

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Consequential provision

- 18 A statutory instrument containing regulations under section 39(1) is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 2

GENERAL RESTRICTIONS ON CERTAIN POWERS OF DEVOLVED AUTHORITIES

No power to make provision outside devolved competence

- 19 (1) No provision may be made by a devolved authority acting alone in regulations under section 31, 32 or 33 unless the provision is within the devolved competence of the devolved authority.
- (2) See paragraphs 23 to 25 for the meaning of “devolved competence” for the purposes of this Part.

Requirement for consent where it would otherwise be required

- 20 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers acting alone in regulations under section 31, 32 or 33 so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown.
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under section 31, 32 or 33 so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State.
- (3) Sub-paragraph (1) or (2) does not apply if—
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and
 - (b) no such consent would be required in that case.
- (4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority acting alone in regulations under section 31, 32 or 33 so far as that provision, if contained in—
- (a) subordinate legislation made otherwise than under this Act by the devolved authority, or
 - (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by (in the case of Scotland) the First Minister or Lord Advocate acting alone or (in the case of Northern Ireland) a Northern Ireland devolved authority acting alone,
- would require the consent of a Minister of the Crown.
- (5) Sub-paragraph (4) does not apply if—
- (a) the provision could be contained in—
 - (i) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, or

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- (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b) and of a devolved authority acting alone or (as the case may be) other person acting alone, and
- (b) no such consent would be required in that case.

Requirement for joint exercise where it would otherwise be required

- 21 (1) No regulations may be made under section 31, 32 or 33 by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or
 - (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations may be made under section 31, 32 or 33 by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (3) No regulations may be made under section 31, 32 or 33 by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
 - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in—
- (a) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
 - (b) different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone.

Requirement for consultation where it would otherwise be required

- 22 (1) No regulations may be made under section 31, 32 or 33 by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of Senedd Cymru, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (2) No regulations may be made under section 31, 32 or 33 by the Scottish Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after

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consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.

- (3) No regulations may be made under section 31, 32 or 33 by the Welsh Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (4) No regulations may be made under section 31, 32 or 33 by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (5) Sub-paragraph (2), (3) or (4) does not apply if—
 - (a) the provision could be contained in an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.
- (6) Sub-paragraph (2), (3) or (4) does not apply if—
 - (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

Meaning of devolved competence

- 23 A provision is within the devolved competence of the Scottish Ministers for the purposes of this Part if—
 - (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law), or
 - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone (ignoring section 57(2) of the Scotland Act 1998 so far as relating to EU law and section 57(4) of that Act).
- 24 A provision is within the devolved competence of the Welsh Ministers for the purposes of this Part if—
 - (a) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of Senedd Cymru (ignoring section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with the consent of a Minister of the Crown), or

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- (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone (ignoring section 80(8) of the Government of Wales Act 2006).
- 25 A provision is within the devolved competence of a Northern Ireland department for the purposes of this Part if—
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly—
- (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
- (ii) would not require the consent of the Secretary of State,
- (b) the provision—
- (i) amends or repeals Northern Ireland legislation, and
- (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998) and require the consent of the Secretary of State, or
- (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone (ignoring section 24(1)(b) and (3) of the Northern Ireland Act 1998).

PART 3

GENERAL PROVISION ABOUT POWERS UNDER ACT

Scope and nature of powers: general

- 26 (1) Any power to make regulations under this Act—
- (a) so far as exercisable by a Minister of the Crown or by a Minister of the Crown acting jointly with a devolved authority, is exercisable by statutory instrument,
- (b) so far as exercisable by the Welsh Ministers or by the Welsh Ministers acting jointly with a Minister of the Crown, is exercisable by statutory instrument, and
- (c) so far as exercisable by a Northern Ireland department (other than when acting jointly with a Minister of the Crown), is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) (and not by statutory instrument).
- (2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments).
- 27 Any power to make regulations under this Act—
- (a) may be exercised so as to make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and
- (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

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- 28 The fact that a power to make regulations is conferred by this Act does not affect the extent of any other power to make subordinate legislation under this Act or any other enactment.

Anticipatory exercise of powers in relation to future relationship agreements etc.

- 29 Any power to make regulations under this Act in relation to a future relationship agreement or an agreement falling within section 31(7)(b) is also capable of being exercised before the agreement concerned is signed, provisionally applied or ratified or before it comes into force.

Scope of appointed day power

- 30 The power of a Minister of the Crown under section 40(7) to appoint a day includes a power to appoint a time on that day if the Minister considers it appropriate to do so.

Disapplication of certain review provisions

- 31 Section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply in relation to any power to make regulations under this Act.

Hybrid instruments

- 32 If an instrument, or a draft of an instrument, containing regulations under this Act would, apart from this paragraph, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

Procedure on re-exercise of certain powers

- 33 A power to make regulations which, under this Schedule, is capable of being exercised subject to different procedures may (in spite of section 14 of the Interpretation Act 1978) be exercised, when revoking, amending or re-enacting an instrument made under the power, subject to a different procedure from the procedure to which the instrument was subject.

Combinations of instruments

- 34 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made or its approval after it is made.
- (2) The statutory instrument may also include regulations under this Act or another enactment which are made by statutory instrument which is subject to a procedure before Parliament that provides for the annulment of the instrument after it has been made.
- (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument is the procedure mentioned in sub-paragraph (1) and not the procedure mentioned in sub-paragraph (2).
- (4) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before Senedd Cymru

as they apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to Senedd Cymru.

- (5) Sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument but as if the references to Parliament were references to the Northern Ireland Assembly.
- (6) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under this Act which is subject to a procedure before the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly as well as a procedure before Parliament as they apply to a statutory instrument containing regulations under this Act which is subject to a procedure before Parliament but as if the references to Parliament were references to Parliament and the Scottish Parliament, Senedd Cymru or (as the case may be) the Northern Ireland Assembly.
- (7) This paragraph does not prevent the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under this Act (and, accordingly, references in this Schedule to an instrument containing regulations are to be read as references to an instrument containing (whether alone or with other provision) regulations).

Changes to legislation:

There are currently no known outstanding effects for the European Union (Future Relationship) Act 2020, SCHEDULE 5.