

SCHEDULES

SCHEDULE 5

REGULATIONS UNDER THIS ACT

PART 1

PROCEDURE

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—

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- (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,

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.

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- (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).
- (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—

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- (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.
- 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.

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- (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
 - (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

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- (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.
- (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.

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