



European Union (Withdrawal Agreement) Act 2020

2020 CHAPTER 1

PART 1

IMPLEMENTATION PERIOD

Supplementary powers

4 Powers corresponding to section 3 involving devolved authorities

After Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (corresponding powers involving devolved authorities: dealing with deficiencies arising from withdrawal) insert—

“PART 1A

PROVISION IN CONNECTION WITH IMPLEMENTATION PERIOD

Supplementary power in connection with implementation period

- 11A (1) A devolved authority may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f)(i) (whether applying in all cases or particular cases or descriptions of case),
 - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
 - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section, or

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- (d) make such provision not falling within paragraph (a), (b) or (c) as the devolved authority considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations—
 - (a) provide for other modifications for the purposes of section 1B(3)(f) (i) (whether applying in all cases or particular cases or descriptions of case),
 - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
 - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section, or
 - (d) make such provision not falling within paragraph (a), (b) or (c) as they consider appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.
- (3) The power to make regulations under this Part may (among other things) be exercised by modifying any provision made by or under an enactment.
- (4) In sub-paragraph (3) “enactment” does not include primary legislation passed or made after IP completion day.
- (5) No regulations may be made under this Part after the end of the period of two years beginning with IP completion day.
- (6) Regulations under sub-paragraph (1) are also subject to paragraphs 11B and 11C.

No power to make provision outside devolved competence

- 11B (1) No provision may be made by a devolved authority acting alone in regulations under this Part unless the provision is within the devolved competence of the devolved authority.
- (2) See paragraphs 11D to 11F for the meaning of “devolved competence” for the purposes of this Part.

Certain requirements for consent, joint exercise or consultation

- 11C Paragraphs 5 to 7 apply for the purposes of this Part as they apply for the purposes of Part 1.

Meaning of devolved competence: Part 1A

- 11D 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, in the case of regulations made under this Part before exit day, section 29(2)(d) of the Scotland Act 1998 so far as relating to 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

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- acting alone (ignoring, in the case of regulations made under this Part before exit day, section 57(2) of the Scotland Act 1998 so far as relating to EU law).
- 11E 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 the National Assembly for Wales if it were contained in an Act of the Assembly (ignoring, in the case of regulations made under this Part before exit day, section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law but including any provision that could be made only with the consent of a Minister of the Crown), or
 - (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone (ignoring, in the case of regulations made under this Part before exit day, section 80(8) of the Government of Wales Act 2006 so far as relating to EU law).
- 11F 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, in the case of regulations made under this Part before exit day, section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law), and
 - (ii) would not require the consent of the Secretary of State,
 - (b) the provision—
 - (i) amends or repeals Northern Ireland legislation, and
 - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring, in the case of regulations made under this Part before exit day, section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law) and require the consent of the Secretary of State, or
 - (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone (ignoring, in the case of regulations made under this Part before exit day, section 24(1)(b) of the Northern Ireland Act 1998).”

Changes to legislation:

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