

Status: Point in time view as at 04/07/2018.

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SCHEDULES

SCHEDULE 7

REGULATIONS

PART 2

SCRUTINY OF OTHER POWERS UNDER ACT

Power to enable challenges to validity of retained EU law

- 9 (1) A statutory instrument containing regulations under paragraph 1(2)(b) of Schedule 1 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) This paragraph is subject to paragraph 19.

Power to implement withdrawal agreement

- 10 (1) A statutory instrument containing regulations under section 9 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—
- (a) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
 - (b) relates to a fee in respect of a function exercisable by a public authority in the United Kingdom,
 - (c) creates, or widens the scope of, a criminal offence, or
 - (d) creates or amends a power to legislate.
- (3) Any other statutory instrument containing regulations under section 9 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 17 for restrictions on the choice of procedure under sub-paragraph (3).
- (5) Paragraphs 1(6) to (13)(a) and 2 apply to regulations under Part 2 of Schedule 2 as they apply to regulations under Part 1 of that Schedule except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision falling within sub-paragraph (2) above.
- (6) This paragraph is subject to paragraph 19.

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Power to repeal provisions relating to retained EU law restrictions

- 11 A statutory instrument containing regulations under section 12(9) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Powers in connection with fees and charges

- 12 (1) A statutory instrument containing regulations of a Minister of the Crown under Schedule 4 which contain provision which does not relate to altering the amount of a fee or charge to reflect changes in the value of money 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) Any other statutory instrument containing regulations under Schedule 4 of a Minister of the Crown 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.
- (3) Paragraphs 1(6) to (13)(a) and 2 apply to regulations under Schedule 4 as they apply to regulations under Part 1 of Schedule 2 except that any reference to provision falling within paragraph 1(2) is to be read as a reference to any provision made under Schedule 4 which does not relate to altering the amount of a fee or charge to reflect changes in the value of money.
- (4) This paragraph is subject to paragraph 19.

Power to make provision about judicial notice and admissibility

- 13 A statutory instrument containing regulations under paragraph 4 of Schedule 5 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Power to amend the definition of “exit day”

- 14 A statutory instrument containing regulations under section 20(4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Power to make consequential provision

- 15 (1) A statutory instrument containing regulations under section 23(1) 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.
- (2) See paragraph 17 for restrictions on the choice of procedure under sub-paragraph (1).

Power to make transitional, transitory or saving provision

- 16 (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make regulations under section 23(6) considers that—
- (a) it is not appropriate for the statutory instrument containing them to be subject to no parliamentary procedure, and

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- (b) it is appropriate for that statutory instrument to be subject to the parliamentary procedure in sub-paragraph (2).
- (2) The statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Sub-paragraph (4) applies if a Minister of the Crown who is to make regulations under section 23(6) considers that—
 - (a) it is not appropriate for the statutory instrument containing them to be subject to no parliamentary procedure, and
 - (b) it is appropriate for that statutory instrument to be subject to the parliamentary procedure in sub-paragraph (4).
- (4) The statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

*Parliamentary committee to sift certain implementation
or consequential regulations of a Minister of the Crown*

- 17
- (1) Sub-paragraph (2) applies if a Minister of the Crown who is to make a statutory instrument to which paragraph 10(3) or 15 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

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- (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 of Parliament 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 10(3) or 15 applies is made that another procedure should apply in relation to the instrument (whether under that paragraph or paragraph 19).
- (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.

Committee of the National Assembly for Wales to sift certain implementation regulations of Welsh Ministers

- 18 Paragraph 4 applies to regulations under Part 2 of Schedule 2 as it applies to regulations under Part 1 of that Schedule but as if—
- (a) the references to paragraph 1(9) were references to paragraph 1(9) as applied by paragraph 10(5),
 - (b) the reference to paragraph 7 were a reference to that paragraph as applied by paragraph 19(7), and

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- (c) paragraph 4(9) were omitted.

Scrutiny procedure for certain powers to which this Part applies in urgent cases

- 19 (1) Sub-paragraph (2) applies to—
- (a) a statutory instrument to which paragraph 9(1), 10(1) or 12(1) applies, or
 - (b) a statutory instrument to which paragraph 10(3), 12(2) or 15 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.
- (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.
- (7) Paragraphs 6 to 8 apply to regulations under Part 2 of Schedule 2 as they apply to regulations under Part 1 of that Schedule but as if—
- (a) the references to paragraphs 1(6), (7), (8), (9), (10) or (11) were references to those provisions as applied by paragraph 10(5),
 - (b) the reference in paragraph 7(8) to paragraph 4 were a reference to that paragraph as applied by paragraph 18, and
 - (c) paragraphs 6(7), 7(9) and 8(7) were omitted.
- (8) Sub-paragraph (9) applies to a statutory instrument to which paragraph 10(3) or 15 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.
- (9) Paragraph 17 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.

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