



European Union (Withdrawal Agreement) Act 2020

2020 CHAPTER 1

PART 4

OTHER SUBJECT AREAS

Ireland/Northern Ireland Protocol

21 Main power in connection with Ireland/Northern Ireland Protocol

After section 8B of the European Union (Withdrawal) Act 2018 (power in connection with certain other separation issues) (for which see section 18 above) insert—

“8C Power in connection with Ireland/Northern Ireland Protocol in withdrawal agreement

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate—
 - (a) to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement,
 - (b) to supplement the effect of section 7A in relation to the Protocol, or
 - (c) otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 7A and the Protocol).
- (2) Regulations under subsection (1) may make any provision that could be made by an Act of Parliament (including modifying this Act).
- (3) Regulations under subsection (1) may (among other things) make provision facilitating the access to the market within Great Britain of qualifying Northern Ireland goods.

Status: This is the original version (as it was originally enacted).

- (4) Such provision may (among other things) include provision about the recognition within Great Britain of technical regulations, assessments, registrations, certificates, approvals and authorisations issued by—
- (a) the authorities of a member State, or
 - (b) bodies established in a member State,
- in respect of qualifying Northern Ireland goods.
- (5) Regulations under subsection (1) may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of section 7A and the Protocol.
- (6) A Minister of the Crown may by regulations define “qualifying Northern Ireland goods” for the purposes of this Act.
- (7) In this section any reference to the Protocol on Ireland/Northern Ireland includes a reference to—
- (a) any other provision of the withdrawal agreement so far as applying to the Protocol, and
 - (b) any provision of EU law which is applied by, or referred to in, the Protocol (to the extent of the application or reference),
- but does not include the second sentence of Article 11(1) of the Protocol (which provides that the United Kingdom and the Republic of Ireland may continue to make new arrangements that build on the provisions of the Belfast Agreement in other areas of North-South cooperation on the island of Ireland).”

22 Powers corresponding to section 21 involving devolved authorities

After Part 1B of Schedule 2 to the European Union (Withdrawal) Act 2018 (corresponding powers involving devolved authorities: provision in connection with certain other separation issues) (for which see section 19 above) insert—

“PART 1C

PROVISION IN CONNECTION WITH PROTOCOL ON IRELAND/NORTHERN IRELAND

Power in connection with Protocol on Ireland/Northern Ireland

- 11M (1) A devolved authority may by regulations make such provision as the devolved authority considers appropriate—
- (a) to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement,
 - (b) to supplement the effect of section 7A in relation to the Protocol, or
 - (c) otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 7A and the Protocol).
- (2) A Minister of the Crown acting jointly with a devolved authority may by regulations make such provision as they consider appropriate—
- (a) to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement,

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- (b) to supplement the effect of section 7A in relation to the Protocol, or
 - (c) otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol (including matters arising by virtue of section 7A and the Protocol).
- (3) Regulations under this Part may make any provision that could be made by an Act of Parliament.
- (4) Regulations under this Part may (among other things) make provision facilitating the access to the market within Great Britain of qualifying Northern Ireland goods.
- (5) Such provision may (among other things) include provision about the recognition within Great Britain of technical regulations, assessments, registrations, certificates, approvals and authorisations issued by—
 - (a) the authorities of a member State, or
 - (b) bodies established in a member State,in respect of qualifying Northern Ireland goods.
- (6) Regulations under this Part may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of section 7A and the Protocol.
- (7) Regulations under sub-paragraph (1) are also subject to paragraphs 11N and 11O.
- (8) In this paragraph any reference to the Protocol on Ireland/Northern Ireland includes a reference to—
 - (a) any other provision of the withdrawal agreement so far as applying to the Protocol, and
 - (b) any provision of EU law which is applied by, or referred to in, the Protocol (to the extent of the application or reference),but does not include the second sentence of Article 11(1) of the Protocol (which provides that the United Kingdom and the Republic of Ireland may continue to make new arrangements that build on the provisions of the Belfast Agreement in other areas of North-South cooperation on the island of Ireland).

No power to make provision outside devolved competence

- 11N (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 11P to 11R for the meaning of “devolved competence” for the purposes of this Part.

Certain requirements for consent, joint exercise or consultation

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

Status: This is the original version (as it was originally enacted).

Meaning of devolved competence: Part 1C

- 11P 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), 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).
- 11Q 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 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 section 80(8) of the Government of Wales Act 2006 so far as relating to EU law).
- 11R 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 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 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 section 24(1)(b) of the Northern Ireland Act 1998).”

23 Protection for certain rights, safeguards etc. in Belfast Agreement

Schedule 3 contains provision about the implementation of Article 2(1) of the Protocol on Ireland/Northern Ireland in the withdrawal agreement.

24 No alteration of North-South co-operation

In section 10 of the European Union (Withdrawal) Act 2018 (continuation of North-South co-operation and the prevention of new border arrangements), after subsection (2), insert—

“(3) A Minister of the Crown may not agree to the making of a recommendation by the Joint Committee under Article 11(2) of the Protocol on Ireland/Northern Ireland in the withdrawal agreement (recommendations as to North-South cooperation) to—

- (a) alter the arrangements for North-South co-operation as provided for by the Belfast Agreement,
- (b) establish a new implementation body, or
- (c) alter the functions of an existing implementation body.

(4) In this section—

“the Belfast Agreement” has the meaning given by section 98 of the Northern Ireland Act 1998;

“implementation body” has the meaning given by section 55(3) of that Act.”