

*Status: Point in time view as at 01/12/2009.*

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## SCHEDULES

### SCHEDULE 2

Section 2.

#### PROVISIONS AS TO SUBORDINATE LEGISLATION

- 1 (1) The powers conferred by section 2(2) of this Act to make provision for the purposes mentioned in section 2(2) (a) and (b) shall not include power—
- (a) to make any provision imposing or increasing taxation; or
  - (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision; or
  - (c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal; or
  - (d) to create any new criminal offence punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than [<sup>F1</sup>level 5 on the standard scale] (if not calculated on a daily basis) or with a fine of more than [<sup>F2</sup>£100 a day].
- (2) Sub-paragraph (1)(c) above shall not be taken to preclude the modification of a power to legislate conferred otherwise than under section 2(2), or the extension of any such power to purposes of the like nature as those for which it was conferred; and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of sub-paragraph (1)(c).

#### Textual Amendments

- F1** Words substituted: (E.W.) by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**; (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**; and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), **arts. 5, 6**
- F2** Words substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), s. 32(3)

#### Modifications etc. (not altering text)

- C1** Sch. 2 para. 1(1)(a)(c)(d) excluded (5.11.1993) by [1993 c. 51, s. 2\(4\)](#)
- C2** Sch. 2 para. 1(1)(c) excluded (20.6.2003) by [2002 c. 40, ss. 209\(8\), 279](#); [S.I. 2003/1397, art. 2](#), Sch.
- C3** Sch. 2 para. 1(1)(d) excluded (27.9.1993) by [1993 c. 36, s. 70\(2\)](#)  
Sch. 2 para. 1(1)(d) excluded (30.11.2000) by [2000 c. 37, s. 81\(2\)](#)
- C4** Sch. 2 para. 1(1)(d) excluded (20.11.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 307(2)(3)**, 336
- C5** [Sch. 2 para. 1\(1\)\(d\)](#) excluded (prosp.) by [Animal Welfare Act 2006 \(c. 45\)](#), **ss. 8(6)**, 68 (with [ss. 1\(2\), 58\(1\), 59, 60](#))
- C6** Sch. 2 para. 1(1)(d) excluded (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 143(1)**, 182(1)(c) (with [s. 180](#))

[<sup>F3</sup>1A (1) Where—

- (a) subordinate legislation makes provision for a purpose mentioned in section 2(2) of this Act,

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- (b) the legislation contains a reference to a [<sup>F4</sup>EU instrument] or any provision of a [<sup>F4</sup>EU instrument], and
- (c) it appears to the person making the legislation that it is necessary or expedient for the reference to be construed as a reference to that instrument or that provision as amended from time to time,
- the subordinate legislation may make express provision to that effect.
- (2) In this paragraph “subordinate legislation” means any Order in Council, order, rules, regulations, scheme, warrant, byelaws or other instrument made after the coming into force of this paragraph under any Act, Act of the Scottish Parliament [<sup>F5</sup>, Measure or Act of the National Assembly for Wales] or Northern Ireland legislation passed or made before or after the coming into force of this paragraph.]

#### Textual Amendments

- F3** Sch. 2 para. 1A inserted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), **ss. 28, 33**
- F4** Words in Sch. 2 para. 1A substituted (1.12.2009) by [European Union \(Amendment\) Act 2008 \(c. 7\)](#), **ss. 3, 8, Sch. Pt. 1**; S.I. 2009/3143, **art. 2**
- F5** Words in Sch. 2 para. 1A(2) inserted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), **art. 3, Sch. 1 para. 1** (the amendment coming into force immediately after the end of "the initial period" (which ended with the date of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see **ss. 46, 161(5)** of [Government of Wales Act 2006 \(c. 32\)](#))

- 2 (1) Subject to paragraph 3 below, where a provision contained in any section of this Act confers power to make [<sup>F6</sup>any order, rules, regulations or scheme](otherwise than by modification or extension of an existing power), the power shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing an Order in Council or [<sup>F6</sup>any order, rules, regulations or scheme] made in the exercise of a power so conferred, if made without a draft having been approved by resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House.

#### Textual Amendments

- F6** Words in Sch. 2 para. 2(1)(2) substituted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), **ss. 27(2)(a)**, 33

#### Modifications etc. (not altering text)

- C7** Sch. 2 para. 2 applied (18.11.2004) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 260(5)**, 263
- C8** Sch. 2 para. 2 amended (1.12.1998) by 1998 c. 38, **s. 29(3)**; S.I. 1998/2789, **art. 2**
- C9** Sch. 2 para. 2(2) excluded (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), **ss. 20(2)**, 33
- C10** Sch. 2 para. 2(2) amended (3.5.2007) by [Government of Wales Act 2006 \(c. 32\)](#), **ss. 59(4)**, 161 (with Sch. 11 para. 22), the amending provision coming into force immediately after "the 2007 election " (held on 3.5.2007) subject to **s. 161(4)(5)** of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see **ss. 46, 161(1)(4)(5)** of the amending Act.
- C11** Sch. 2 para. 2(2) modified (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 143(2)(a)**, 182(1)(c) (with s. 180)

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- [<sup>F7</sup>2A (1) This paragraph applies where, pursuant to paragraph 2(2) above, a draft of a statutory instrument containing provision made in exercise of the power conferred by section 2(2) of this Act is laid before Parliament for approval by resolution of each House of Parliament and—
- (a) the instrument also contains provision made in exercise of a power conferred by any other enactment; and
  - (b) apart from this paragraph, any of the conditions in sub-paragraph (2) below applies in relation to the instrument so far as containing that provision.
- (2) The conditions referred to in sub-paragraph (1)(b) above are that—
- (a) the instrument, so far as containing the provision referred to in sub-paragraph (1)(a) above, is by virtue of any enactment subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) the instrument so far as containing that provision is by virtue of any enactment required to be laid before Parliament after being made and to be approved by resolution of each House of Parliament in order to come into or remain in force;
  - (c) in a case not falling within paragraph (a) or (b) above, the instrument so far as containing that provision is by virtue of any enactment required to be laid before Parliament after being made;
  - (d) the instrument or a draft of the instrument so far as containing that provision is not by virtue of any enactment required at any time to be laid before Parliament.
- (3) Where this paragraph applies in relation to the draft of a statutory instrument—
- (a) the instrument, so far as containing the provision referred to in sub-paragraph (1)(a) above, may not be made unless the draft is approved by a resolution of each House of Parliament;
  - (b) in a case where the condition in sub-paragraph (2)(a) above is satisfied, the instrument so far as containing that provision is not subject to annulment in pursuance of a resolution of either House of Parliament;
  - (c) in a case where the condition in sub-paragraph (2)(b) above is satisfied, the instrument is not required to be laid before Parliament after being made (and accordingly any requirement that the instrument be approved by each House of Parliament in order for it to come into or remain in force does not apply); and
  - (d) in a case where the condition in sub-paragraph (2)(c) above is satisfied, the instrument so far as containing that provision is not required to be laid before Parliament after being made.
- (4) In this paragraph, references to an enactment are to an enactment passed or made before or after the coming into force of this paragraph.

#### Textual Amendments

**F7** Sch. 2 paras. 2A-2C inserted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), ss. 29, 33

#### Modifications etc. (not altering text)

**C12** [Sch. 2 para. 2A](#) applied (with modifications) (25.5.2007) by [2006 c. 32](#), [Sch. 11 para. 35A\(1\)\(3\)](#) (as inserted by [The Government of Wales Act 2006 \(Transitional Provisions\) Order 2007 \(S.I. 2007/1270\)](#), {art. 2(2)})

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- 2B (1) This paragraph applies where, pursuant to paragraph 2(2) above, a statutory instrument containing provision made in exercise of the power conferred by section 2(2) of this Act is laid before Parliament under section 5 of the Statutory Instruments Act 1946 (instruments subject to annulment) and—
- (a) the instrument also contains provision made in exercise of a power conferred by any other enactment; and
  - (b) apart from this paragraph, either of the conditions in sub-paragraph (2) below applies in relation to the instrument so far as containing that provision.
- (2) The conditions referred to in sub-paragraph (1)(b) above are that—
- (a) the instrument so far as containing the provision referred to in sub-paragraph (1)(a) above is by virtue of any enactment required to be laid before Parliament after being made but—
    - (i) is not subject to annulment in pursuance of a resolution of either House of Parliament; and
    - (ii) is not by virtue of any enactment required to be approved by resolution of each House of Parliament in order to come into or remain in force;
  - (b) the instrument or a draft of the instrument so far as containing that provision is not by virtue of any enactment required at any time to be laid before Parliament.
- (3) Where this paragraph applies in relation to a statutory instrument, the instrument, so far as containing the provision referred to in sub-paragraph (1)(a) above, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this paragraph, references to an enactment are to an enactment passed or made before or after the coming into force of this paragraph.

#### Textual Amendments

**F7** Sch. 2 paras. 2A-2C inserted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), **ss. 29, 33**

#### Modifications etc. (not altering text)

**C13** [Sch. 2 para. 2B](#) applied (with modifications) (25.5.2007) by [2006 c. 32](#), [Sch. 11 para. 35A\(2\)\(3\)](#) (as inserted by [The Government of Wales Act 2006 \(Transitional Provisions\) Order 2007 \(S.I. 2007/1270\)](#), {art. 2(2)})

- 2C Paragraphs 2A and 2B above apply to a Scottish statutory instrument containing provision made in the exercise of the power conferred by section 2(2) of this Act (and a draft of any such instrument) as they apply to any other statutory instrument containing such provision (or, as the case may be, any draft of such an instrument), but subject to the following modifications—
- (a) references to Parliament and to each or either House of Parliament are to be read as references to the Scottish Parliament;
  - (b) references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and
  - (c) the reference in paragraph 2B(1) to section 5 of the Statutory Instruments Act 1946 is to be read as a reference to article 11 of the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Statutory Instruments\) Order 1999 \(S.I. 1999/1096\)](#).]

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#### Textual Amendments

**F7** Sch. 2 paras. 2A-2C inserted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), **ss. 29, 33**

- 3 Nothing in paragraph 2 above shall apply to any Order in Council made by the Governor of Northern Ireland or to any regulation made by a Minister or department of the Government of Northern Ireland; but where a provision contained in any section of this Act confers power to make such an Order in Council or [<sup>F8</sup>order, rules, regulations or scheme] , then any Order in Council or [<sup>F8</sup>order, rules, regulations or scheme] made in the exercise of that power, if made without a draft having been approved by resolution of each House of the Parliament of Northern Ireland, shall be subject to negative resolution within the meaning of section 41(6) of the <sup>M1</sup>Interpretation Act (Northern Ireland) 1954 as if the Order or [<sup>F8</sup>order, rules, regulations or scheme] were a statutory instrument within the meaning of that Act.

#### Textual Amendments

**F8** Words in [Sch. 2 para. 3](#) substituted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), **ss. 27(2)(b), 33**

#### Modifications etc. (not altering text)

**C14** [Sch. 2 para. 3](#) applied (18.11.2004) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 260(5), 263**

**C15** [Sch. 2 para. 3](#) modified (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 143(3), 182(1)(c)** (with s. 180)

#### Marginal Citations

**M1** 1954 c. 33 (N.I.).

- [<sup>F9</sup>4 (1) The power to make orders under section 5(1) or (2) of this Act shall be exercisable in accordance with the following provisions of this paragraph.
- (2) The power to make such orders shall be exercisable by statutory instrument and includes power to amend or revoke any such order made in the exercise of that power.
- (3) Any statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of the House of Commons except in a case falling within sub-paragraph (4) below.
- (4) Subject to sub-paragraph (6) below, where an order imposes or increases any customs duty, or restricts any relief from customs duty under the said section 5, the statutory instrument containing the order shall be laid before the House of Commons after being made and, unless the order is approved by that House before the end of the period of 28 days beginning with the day on which it was made, it shall cease to have effect at the end of that period, but without prejudice to anything previously done under the order or to the making of a new order.

In reckoning the said period of 28 days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.

- (5) Where an order has the effect of altering the rate of duty on any goods in such a way that the new rate is not directly comparable with the old, it shall not be treated for the purposes of sub-paragraph (4) above as increasing the duty on those goods if it

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declares the opinion of the Treasury to be that, in the circumstances existing at the date of the order, the alteration is not calculated to raise the general level of duty on the goods.

- (6) Sub-paragraph (4) above does not apply in the case of an instrument containing an order which states that it does not impose or increase any customs duty or restrict any relief from customs duty otherwise than in pursuance of a [<sup>F10</sup>EU obligation] .]

#### Subordinate Legislation Made

- P1** Sch. 2 para. 4: s. 5(1) (with s. 5(3) and Sch. 2 para. 4) power exercised 15.11.1991) by [S.I.1991/2583](#)  
 Sch. 2 para. 4: for exercises of this power before 01.02.1991 see Index to Government Orders

#### Textual Amendments

- F9** Sch. 2 paras. 4, 5 added by [Customs and Excise Duties \(General Reliefs\) Act 1979 \(c. 3, SIF 40:1\)](#), s. 19(1), [Sch. 2 para. 5](#)
- F10** Words in Sch. 2 para. 4 substituted (1.12.2009) by [European Union \(Amendment\) Act 2008 \(c. 7\)](#), ss. 3, 8, [Sch. Pt. 1](#); [S.I. 2009/3143](#), [art. 2](#)

- 5 As soon as may be after the end of each financial year the Secretary of State shall lay before each House of Parliament a report on the exercise during that year of the powers conferred by section 5(1) and (2) of this Act with respect to the imposition of customs duties and the allowance of exemptions and reliefs from duties so imposed (including the power to amend or revoke orders imposing customs duties or providing for any exemption or relief from duties so imposed).

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