

SCHEDULES

SCHEDULE 2

Section 15

INDEPENDENT MONITORING AUTHORITY FOR THE CITIZENS’ RIGHTS AGREEMENTS

PART 1

CONSTITUTION, PROCEEDINGS ETC.

Status

- 1 (1) The IMA is not to be regarded—
 - (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The IMA’s property is not to be regarded—
 - (a) as the property of the Crown, or
 - (b) as property held on behalf of the Crown.

Membership

- 2 (1) The IMA is to consist of the following members—
 - (a) a chair (who is to be a non-executive member),
 - (b) at least 2 but not more than 6 other non-executive members,
 - (c) the chief executive (who is to be an executive member), and
 - (d) at least 1 but not more than 3 other executive members.
- (2) The Secretary of State is to appoint the non-executive members.
- (3) The non-executive members are to appoint the executive members (subject to paragraph 3).
- (4) The non-executive members may make appointments under sub-paragraph (3) only if the chair and at least 2 other non-executive members have been appointed.
- (5) The non-executive members must consult the Secretary of State before appointing the chief executive.
- (6) The Secretary of State and the non-executive members must, so far as possible, ensure that the number of non-executive members exceeds the number of executive members.
- (7) A person may not hold office as a member of the IMA if the person is a civil servant.
- (8) The executive members are employees of the IMA.

Status: This is the original version (as it was originally enacted).

- (9) In sub-paragraphs (3) to (6), the references to the non-executive members are to all the non-executive members for the time being.

Interim chief executive

- 3 (1) The Secretary of State may appoint a person to be the IMA’s chief executive until the appointment of a chief executive by the non-executive members under paragraph 2(3) first takes effect.
- (2) A chief executive appointed by the Secretary of State may incur expenditure and do other things in the name and on behalf of the IMA until the membership of the IMA is first constituted in accordance with paragraph 2(1).
- (3) In exercising the power in sub-paragraph (2), a chief executive appointed by the Secretary of State must act in accordance with any directions given by the Secretary of State.

Requirements relating to appointment

- 4 (1) In making appointments, the Secretary of State and the non-executive members must have regard to the desirability of the IMA’s members (between them) having knowledge of conditions in the United Kingdom relating to matters in relation to which provision is made in Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement (“the relevant matters”).
- (2) The Secretary of State must, so far as possible, ensure that the non-executive members of the IMA include—
- (a) a member who knows about conditions in Scotland relating to the relevant matters,
 - (b) a member who knows about conditions in Wales relating to the relevant matters, and
 - (c) a member who knows about conditions in Northern Ireland relating to the relevant matters.
- (3) If the IMA has functions in relation to Gibraltar by virtue of paragraph 33, the Secretary of State must, so far as possible, ensure that the non-executive members of the IMA include a member who knows about conditions in Gibraltar relating to the relevant matters.
- (4) Before appointing a person, the Secretary of State or the non-executive members (as the case may be) must be satisfied that the person does not have a conflict of interest.
- (5) In sub-paragraph (4), “conflict of interest”, in relation to a person, means a financial or other interest which is likely to affect prejudicially the discharge by the person of the person’s functions as a member of the IMA.

Procedure for appointing members with knowledge of conditions in devolved areas etc.

- 5 (1) This paragraph applies in relation to the appointment of non-executive members for the purposes of paragraph 4(2) and (3).
- (2) Before making an appointment, the Secretary of State must tell the relevant authority who the Secretary of State proposes to appoint and why.

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- (3) If the relevant authority approves the proposed appointment within the period of one month beginning with the day on which the Secretary of State complies with sub-paragraph (2), the Secretary of State must appoint that person (subject to sub-paragraph (4)).
- (4) If that person is no longer available or the Secretary of State and the relevant authority agree, after the relevant authority has given its approval as mentioned in sub-paragraph (3), that it is no longer appropriate to appoint that person—
 - (a) the Secretary of State must propose to appoint a different person, and
 - (b) sub-paragraphs (2) and (3) apply again.
- (5) If the relevant authority does not approve the proposed appointment as mentioned in sub-paragraph (3), the Secretary of State may—
 - (a) make the proposed appointment without the approval of the relevant authority, or
 - (b) propose to appoint a different person.
- (6) If the Secretary of State proposes to appoint a different person, sub-paragraphs (2) to (5) apply again.
- (7) If the Secretary of State makes a proposed appointment without the approval of the relevant authority as mentioned in sub-paragraph (3), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with the appointment.
- (8) In this paragraph, the “relevant authority” means—
 - (a) in relation to an appointment for the purposes of paragraph 4(2)(a), the Scottish Ministers,
 - (b) in relation to an appointment for the purposes of paragraph 4(2)(b), the Welsh Ministers,
 - (c) in relation to an appointment for the purposes of paragraph 4(2)(c), the Executive Office in Northern Ireland, and
 - (d) in relation to an appointment for the purposes of paragraph 4(3), the Gibraltar Ministers.

Non-executive members: terms of appointment and tenure etc.

- 6 (1) A person holds and vacates office as a non-executive member of the IMA in accordance with the terms and conditions of the person’s appointment.
- (2) The terms and conditions of a person’s appointment as a non-executive member of the IMA are to be determined by the Secretary of State, subject to the following provisions of this Schedule.
- (3) The chair is to be appointed for a period of up to 5 years.
- (4) Any other non-executive member of the IMA is to be appointed for a period of up to 4 years.
- (5) A non-executive member may resign by giving notice in writing to the Secretary of State.

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- (6) The Secretary of State may by notice in writing remove a person from office as a non-executive member of the IMA on any of the grounds mentioned in sub-paragraph (7), but must consult the other non-executive members before doing so.
- (7) The grounds are—
- (a) that the person has been absent from the IMA's meetings for a continuous period of more than 6 months without the IMA's permission;
 - (b) that, in the opinion of the Secretary of State, the person has a conflict of interest (within the meaning of paragraph 4(5)) which prevents the person carrying out the functions of the office;
 - (c) that the person has been convicted of a criminal offence;
 - (d) that, in the opinion of the Secretary of State, the person is unable, unwilling or unfit to carry out the functions of the office;
 - (e) any other grounds specified in the person's terms of appointment.

Remuneration of non-executive members

- 7 (1) The IMA must pay its non-executive members such remuneration as the Secretary of State may determine.
- (2) The IMA must pay, or make provision for paying, to or in respect of any person who is or has been a non-executive member such sums as the Secretary of State may determine in respect of allowances and gratuities.
- (3) Sub-paragraph (4) applies where—
- (a) a person ceases to hold office as a non-executive member other than by reason of their term of office expiring, and
 - (b) the Secretary of State thinks there are special circumstances that make it right for the person to receive compensation.
- (4) The IMA must make a payment to the person of such amount as the Secretary of State may determine.

Staffing of the IMA

- 8 (1) The IMA may—
- (a) appoint employees (in addition to the executive members), and
 - (b) make such other arrangements for the staffing of the IMA as it considers appropriate.
- (2) The terms and conditions of appointment as an employee are to be determined—
- (a) in the case of employees other than a chief executive appointed by the Secretary of State, by the IMA with the approval of the Secretary of State, or
 - (b) in the case of a chief executive appointed by the Secretary of State, by the Secretary of State.
- (3) The IMA must pay its employees such remuneration—
- (a) in the case of employees other than a chief executive appointed by the Secretary of State, as the IMA may determine with the approval of the Secretary of State, or
 - (b) in the case of a chief executive appointed by the Secretary of State, as the Secretary of State may determine.

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- (4) The IMA must pay, or make provision for paying, to or in respect of a person who is or has been an employee of the IMA, such sums in respect of pensions, allowances and gratuities—
 - (a) in the case of employees other than a chief executive appointed by the Secretary of State, as the IMA may determine with the approval of the Secretary of State, or
 - (b) in the case of a chief executive appointed by the Secretary of State, as the Secretary of State may determine.
- (5) In the Superannuation Act 1972 (“the 1972 Act”), in Schedule 1 (kinds of employment to which a scheme under section 1 of the 1972 Act can apply), in the list of “Other Bodies”, at the appropriate place insert—

“The Independent Monitoring Authority for the Citizens’ Rights Agreements.”
- (6) The IMA must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase in the sums payable out of money provided by Parliament which is attributable to the provision of pensions by virtue of section 1 of the 1972 Act or section 1 of the Public Service Pensions Act 2013 in respect of employees of the IMA.
- (7) In relation to executive members of the IMA, references in sub-paragraphs (2) to (4) to the IMA determining something with the approval of the Secretary of State are to be read as references to the non-executive members determining that thing with the approval of the Secretary of State.

Procedure

- 9 (1) The IMA may regulate its own procedure, subject to the following.
 - (2) The IMA must establish and maintain a register of members’ interests.
 - (3) The IMA must publish entries recorded in the register.
 - (4) A meeting of the IMA is not quorate unless—
 - (a) at least half the members appointed for the time being are present, and
 - (b) a majority of the members present are non-executive members.
 - (5) The IMA’s procedures must include arrangements for dealing with conflicts of interests (within the meaning of paragraph 4(5)) of members.
 - (6) The arrangements must oblige each member—
 - (a) to declare all financial interests,
 - (b) to declare any other personal interest relevant to the exercise of a function, and
 - (c) to withdraw from the exercise of any function to which an interest of a sort mentioned in paragraph (a) or (b) is relevant, unless the IMA is satisfied that the interest will not influence the exercise of the function.
 - (7) The validity of any proceedings of the IMA, or of its committees or sub-committees, is not affected by a vacancy or a defective appointment.

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Discharge of functions

- 10 (1) The IMA may authorise a committee, member or employee of the IMA to do anything the IMA may do apart from approving an annual report to be provided as mentioned in paragraph 31.
- (2) A committee of the IMA may authorise the following to do anything which the committee may do under sub-paragraph (1)—
- (a) a sub-committee,
 - (b) a member of the committee,
 - (c) a member of the IMA, or
 - (d) an employee of the IMA.
- (3) Committees and sub-committees may include employees of the IMA who are not members of it.

Seal and evidence

- 11 (1) The application of the IMA's seal must be authenticated by the signature of—
- (a) the chief executive of the IMA, or
 - (b) some other person authorised for that purpose by the IMA.
- (2) A document purporting to be duly executed under the IMA's seal or signed on its behalf—
- (a) is to be received in evidence, and
 - (b) is to be taken to be executed or signed in that way, unless the contrary is shown.
- (3) But this paragraph does not apply in relation to any document which is, or is to be, signed in accordance with the law of Scotland.

Funding

- 12 The Secretary of State must pay to the IMA such sums as the Secretary of State considers appropriate for the purpose of enabling the IMA to exercise its functions.

Operational independence

- 13 In exercising functions in respect of the IMA, the Secretary of State must have regard to the need to protect—
- (a) its operational independence, and
 - (b) its ability to make impartial assessments when exercising its functions.

Accounts and audit

- 14 (1) The IMA must—
- (a) keep proper accounts and proper records in relation to them, and
 - (b) prepare a statement of accounts in respect of each financial year.
- (2) Each statement of accounts must comply with any directions given by the Secretary of State as to—
- (a) its content and form;
 - (b) the methods and principles to be applied in preparing it;

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- (c) the additional information (if any) which is to be provided for the information of Parliament.
- (3) The IMA must send a copy of each statement of accounts to the Secretary of State and the Comptroller and Auditor General before the end of August next following the financial year to which the statement relates.
- (4) The Comptroller and Auditor General must—
 - (a) examine, certify and report on each statement of accounts, and
 - (b) lay a copy of each statement and the report on the statement before Parliament within the period of 4 months beginning with the day on which the Comptroller and Auditor General receives the statement.
- (5) In this Schedule, “financial year” means—
 - (a) the period beginning with the day on which the membership of the IMA is first constituted in accordance with paragraph 2(1) and ending with—
 - (i) the first 31 March after that day, if that results in the first financial year being a period of 6 months or more, or
 - (ii) otherwise, the second 31 March after that day, and
 - (b) each successive period of 12 months.

Annual plan

- 15 (1) The IMA—
- (a) must prepare, for each financial year, a plan for the exercise during that year of its functions (“the annual plan”), and
 - (b) may revise the annual plan.
- (2) The IMA must send the proposed annual plan or any revision of it to the Secretary of State.
- (3) The first annual plan must—
- (a) be completed within the period of three months beginning with the day on which the membership of the IMA is first constituted in accordance with paragraph 2(1), and
 - (b) relate to the remainder of the financial year that begins with that day.
- (4) Each subsequent annual plan must be sent to the Secretary of State not later than one month before the beginning of the financial year to which the plan relates.

Public records

- 16 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place, insert—
- “Independent Monitoring Authority for the Citizens’ Rights Agreements.”

Investigation by the Parliamentary Commissioner

- 17 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation), at the appropriate place, insert—
- “Independent Monitoring Authority for the Citizens’ Rights Agreements.”

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House of Commons disqualification

- 18 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place, insert—
 “The Independent Monitoring Authority for the Citizens’ Rights Agreements.”

Northern Ireland Assembly disqualification

- 19 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place, insert—
 “The Independent Monitoring Authority for the Citizens’ Rights Agreements.”

Freedom of information

- 20 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which that Act applies), at the appropriate place, insert—
 “The Independent Monitoring Authority for the Citizens’ Rights Agreements.”

Public sector equality duty

- 21 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), after the group of entries under the heading “Broadcasting”, insert—
 “*Citizens’ rights*
 The Independent Monitoring Authority for the Citizens’ Rights Agreements.”

PART 2

FUNCTIONS OF THE IMA ETC.

General duties

- 22 (1) The IMA must monitor the implementation and application in the United Kingdom of Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement.
- (2) The duty in sub-paragraph (1) includes keeping under review the adequacy and effectiveness of—
- (a) the legislative framework which implements or otherwise deals with matters arising out of, or related to, Part 2, and
 - (b) the exercise by relevant public authorities of functions in relation to Part 2.
- (3) In this Schedule—
 “Part 2” means Part 2 of the withdrawal agreement or (as the case may be) Part 2 of the EEA EFTA separation agreement, so far as the Part in question applies to and in the United Kingdom;
 “relevant public authority” means the Secretary of State or any other person who exercises functions of a public nature, apart from—
- (a) a court or tribunal;

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- (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament;
 - (c) the devolved legislatures or a person exercising functions in connection with proceedings in any of the devolved legislatures.
- 23 (1) The IMA must promote the adequate and effective implementation and application in the United Kingdom of Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement.
- (2) For related functions see—
 - (a) paragraph 27 (reports following an inquiry), and
 - (b) paragraph 30 (instituting or intervening in legal proceedings).
- 24 In exercising its functions, the IMA must have regard to the importance of addressing general or systemic failings in the implementation or application of Part 2.

Inquiries

- 25 (1) Subject to sub-paragraph (3), the IMA may carry out an inquiry—
 - (a) in response to a request from the Secretary of State,
 - (b) in response to a request from the Scottish Ministers relating to a relevant public authority which is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),
 - (c) in response to a request from the Welsh Ministers relating to a relevant public authority which is a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006,
 - (d) in response to a request from the Executive Office in Northern Ireland relating to a relevant public authority—
 - (i) which exercises functions only in or as regards Northern Ireland, and
 - (ii) whose functions are wholly or mainly functions which relate to transferred matters (within the meaning of the Northern Ireland Act 1998),
 - (e) following a complaint by a person under paragraph 29, or
 - (f) on its own initiative.
- (2) The purposes of an inquiry are for the IMA—
 - (a) to decide whether—
 - (i) the United Kingdom has failed to comply with Part 2, or
 - (ii) a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right (see paragraph 41(1)), and
 - (b) to identify any recommendations that it considers appropriate to be made to a relevant public authority to promote the adequate and effective implementation or application of Part 2.
- (3) The IMA may not carry out an inquiry under sub-paragraph (1)(e) or (f) unless satisfied that there are reasonable grounds to believe that the inquiry may conclude—
 - (a) that the United Kingdom has failed to comply with Part 2, or
 - (b) that a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right.

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- (4) The IMA may decide not to carry out an inquiry even if satisfied as mentioned in sub-paragraph (3).
 - (5) Among the reasons the IMA may decide not to carry out an inquiry is if it considers that there are no reasonable grounds to believe that the inquiry may identify general or systemic failings in the implementation or application of Part 2.
- 26
- (1) The IMA must publish its intention to carry out an inquiry.
 - (2) Where an inquiry is about matters raised in a complaint by a person under paragraph 29(1)(a) or (b), the IMA must invite representations from—
 - (a) the person,
 - (b) any relevant public authority about which the person is complaining, and
 - (c) any other person the IMA considers appropriate.
 - (3) In any other inquiry, the IMA must invite representations from any person it considers appropriate.
 - (4) The IMA must publish information about how and when a person may submit representations in relation to an inquiry.
 - (5) The IMA must consider any representations which are submitted accordingly.

Reports following an inquiry

- 27
- (1) When the IMA has carried out an inquiry under paragraph 25, it must—
 - (a) prepare a written report of its conclusions, and
 - (b) include in the report any recommendations it considers appropriate to be made to a relevant public authority to promote the adequate and effective implementation or application of Part 2.
 - (2) The IMA must publish a report as soon as reasonably practicable after preparing it.
 - (3) Before publishing a report that contains material relating to border security or terrorism (including material about individual cases), the IMA must give the Secretary of State an opportunity to require the IMA to remove from the report any material which, in the opinion of the Secretary of State, should not be published on the grounds that its publication—
 - (a) is undesirable for reasons of national security, or
 - (b) might jeopardise an individual's safety.
 - (4) As soon as reasonably practicable after publishing a report, the IMA must send it to—
 - (a) the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland,
 - (b) any relevant public authority which was invited to make representations in relation to the inquiry,
 - (c) any relevant public authority to which a recommendation is made in the report, and
 - (d) any other relevant public authority the IMA considers appropriate.
- 28
- (1) Where a report under paragraph 27 includes recommendations to a relevant public authority, the authority must—
 - (a) have regard to the recommendations, and

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- (b) publish a response to the recommendations expeditiously and, in any event, within the period of 3 months beginning with the day on which the IMA published its report.
- (2) The authority’s response must explain—
- (a) what, if anything, it proposes to do in response to each recommendation, and
 - (b) its reasons.

Complaints

- 29 (1) A person who claims to have a relevant right may complain to the IMA that—
- (a) the United Kingdom has failed to comply with Part 2;
 - (b) a relevant public authority has acted or is proposing to act in a way that prevents the person exercising the right in question.
- (2) The IMA must carry out a preliminary review of each complaint in order to decide whether to carry out an inquiry under paragraph 25 in relation to it.
- (3) In deciding whether to carry out an inquiry in response to a complaint, the IMA must consider whether it would be more appropriate for the person who made the complaint to deal with its subject matter by other means (for example, court proceedings) than for the IMA to carry out an inquiry.
- (4) If the IMA decides not to carry out an inquiry, the IMA—
- (a) must inform the person who made the complaint, and
 - (b) may advise the person about other ways of dealing with the subject matter of the complaint.

Applying for review or intervening in legal proceedings

- 30 (1) The IMA may, if it considers it appropriate to do so in order to promote the adequate and effective implementation or application of Part 2—
- (a) make an application for review, or
 - (b) intervene in any legal proceedings (including proceedings on an application for review).
- (2) For the purposes of sub-paragraph (1), the IMA is to be treated as having title and interest in relation to the subject matter of any application which it may make, or of any legal proceedings in which it may intervene, in Scotland.
- (3) Sub-paragraph (1) does not create a cause of action.
- (4) In this paragraph, “application for review” means—
- (a) in relation to England and Wales or Northern Ireland, an application for judicial review, and
 - (b) in relation to Scotland, an application to the supervisory jurisdiction of the Court of Session.

Annual reports for specialised committee etc.

- 31 (1) The IMA must provide annual reports on the implementation and application of Part 2 of the withdrawal agreement to the specialised committee on citizens’ rights established by Article 165(1)(a) of that agreement.

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- (2) The IMA must provide annual reports on the implementation and application of Part 2 of the EEA EFTA separation agreement to the Joint Committee established by Article 65(1) of that agreement.
- (3) The annual reports must contain information on—
 - (a) measures taken by relevant public authorities to implement or comply with Part 2,
 - (b) the number and nature of complaints made to the IMA under paragraph 29(1), and
 - (c) the exercise by the IMA of its functions in relation to Part 2.
- (4) The annual reports may contain any other information which the IMA considers appropriate.
- (5) The first annual reports must relate to the period of 12 months beginning with IP completion day.
- (6) Subsequent annual reports must relate to each successive period of 12 months.
- (7) The IMA must provide annual reports to the committees mentioned in sub-paragraphs (1) and (2) as soon as reasonably practicable after the end of the period to which they relate.
- (8) The IMA must, at the same time as providing an annual report to the committees mentioned in sub-paragraphs (1) and (2), provide it to—
 - (a) the Secretary of State,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers, and
 - (d) the Executive Office in Northern Ireland.
- (9) The Secretary of State must, as soon as reasonably practicable after receiving an annual report, lay it before Parliament.
- (10) The Secretary of State must publish the annual report as soon as reasonably practicable after laying it before Parliament.
- (11) As soon as reasonably practicable after receiving an annual report, the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland must lay the report before the appropriate devolved legislature.

Guidance

- 32
- (1) The IMA must publish guidance on how it will exercise its functions under paragraphs 22 to 30.
 - (2) The guidance must explain how the IMA will give effect to the importance of addressing general or systemic failings in the implementation and application of Part 2.
 - (3) In preparing the guidance, the IMA must have regard to—
 - (a) the way in which the European Commission exercises its functions of monitoring and enforcement in relation to citizens’ rights under EU law, and
 - (b) any guidance or other publications issued by the European Commission about how it exercises such functions.

- (4) The IMA must first publish guidance within the period of 3 months beginning with the day on which the membership of the IMA is first constituted in accordance with paragraph 2(1).

Gibraltar

- 33 The IMA is to exercise any function in relation to Gibraltar which—
- (a) the Gibraltar legislature confers on it, and
 - (b) corresponds to a function which the IMA has in relation to the United Kingdom by virtue of this Schedule.

Supplementary power

- 34 (1) Subject to sub-paragraph (2), the IMA may do anything which it thinks necessary or expedient for the purposes of, or in connection with, the exercise of its functions.
- (2) The IMA may not—
- (a) borrow money;
 - (b) accept gifts of money, land or other property.

Cooperation by relevant public authorities

- 35 A relevant public authority must, so far as reasonably practicable, comply with a request by the IMA to cooperate with it in the exercise of the IMA’s functions (including a request to provide information or documents).

PART 3

FURTHER PROVISIONS

Disclosure of HMRC’s information

- 36 (1) Her Majesty’s Revenue and Customs (or anyone acting on their behalf) may disclose information for the purpose of—
- (a) facilitating the exercise by the IMA of any of its functions, or
 - (b) facilitating the exercise by the Secretary of State or another relevant public authority of functions relating to the IMA.
- (2) A person who receives information as a result of sub-paragraph (1) may not—
- (a) use the information for a purpose other than one mentioned in sub-paragraph (1), or
 - (b) further disclose the information,
- except with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (3) If a person discloses information in contravention of sub-paragraph (2) which relates to a person whose identity—
- (a) is specified in the disclosure, or
 - (b) can be deduced from it,

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section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act.

- (4) This paragraph does not limit the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.

Data protection and disclosure of information

- 37 Nothing in this Schedule authorises the making of a disclosure which—
- (a) contravenes the data protection legislation within the meaning of the Data Protection Act 2018 (see section 3 of that Act), or
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

Disclosure of information to IMA: national security

- 38 (1) A relevant public authority must not disclose information to the IMA if a Minister of the Crown certifies that the disclosure would be undesirable for reasons of national security.
- (2) The power conferred by sub-paragraph (1) on a Minister of the Crown is exercisable only by—
- (a) a Minister who is a member of the Cabinet, or
 - (b) the Attorney General or the Advocate General for Scotland.

Transfer of IMA's functions and abolition

- 39 (1) The Secretary of State may by regulations—
- (a) transfer the functions of the IMA to another body that is a relevant public authority, and
 - (b) in view of that transfer of functions, make any modifications that the Secretary of State considers appropriate to the constitutional or funding arrangements or the functions of the transferee.
- (2) The Secretary of State may make regulations under sub-paragraph (1) only if satisfied that the transfer of functions serves the purpose of improving the exercise of the transferred functions, having regard to efficiency, effectiveness and economy.
- (3) In making regulations under sub-paragraph (1), the Secretary of State must have regard to the need to ensure that the transferee—
- (a) has operational independence when exercising the transferred functions and that it is able to make impartial assessments when exercising those functions, and
 - (b) has appropriate funding to exercise the transferred functions.
- (4) Regulations under sub-paragraph (1)—
- (a) may not provide for the transfer of the IMA's functions under paragraph 33 (which, accordingly, will lapse on the abolition of the IMA), but
 - (b) must make provision corresponding to that paragraph in relation to the transferee.

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

- (5) Regulations under sub-paragraph (1) may include provision—
- (a) transferring the IMA’s property, rights and liabilities (including rights and liabilities in respect of contracts of employment);
 - (b) abolishing the IMA.
- (6) Before making regulations under this paragraph, the Secretary of State must consult—
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the Executive Office in Northern Ireland, and
 - (d) if the IMA has functions in relation to Gibraltar by virtue of paragraph 33, the Gibraltar Ministers.
- (7) The power to make regulations under sub-paragraph (1) may (among other things) be exercised by modifying any provision made by or under an enactment (including this Act).
- (8) In this paragraph “constitutional arrangements” has the meaning given by section 3(2) of the Public Bodies Act 2011.
- 40 (1) The Secretary of State may by regulations—
- (a) remove functions of the IMA, if it appears to the Secretary of State that, in accordance with Article 159(3) of the withdrawal agreement or Article 64(4) of the EEA EFTA separation agreement, it is no longer necessary for the IMA to continue to exercise those functions, or
 - (b) abolish the IMA, if it appears to the Secretary of State that, in accordance with Article 159(3) of the withdrawal agreement and Article 64(4) of the EEA EFTA separation agreement, it is no longer necessary for the IMA to continue to exist.
- (2) Regulations under sub-paragraph (1) may include provision transferring the IMA’s property, rights and liabilities (including rights and liabilities in respect of contracts of employment).
- (3) The power to make regulations under sub-paragraph (1) may (among other things) be exercised by modifying any provision made by or under an enactment (including this Act).

Interpretation

- 41 (1) In this Schedule—
- “civil servant” means a person employed in the civil service of the State;
 - “devolved legislature” means—
 - (a) the Scottish Parliament,
 - (b) the National Assembly for Wales, or
 - (c) the Northern Ireland Assembly;
 - “domestic law” means the law of England and Wales, Scotland or Northern Ireland;
 - “Part 2” has the meaning given by paragraph 22(3);
 - “relevant public authority” has the meaning given by paragraph 22(3);
 - “relevant right” means—

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

- (a) a right created or arising by or under Part 2, or
 - (b) a right which—
 - (i) corresponds to such a right, and
 - (ii) is created or arises by or under a provision of domestic law so far as that provision has effect in connection with Part 2.
- (2) In this Schedule, references to a relevant public authority acting include references to the relevant public authority failing to act.