

SCHEDULES

SCHEDULE 13

Sections 90 and 158

REGULATIONS UNDER CHAPTER 1 OF PART 3 OR PART 6: RESTRICTIONS ON DEVOLVED AUTHORITIES

No power to make provision outside devolved competence

- 1 (1) No provision may be made by a devolved authority acting alone in regulations under Chapter 1 of Part 3 or Part 6 unless the provision is within the devolved competence of the devolved authority.
- (2) See paragraphs 5 to 7 for the meaning of “devolved competence”.

Requirement for consent where it would otherwise be required

- 2 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers acting alone in regulations under Chapter 1 of Part 3 or Part 6 so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown.
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under Chapter 1 of Part 3 or Part 6 so far as that provision would, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State.
- (3) Sub-paragraph (1) or (2) does not apply if—
 - (a) the provision could be contained in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and
 - (b) no such consent would be required in that case.
- (4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority acting alone in regulations under Chapter 1 of Part 3 or Part 6 so far as that provision, if contained in—
 - (a) subordinate legislation made otherwise than under this Act by the devolved authority, or
 - (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by a Northern Ireland devolved authority acting alone,would require the consent of a Minister of the Crown.
- (5) Sub-paragraph (4) does not apply if—
 - (a) the provision could be contained in—
 - (i) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, or

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- (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b) and of a devolved authority acting alone or (as the case may be) other person acting alone, and
- (b) no such consent would be required in that case.

Requirement for joint exercise where it would otherwise be required

- 3 (1) No regulations may be made under Chapter 1 of Part 3 or Part 6 by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Secretary of State.
- (2) No regulations may be made under Chapter 1 of Part 3 or Part 6 by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Secretary of State.
- (3) No regulations may be made under Chapter 1 of Part 3 or Part 6 by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
 - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Secretary of State.
- (4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in—
- (a) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
 - (b) different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone.

Requirement for consultation where it would otherwise be required

- 4 (1) No regulations may be made under Chapter 1 of Part 3 or Part 6 by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of Senedd Cymru, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (2) No regulations may be made under Chapter 1 of Part 3 or Part 6 by the Scottish Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.

- (3) No regulations may be made under Chapter 1 of Part 3 or Part 6 by the Welsh Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (4) No regulations may be made under Chapter 1 of Part 3 or Part 6 by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown.
- (5) Sub-paragraph (2), (3) or (4) does not apply if—
- (a) the provision could be contained in an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.
- (6) Sub-paragraph (2), (3) or (4) does not apply if—
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by—
 - (i) the Scottish Ministers acting alone,
 - (ii) the Welsh Ministers acting alone, or
 - (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

Meaning of devolved competence

- 5 A provision is within the devolved competence of the Scottish Ministers if—
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
 - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers.
- 6 A provision is within the devolved competence of the Welsh Ministers if—
- (a) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (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.
- 7 A provision is within the devolved competence of a Northern Ireland department if—
- (a) the provision—
 - (i) would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly, and

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- (ii) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State,
- (b) the provision—
 - (i) amends or repeals Northern Ireland legislation, and
 - (ii) would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly, and would, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring 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.

Interpretation

8 In this Schedule—

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“Northern Ireland devolved authority” means the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;

“subordinate legislation” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018.