

SCHEDULE 2

(introduced by section 27(6))

SCOTTISH STATUTORY INSTRUMENTS: TRANSITIONAL AND CONSEQUENTIAL PROVISION

Interpretation

- 1 (1) In this schedule—
“devolved Scottish public authority” means an authority to which paragraph 1 or 2 of Part 3 of Schedule 5 to the Scotland Act 1998 (c. 46) applies (Scottish public authorities with mixed or no reserved functions), and
“pre-commencement enactment” means an enactment passed or made before Part 2 comes into force.
- (2) A reference in this schedule to a function’s being exercisable within devolved competence is to be construed in accordance with section 54 of the Scotland Act 1998 (c. 46).
- (3) For the purpose of the definition of “pre-commencement enactment” in subparagraph (1), an Act of the Scottish Parliament is to be taken to have been passed on the date on which the Bill for the Act was passed by the Parliament.

Ministerial functions of making orders or regulations under pre-commencement enactments

- 2 (1) This paragraph applies in relation to any function of the Scottish Ministers, the First Minister or the Lord Advocate of making, confirming or approving orders, regulations or rules under a pre-commencement enactment.
- (2) If a provision of any pre-commencement enactment provides for the function to be exercisable by statutory instrument, that provision ceases to have effect so far as it relates to the exercise of the function.
- (3) If no provision is made in any pre-commencement enactment for the function to be exercisable by statutory instrument, then the function is not to be exercisable by Scottish statutory instrument.

Functions of making Orders in Council

- 3 (1) This paragraph applies in relation to any function of Her Majesty of making Orders in Council under a pre-commencement enactment, so far as the function is exercisable within devolved competence.
- (2) Section 1 of the Statutory Instruments Act 1946 (c. 36) (definition of “statutory instrument”) ceases to have effect in relation to the exercise of the function.
- (3) If provision is made in any pre-commencement enactment which disapplies that section in relation to the function, then the function is not to be exercisable by Scottish statutory instrument.

Functions of making acts of adjournal or acts of sederunt

- 4 (1) This paragraph applies in relation to any function of the High Court of Justiciary of making acts of adjournal or the Court of Session of making acts of sederunt under a pre-commencement enactment.

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

- (2) If provision is made in the pre-commencement enactment conferring the function for the function to be exercisable otherwise than by statutory instrument, then the function is not to be exercisable by Scottish statutory instrument.

Other functions of making etc. subordinate legislation under pre-commencement enactments

- 5 (1) This paragraph applies in relation to—
- (a) a function of the Scottish Ministers, the First Minister or the Lord Advocate of making, confirming or approving subordinate legislation under a pre-commencement enactment,
 - (b) a function of a devolved Scottish public authority of making, confirming or approving subordinate legislation under such an enactment, and
 - (c) a function of any other person (other than a Minister of the Crown) of making, confirming or approving subordinate legislation under such an enactment, so far as the function is exercisable within devolved competence.
- (2) A provision of any pre-commencement enactment which provides for the function to be exercisable by statutory instrument has effect in relation to the exercise of the function as if it provided instead for the function to be exercisable by Scottish statutory instrument.
- (3) This paragraph does not apply in relation to a function to which paragraph 2 or 3 applies.

Functions to which this schedule does not apply

- 6 Nothing in this schedule applies in relation to—
- (a) a function of agreeing or consenting to, or otherwise approving, subordinate legislation made by a Minister of the Crown,
 - (b) a function which is exercised jointly with a Minister of the Crown, or
 - (c) a function of making an Order in Council which is, or a draft of which is, to be laid before each House of Parliament as well as the Scottish Parliament.