

## SCHEDULE 1

Regulation 17

### Regulation (EC) No 110/2008 of the European Parliament and of the Council: new Articles 25 to 25c

#### *“Article 25*

#### *Regulations: general*

1. Any power to make regulations under this Regulation is exercisable by:
  - (a) the Secretary of State:
    - (i) in the case of regulations made under Article 27 concerning a subject matter that is outside of the devolved competence of the Scottish Ministers and the Welsh Ministers, in relation to Great Britain;
    - (ii) otherwise in relation to England;
  - (b) the Scottish Ministers in relation to Scotland:
    - (i) in the case of regulations made under Article 27 concerning a subject matter that is within the devolved competence of the Scottish Ministers;
    - (ii) in the case of regulations made under any other article of this Regulation;
  - (c) the Welsh Ministers in relation to Wales;
    - (i) in the case of regulations made under Article 27 concerning a subject matter that is within the devolved competence of the Welsh Ministers;
    - (ii) in the case of regulations made under any other article of this Regulation.
2. But the power to make regulations may be exercised by the Secretary of State for the whole or part of Great Britain in the case of regulations to which paragraph 3 applies if consent is given by:
  - (a) the Scottish Ministers to the extent that the for the regulations will apply in relation to Scotland;
  - (b) the Welsh Ministers to the extent that the regulations will apply in relation to Wales.
3. This paragraph applies to:
  - (a) regulations that may be made under Article 27 concerning a subject matter that is within the devolved competence of the Scottish Ministers, in relation to Scotland, and the devolved competence of the Welsh Ministers, in relation to Wales;
  - (b) regulations that may be made under any other article of this Regulation.
4. For the purposes of this Article:
  - (a) it is within the devolved competence of the Scottish Ministers to make any provision by regulations under Article 27 in relation to Scotland that would be within the legislative competence of the Scottish Parliament if it were included in an Act of the Parliament (see section 29 of the Scotland Act 1998(1));
  - (b) it is within the devolved competence of the Welsh Ministers to make any provision by regulations under Article 27 in relation to Wales that would be within the legislative

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(1) 1998 c. 46; section 29 was amended by the Scotland Act 2012 (c. 11), section 9(2) and S.I. 2011/1043. It is prospectively amended, from a day to be appointed, by the European Union (Withdrawal) Act 2018 (c. 16), section 12(1).

competence of Senedd Cymru if it were included in an Act of Senedd Cymru (see section 108A of the Government of Wales Act 2006(2)),

- (c) in relation to regulations made under Article 27, ‘outside of devolved competence’ is to be construed, in relation to the Secretary of State, as meaning anything that is not within the devolved competence of the Scottish Ministers or Welsh Ministers by virtue of points (a) and (b) respectively.

#### *Article 25a*

##### *Regulations: the Secretary of State*

1. Regulations made by the Secretary of State under this Regulation are to be made by statutory instrument.
2. Except as specified in paragraph 3, a statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
3. A statutory instrument containing regulations made by the Secretary of State under Article 26 that amend Annex 2 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
4. Regulations made by the Secretary of State under this Regulation may:
  - (a) contain supplementary, incidental, consequential, transitional or saving provision (including provision amending or revoking an enactment);
  - (b) make different provision for different purposes.
5. In this Article, ‘enactment’ means:
  - (a) where Article 25(1)(a) applies:
    - (i) an enactment contained in any Order in Council, order, rules, regulations or other instrument made under an Act to the extent that the enactment applies to England;
    - (ii) regulations made under retained direct principal EU legislation to the extent that they apply in England;
    - (iii) retained direct minor EU legislation to the extent that it applies to England;
  - (b) where Article 25(2) applies:
    - (i) an enactment contained in any Order in Council, order, rules, regulations or other instrument made under an Act, except to the extent that the enactment extends to Northern Ireland;
    - (ii) regulations made under retained direct principal EU legislation, except to the extent that they extend to Northern Ireland;
    - (iii) retained direct minor EU legislation, except to the extent that it extends to Northern Ireland.

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(2) 2006 c. 32; section 108A was substituted, for section 108 as originally enacted, by the Wales Act 2017 (c. 4), section 3(1) and amended by the Senedd and Elections (Wales) Act 2020 (anaw 1), Schedule 1, paragraph 2(1) and (19). It is prospectively amended, from a day to be appointed, by the European Union (Withdrawal) Act 2018 (c. 16), section 12(3).

## Article 25b

### Regulations: Scotland

1. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>(3)</sup>.

2. Subject to paragraph 3, regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

3. Regulations made by the Scottish Ministers under Article 26 that amend Annex 2 are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

4. Regulations made by the Scottish Ministers under this Regulation may:

- (a) contain supplementary, incidental, consequential, transitional or saving provision (including provision amending or revoking an enactment) to the extent that such provision is within the devolved competence of the Scottish Ministers;
- (b) make different provision for different purposes.

5. In this Article, 'enactment' means:

- (a) an enactment contained in any Order in Council, order, rules, regulations or other instrument made under an Act;
- (b) an enactment contained in an instrument made under an Act of the Scottish Parliament;
- (c) regulations made under retained direct principal EU legislation;
- (d) retained direct minor EU legislation.

6. For the purposes of paragraph 4(a), a provision is within the devolved competence of the Scottish Ministers if the amendment or revocation of the provision that would be within the legislative competence of the Scottish Parliament if was included in an Act of the Parliament (see section 29 of the Scotland Act 1998).

## Article 25c

### Regulations: Wales

1. Regulations made by the Welsh Ministers under this Regulation are to be made by statutory instrument.

2. Subject to paragraph 3, a statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of Senedd Cymru.

3. A statutory instrument containing regulations made by the Welsh Ministers under Article 26 that amend Annex 2 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

4. Regulations made by the Welsh Ministers under this Regulation may:

- (a) contain supplementary, incidental, consequential, transitional or saving provision (including provision amending or revoking an enactment) to the extent that such provision is within the devolved competence of the Welsh Ministers;
- (b) make different provision for different purposes.

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(3) 2010 asp 10.

**5.** In this Article, ‘enactment’ means:

- (a) an enactment contained in any Order in Council, order, rules, regulations or other instrument made under an Act;
- (b) an enactment contained in an instrument made under a Measure or Act of Senedd Cymru;
- (c) regulations made under retained direct principal EU legislation;
- (d) retained direct minor EU legislation.

**6.** For the purposes of paragraph 4(a), a provision is within the devolved competence of the Welsh Ministers to the extent that it would be within the legislative competence of Senedd Cymru if it were included in an Act of Senedd Cymru (see section 108A of the Government of Wales Act 2006).”