

SCHEDULES

SCHEDULE 1

Section 10

EXCLUSIONS FROM MARKET ACCESS PRINCIPLES

Threats to human, animal or plant health

- 1 (1) The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) legislation so far as it satisfies the conditions set out in this paragraph.
 - (2) The first condition is that the aim of the legislation is to prevent or reduce the movement of a pest or disease into the part of the United Kingdom in which the legislation applies (“the restricting part”) from another part of the United Kingdom (“the affected part”).
 - (3) The second condition is that it is reasonable to believe that the pest or disease—
 - (a) is present in the affected part, and
 - (b) is not present, or is significantly less prevalent, in the restricting part.
 - (4) The third condition is that the potential movement of that pest or disease into the restricting part from the affected part poses (or would in the absence of the legislation pose) a serious threat to the health of humans, animals or plants in the restricting part.
 - (5) The fourth condition is that the responsible administration has provided to the other administrations an assessment of the available evidence in relation to—
 - (a) the threat referred to in sub-paragraph (4), and
 - (b) the likely effectiveness of the legislation in addressing that threat.
 - (6) The fifth condition is that the legislation can reasonably be justified as necessary in order to address the threat referred to in sub-paragraph (4).
 - (7) In determining whether the fifth condition is met the following consideration is to be taken into account: whether the legislation, taken together with any similar legislation applying in the restricting part, imposes measures of similar severity arising from the potential movement of the pest or disease into, or within, the restricting part (wherever those threats originate).
 - (8) In this paragraph “pest or disease” includes any organism or agent that is liable to cause a disease or other harm to the health of humans, animals or plants.
- 2 (1) The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) legislation so far as it satisfies the conditions set out in this paragraph.
 - (2) The first condition is that the aim of the legislation is to prevent or reduce the movement of unsafe food or feed into the part of the United Kingdom in which the legislation applies (“the restricting part”) from another part of the United Kingdom (“the affected part”).

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- (3) The second condition is that it is reasonable to believe that the food or feed affected by the legislation is, is likely to be, or is at particular risk of being unsafe in a particular respect.
- (4) The third condition is the potential movement of food or feed that is unsafe in that respect into the restricting part from the affected part poses (or would in the absence of the legislation pose) a serious threat to the health of humans or animals in the restricting part.
- (5) The fourth condition is that the responsible administration has provided to the other administrations an assessment of the available evidence in relation to—
- (a) the threat referred to in sub-paragraph (4), and
 - (b) the likely effectiveness of the legislation in addressing that threat.
- (6) The fifth condition is that the legislation can reasonably be justified as necessary in order to address the threat referred to in sub-paragraph (4).
- (7) In this paragraph—
- “food” and “feed” have the same meaning as in Regulation (EC) No 178/2002 (see Articles 2 and 3);
- “unsafe”—
- (a) in relation to food, has the same meaning as in Article 14 of Regulation (EC) No 178/2002;
 - (b) in relation to feed, means “unsafe for its intended use” within the meaning given by Article 15(2) of Regulation (EC) No 178/2002;
- “Regulation (EC) No 178/2002” means Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law (etc), as it forms part of retained EU law on IP completion day.
- 3 Where a decision is taken to exercise powers conferred by legislation in a particular way for the purpose referred to in paragraph 1(2) or 2(2), references to “legislation” in paragraph 1 or 2 (except in paragraph 1(1) or 2(1)) are to be read as references to the use of the legislation in that way.
- 4 (1) In paragraphs 1 and 2, “responsible administration” is to be interpreted in accordance with sub-paragraphs (2) to (5).
- (2) The responsible administration is the Scottish Ministers if—
- (a) the restricting part is Scotland, and
 - (b) the provision contained in the legislation in question, so far as it applies in Scotland—
 - (i) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, or
 - (ii) is provision which could be made in subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone.
- (3) The responsible administration is the Welsh Ministers if—
- (a) the restricting part is Wales, and
 - (b) the provision contained in the legislation in question, so far as it applies in Wales—

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- (i) would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given), or
 - (ii) is provision which could be made in subordinate legislation by the Welsh Ministers acting alone.
- (4) The responsible administration is a Northern Ireland department if—
 - (a) the restricting part is Northern Ireland, and
 - (b) the provision contained in the legislation in question, so far as it applies in Northern Ireland—
 - (i) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly,
 - (ii) is contained in, or was made under, Northern Ireland legislation, and would be within the legislative competence of the Northern Ireland Assembly, and would require the consent of the Secretary of State, if contained in an Act of that Assembly,
 - (iii) is provision which could be made in subordinate legislation by the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department.
- (5) In any other case the responsible administration is the Secretary of State.
- (6) In paragraphs 1 and 2, “the other administrations” means each of the Scottish Ministers, the Welsh Ministers, a Northern Ireland department and the Secretary of State, other than the responsible administration.
- 5 (1) A relevant requirement is not to be taken to directly discriminate against incoming goods for the purposes of section 7 to the extent that it can reasonably be justified as a response to a public health emergency.
- (2) In this paragraph—
 - “public health emergency” means an event or a situation that is reasonably considered to pose an extraordinary threat to human health in the destination part;
 - “relevant requirement”, “incoming goods” and “destination part” have the meanings they have in relation to the non-discrimination principle for goods (see sections 5 and 6).

Chemicals

- 6 An authorisation under Chapter 2 of Title 7 of the REACH Regulation is to be disregarded in determining (for the purposes of the mutual recognition principle for goods) whether goods can be sold as mentioned in section 2(1)(b).
- 7 The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of)—
 - (a) Article 67 of the REACH Regulation, or
 - (b) a restriction imposed in accordance with Article 129 of that Regulation.
- 8 In paragraphs 6 and 7, “the REACH Regulation” means Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006

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concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (etc), as it forms part of retained EU law.

Fertilisers and pesticides

- 9 The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) any of the following—
- (a) a prohibition or condition imposed in accordance with Article 15(1) of Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers, as it forms part of retained EU law;
 - (b) regulations under section 74A(1) of the Agriculture Act 1970, to the extent that such regulations can reasonably be justified as a response to a risk to—
 - (i) the health or safety of humans, animals or plants, or
 - (ii) the environment.
- 10 The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) any of the following—
- (a) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market (etc), as it forms part of retained EU law;
 - (b) the Plant Protection Products Regulations 2011 (S.I. 2011/2131);
 - (c) the Plant Protection Products Regulations (Northern Ireland) 2011 (S.R. (N.I.) 2011 No. 295).

Taxation

- 11 The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) any legislation so far as it imposes, or relates to the imposition of, any tax, rate, duty or similar charge.

Provision having effect in more than one part of the United Kingdom

- 12 (1) A relevant requirement is not to be taken indirectly to discriminate against goods for the purposes of section 8 if—
- (a) it is statutory provision contained in, or in subordinate legislation made under, an Act of Parliament,
 - (b) the same, or substantially the same, statutory provision applies in the originating part,
 - (c) the statutory provision that applies in the originating part is also contained in, or in subordinate legislation made under, an Act of Parliament, and
 - (d) no substantive change to the statutory provision has come into force—
 - (i) in the destination part but not the originating part, or
 - (ii) in the originating part but not the destination part.
- (2) In sub-paragraph (1), “relevant requirement”, “statutory provision”, “originating part” and “destination part” have the meanings they have in relation to the non-discrimination principle for goods (see sections 5 and 6).