

SCHEDULE 2

AMENDMENTS TO RETAINED DIRECT EU LEGISLATION

Regulation (EU) No 528/2012

129. For Article 88, substitute—

“Article 88

Safeguard clause

- 1.** Where on the basis of new evidence the competent authority has justifiable grounds to consider that a biocidal product, although authorised in accordance with this Regulation, constitutes a serious immediate or long-term risk to the health of humans, particularly of vulnerable groups, or animals, or to the environment, it may take appropriate provisional measures.
- 2.** The Secretary of State or a Devolved Authority shall issue a decision to either permit the provisional measure for a time period defined in the decision or require the competent authority to revoke the provisional measure if they have competence to issue the decision within the meaning in paragraphs 3 to 7.
- 3.** The Secretary of State has competence to issue a decision if, or to the extent that, the exercise of the function to take that measure—
 - (a) relates to England;
 - (b) relates to Scotland and is not within devolved competence (within the meaning of section 54 of the Scotland Act 1998);
 - (c) relates to Wales and is not within devolved competence (within the meaning of section 58A(7) and (8) of the Government of Wales Act 2006);
 - (d) relates to Northern Ireland and is not within devolved competence in Northern Ireland as set out in paragraphs 6 and 7.
- 4.** The Scottish Ministers have competence to issue the decision if, or to the extent that, the exercise of the function to take that measure is within devolved competence (within the meaning of section 54 of the Scotland Act 1998).
- 5.** The Welsh Ministers have competence to issue a decision if, or to the extent that, the exercise of the function to take that measure is within devolved competence (within the meaning of section 58A(7) and (8) of the Government of Wales Act 2006).
- 6.** A Department in Northern Ireland has competence to issue a decision if, or to the extent that, the exercise of the function to take that measure is within devolved competence in Northern Ireland.
- 7.** For the purposes of paragraph 6, the exercise of the function of issuing a decision is within devolved competence in Northern Ireland except so far as a provision of an Act of the Northern Ireland Assembly conferring the function of taking that measure would be outside the legislative competence of the Assembly.

The references in this paragraph to provision being outside the legislative competence of the Northern Ireland Assembly are to be read in accordance with section 6 of the Northern Ireland Act 1998.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 No. 720*

Any provision that would be outside the legislative competence of the Northern Ireland Assembly unless the Secretary of State consented to it is to be regarded, for the purposes of this paragraph, as outside legislative competence.

8. Where the Secretary of State issues the decision under paragraph 2 the Secretary of State must immediately inform the Devolved Authorities giving reasons for the decision. Where a Devolved Authority issues the decision under paragraph 2, it must immediately inform the other Devolved Authorities and the Secretary of State giving reasons for the decision.”