SCHEDULE 2

AMENDMENTS TO RETAINED DIRECT EU LEGISLATION

Commission Delegated Regulation (EU) No 1062/2014

234. For Article 22 (except the heading), substitute—

"**1.** Without prejudice to Article 55(1) of Regulation No 528/2012, within 18 months of the date of a decision not to approve an existing active substance, where the competent authority considers this existing active substance to be essential for one of the reasons referred to in points (b) or (c) of the first subparagraph of Article 5(2) of Regulation (EU) No 528/2012, the competent authority may submit a reasoned application to the Secretary of State or a Devolved Authority for a derogation from point (a) (ii) of Article 89(8) of that Regulation.

2. The competent authority shall make the application, or where relevant, the non-confidential version, publicly available by electronic means. Any person may submit comments within 60 days of publication.

3. Taking account of the comments received, the Secretary of State or a Devolved Authority may exercise a derogation from point (a) (ii) of Article 89(8) of Regulation (EU) No 528/2012 allowing biocidal products consisting of, containing or generating the substance to be made available on the market and used in the United Kingdom subject to the conditions in paragraph 10 and any further conditions imposed by the Secretary of State or a Devolved Authority if they have competence to exercise the derogation within the meaning of paragraphs 4 to 8.

4. The Secretary of State has competence to exercise the derogation 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(**1**));

(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(**2**));

(d) relates to Northern Ireland and is not within devolved competence in Northern Ireland as set out in paragraphs 7 and 8.

5. The Scottish Ministers have competence to exercise the derogation 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).

6. The Welsh Ministers have competence to exercise the derogation 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).

7. A Department in Northern Ireland has competence to exercise the derogation if, or to the extent that the function to take that measure is within devolved competence in Northern Ireland.

8. For the purposes of paragraph 7, the exercise of the function of exercising the derogation is within devolved competence in Northern Ireland except so far as a provision of

(**1**) 1998 c. 46.
(**2**) 2006 c. 32; section 58A was inserted by the Wales Act 2017 (c.4).

an Act of the Northern Ireland Assembly conferring the function of taking that provisional 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(**3**).

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.

9. Where the Secretary of State grants the derogation under paragraph 3, the Secretary of State must immediately inform the Devolved Authorities giving reasons for the decision. Where a Devolved Authority exercises the derogation under paragraph 3, it must immediately inform the other Devolved Authorities and the Secretary of State giving reasons for the decision.

10. The competent authority shall:

(a) ensure that continued use is limited to such cases where and such time during which the conditions of paragraph 1 are fulfilled;

(b) impose appropriate risk mitigation measures to ensure the exposure of humans, animals and the environment is minimised;

(c) ensure that alternatives are being sought, or that an application for approval of the active substance is being prepared for submission in accordance with Article 7 of Regulation (EU) No 528/2012 in due time before the expiry of the derogation."

(**3**) 1998 c. 47; section 6 is amended by section 12 of the European Union Withdrawal Act 2018 and S.I. 2011/1043.