

## SCHEDULE 2

### AMENDMENTS TO RETAINED DIRECT EU LEGISLATION

#### **Regulation (EC) No 1272/2008**

53. After Article 53, insert—

#### *“Article 53A*

##### **Regulation making power**

1. Any power to make regulations conferred on the Secretary of State by this Regulation is exercisable by statutory instrument.
2. Such regulations may—
  - (a) contain incidental, supplemental, consequential and transitional provision; and
  - (b) may make different provision for different purposes.
3. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
4. The function of making regulations under this Regulation is subject to the consent requirement in Article 53B.

#### *Article 53B*

##### **The consent requirement**

1. Where any provision of this Regulation states that a function is subject to the consent requirement in this Article, the function may be exercised in a particular instance only if the person exercising it has obtained the consent or consents (if any) required by paragraphs 2 to 4.
2. The consent of the Scottish Ministers is required if, or to the extent that, the exercise of the function is within devolved competence (within the meaning of section 54 of the Scotland Act 1998<sup>(1)</sup>) whether or not the exercise of the function also relates to a part of the United Kingdom other than Scotland.
3. The consent of the Welsh Ministers is required if, or to the extent that, the exercise of the function is within devolved competence (within the meaning of section 58A(7) and (8) of the Government of Wales Act 2006<sup>(2)</sup>) whether or not the exercise of the function also relates to a part of the United Kingdom other than Wales.
4. The consent of a Northern Ireland Department is required if, or to the extent that, the exercise of the function is within devolved competence, whether or not the exercise of the function also relates to a part of the United Kingdom other than Northern Ireland. The exercise of the function is within devolved competence for the purposes of this paragraph unless it is outside competence by virtue of paragraph 5 or 6.
5. It is outside devolved competence—

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(1) 1998 c. 46.

(2) 2006 c. 32.

**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*

- (a) to make any provision by subordinate legislation which would be outside the legislative competence of the Northern Ireland Assembly if it were included in an Act of the Assembly; or
- (b) to confirm or approve subordinate legislation containing such provision.

6. In the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or exercise it in any way) so far as a provision of an act of the Northern Ireland Assembly conferring the function (or, as the case may be, conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.

7. References in paragraph 5 and 6 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<sup>(3)</sup>. 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 paragraphs 5 and 6, as outside legislative competence.”

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(3) 1998 c. 47.