

## SCHEDULES

### SCHEDULE 21

Section 140

#### AMENDMENT OF REACH LEGISLATION

##### *Amendment of the REACH Regulation*

- 1 (1) The Secretary of State may by regulations amend the REACH Regulation.
- (2) The Secretary of State may make regulations under this paragraph only if the Secretary of State considers that the provision made by the regulations is consistent with Article 1 of the REACH Regulation (aim and scope of the REACH Regulation).
- (3) The Secretary of State may not make regulations under this paragraph which amend any protected provision of the REACH Regulation.
- (4) But sub-paragraph (3) does not prevent any protected provision of the REACH Regulation from being amended by provision made under this paragraph by virtue of section 143(1)(a).
- (5) Before making regulations under this paragraph, the Secretary of State must publish an explanation of why the Secretary of State considers that the provision to be made by the regulations is consistent with Article 1 of the REACH Regulation.
- (6) The explanation relating to regulations under this paragraph is to be published—
  - (a) no later than the time when the Secretary of State begins the consultation on that exercise of the power that is required by paragraph 5, and
  - (b) in the manner which the Secretary of State considers appropriate.
- (7) Regulations under this paragraph are subject to the affirmative procedure.

##### *Amendment of the REACH Enforcement Regulations 2008*

- 2 (1) The Secretary of State or a relevant devolved authority may by regulations amend the REACH Enforcement Regulations 2008 ([S.I. 2008/2852](#)).
- (2) The Secretary of State or a relevant devolved authority may make regulations under this paragraph only if the Secretary of State or the authority considers that the provision made by the regulations is necessary or appropriate for, or in connection with, enforcement of the REACH Regulation.
- (3) The provision that may be made by regulations under this paragraph includes—
  - (a) provision creating, or widening the scope of, a criminal offence;
  - (b) provision specifying the punishment for a criminal offence.
- (4) But regulations under this paragraph may not provide for a criminal offence—
  - (a) under the law of England and Wales to be—
    - (i) punishable on conviction on indictment with imprisonment for more than two years, or

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) punishable on summary conviction with imprisonment for more than the prescribed term for England and Wales or with a fine that is calculated on a daily basis of more than £100 a day;
  - (b) under the law of Scotland to be—
    - (i) punishable on conviction on indictment with imprisonment for more than two years, or
    - (ii) punishable on summary conviction with imprisonment for more than the prescribed term for Scotland or with a fine of more than the applicable maximum for Scotland (if not calculated on a daily basis) or a fine of more than £100 a day;
  - (c) under the law of Northern Ireland to be—
    - (i) punishable on conviction on indictment with imprisonment for more than two years, or
    - (ii) punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or a fine of more than £100 a day.
- (5) In sub-paragraph (4)—
  - “applicable maximum for Scotland” means—
    - (a) level 5 on the standard scale, where the offence is a summary offence;
    - (b) the statutory maximum, where the offence is triable either way;
  - “prescribed term for England and Wales” means—
    - (a) 51 weeks, where the offence is a summary offence;
    - (b) 12 months, where the offence is triable either way;
  - “prescribed term for Scotland” means—
    - (a) 3 months, where the offence is a summary offence;
    - (b) 12 months, where the offence is triable either way.
- (6) But, in the definition of “prescribed term for England and Wales” in sub-paragraph (5)—
  - (a) the reference to 51 weeks is to be read, until the commencement of section 281(5) of the Criminal Justice Act 2003, as a reference to 3 months;
  - (b) the reference to 12 months is to be read, until the commencement of section 282(3) of the Criminal Justice Act 2003, as a reference to 3 months.
- (7) Regulations under this paragraph—
  - (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
  - (b) made by the Scottish Ministers, may contain only provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament;
  - (c) made by the Department of Agriculture, Environment and Rural Affairs or the Department for the Economy in Northern Ireland may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State’s consent.
- (8) Regulations under this paragraph are subject to the affirmative procedure.

*Consent of the devolved administrations*

- 3 (1) The power of the Secretary of State to make regulations under this Schedule is subject to the consent requirement in Article 4A of the REACH Regulation.
- (2) Accordingly, in Article 4A(1) of the REACH Regulation, the reference to the REACH Regulation is to be read as including a reference to this Schedule.

*Requests by devolved administrations for exercise of powers under this Schedule*

- 4 The Secretary of State must consider any request made by a relevant devolved authority for the Secretary of State to make regulations under this Schedule.

*Consultation*

- 5 (1) Before making regulations under this Schedule the Secretary of State must consult—
- (a) the Agency,
  - (b) any person nominated by a relevant devolved authority as a consultee for the consultation in question, and
  - (c) such other persons the Secretary of State considers appropriate.
- (2) The nomination of a person as a consultee by a relevant devolved authority is to be made by that authority to the Secretary of State.
- (3) Before making regulations under paragraph 2 a relevant devolved authority must consult—
- (a) the Agency, and
  - (b) such other persons that authority considers appropriate.

*The protected provisions*

- 6 In paragraph 1 “protected provision of the REACH Regulation” means any of the provisions of the REACH Regulation set out in the following Table—

<i>Fundamental principles</i>
Article 1 (aim and scope of the REACH Regulation)
Article 5 (the principle of “no data, no market”)
Article 25(1) (animal testing as a last resort)
Article 35 (access to information for workers)
Article 45 (evaluation of substances on the rolling action plan)
Article 48 (follow-up to substance evaluation)
Article 55 (the aim of Title VII, which is about authorisation of substances)
Article 67(1) (effect of restrictions contained in Annex XVII)
Article 92 or 93 (appeals)
Article 111, first subparagraph (formats and software for submission of information to the Agency)
Article 123 (communication to the public of information on risks of substances)

---

*Status: This is the original version (as it was originally enacted).*

---

<i>Role of the devolved administrations</i>
Article 4A (the consent requirement)
Article 129(1) (the safeguard clause: basic principles)
<i>Transparency</i>
Article 54 (publication of information on evaluation)
Article 64(6) (publication of Agency authorisation opinions)
Article 72(2) (publication of Agency restriction opinions)
Article 77(A4) (Agency to act in a way that ensures a high degree of transparency) and (2)(e) (database(s) of registered substances)
Article 109 (general rules on transparency for the Agency)
<i>Collaboration between the Agency and other bodies</i>
Article 95 (conflicts of opinion with other bodies)
Article 108 (contacts with stakeholder organisations)
Article 110 (relations with relevant public bodies)
<i>Annexes</i>
The Annexes

### *Other interpretation*

7

In this Schedule—

“Agency” has the same meaning as in the REACH Regulation (see Article 2A of the Regulation);

“REACH Regulation” means Regulation [\(EC\) No 1907/2006](#) of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency;

“relevant devolved authority” means—

- (a) the Scottish Ministers,
- (b) the Welsh Ministers, or
- (c) the Department of Agriculture, Environment and Rural Affairs or the Department for the Economy in Northern Ireland.