

SCHEDULE 2

AMENDMENTS TO RETAINED DIRECT EU LEGISLATION

Regulation (EC) No 1272/2008

51. For Article 52 substitute—

“Article 52

Safeguard clause

1. The Secretary of State or a Devolved Authority may take appropriate provisional measures in respect of a substance or mixture if they—

- (a) have justifiable grounds for believing that the substance or mixture, although satisfying the requirements of this Regulation, constitutes a serious risk to human health or the environment due to reasons of classification, labelling or packaging; and
- (b) have competence to take the provisional measures, within the meaning of paragraphs 6 to 10.

2. A provisional measure taken by a Devolved Authority applies only in relation to the territory in relation to which it has competence.

3. Where the Secretary of State takes a provisional measure, the Secretary of State must immediately inform the Devolved Authorities, giving the reasons for the decision. Where a Devolved Authority takes a provisional measure, it must immediately inform the other Devolved Authorities and the Secretary of State, giving the reasons for the decision.

4. Within 90 days of a provisional measure being taken—

- (a) in the case of a provisional measure relating to classification or labelling of a substance—
 - (i) where the Secretary of State took the measure, the Secretary of State must request the Agency to produce a proposal for a new or revised mandatory classification and labelling requirement under Article 37A(2),
 - (ii) where a Devolved Authority took the measure, the Competent Authority for that country must request the Agency to produce a proposal for a new or revised mandatory classification and labelling requirement under Article 37A(2);
- (b) in the case of a provisional measure that falls within the scope of Article 53—
 - (i) where the Secretary of State took the measure, the Secretary of State must decide whether or not to make the measure permanent by making regulations under Article 53,
 - (ii) where a Devolved Authority took the measure, it must decide whether or not to request the Secretary of State to make the measure permanent by making regulations under Article 53.

5. The taker of the provisional measure must revoke that measure, when—

- (a) in the case of a provisional measure relating to the classification or labelling of a substance, the Secretary of State makes a decision under Article 37A;
- (b) in the case of a provisional measure that falls within the scope of Article 53—

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

- (i) where paragraph 4(b)(i) of this Article applies, the Secretary of State either decides not to make the measure permanent or makes regulations under Article 53 to make the measure permanent, or
 - (ii) where paragraph 4(b)(ii) of this Article applies, the Devolved Authority decides not to request the Secretary of State to make the measure permanent.
- 6.** The Secretary of State has competence to take a provisional measure 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.
- 7.** The Scottish Ministers have competence to take a provisional measure 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).
- 8.** The Welsh Ministers have competence to take a provisional measure 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).
- 9.** A Department in Northern Ireland has competence to take a provisional measure if, or to the extent that, the exercise of the function to take that measure is within devolved competence in Northern Ireland.
- 10.** For the purposes of paragraph 9, the exercise of the function of taking a provisional measure 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 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.”

(1) 1998 c. 46.

(2) 2006 c. 32. Section 58A was inserted by the Wales Act 2017 (c. 4).

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