

SCHEDULES

SCHEDULE 2

Section 46

TRADING SCHEMES

PART 1

SCHEMES LIMITING ACTIVITIES

Introductory

- 1 This Part of this Schedule deals with trading schemes that operate by limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions.

Trading periods

- 2 The regulations must specify the period or periods by reference to which the scheme is to operate (a “trading period”).

Activities

- 3 (1) The regulations must identify the activities to which the trading scheme applies.
- (2) The regulations may identify the activities by reference to any, or any combination of, criteria and in particular—
- (a) may identify the activities by reference to the locations or locations at which they are carried on, or
 - (b) may be expressed to apply to all activities of a particular kind carried on in the United Kingdom or a part of the United Kingdom.
- (3) The regulations must specify the units of measurement of the activities for the purposes of the scheme.
- (4) The regulations may specify units of measurement by reference to—
- (a) the activities themselves,
 - (b) anything consumed or used for the purposes of the activities,
 - (c) anything produced by the activities, or
 - (d) any other consequence of the activities.
- (5) The regulations may, in particular, make provision—
- (a) for activities to be measured by reference to the amount (in tonnes of carbon dioxide equivalent) of the greenhouse gas emissions for which those activities are to be regarded as responsible; and
 - (b) as to the method by which that amount is to be measured or calculated.

Status: This is the original version (as it was originally enacted).

- (6) The regulations may make different provision in relation to different descriptions of activity to which the scheme applies.

Participants

- 4 (1) The regulations must identify the persons to whom the trading scheme applies (the “participants”).
- (2) The regulations—
- (a) may identify the participants by reference to any, or any combination of, criteria, or
 - (b) provide for their identification by a specified person or body.
- (3) The regulations may, in particular, identify or provide for the identification of the participants by reference to their responsibility for activities to which the trading scheme applies.
- (4) The regulations may provide for more than one person to be treated as a single participant.
- (5) The regulations may provide for persons to cease to be participants in circumstances specified in the regulations.

Allocation of allowances

- 5 (1) The regulations may provide for the allocation among the participants of allowances representing the right to carry on a specified amount of the activities in a trading period.
- (2) The regulations may set a limit on—
- (a) the total amount of the activities for a trading period, and
 - (b) the total amount of the allowances to be allocated for the period.
- (3) The regulations may specify the method of allocation or provide for it to be determined in accordance with the regulations.
- (4) The regulations may not provide for allowances to be allocated in return for consideration.

Use of allowances

- 6 (1) The regulations may require each participant to have or acquire enough allowances to match the participant’s activities in a trading period, subject to any offsetting in accordance with provision made under paragraph 7.
- (2) The regulations—
- (a) may permit allowances held by a participant at the end of a trading period in excess of the participant’s activities in the period to be used to cover the participant’s activities in a later trading period,
 - (b) may permit allowances allocated to a participant for a trading period to be used to cover the participant’s activities in an earlier trading period, and
 - (c) may in either case provide for such use of allowances to be subject to such conditions and limitations as may be specified in or determined in accordance with the regulations.

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

- (3) The regulations must contain provision for ensuring that allowances used by a participant for the purposes of a trading scheme cannot be used by the participant for any other purpose.
- (4) The regulations—
 - (a) may provide for the expiry of allowances after such period as may be specified in or determined in accordance with the regulations;
 - (b) may enable allowances to be cancelled by a person by whom they are held instead of being used for the purposes of a trading scheme.

Credits

- 7 (1) The regulations may enable participants to offset the carrying on of the activities in a trading period by acquiring credits representing—
 - (a) a reduction in an amount of greenhouse gas emissions, or
 - (b) the removal of an amount of greenhouse gas from the atmosphere.
- (2) Regulations that make provision under this paragraph for a trading period must set a limit on the total amount of the activities for the period.
- (3) If the regulations also provide for the allocation of allowances for the period, they must—
 - (a) set a limit on the total amount of the allowances to be allocated for the period, and
 - (b) require each participant to acquire enough credits to offset any activities carried on by the participant in the period in excess of those for which the participant has or has acquired allowances.
- (4) Otherwise, such regulations must—
 - (a) set a limit on the amount of the activities that each participant may carry on in the period, and
 - (b) require each participant to acquire enough credits to offset any activities carried on by the participant in the period in excess of that limit.
- (5) The regulations must specify—
 - (a) the descriptions of credits that may be used for offsetting a participant's activities,
 - (b) the value of different descriptions of credit as regards the amount of the activities they are treated as offsetting, and
 - (c) the circumstances in which credits of any description may be used for the purposes of the trading scheme.
- (6) The regulations—
 - (a) must contain provision for ensuring that credits used to offset activities under a trading scheme cannot be used by the participant for any other purpose;
 - (b) may enable credits to be cancelled by a person by whom they are held instead of being used for that purpose.

Payments

- 8 (1) The regulations may provide that a participant who does not have or acquire enough allowances or credits to match or offset the participant's activities in a trading period

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

must pay an amount specified in or determined in accordance with the regulations within the period so specified.

- (2) The regulations may require the payment to be made to—
 - (a) the administrator, or
 - (b) such other person as the regulations may specify.
- (3) The provision that may be made about the amount of the payment includes, in particular, provision—
 - (a) for the amount to be determined by the administrator or a national authority;
 - (b) in a case where the payment is not made within the period specified in the regulations, for the amount to increase at the rate so specified until payment;
 - (c) for the amount of the payment, or of any amount by reference to which it is to be calculated, to be adjusted from time to time by reference to inflation or some other factor.
- (4) Provision within sub-paragraph (3)(c) may refer, in particular, to an index or data specified in the regulations (including as modified from time to time after the regulations come into force).
- (5) If the regulations provide for payments to be made to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations.

Trading

- 9 (1) The regulations must provide for the participants in a trading scheme to trade in any allowances or credits under the scheme.
- (2) The regulations may also provide for trading in the allowances or credits by third parties authorised in accordance with the regulations.
- (3) The regulations must specify the circumstances in which trading is permitted.
- (4) The regulations may require trading to be notified to the administrator of the trading scheme.

Permits

- 10 (1) The regulations may provide that participants may only carry on activities to which the trading scheme applies, or specified activities to which the scheme applies, if they hold a permit.
- (2) The regulations may make provision about the issue, variation, transfer, surrender and revocation of permits.
- (3) The regulations may provide for conditions to be attached to permits.
- (4) References in this Schedule to the requirements of the scheme include requirements imposed by conditions attached to a permit.

Units under other schemes

- 11 (1) The regulations may make provision for recognising any of the following as equivalent to allowances or credits under the trading scheme—

- (a) allowances, credits or certificates under another trading scheme for which provision is made by regulations under this Part of this Act;
 - (b) units under any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions.
- (2) The regulations may provide—
- (a) for determining the value for the purposes of the scheme of any such allowances, credits, certificates or units, and
 - (b) for the use for the purposes of the scheme of any such allowances, credits, certificates or units to be subject to such conditions and limitations as may be specified in or determined in accordance with the regulations.

PART 2

SCHEMES ENCOURAGING ACTIVITIES

Introductory

- 12 This Part of this Schedule deals with trading schemes that operate by encouraging activities that consist of, or that cause or contribute, directly or indirectly to—
- (a) reductions in greenhouse gas emissions, or
 - (b) the removal of greenhouse gas from the atmosphere.

Trading periods

- 13 The regulations must specify the period or periods by reference to which the scheme is to operate (a “trading period”).

Activities

- 14 (1) The regulations must identify the activities to which the trading scheme applies.
- (2) The regulations may identify the activities by reference to any, or any combination of, criteria and in particular—
- (a) may identify the activities by reference to the locations or locations at which they are carried on, or
 - (b) may be expressed to apply to all activities of a particular kind carried on in the United Kingdom or a part of the United Kingdom.
- (3) The regulations must specify the units of measurement of the activities for the purposes of the scheme.
- (4) The regulations may specify units of measurement by reference to—
- (a) the activities themselves,
 - (b) anything consumed or used for the purposes of the activities,
 - (c) anything produced by the activities, or
 - (d) any other consequence of the activities.
- (5) The regulations may, in particular, make provision—
- (a) for activities to be measured by reference to the amount (in tonnes of carbon dioxide equivalent) of the reduction of greenhouse gas emissions, or

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

removals of greenhouse gas from the atmosphere, for which those activities are to be regarded as responsible; and

(b) as to the method by which that amount is to be measured or calculated.

(6) The regulations may make different provision in relation to different descriptions of activity to which the scheme applies.

Participants

15 (1) The regulations must identify the persons to whom the trading scheme applies (the “participants”).

(2) The regulations—

(a) may identify the participants by reference to any, or any combination of, criteria, or

(b) provide for their identification by a specified person or body.

(3) The regulations may provide for more than one person to be treated as a single participant.

(4) The regulations may provide for persons to cease to be participants in circumstances specified in the regulations.

Targets and obligations

16 The regulations must, for each trading period—

(a) set a target for the total amount of the activities, and

(b) impose, or provide for the imposition of, an obligation on each participant in relation to the carrying on of a specified amount of the activities in the period.

Certificates

17 (1) The regulations must provide for the issue of certificates evidencing the carrying on of the activities in a trading period.

(2) The regulations may provide for certificates to evidence the carrying on of the activities—

(a) by the participant in question,

(b) by another participant in the trading scheme, or

(c) by a third party authorised in accordance with the regulations to obtain certificates for the purposes of the scheme.

(3) The regulations must require each participant to have enough certificates at the end of each trading period to comply with the participant’s obligations under the trading scheme.

(4) The regulations must contain provision for ensuring that certificates used by a participant for that purpose cannot be used by the participant for any other purpose.

(5) The regulations—

(a) may provide for the expiry of certificates after such period as may be specified in or determined in accordance with the regulations;

- (b) may enable certificates to be cancelled by a person by whom they are held instead of being used for the purposes of a trading scheme.

Payments

- 18
- (1) The regulations may provide that a participant who does not have enough certificates at the end of a trading period to comply with the participant's obligations under the trading scheme must pay an amount specified in or determined in accordance with the regulations within the period so specified.
 - (2) The regulations may require the payment to be made to—
 - (a) the administrator, or
 - (b) such other person as the regulations may specify.
 - (3) The provision that may be made about the amount of the payment includes, in particular, provision—
 - (a) for the amount to be determined by the administrator or a national authority;
 - (b) in a case where the payment is not made within the period specified in the regulations, for the amount to increase at the rate so specified until payment;
 - (c) for the amount of the payment, or of any amount by reference to which it is to be calculated, to be adjusted from time to time by reference to inflation or some other factor.
 - (4) Provision within sub-paragraph (3)(c) may refer, in particular, to an index or data specified in the regulations (including as modified from time to time after the regulations come into force).
 - (5) If the regulations provide for payments to be made to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations.

Trading

- 19
- (1) The regulations must provide for the participants in a trading scheme to trade in certificates.
 - (2) The regulations may also provide for trading in certificates by third parties authorised in accordance with the regulations.
 - (3) The regulations must specify the circumstances in which trading is permitted.
 - (4) The regulations may require trading to be notified to the administrator of the trading scheme.

Units under other schemes

- 20
- (1) The regulations may make provision for recognising any of the following as equivalent to certificates under the trading scheme—
 - (a) allowances, credits or certificates under another trading scheme for which provision is made by regulations under this Part of this Act;
 - (b) units under any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions.
 - (2) The regulations may provide—

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

- (a) for determining the value for the purposes of the scheme of any such allowances, credits, certificates or units, and
- (b) for the use for the purposes of the scheme of any such allowances, credits, certificates or units to be subject to such conditions and limitations as may be specified in or determined in accordance with the regulations.

PART 3

ADMINISTRATION AND ENFORCEMENT

The administrator

- 21
- (1) The regulations may appoint a person as the administrator of a trading scheme.
 - (2) The regulations may confer or impose functions on the administrator for the purposes of the scheme.
 - (3) Only the following may be appointed as the administrator of a trading scheme—
 - (a) the Secretary of State,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers,
 - (d) the relevant Northern Ireland department,
 - (e) a body established by an enactment, or
 - (f) any combination of the above.
 - (4) The same person may be appointed as the administrator of more than one trading scheme.
 - (5) More than one person may be appointed as the administrator of the same trading scheme.

Information

- 22
- (1) The regulations may require such information as may be specified in or determined in accordance with the regulations to be provided to—
 - (a) the administrator of a trading scheme,
 - (b) a national authority, or
 - (c) participants or potential participants in the scheme,for purposes connected with the scheme.
 - (2) The regulations may confer power on the administrator of a trading scheme to require information to be provided to any of those persons for those purposes.
 - (3) The regulations must provide for a requirement by the administrator to provide information to be notified in writing to the person to whom it is made.
 - (4) If the regulations confer functions on the administrator for the purposes of this paragraph, they may provide for the administrator to delegate the performance of any of those functions.

- (5) The regulations may provide for information held by or on behalf of the administrator of a trading scheme in connection with the administrator's functions to be disclosed to—
- (a) any other administrator of the scheme,
 - (b) the administrator of another trading scheme, or
 - (c) a national authority.

Registers

- 23 (1) The regulations may provide for the creation and maintenance of a register or registers of information relating to a trading scheme and, in particular, for the register or registers to keep track of any of the following—
- (a) the participants in a trading scheme;
 - (b) any limits on or obligations applying to the participants' activities under the scheme;
 - (c) any allocation of allowances among the participants;
 - (d) the allowances, credits, certificates or other units held by the participants or others;
 - (e) trading in allowances, credits, certificates or other units;
 - (f) the use by the participants or others of allowances, credits, certificates or other units for the purposes of the scheme;
 - (g) the cancellation of allowances, credits, certificates or other units;
 - (h) permits held by the participants, and any conditions attached to those permits.
- (2) The regulations may, in particular, provide for the establishment and maintenance of accounts in which allowances, credits, certificates or other units may be held by the participants, the administrator or others and between which they may be transferred.
- (3) The regulations may provide for the same register to operate in relation to more than one trading scheme.
- (4) The regulations may make provision for the disclosure of information held in or derived from a register relating to a trading scheme—
- (a) for the purposes of the administration of another trading scheme for which provision is made by regulations under this Part of this Act, or
 - (b) for the purposes of the administration of any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions.

Publication of information

- 24 The regulations may confer or impose functions on the administrator of a trading scheme in relation to the publication of information relating to the scheme or its participants (including, in particular, information supplied to the administrator by the participants and others).

Acquisition of units by the administrator

- 25 The regulations may confer powers on the administrator of a trading scheme to acquire—

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

- (a) allowances, credits or certificates under another trading scheme for which provision is made by regulations under this Part of this Act, or
- (b) units under any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions.

Charges

- 26 (1) The regulations may—
- (a) require the payment by participants or other persons authorised to trade in allowances, credits or certificates of charges of an amount determined by or under the regulations by reference to the costs of operating the scheme, and
 - (b) provide for such charges to be imposed by—
 - (i) a national authority,
 - (ii) the administrator of the scheme, or
 - (iii) such other person as may be specified in or determined in accordance with the regulations.
- (2) If the regulations provide for charges to be payable to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations.

Monitoring compliance

- 27 (1) The regulations may make provision for monitoring compliance with the requirements of a trading scheme.
- (2) The regulations may, in particular, make provision about—
- (a) the keeping of records by the participants,
 - (b) the provision of information by the participants and others,
 - (c) the audit and verification of that information, and
 - (d) the inspection of premises.
- (3) If the regulations confer functions on the administrator of the scheme for the purposes of this paragraph, they may provide for the administrator to delegate the performance of any of those functions.

Enforcement

- 28 (1) The regulations may confer powers on a person to whom this paragraph applies to—
- (a) require the production of documents or the provision of information,
 - (b) question the officers of a company,
 - (c) enter premises with a warrant, or
 - (d) seize documents or records.
- (2) The regulations must provide that the power in question may only be exercised where the person on whom it is conferred reasonably believes there has been a failure to comply with the requirements of a trading scheme.
- (3) This paragraph applies to—
- (a) a national authority,
 - (b) the administrator of the scheme, and

- (c) such other person as may be specified in or determined in accordance with the regulations.

Penalties

- 29
- (1) The regulations may provide that a person is liable to a financial or other penalty if the person fails to comply with the requirements of a trading scheme.
 - (2) The regulations may—
 - (a) specify the amount of any financial penalty, or
 - (b) provide for the amount of any financial penalty to be determined in accordance with the regulations.
 - (3) If the regulations provide for financial penalties to be payable to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations.

Offences

- 30
- (1) The regulations may create offences relating to trading schemes.
 - (2) The regulations may provide for such an offence to be triable—
 - (a) only summarily, or
 - (b) either summarily or on indictment.
 - (3) The regulations may provide for such an offence to be punishable on summary conviction—
 - (a) with imprisonment for a term not exceeding such period as is specified in the regulations (which may not exceed the normal maximum term),
 - (b) with a fine not exceeding such amount as is so specified (which may not exceed £50,000), or
 - (c) with both.
 - (4) The “normal maximum term” means—
 - (a) in relation to England and Wales—
 - (i) in the case of an offence triable only summarily, 51 weeks, and
 - (ii) in the case of an offence triable either summarily or on indictment, twelve months;
 - (b) in relation to Scotland—
 - (i) in the case of an offence triable only summarily, 6 months, and
 - (ii) in the case of an offence triable either summarily or on indictment, twelve months;
 - (c) in relation to Northern Ireland, six months.
 - (5) Regulations that—
 - (a) are made before the date on which section 281(5) of the Criminal Justice Act 2003 (c. 44) comes into force, and
 - (b) in relation to England and Wales, make provision for a summary offence to be punishable with a term of imprisonment exceeding six months,must provide that, where the offence is committed before that date, it is punishable with imprisonment for a term not exceeding six months.

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

- (6) Regulations that—
- (a) are made before the date on which section 154(1) of the Criminal Justice Act 2003 comes into force, and
 - (b) in relation to England and Wales, make provision for an offence triable either summarily or on indictment to be punishable on summary conviction with a term of imprisonment exceeding six months,
- must provide that, where the offence is committed before that date, it is punishable on summary conviction with imprisonment for a term not exceeding six months.
- (7) The regulations may provide for an offence to be punishable on indictment—
- (a) with imprisonment for a term not exceeding such period as is specified in the regulations (which may not exceed five years),
 - (b) with a fine, or
 - (c) with both.
- (8) The regulations may—
- (a) provide for defences against offences, and
 - (b) make provision about matters of procedure and evidence in proceedings relating to offences.

Appeals

- 31 (1) The regulations may confer rights of appeal against—
- (a) decisions made in relation to a trading scheme, and
 - (b) civil penalties imposed or enforcement action taken for failure to comply with the requirements of a trading scheme.
- (2) The regulations must specify the court, tribunal or person who is to hear and determine appeals in relation to a trading scheme.
- (3) The regulations may, in particular, provide for appeals in relation to a trading scheme to be heard by—
- (a) a national authority, if not the administrator of the trading scheme, or
 - (b) a person appointed by a national authority for that purpose.
- (4) They may provide for an appeal to be determined by a person other than the person by whom the appeal was heard.