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## SCHEDULES

### SCHEDULE 2

#### TRADING SCHEMES

#### 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.

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- (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).

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#### *Acquisition of units by the administrator*

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

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- (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

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- (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.
- (6) Regulations that—
- (a) are made before the date on which [F1 paragraph 24(2) of Schedule 22 to the Sentencing Act 2020] 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.

#### Textual Amendments

**F1** Words in [Sch. 2 para. 30\(6\)\(a\)](#) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 443\(1\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

#### 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.

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