

## SCHEDULES

### SCHEDULE 1

Section 32

#### THE COMMITTEE ON CLIMATE CHANGE

##### *Membership*

- 1 (1) The Committee shall consist of—
  - (a) a person appointed by the national authorities to chair the Committee (“the chair”), and
  - (b) not less than five and not more than eight other members appointed by the national authorities.
- (2) The national authorities must consult the chair before appointing the other members.
- (3) In appointing a member, the national authorities must have regard to the desirability of securing that the Committee (taken as a whole) has experience in or knowledge of the following—
  - (a) business competitiveness;
  - (b) climate change policy at national and international level, and in particular the social impacts of such policy;
  - (c) climate science, and other branches of environmental science;
  - (d) differences in circumstances between England, Wales, Scotland and Northern Ireland and the capacity of national authorities to take action in relation to climate change;
  - (e) economic analysis and forecasting;
  - (f) emissions trading;
  - (g) energy production and supply;
  - (h) financial investment;
  - (i) technology development and diffusion.
- (4) The Secretary of State may by order amend sub-paragraph (1)(b) so as to alter the minimum or maximum number of members of the Committee.
- (5) Such an order may only be made with the consent of the other national authorities.
- (6) Any such order is subject to negative resolution procedure.
- 2 The national authorities may, after consulting the chair, appoint one of the members as deputy to the chair (“the deputy chair”).

##### *Term of office*

- 3 A member holds and vacates office in accordance with the terms of the member’s appointment.
- 4 A member may resign by giving written notice to the Secretary of State.

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- 5 The national authorities may remove a member—
- (a) who has been absent from meetings of the Committee without its permission for a period of 6 months or more,
  - (b) who has become bankrupt or has made an arrangement with creditors,
  - (c) whose estate has been sequestrated in Scotland or who, under Scots law, has made a composition or arrangement with, or granted a trust deed for, creditors, or
  - (d) who in the opinion of the national authorities is otherwise unable or unfit to carry out the duties of that member.
- 6 A person ceases to be the chair or the deputy chair if the person—
- (a) resigns that office by giving written notice to the Secretary of State, or
  - (b) ceases to be a member.
- 7 A person who—
- (a) ceases to be a member, or
  - (b) ceases to be the chair or the deputy chair,
- may be reappointed to that office.

#### *Remuneration and pensions etc*

- 8 The Committee may pay to the members such remuneration and allowances as the national authorities may determine.
- 9 The Committee must, if required to do so by the national authorities—
- (a) pay such pensions, gratuities or allowances as the national authorities may determine to or in respect of any person who is or has been a member, or
  - (b) pay such sums as the national authorities may determine towards provision for the payment of pensions, gratuities or allowances to or in respect of such a person.
- 10 If the national authorities consider there are special circumstances which make it right for a person who has ceased to be a member to receive compensation, the Committee must pay the person such compensation as the national authorities may determine.

#### *Staff*

- 11 (1) The Committee must appoint a person to be chief executive, but may only appoint a person who has been approved by the national authorities.
- (2) The chief executive is an employee of the Committee.
- 12 The Committee may appoint other employees.
- 13 The Committee must, if required to do so by the national authorities—
- (a) pay such pensions, gratuities or allowances as the national authorities may determine to or in respect of any employee or former employee, or
  - (b) pay such sums as the national authorities may determine towards provision for the payment of pensions, gratuities or allowances to or in respect of any employee or former employee.

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- 14 (1) In Schedule 1 to the Superannuation Act 1972 (c. 11) (kinds of employment to which section 1 of that Act applies), in the list of other bodies, at the appropriate place insert—
- “The Committee on Climate Change.”
- (2) The Committee must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

#### *Sub-committees*

- 15 (1) The Committee may establish sub-committees.
- (2) A sub-committee may include persons who are not members of the Committee.
- (3) The Committee may pay such remuneration and allowances as the national authorities may determine to any person who—
- (a) is a member of a sub-committee, but
  - (b) is not a member of the Committee.
- (4) This paragraph does not apply in relation to the Adaptation Sub-Committee.

#### *The Adaptation Sub-Committee*

- 16 (1) There shall be a sub-committee of the Committee, to be known as the Adaptation Sub-Committee or, in Welsh, as yr Is-bwyllgor Addasu (referred to in this paragraph as “the ASC”).
- (2) The ASC shall consist of—
- (a) a person appointed by the national authorities to chair the ASC (“the ASC chair”), and
  - (b) not less than five other members appointed by the national authorities.
- (3) The national authorities must—
- (a) consult the chair before appointing the ASC chair, and
  - (b) consult the ASC chair before appointing the other members of the ASC.
- (4) A person ceases to be the ASC chair if the person—
- (a) resigns that office by giving written notice to the Secretary of State, or
  - (b) ceases to be a member of the ASC.
- (5) The ASC may include persons who are not members of the Committee.
- (6) Paragraphs 3 to 5 (term of office) apply to a person who is—
- (a) a member of the Committee, and
  - (b) a member of the ASC,
- in that person’s capacity as a member of the ASC.
- (7) Those paragraphs and paragraphs 8 to 10 (remuneration and pensions etc) apply to a member of the ASC who is not a member of the Committee as they apply to a member of the Committee.

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- (8) In the application of paragraph 5(a) by virtue of this paragraph, the reference to the Committee is a reference to the ASC.
- (9) A person who—
- (a) ceases to be a member of the ASC, or
  - (b) ceases to be the ASC chair,
- may be reappointed to that office.
- (10) The ASC must provide the Committee with such advice, analysis, information or other assistance as the Committee may require in connection with the exercise of its functions under—
- (a) section 38(1)(c) (advice etc to national authorities on adaptation to climate change),
  - (b) section 57 (advice on report on impact of climate change), or
  - (c) section 59 (reporting on progress in connection with adaptation).

#### *Proceedings*

- 17 The Committee may regulate—
- (a) its own procedure (including quorum), and
  - (b) the procedure of any sub-committee (including quorum).
- 18 The validity of anything done by the Committee or any sub-committee is not affected by—
- (a) any vacancy in the membership of the Committee or sub-committee, or
  - (b) any defect in the appointment of any member of the Committee or sub-committee.
- 19 The Committee must publish the minutes of its meetings in such manner as it considers appropriate.

#### *Discharge of functions*

- 20 The Committee may authorise a sub-committee, member or employee to exercise any of the Committee's functions.

#### *Application of seal and proof of documents*

- 21 (1) The application of the Committee's seal must be authenticated by the signature of—
- (a) a member of the Committee who is authorised (generally or specially) for that purpose, or
  - (b) an employee who is so authorised.
- (2) A document purporting to be duly executed under the seal of the Committee or to be signed on behalf of the Committee shall be received in evidence and treated as so executed or signed unless the contrary is shown.
- (3) This paragraph does not apply in relation to Scotland.

#### *Reports and accounts*

- 22 (1) For each financial year the Committee must—

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- (a) prepare an annual report on the discharge of its functions during the year, and
  - (b) send a copy to the national authorities within such period as the national authorities may direct.
- (2) A copy of each report received under this paragraph must be laid—
- (a) by the Secretary of State before Parliament,
  - (b) by the Scottish Ministers before the Scottish Parliament,
  - (c) by the Welsh Ministers before the National Assembly for Wales, and
  - (d) by the relevant Northern Ireland department before the Northern Ireland Assembly.
- 23 In this Schedule “financial year” means—
- (a) the period beginning with the day the Committee is established and ending with the next 31st March, and
  - (b) each subsequent period of 12 months ending with 31st March.
- 24 (1) The Committee must keep proper accounts and proper records in relation to the accounts.
- (2) For each financial year the Committee must—
- (a) prepare a statement of accounts in respect of that financial year, and
  - (b) send a copy of the statement to the national authorities and the Comptroller and Auditor General within such period as the national authorities direct.
- (3) The statement must be in such form as the national authorities may direct.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the statement, and
  - (b) send a copy of the certified statement and the report to the national authorities as soon as possible.
- (5) A copy of each statement received under sub-paragraph (4) must be laid—
- (a) by the Secretary of State before Parliament,
  - (b) by the Scottish Ministers before the Scottish Parliament,
  - (c) by the Welsh Ministers before the National Assembly for Wales, and
  - (d) by the relevant Northern Ireland department before the Northern Ireland Assembly.

### *Information*

- 25 (1) The Committee must provide the national authorities with such information as they may request about its property.
- (2) The Committee must provide the Secretary of State with such information as the Secretary of State may request about the exercise or proposed exercise of its functions under—
- (a) Part 1 (carbon target and budgeting),
  - (b) section 33 (advice on level of 2050 target),
  - (c) section 34 (advice in connection with carbon budgets),
  - (d) section 35 (advice on emissions from international aviation and international shipping),
  - (e) section 36 (reports on progress),

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- (f) section 57 (advice on report on impact of climate change), or
  - (g) section 59 (reporting on progress in connection with adaptation).
- (3) The Committee must provide a national authority with such information as the national authority may request about the exercise or proposed exercise of the Committee's functions under—
- (a) section 38 (duty to provide advice or assistance on request), or
  - (b) section 48 (advice on trading scheme regulations),
- in relation to that national authority.

If the information relates to the exercise or proposed exercise of those functions in relation to two or more national authorities, the request must be made by all of them jointly.

- (4) The Committee must provide the national authorities with such information as they may request about the exercise or proposed exercise of any of its other functions.
- (5) The Committee must also—
- (a) permit any person authorised by a national authority to inspect and make copies of any accounts or other documents of the Committee, and
  - (b) provide such explanation of them as that person or the national authority may require.
- (6) Before exercising a function under sub-paragraph (5), the national authority must consult the other national authorities.

#### *Publication of advice etc*

- 26 A requirement under this Act for the Committee to publish anything does not oblige it to publish—
- (a) information it could refuse to disclose in response to a request under—
    - (i) the Freedom of Information Act 2000 (c. 36), or
    - (ii) the Environmental Information Regulations 2004 (S.I. 2004/3391) or any regulations replacing those regulations;
  - (b) information whose disclosure is prohibited by any enactment.

#### *Status*

- 27 (1) The Committee is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (2) The Committee is to be treated as a cross-border public authority within the meaning of the Scotland Act 1998 (c. 46) for the purposes of the following provisions of that Act—
- (a) section 23(2)(b) (power of Scottish Parliament to require persons outside Scotland to attend to give evidence or produce documents);
  - (b) section 70(6) (legislation of Scottish Parliament not to require certain cross-border public authorities to prepare accounts).

#### *Public Records Act 1958 (c. 51)*

- 28 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert—

“The Committee on Climate Change.”

*Parliamentary Commissioner Act 1967 (c. 13)*

29 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation)—

(a) at the appropriate place insert—

“The Committee on Climate Change.”, and

(b) in the notes at the appropriate place insert—

*“Committee on Climate Change*

In the case of the Committee on Climate Change, no investigation is to be conducted in respect of any action taken by or on behalf of the Committee—

(a) in the exercise in or as regards Scotland of any function to the extent that the function is exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998), or

(b) in connection with functions of the Committee in relation to Wales (within the meaning of the Government of Wales Act 2006).”

*House of Commons Disqualification Act 1975 (c. 24)*

30 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert—

“The Committee on Climate Change.”

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

31 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert—

“The Committee on Climate Change.”

*Race Relations Act 1976 (c. 74)*

32 In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty), at the appropriate place insert—

“The Committee on Climate Change.”

*Freedom of Information Act 2000 (c. 36)*

33 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities), at the appropriate place insert—

“The Committee on Climate Change.”

*Scottish Public Services Ombudsman Act 2002 (asp 11)*

34 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

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- (2) In section 7 (matters which may be investigated: restrictions), after subsection (6B) insert—

“(6C) The Ombudsman must not investigate action taken by or on behalf of the Committee on Climate Change in the exercise in or as regards Scotland of any function to the extent that the function is not exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998).”

- (3) In Schedule 2 (persons liable to investigation), after paragraph 91A insert—

“91B The Committee on Climate Change.”

*Public Services Ombudsman (Wales) Act 2005 (c. 10)*

- 35 In Schedule 3 to the Public Services Ombudsman (Wales) Act 2005 (listed authorities), after the heading “Environment” insert—

“The Committee on Climate Change.”

## 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.
- (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.

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### *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.
- (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 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.

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### *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—

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- (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 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.

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- (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—
    - (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.

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### *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—



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- (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—
- (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.

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### *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

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- (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.
- (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.

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- (4) They may provide for an appeal to be determined by a person other than the person by whom the appeal was heard.

## SCHEDULE 3

Section 49

### TRADING SCHEMES REGULATIONS: FURTHER PROVISIONS

#### PART 1

##### REGULATIONS MADE BY A SINGLE NATIONAL AUTHORITY

- 1 This Part of this Schedule applies in relation to an instrument containing regulations under this Part of this Act made by a single national authority.
- 2 (1) Where the instrument contains regulations that—  
(a) are to be made by the Secretary of State, and  
(b) are subject to affirmative resolution procedure,  
the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (2) Where the instrument contains regulations that—  
(a) are to be made by a national authority other than the Secretary of State, and  
(b) are subject to affirmative resolution procedure,  
the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the relevant devolved legislature.
- 3 (1) An instrument containing regulations made by the Secretary of State that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) An instrument containing regulations made by the Scottish Ministers that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) An instrument containing regulations made by the Welsh Ministers that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4) An instrument containing regulations made by a Northern Ireland department that are subject to negative resolution procedure is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act.
- 4 Any provision that may be made by regulations subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

## PART 2

### REGULATIONS MADE BY TWO OR MORE NATIONAL AUTHORITIES

- 5 This Part of this Schedule applies in relation to an instrument containing regulations under this Part of this Act made or to be made by any two or more of—
- (a) the Secretary of State,
  - (b) the Welsh Ministers, and
  - (c) a Northern Ireland department.
- 6 If any of the regulations are subject to affirmative resolution procedure, all of them are subject to that procedure.
- 7 Paragraphs 2 and 3 (affirmative and negative resolution procedure) apply to the instrument as they apply to an instrument containing regulations made by a single national authority.
- 8 (1) If in accordance with paragraph 3 (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) a devolved legislature resolves that an instrument containing regulations made by a national authority be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (2) This is without prejudice to the validity of anything previously done under the instrument or to the making of a new instrument.
- (3) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution.

## PART 3

### POWER TO MAKE PROVISION BY ORDER IN COUNCIL

- 9 (1) Her Majesty may by Order in Council make provision for trading schemes.
- (2) That power may only be exercised to make an Order in Council—
- (a) that extends or applies both to Scotland and to one or more of England, Wales and Northern Ireland, or
  - (b) that extends to Scotland only and contains both provision within the legislative competence of the Scottish Parliament and provision outside that competence.
- (3) The provision that may be made by an Order in Council under this paragraph includes any provision that may be made by a national authority by regulations under this Part of this Act.
- 10 No recommendation is to be made to Her Majesty in Council to make an Order in Council under paragraph 9 unless the requirements of section 48(1) and (2) as to advice and consultation have been complied with.

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- 11 (1) This paragraph applies to an Order in Council under paragraph 9 containing any provision that, were it to be made by regulations under this Part of this Act, would be subject to affirmative resolution procedure.
- (2) No recommendation is to be made to Her Majesty in Council to make an Order in Council to which this paragraph applies unless—
- (a) in the case of an Order in Council containing provision that may be made by the Secretary of State by regulations under this Part of this Act, a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament, and
  - (b) in the case of an Order in Council containing provision that may be made by a national authority other than the Secretary of State by regulations under this Part of this Act, a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the relevant devolved legislature.
- 12 (1) This paragraph applies to an Order in Council under paragraph 9 other than one to which paragraph 11 applies.
- (2) An Order in Council to which this paragraph applies containing provision that may be made by the Secretary of State by regulations under this Part of this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An Order in Council to which this paragraph applies containing provision that may be made by the Scottish Ministers by regulations under this Part of this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An Order in Council to which this paragraph applies containing provision that may be made by the Welsh Ministers by regulations under this Part of this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) An Order in Council to which this paragraph applies containing provision that may be made by a Northern Ireland department by regulations under this Part of this Act is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act.
- 13 (1) If in accordance with paragraph 12—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an Order in Council be annulled, or
  - (b) a devolved legislature resolves that an Order in Council be annulled,
- nothing further is to be done under the Order in Council after the date of the resolution and Her Majesty may by Order in Council revoke it.
- (2) This is without prejudice to the validity of anything previously done under the Order in Council or to the making of a new Order in Council.
- (3) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution.

## SCHEDULE 4

Section 50

### TRADING SCHEMES: POWERS TO REQUIRE INFORMATION

#### *Introductory*

- 1 (1) The powers conferred by this Schedule are exercisable by the following authorities—
- (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the relevant Northern Ireland department;
  - (d) the Welsh Ministers;
  - (e) the Environment Agency;
  - (f) the Scottish Environment Protection Agency.
- (2) References in this Schedule to an “environmental authority” are to any of those authorities.

#### *Information from electricity suppliers and distributors*

- 2 (1) An environmental authority may, for the purposes of enabling a trading scheme to be established, by notice require an electricity supplier or electricity distributor to provide any of the following information—
- (a) information about the electricity meters and metering systems for which the supplier or distributor is responsible, including (in particular) their locations and any identifying features;
  - (b) information about the persons to whom electricity measured by those meters or systems is supplied or who purchase such electricity;
  - (c) information about the consumption by those persons of that electricity;
  - (d) any other information that the environmental authority considers necessary for identifying the potential participants in the scheme.
- (2) An “electricity supplier”—
- (a) in relation to England and Wales and Scotland means an authorised supplier within the meaning of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act);
  - (b) in relation to Northern Ireland means—
    - (i) an electricity supplier within the meaning of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231) (N.I. 1) (see Article 3 of that Order), or
    - (ii) a person who may supply electricity to premises without a licence by virtue of an exemption under Article 9 of that Order.
- (3) An “electricity distributor”—
- (a) in relation to England and Wales and Scotland means an authorised distributor within the meaning of the Electricity Act 1989 (see section 64(1) of that Act);
  - (b) in relation to Northern Ireland means an electricity distributor within the meaning of the Electricity (Northern Ireland) Order 1992 (see Article 3 of that Order).

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- (4) References in this Schedule to an electricity supplier or electricity distributor include an agent of such a supplier or distributor.

*Information from potential participants in a trading scheme*

- 3 (1) An environmental authority may, for the purposes of enabling a trading scheme to be established, by notice require a potential participant in the scheme to provide any of the following information—
- (a) information about whether the criteria specified in the notice are met by the potential participant, either alone or together with any other person or persons;
  - (b) information identifying any potential co-participant;
  - (c) contact details for the potential participant and any potential co-participant;
  - (d) information about the meters that measure electricity supplied to or purchased by the potential participant or any potential co-participant;
  - (e) information about the consumption of electricity by the potential participant and any potential co-participant;
  - (f) information about any climate change agreement (within the meaning of Schedule 6 to the Finance Act 2000 (c. 17)) entered into by or on behalf of the potential participant or any potential co-participant.
- (2) A “potential participant”, in relation to a trading scheme, means a person who the environmental authority considers—
- (a) will or may be a participant in the scheme, or
  - (b) will or may fall to be treated together with any other person or persons (a “potential co-participant”) as such a participant.

*Requirements for a valid notice*

- 4 (1) A notice under this Schedule must comply with the following requirements.
- (2) The notice must—
- (a) be in writing,
  - (b) specify the information to be provided,
  - (c) specify the name and address of the person to whom the information is to be provided,
  - (d) specify the date by which the information is to be provided, and
  - (e) explain the consequences of failure to comply with the notice.
- (3) An environmental authority must not give a notice requiring information from a person unless—
- (a) the authority has previously sent the person a request in writing for the information, and
  - (b) the person has failed to provide the information within the period of 28 days beginning with the day on which the request was sent.

*Failure to comply with notice etc an offence*

- 5 (1) A person who—



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- (a) fails without reasonable excuse to comply with a notice under this Schedule, or
  - (b) provides information in response to such a notice that the person knows or suspects to be false or misleading,
- commits an offence.
- (2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### *Disclosure of information*

- 6 (1) This paragraph applies to information obtained by an environmental authority (whether or not pursuant to a notice under this Schedule) from—
- (a) an electricity supplier or electricity distributor, or
  - (b) a potential participant,
- for the purposes of enabling a trading scheme to be established.
- (2) The information may be disclosed for the purposes of or in connection with the establishment, operation or enforcement of a trading scheme—
- (a) by an environmental authority to another environmental authority or the administrator of the scheme, or
  - (b) by the administrator of the scheme to any other administrator of the scheme or an environmental authority.
- (3) This does not affect any other right to disclose information within sub-paragraph (1) apart from this paragraph.

## SCHEDULE 5

Section 71

### WASTE REDUCTION SCHEMES

#### PART 1

##### MAIN PROVISIONS

- 1 After section 60 of the Environmental Protection Act 1990 (c. 43) insert—

*“Waste reduction schemes*

#### **60A Waste reduction schemes**

A waste collection authority whose area is in England may make a waste reduction scheme in accordance with Schedule 2AA to this Act.”

- 2 After Schedule 2A to that Act insert—

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“SCHEDULE  
2AA

WASTE REDUCTION SCHEMES

**Introductory**

- 1 (1) The purpose of a waste reduction scheme is to provide a financial incentive—
  - (a) to produce less domestic waste, and
  - (b) to recycle more of what is produced,and accordingly to reduce the amount of residual domestic waste.
- (2) A waste reduction scheme—
  - (a) may cover the whole or any part of the area of a waste collection authority, and
  - (b) may apply to all domestic premises, to domestic premises other than those of a specified description or to specified descriptions of domestic premises.

**Conditions for making waste reduction scheme**

- 2 (1) A waste collection authority may make a waste reduction scheme only if—
  - (a) a good recycling service is available to the occupiers of premises to which the scheme applies,
  - (b) the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and
  - (c) the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit or disposal of waste.
- (2) In sub-paragraph (1)(a) above—
  - (a) a “recycling service” means arrangements for the collection of recyclable domestic waste from premises separately from other waste; and
  - (b) a “good” recycling service means a recycling service that meets the standards specified for the purposes of this definition in guidance issued by the Secretary of State.
- (3) The Secretary of State may by order amend sub-paragraphs (1) and (2) above.

**Incentive under waste reduction scheme**

- 3 (1) A waste reduction scheme must provide for a financial incentive that the authority considers will be effective to achieve the purpose of the scheme.
- (2) The scheme may provide for the incentive to be provided—
  - (a) by means of rebates from council tax or by other payments, or

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(b) by means of charges under paragraph 4,  
or by any combination of those means.

### **Charges in respect of residual domestic waste**

- 4 (1) A waste reduction scheme may include provision for charging by reference to—
- (a) the amount of residual domestic waste collected from premises,
  - (b) the size of receptacles used for the purposes of the collection of residual domestic waste from premises,
  - (c) the number of receptacles used for such purposes, or
  - (d) the frequency with which residual domestic waste is collected from premises,
- or by reference to any combination of those factors.
- (2) The scheme may, in particular, make provision for occupiers of premises—
- (a) to be required (by notice under section 46) to place residual domestic waste for collection in receptacles of a specified kind,
  - (b) to be required (by such notice) to place such waste in receptacles that are identified by such means as may be specified, or
  - (c) to be required to do both,
- and for a charge to be made by the authority in respect of the receptacles, the means of identifying them or both.
- (3) A charge under this paragraph in respect of a receptacle is in addition to any charge under section 46 in respect of the cost of providing the receptacle.
- (4) The amount of any charge under this paragraph need not be related to the authority's costs.
- (5) The scheme may make provision as to the person or persons by whom any charge is payable.
- (6) The scheme may—
- (a) require any charge to be paid in advance on the basis of an estimate of the amount that is likely to be payable in respect of any premises; or
  - (b) require payments in respect of any charge to be made on account or by instalments.

### **Charging: supplementary provisions**

- 5 (1) The Secretary of State may by order set a limit on the amount of the charge under paragraph 4 that may be imposed in respect of any premises in any financial year.
- (2) A failure to pay a charge under paragraph 4 does not affect the authority's duty under section 45(1)(a) (general duty to arrange for collection of household waste).

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- (3) Section 45(3) (general prohibition on charging for collection of household waste) has effect subject to paragraph 4.

#### **Requirement of revenue neutrality**

- 6 (1) From year to year, and taking one year with another, the aggregate amount of charges under a waste reduction scheme must not exceed the aggregate amount of the rebates or other payments under the scheme.
- (2) The Secretary of State may by order amend sub-paragraph (1) above.
- (3) Any such order may make any amendments of paragraph 4(4) that appear to the Secretary of State to be necessary or expedient in consequence of, or in connection with, the amendment of sub-paragraph (1) above.

#### **Procedure for putting scheme in place**

- 7 (1) The authority must comply with the following requirements after making a waste reduction scheme and before it is brought into operation.
- (2) The authority must publish the scheme in such manner as it considers appropriate.
- (3) The authority must send to the occupier of any premises to which the scheme applies a notice setting out—
- (a) the requirements applicable under the scheme in relation to the collection of domestic waste from premises to which the scheme applies;
  - (b) any rebates or other payments available under the scheme and the manner in which they are to be made; and
  - (c) any charges provided for by the scheme and the manner in which they are to be collected.

#### **Appeals**

- 8 A waste reduction scheme must contain provision enabling a person to appeal against any decision affecting, directly or indirectly, that person's entitlement to a rebate or other payment, or liability to pay a charge, under the scheme.

#### **Separate account to be kept**

- 9 (1) A waste collection authority that operates a waste reduction scheme must keep a separate account of—
- (a) any rebates or other payments under the scheme, and
  - (b) any charges received by it under the scheme.
- (2) Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it.

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- (3) A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by sub-paragraph (2) above commits an offence.
- (4) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Contributions by waste disposal authority**

- 10 (1) Where a waste collection authority that operates a waste reduction scheme is not also the waste disposal authority, the waste disposal authority may pay to the collection authority contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority attributable to the scheme.
- (2) The collection authority must supply to the disposal authority such information as the disposal authority may reasonably require for the purpose of determining amounts under this paragraph.

#### **Power to make provision as to administration etc**

- 11 (1) The Secretary of State may by regulations make provision as to—
  - (a) the manner in which the amount of any rebate or other payment is to be determined, and any rebate or payment is to be given, and
  - (b) the manner in which—
    - (i) the amount of any charge is to be determined, and
    - (ii) any charge is to be collected or enforced.
- (2) The regulations may in particular provide—
  - (a) for appeals against determinations or any failure to make a determination,
  - (b) for the appointment of persons or bodies to hear appeals, and
  - (c) for charges to be recoverable, if a county court so orders, as if they were payable under a county court order.
- (3) The regulations may include provision—
  - (a) for integrating the administration of the scheme with the administration of council tax, and
  - (b) for that purpose modifying, to such extent as appears to the Secretary of State to be necessary or expedient, any of the enactments relating to council tax.

In paragraph (b) “modifying” includes making additions, amendments or omissions.

- (4) The regulations may in particular provide—
  - (a) for including material relating to the scheme in the notice containing the council tax demand,
  - (b) for applying to questions arising under the scheme the procedure for appeals about liability to council tax, and

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- (c) for applying to any liability under the scheme the procedures for the enforcement of liability for council tax.

### **Use of information obtained for council tax purposes**

- 12 An authority may use for the purpose of administering a waste reduction scheme information it has obtained for the purpose of carrying out its functions under the enactments relating to council tax.

### **Amendment or revocation of waste reduction scheme**

- 13 (1) An authority that has made a waste reduction scheme may amend or revoke the scheme.
- (2) After amending a scheme and before bringing the amendment into operation, the authority must—
- (a) publish the amended scheme in such manner as it thinks appropriate, and
  - (b) if the amendment affects any of the matters previously notified to occupiers, send to the occupier of any premises to which the scheme applies a notice setting out the effect of the amendment.
- (3) The amendment or revocation of a scheme does not affect any entitlement or liability under the scheme in respect of a period before the amendment or revocation takes effect.
- (4) The revocation of a scheme does not affect the duty of the authority to comply with paragraph 6(1).

### **Guidance**

- 14 (1) The Secretary of State may issue guidance to waste collection authorities and waste disposal authorities as respects the exercise of their functions under this Schedule.
- (2) Any such guidance issued—
- (a) must be published in such manner as the Secretary of State considers appropriate, and
  - (b) may be amended or replaced by further guidance, or revoked.
- (3) In exercising their functions under this Schedule waste collection authorities and waste disposal authorities must have regard to any guidance in force under this paragraph.

### **Interpretation**

- 15 (1) In this Schedule—
- “domestic premises” means—
- (a) a building or self-contained part of a building which is used wholly for the purposes of living accommodation,
  - (b) a caravan (as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960 (c. 62)) that usually

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and for the time being is situated on a caravan site (within the meaning of that Act), or

- (c) a moored vessel used wholly for the purposes of living accommodation;

“domestic waste” means household waste from domestic premises;

“enactment” includes an enactment contained in subordinate legislation;

“recyclable waste” means waste that is capable of being recycled;

“residual domestic waste” means domestic waste that is not—

- (a) waste meeting the conditions for collection by the authority as recyclable waste, or

- (b) waste for which a charge may be made by virtue of regulations under section 45(3) (power to charge for collection of household waste in prescribed cases);

“specified” means specified in the waste reduction scheme.

- (2) The Secretary of State may by order amend the definition of “domestic premises” in sub-paragraph (1).

- (3) References in this Schedule to recycling include re-using and composting.

### **Orders and regulations**

- 16 (1) An order under paragraph 2(3), 6(2) or 15(2) is subject to affirmative resolution procedure.
- (2) Section 161(3) (negative resolution procedure: orders) applies in relation to an order under paragraph 5(1), subject as follows.
- (3) An order under that paragraph is subject to affirmative resolution procedure if—
- (a) it is the first order to be made under that paragraph, or
- (b) it increases the limit for the time being set by an order under that paragraph by more than is necessary to reflect changes in the value of money since that limit was set.
- (4) Section 161(2) (negative resolution procedure: regulations) applies in relation to regulations under paragraph 11, subject as follows.
- (5) Regulations under that paragraph are subject to affirmative resolution procedure if they modify an enactment contained in an Act of Parliament.
- (6) Where an order or regulations are subject to “affirmative resolution procedure” the Secretary of State must not make the order or regulations unless a draft of the statutory instrument containing them has been laid before and approved by resolution of each House of Parliament.”.

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## PART 2

### CONSEQUENTIAL AMENDMENTS

- 3 (1) Section 46 of the Environmental Protection Act 1990 (c. 43) (receptacles for household waste) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Where—
- (a) subsection (1) applies to a waste collection authority, and
- (b) a waste reduction scheme under Schedule 2AA to this Act is in operation in the authority’s area,
- the authority may require the occupier to place the waste for collection in receptacles identified by such means as may be specified.
- (1B) A requirement under subsection (1A)—
- (a) must be imposed by notice served on the occupier;
- (b) may be imposed instead of, or in addition to, any requirement imposed on the occupier under subsection (1).”.
- (3) In subsection (6) (penalties for failure to comply with requirements under subsection (1) etc) after “subsection (1),” insert “(1A),”.
- (4) In subsection (10) (interpretation), in the definition of “specified”, after “subsection (1)” insert “or (1A)”.
- 4 (1) Section 161 of that Act (regulations, orders and directions) is amended as follows.
- (2) After subsection (2) (negative resolution procedure: regulations) insert—
- “(2ZA) Subsection (2) does not apply to a statutory instrument containing regulations under paragraph 11 of Schedule 2AA to this Act to which paragraph 16(5) of that Schedule applies.”
- (3) In subsection (4) (instruments not subject to negative resolution procedure), after paragraph (a) insert—
- “(aa) which contains—
- (i) an order under paragraph 2(3), 6(2) or 15(2) of Schedule 2AA to this Act, or
- (ii) an order under paragraph 5(1) of that Schedule to which paragraph 16(3) of that Schedule applies, or”.



## SCHEDULE 6

Section 77

### CHARGES FOR SINGLE USE CARRIER BAGS

#### PART 1

##### POWERS TO MAKE REGULATIONS ABOUT CHARGES

###### *General power*

- 1 The relevant national authority may make provision by regulations about charging by sellers of goods for the supply of single use carrier bags.

###### *Requirement to charge*

- 2 The regulations may make provision requiring sellers of goods to charge for single use carrier bags supplied—
- (a) at the place where the goods are sold, for the purpose of enabling the goods to be taken away, or
  - (b) for the purpose of enabling the goods to be delivered.

###### *Sellers of goods*

- 3 (1) “Seller”, in relation to goods, has the meaning given by the regulations which may define that term by reference (in particular) to—
- (a) a person’s involvement in selling the goods,
  - (b) a person’s interest in the goods, or
  - (c) a person’s interest in the place at or from which the goods are sold, or any combination of those factors.
- (2) The regulations may make provision for regulations under this Schedule to apply—
- (a) to all sellers of goods,
  - (b) to sellers of goods named in the regulations,
  - (c) to sellers of goods identified by reference to specified factors, or
  - (d) to sellers of goods within paragraph (b) and sellers of goods within paragraph (c).
- (3) The specified factors may include—
- (a) the place or places at or from which a seller supplies goods;
  - (b) the type of goods that a seller supplies;
  - (c) the value of goods that a seller supplies;
  - (d) a seller’s turnover or any part of that turnover.
- (4) In this Schedule “specified” means specified in regulations under this Schedule.

###### *Amount of charge*

- 4 The regulations may specify the minimum amount that a seller must charge for each single use carrier bag, or provide for that amount to be determined in accordance with the regulations.

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### *Single use carrier bags*

- 5 “Single use carrier bag” has the meaning given by the regulations, which may define that term by reference (in particular) to—
- (a) a bag’s size, thickness, construction, composition or other characteristics, or
  - (b) its intended use,
- or any combination of those factors.

### *Administration*

- 6 (1) The regulations may appoint a person (an “administrator”) to administer provision made by regulations under this Schedule.
- (2) More than one person may be appointed as administrator.
- (3) The regulations may confer or impose powers or duties on an administrator and may (in particular) do so—
- (a) by making modifications to any enactment applying to the administrator, or
  - (b) by providing for any such enactment to apply, with or without modifications, for the purposes of regulations under this Schedule.
- (4) References in this Schedule to an administrator include a person appointed by an administrator.

### *Record-keeping and publication of records*

- 7 (1) The regulations may require records to be kept relating to charges made for single use carrier bags.
- (2) The regulations may require—
- (a) the records, or such other information as may be specified, to be published at such times and in such manner as may be specified;
  - (b) the records, or such other information as may be specified, to be supplied on request and in such manner as may be specified to—
    - (i) the relevant national authority,
    - (ii) an administrator, or
    - (iii) members of the public.
- (3) The regulations may (in particular) require the publication or supply of records or information relating to any of the following—
- (a) the amount received by a seller by way of charges for single use carrier bags;
  - (b) the seller’s gross or net proceeds of the charge;
  - (c) the uses to which the net proceeds of the charge have been put.
- (4) In this paragraph—
- “gross proceeds of the charge” means the amount received by the seller by way of charges for single use carrier bags;
  - “net proceeds of the charge” means the seller’s gross proceeds of the charge reduced by such amounts as may be specified.

### *Enforcement*

- 8 (1) The regulations may confer or impose powers or duties on an administrator to enforce provision made by regulations under this Schedule.
- (2) The regulations may (in particular) confer powers on an administrator to—
- (a) require the production of documents or the provision of information, or
  - (b) question a seller or officers or employees of a seller.
- (3) Regulations under sub-paragraph (2) must contain provision for ensuring that the power in question is exercised by a person only where the person reasonably believes there has been a failure to comply with a requirement of regulations under this Schedule.

## **PART 2**

### CIVIL SANCTIONS

#### *Civil sanctions*

- 9 (1) The relevant national authority may make provision by regulations about civil sanctions for breaches of regulations under this Schedule.
- (2) For the purposes of this Schedule a person breaches regulations under this Schedule if, in such circumstances as may be specified, the person—
- (a) fails to comply with a requirement made by or under the regulations, or
  - (b) obstructs or fails to assist an administrator.
- (3) In this Schedule “civil sanction” means—
- (a) a fixed monetary penalty (see paragraph 10), or
  - (b) a discretionary requirement (see paragraph 12).

#### *Fixed monetary penalties*

- 10 (1) The regulations may make provision conferring on an administrator the power by notice to impose a fixed monetary penalty on a person who breaches regulations under this Schedule.
- (2) The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “fixed monetary penalty” is a requirement to pay to an administrator a penalty of an amount specified in or determined in accordance with the regulations.
- (4) The regulations may not provide for the imposition of a fixed monetary penalty in excess of £5,000.

#### *Fixed monetary penalties: procedure*

- 11 (1) Provision under paragraph 10 must secure that—

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- (a) where an administrator proposes to impose a fixed monetary penalty on a person, the administrator must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),
  - (b) the notice of intent also offers the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the administrator in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the administrator must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the administrator decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with sub-paragraph (4), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the effect of payment of the sum referred to in sub-paragraph (1)(b),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the administrator may not impose the fixed monetary penalty,
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
  - (f) the period within which representations and objections may be made, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (3) Provision pursuant to sub-paragraph (1)(c)(ii) must include provision for circumstances in which the administrator may not decide to impose a fixed monetary penalty.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the administrator include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.

### *Discretionary requirements*

- 12 (1) The regulations may make provision conferring on an administrator the power by notice to impose one or more discretionary requirements on a person who breaches regulations under this Schedule.
- (2) The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “discretionary requirement” means—
- (a) a requirement to pay a monetary penalty to an administrator of such amount as the administrator may determine, or
  - (b) a requirement to take such steps as an administrator may specify, within such period as the administrator may specify, to secure that the breach does not continue or recur.
- (4) In this Schedule—
- “variable monetary penalty” means a requirement referred to in sub-paragraph (3)(a);
  - “non-monetary discretionary requirement” means a requirement referred to in sub-paragraph (3)(b).
- (5) The regulations must, in relation to each kind of breach of regulations under this Schedule for which a variable monetary penalty may be imposed—
- (a) specify the maximum penalty that may be imposed for a breach of that kind, or
  - (b) provide for that maximum to be determined in accordance with the regulations.
- (6) The regulations may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.

### *Discretionary requirements: procedure*

- 13 (1) Provision under paragraph 12 must secure that—
- (a) where an administrator proposes to impose a discretionary requirement on a person, the administrator must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),
  - (b) that person may make written representations and objections to the administrator in relation to the proposed imposition of the discretionary requirement,
  - (c) after the end of the period for making such representations and objections, the administrator must decide whether to—
    - (i) impose the discretionary requirement, with or without modifications, or
    - (ii) impose any other discretionary requirement that the administrator has power to impose under paragraph 12,
  - (d) where the administrator decides to impose a discretionary requirement, the notice imposing it (the “final notice”) complies with sub-paragraph (4), and
  - (e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.

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- (2) To comply with this sub-paragraph the notice of intent must include information as to—
  - (a) the grounds for the proposal to impose the discretionary requirement,
  - (b) the right to make representations and objections,
  - (c) the circumstances in which the administrator may not impose the discretionary requirement,
  - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.
- (3) Provision pursuant to sub-paragraph (1)(c) must include provision for circumstances in which the administrator may not decide to impose a fixed monetary penalty.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to—
  - (a) the grounds for imposing the discretionary requirement,
  - (b) where the discretionary requirement is a variable monetary penalty—
    - (i) how payment may be made,
    - (ii) the period within which payment must be made, and
    - (iii) any early payment discounts or late payment penalties,
  - (c) rights of appeal, and
  - (d) the consequences of non-compliance.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the administrator include the following—
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
  - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason.

*Discretionary requirements: enforcement*

- 14 (1) Provision under paragraph 12 may include provision for a person to pay a monetary penalty (a “non-compliance penalty”) to an administrator if the person fails to comply with a non-monetary discretionary requirement imposed on the person.
- (2) Provision under sub-paragraph (1) may—
  - (a) specify the amount of the non-compliance penalty or provide for that amount to be determined in accordance with the regulations, or
  - (b) provide for the amount to be determined by the administrator or in some other way.
- (3) If the regulations make provision within sub-paragraph (2)(b), they must, in relation to each kind of failure for which a non-compliance penalty may be imposed—
  - (a) specify the maximum penalty that may be imposed for a failure of that kind, or

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- (b) provide for that maximum to be determined in accordance with the regulations.
- (4) Provision under sub-paragraph (1) must secure that—
  - (a) the non-compliance penalty is imposed by notice served by the administrator, and
  - (b) the person on whom it is imposed may appeal against that notice.
- (5) Provision pursuant to paragraph (b) of sub-paragraph (4) must secure that the grounds on which a person may appeal against a notice referred to in that sub-paragraph include the following—
  - (a) that the decision to serve the notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by the administrator, that the amount is unreasonable).

#### *Combination of sanctions*

- 15 (1) Provision may not be made under paragraphs 10 and 12 conferring powers on an administrator in relation to the same kind of breach of regulations under this Schedule unless it complies with the following requirements.
- (2) The provision must secure that the administrator may not serve a notice of intent referred to in paragraph 11(1)(a) on a person in relation to a breach where a discretionary requirement has been imposed on that person in relation to the same breach.
  - (3) Such provision must secure that the administrator may not serve a notice of intent referred to in paragraph 13(1)(a) on a person in relation to a breach where—
    - (a) a fixed monetary penalty has been imposed on that person in relation to the same breach, or
    - (b) the person has discharged liability to a fixed monetary penalty in relation to that breach pursuant to paragraph 11(1)(b).

#### *Monetary penalties*

- 16 (1) If the regulations confer power on an administrator to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 14(1), they may include provision—
  - (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
  - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include—
  - (a) provision for the administrator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
  - (b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

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### *Costs recovery*

- 17 (1) Provision under paragraph 12 may include provision for an administrator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the administrator in relation to the imposition of the discretionary requirement up to the time of its imposition.
- (2) In sub-paragraph (1), the reference to costs includes in particular—
- (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice).
- (3) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served—
- (a) the notice specifies the amount required to be paid;
  - (b) the administrator may be required to provide a detailed breakdown of that amount;
  - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
  - (d) the person required to pay costs may appeal against—
    - (i) the decision of the administrator to impose the requirement to pay costs;
    - (ii) the decision of the administrator as to the amount of those costs.
- (4) Provision under this paragraph may include the provision referred to in paragraph 16(1)(b) and (c) and (2).
- (5) Provision under this paragraph must secure that the administrator is required to publish guidance about how the administrator will exercise the power conferred by the provision.

### *Appeals*

- 18 (1) The regulations may not provide for the making of an appeal other than to—
- (a) the First-tier Tribunal, or
  - (b) another tribunal created under an enactment.
- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) If the regulations make provision for an appeal in relation to the imposition of any requirement or service of any notice, they may include—
- (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
- (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the administrator could take in relation to the act or omission giving rise to the requirement or notice;



- (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the administrator;
- (e) to award costs.

*Publicity for imposition of civil sanctions*

- 19 (1) The regulations may make provision enabling an administrator to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with regulations under this Schedule.
- (2) A “publicity notice” is a notice requiring the person to publicise—
- (a) the fact that the civil sanction has been imposed, and
  - (b) such other information as may be specified in the regulations, in such manner as may be specified in the notice.
- (3) The regulations may provide for a publicity notice to—
- (a) specify the time for compliance with the notice, and
  - (b) require the person to whom it is given to supply an administrator with evidence of compliance within such time as may be specified in the notice.
- (4) The regulations may provide that, if a person fails to comply with a publicity notice, an administrator may—
- (a) publicise the information required to be publicised by the notice, and
  - (b) recover the costs of doing so from that person.

*Persons liable to civil sanctions*

- 20 The regulations may make provision about the persons liable to civil sanctions under regulations under this Schedule and may (in particular) provide for—
- (a) the officers of a body corporate to be so liable as well the body corporate itself, and
  - (b) for the partners of a partnership to be liable as well as the partnership itself, in such circumstances as may be specified.

*Guidance as to use of civil sanctions*

- 21 (1) Where power is conferred on an administrator by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must secure that—
- (a) the administrator must publish guidance about the administrator’s use of the civil sanction,
  - (b) the guidance must contain the relevant information,
  - (c) the administrator must revise the guidance where appropriate,
  - (d) the administrator must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
  - (e) the administrator must have regard to the guidance or revised guidance in exercising the administrator’s functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,

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- (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty,
  - (d) how liability for the penalty may be discharged and the effect of discharge, and
  - (e) rights to make representations and objections and rights of appeal.
- (3) In the case of guidance relating to a discretionary requirement, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the requirement is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the administrator in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
  - (d) rights to make representations and objections and rights of appeal.

#### *Publication of enforcement action*

- 22 (1) Where power is conferred on an administrator by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must, subject to this paragraph, secure that the administrator must from time to time publish reports specifying—
- (a) the cases in which the civil sanction has been imposed, and
  - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 11(1)(b).
- (2) In sub-paragraph (1)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.
- (3) The provision conferring the power need not secure the result in sub-paragraph (1) in cases where the relevant authority considers that it would be inappropriate to do so.

#### *Compliance with regulatory principles*

- 23 A relevant national authority may not make any provision conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule unless the authority is satisfied that the administrator will act in accordance with the principles that—
- (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent;
  - (b) regulatory activities should be targeted only at cases in which action is needed.

#### *Review*

- 24 (1) A relevant national authority must in accordance with this paragraph review the operation of any provision made by the authority conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule.

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- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.
- (3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.
- (4) In conducting a review under this paragraph the relevant national authority must consult such persons as the authority considers appropriate.
- (5) The relevant national authority must publish the results of a review under this section.
- (6) The relevant national authority must lay a copy of a review under this paragraph before—
  - (a) Parliament (where the relevant national authority is the Secretary of State);
  - (b) the National Assembly for Wales (where the relevant national authority is the Welsh Ministers);
  - (c) the Northern Ireland Assembly (where the relevant national authority is the Department of the Environment in Northern Ireland).

### *Suspension*

- 25
- (1) Where provision has been made by a relevant national authority conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule, the authority may direct the administrator—
    - (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in paragraph 11(1)(a) in relation to a breach of that kind, and
    - (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in paragraph 13(1)(a) in relation to a breach of that kind.
  - (2) The relevant national authority may only give a direction under sub-paragraph (1) in relation to a breach of regulations under this Schedule if it is satisfied that the administrator has failed on more than one occasion—
    - (a) to comply with any duty imposed on it under or by virtue of this Schedule in relation to a breach of that kind,
    - (b) to act in accordance with the guidance it has published in relation to a breach of that kind (in particular, the guidance published under paragraph 21), or
    - (c) to act in accordance with the principles referred to in paragraph 23 or with other principles of best practice in relation to the enforcement of a breach of that kind.
  - (3) The relevant national authority may by direction revoke a direction given by it under sub-paragraph (1) if satisfied that the administrator has taken the appropriate steps to remedy the failure to which that direction related.
  - (4) Before giving a direction under sub-paragraph (1) or (3) the relevant national authority must consult—
    - (a) the administrator, and
    - (b) such other persons as the authority considers appropriate.
  - (5) Where the relevant national authority gives a direction under this section, the authority must lay a copy before—

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- (a) Parliament (where the relevant national authority is the Secretary of State);
  - (b) the National Assembly for Wales (where the relevant national authority is the Welsh Ministers);
  - (c) the Northern Ireland Assembly (where the relevant national authority is the Department of the Environment in Northern Ireland).
- (6) Where the relevant national authority gives a direction under this section, the administrator must—
- (a) publish the direction in such manner as the authority thinks fit, and
  - (b) take such other steps as the administrator thinks fit or the authority may require to bring the direction to the attention of other persons likely to be affected by it.

*Payment of penalties into Consolidated Fund*

- 26 (1) Where pursuant to any provision made under this Schedule an administrator receives—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 14,
  - (b) any interest or other financial penalty for late payment of such a penalty, or
  - (c) a sum paid in discharge of liability to a fixed monetary penalty pursuant to paragraph 11(1)(b),
- the administrator must pay it into the relevant Fund.
- (2) In sub-paragraph (1) “relevant Fund” means—
- (a) in a case where the administrator has functions only in relation to Wales, the Welsh Consolidated Fund,
  - (b) in a case where the administrator has functions only in relation to Northern Ireland, the Northern Ireland Consolidated Fund, and
  - (c) in any other case, the Consolidated Fund.

**PART 3**

PROCEDURES APPLYING TO REGULATIONS

*Regulations made by a single authority*

- 27 (1) This paragraph applies in relation to an instrument containing regulations under this Schedule made by a single national authority.
- (2) Where the instrument contains regulations that—
- (a) are to be made by the Secretary of State, and
  - (b) are subject to affirmative resolution procedure,
- the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (3) Where the instrument contains regulations that—
- (a) are to be made by a national authority other than the Secretary of State, and
  - (b) are subject to affirmative resolution procedure,

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the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the relevant devolved legislature.

- (4) An instrument containing regulations made by the Secretary of State that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) An instrument containing regulations made by the Welsh Ministers that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (6) An instrument containing regulations made by the Department of the Environment in Northern Ireland that are subject to negative resolution procedure is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act.
- (7) Any provision that may be made by regulations subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

#### *Regulations made by two or more national authorities*

- 28 (1) This paragraph applies in relation to an instrument containing regulations under this Schedule made or to be made by any two or more of—
- (a) the Secretary of State,
  - (b) the Welsh Ministers, and
  - (c) the Department of the Environment in Northern Ireland.
- (2) If any of the regulations are subject to affirmative resolution procedure, all of them are subject to that procedure.
- (3) Sub-paragraphs (2) to (6) of paragraph 27 apply to the instrument as they apply to an instrument containing regulations made by a single national authority.
- (4) If in accordance with that paragraph—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) a devolved legislature resolves that an instrument containing regulations made by a national authority be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (5) This is without prejudice to the validity of anything previously done under the instrument or to the making of a new instrument.
- (6) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution.

#### *Hybrid instruments*

- 29 If a draft of an instrument containing regulations under this Schedule would, apart from this paragraph, be treated for the purposes of the standing orders of either House

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of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

## SCHEDULE 7

Section 78

### RENEWABLE TRANSPORT FUEL OBLIGATIONS

#### *Introductory*

- 1 Chapter 5 of Part 2 of the Energy Act 2004 (c. 20) (renewable transport fuel obligations) is amended as follows.

#### *The Administrator*

- 2 For section 125 (the Administrator) substitute—

#### **“125 Appointment of the Administrator**

- (1) For the purposes of provision made by or under this Chapter, an RTF order may—
- (a) establish a body corporate, and
  - (b) appoint that body as the Administrator.
- (2) An RTF order may—
- (a) make provision for the appointment of members of the body;
  - (b) make provision in relation to the staffing of the body;
  - (c) make provision in relation to the expenditure of the body;
  - (d) make provision regulating the procedure of the body;
  - (e) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of the body.
- (3) The provision that may be made by an RTF order by virtue of this section includes, in particular, provision conferring discretions on—
- (a) the Secretary of State;
  - (b) the body itself; or
  - (c) members or staff of the body.

#### **125A General functions of the Administrator**

- (1) An RTF order may—
- (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter;
  - (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to the Administrator’s powers and duties; and
  - (c) impose duties on transport fuel suppliers for purposes connected with the Administrator’s powers and duties (including, in particular,

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duties framed by reference to determinations made by the Administrator).

- (2) It is the duty of the Administrator to promote the supply of renewable transport fuel whose production, supply or use—
  - (a) causes or contributes to the reduction of carbon emissions, and
  - (b) contributes to sustainable development or the protection or enhancement of the environment generally.

### **125B Functions of the Administrator: supplementary**

- (1) The powers that may be conferred on the Administrator by virtue of section 125A(1) include, in particular—
  - (a) power to require a transport fuel supplier to provide the Administrator with such information as the Administrator may require for purposes connected with the carrying out of the Administrator's functions;
  - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
  - (c) power to imposes charges of specified amounts on transport fuel suppliers.
- (2) The Secretary of State may give written directions to the Administrator about the exercise of any power conferred on the Administrator by virtue of subsection (1)(a) or (b).
- (3) The power to give directions under subsection (2) includes power to vary or revoke the directions.
- (4) The Administrator must comply with any directions given under that subsection.
- (5) Sums received by the Administrator by virtue of provision within subsection (1)(c)—
  - (a) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund, and
  - (b) otherwise, must be used for the purpose of meeting costs incurred in carrying out the Administrator's functions.
- (6) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

### **125C Transfer of functions to new Administrator**

- (1) The Secretary of State may by order—
  - (a) appoint a person as the Administrator (“the new Administrator”) in place of a person previously so appointed by order under this Chapter (“the old Administrator”), and
  - (b) provide for the transfer of the functions of the old Administrator to the new Administrator.
- (2) Only the following persons may be appointed as the Administrator by order under this section—

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- (a) the Secretary of State;
  - (b) a body or other person established or appointed by or under any enactment to carry out other functions;
  - (c) a body corporate established by the order for appointment as the Administrator.
- (3) An order under this section that establishes a body for appointment as the Administrator may make any provision that may be made by an RTF order by virtue of section 125.
- (4) An order under this section may provide for the transfer of staff of the old Administrator, and of any property, rights or liabilities to which the old Administrator is entitled or subject, to the new Administrator and may, in particular—
  - (a) provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order;
  - (b) provide for the creation of interests in, or rights over, property transferred or retained or for the creation of new rights and liabilities;
  - (c) provide for the order to have effect in spite of anything that would prevent or restrict the transfer of the property, rights or liabilities otherwise than by the order.
- (5) The order may, in particular—
  - (a) provide for anything done by or in relation to the old Administrator to have effect as if done by or in relation to the new Administrator;
  - (b) permit anything (which may include legal proceedings) which is in the process of being done by or in relation to the old Administrator when the transfer takes effect to be continued by or in relation to the new Administrator;
  - (c) provide for a reference to the old Administrator in an instrument or other document to be treated as a reference to the new Administrator;
  - (d) where the old Administrator was established by order under this Chapter, make provision for the dissolution of the old Administrator;
  - (e) make such modifications of any enactment relating to the old Administrator or the new Administrator as the Secretary of State considers appropriate for the purpose of facilitating the transfer.
- (6) An order under this section that provides for the transfer of staff of the old Administrator to the new Administrator must make provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply to the transfer.
- (7) Subject to subsection (8), an order under this section is subject to the negative resolution procedure.
- (8) The power to make an order under this section is subject to the affirmative resolution procedure if the order—
  - (a) contains provision by virtue of subsection (2)(c), or
  - (b) makes any modification of an enactment contained in—
    - (i) an Act of Parliament,



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- (ii) an Act of the Scottish Parliament,
- (iii) a Measure or Act of the National Assembly for Wales, or
- (iv) Northern Ireland legislation.”.

#### *Determination of amounts of transport fuel*

3 In section 126 (determination of amounts of transport fuel), after subsection (4) insert—

- “(5) If an RTF order makes provision for the counting or determination of amounts of transport fuel for the purposes of provision made by or under this Chapter by reference to any document, it may provide for references to the document to have effect as references to it as revised or re-issued from time to time.
- (6) The Secretary of State may give written directions to the Administrator about the exercise of any of the Administrator’s functions in connection with the counting or determination of amounts of transport fuel for the purposes of provision made by or under this Chapter.
- (7) The power to give directions under subsection (6) includes power to vary or revoke the directions.
- (8) The Administrator must comply with any directions given under that subsection.”.

#### *Discharge of obligation by payment*

4 In section 128 (discharge of obligation by payment), for subsections (6) and (7) substitute—

- “(6) Where the Administrator is the Secretary of State—
  - (a) sums received by the Administrator by virtue of this section must be paid into the Consolidated Fund, and
  - (b) an RTF order may make provision for sums to be paid by the Administrator to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.
- (7) Such an order must contain provision ensuring that the total of the sums so paid by the Administrator does not at any time exceed the total of the sums so received by the Administrator up to that time.
- (8) Where the Administrator is a person other than the Secretary of State, an RTF order may—
  - (a) require the Administrator to use, to the specified extent, sums received by the Administrator by virtue of this section for the purpose of meeting costs incurred in carrying out the Administrator’s functions, or
  - (b) require the Administrator to pay, to the specified extent, sums so received to the Secretary of State.
- (9) Sums so received which are not dealt with in accordance with provision made under subsection (8) must be paid by the Administrator to transport

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fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.

- (10) The Secretary of State must pay sums received by the Secretary of State by virtue of provision made under subsection (8)(b) into the Consolidated Fund.”.

#### *Civil penalties*

5 In section 129 (imposition of civil penalties), for subsection (7) substitute—

- “(7) Sums received by the Administrator by virtue of this section—
- (a) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund, and
  - (b) otherwise, must be paid to the Secretary of State, who must pay them into the Consolidated Fund.”.

#### *Disclosure of information*

6 After section 131 insert—

#### **“131A Disclosure of information held by Revenue and Customs**

- (1) This section applies to information held by or on behalf of the Commissioners for Her Majesty’s Revenue and Customs in connection with their functions under or by virtue of the Hydrocarbon Oil Duties Act 1979.
- (2) Such information may be disclosed to—
  - (a) the Administrator, or
  - (b) an authorised person,
 for the purposes of or in connection with the Administrator’s functions.
- (3) In this Chapter “authorised person” means a person who—
  - (a) provides services to, or exercises functions on behalf of, the Administrator, and
  - (b) is authorised by the Administrator to receive information to which this section applies.
- (4) The Administrator may authorise such a person to receive information to which this section applies either generally or for a specific purpose.

#### **131B Further disclosure of information**

- (1) This section applies to information disclosed under section 131A, other than information which is also provided to the Administrator or an authorised person otherwise than under that section.
- (2) Information to which this section applies may not be disclosed—
  - (a) by the Administrator,
  - (b) by an authorised person, or
  - (c) by any other person who obtains it in the course of providing services to, or exercising functions on behalf of, the Administrator,
 except as permitted by the following provisions of this section.

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- (3) Subsection (2) does not apply to a disclosure made—
- (a) by the Administrator to an authorised person,
  - (b) by an authorised person to the Administrator, or
  - (c) by an authorised person to another authorised person,
- for the purposes of, or in connection with, the discharge of the Administrator’s functions.
- (4) Subsection (2) does not apply to a disclosure if it is—
- (a) authorised by an enactment,
  - (b) made in pursuance of an order of a court,
  - (c) made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions,
  - (d) made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions,
  - (e) made with the consent of the Commissioners for Her Majesty’s Revenue and Customs, or
  - (f) made with the consent of each person to whom the information relates.

### **131C Wrongful disclosure**

- (1) A person commits an offence if—
- (a) he discloses information about a person in contravention of section 131B(2), and
  - (b) the person’s identity is specified in the disclosure or can be deduced from it.
- (2) In subsection (1) “information about a person” means revenue and customs information relating to a person within the meaning of section 19(2) of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure).
- (3) It is a defence for a person charged with an offence under this section to prove that he reasonably believed—
- (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both.
- (5) A prosecution for an offence under this section—
- (a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;
  - (b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland.

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- (6) In the application of this section—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or
  - (b) in Northern Ireland,
- the reference in subsection (4)(b) to twelve months is to be read as a reference to six months.”.

### *Interpretation*

- 7 (1) Section 132(1) (interpretation of Chapter 5 of Part 2) is amended as follows.
- (2) For the definition of “Administrator” substitute—
- ““Administrator” means the person for the time being appointed as the Administrator by order under this Chapter;”.
- (3) In the appropriate place insert—
- ““authorised person” has the meaning given by section 131A(3);”;
- ““enactment” includes—
- (a) an enactment contained in subordinate legislation,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
  - (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;”.
- (4) In section 196(1) of the Energy Act 2004 (c. 20) (general interpretation), in the definition of “enactment”, after ““enactment”” insert “(except in Chapter 5 of Part 2)”.

## SCHEDULE 8

Section 79

### CARBON EMISSIONS REDUCTION TARGETS

#### *Gas Act 1986 (c. 44)*

- 1 (1) Section 33BC of the Gas Act 1986 (promotion of reductions in carbon emissions: gas transporters and gas suppliers) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The power to make orders under this section may be exercised so as to impose more than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent.”.
- (3) In subsection (5) (provision that may be made by an order under section 33BC in relation to the obligations it imposes), after paragraph (b) insert—

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- “(ba) requiring the whole or any part of a carbon emissions reductions target to be met by action relating to—
  - (i) persons of a specified description,
  - (ii) specified areas or areas of a specified description, or
  - (iii) persons of a specified description in specified areas or areas of a specified description;”.

- (4) In subsection (13) (interpretation), at the appropriate place insert—

““specified” means specified in the order.”.

### *Electricity Act 1989 (c. 29)*

- 2 In section 6(9) of the Electricity Act 1989 (definition of “electricity distributor” and “electricity supplier”), at the appropriate place insert—

““electricity generator” means any person who is authorised by a generation licence to generate electricity except where that person is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;”.

- 3 (1) Section 41A of that Act (promotion of reductions in carbon emissions: electricity distributors and electricity suppliers) is amended as follows.

- (2) In subsection (1) (power by order to impose obligations on distributors and suppliers to achieve carbon emissions reductions targets)—

- (a) before paragraph (a) insert—

“(za) on each electricity generator (or each electricity generator of a specified description);”, and

- (b) in the closing words, before “distributor” insert “generator.”.

- (3) After that subsection insert—

“(1A) The power to make orders under this section may be exercised so as to impose more than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent.”.

- (4) In subsection (3) (power for order to specify criteria by reference to which the Gas and Electricity Markets Authority is to determine targets), before “electricity distributors” insert “electricity generators.”.

- (5) In subsection (4) (duty of the Secretary of State and the Authority to carry out functions under the section in a way that does not inhibit competition), for the words from “no electricity distributor” to the end of the subsection substitute “—

- (a) no electricity generator is unduly disadvantaged in competing with other electricity generators,
- (b) no electricity distributor is unduly disadvantaged in competing with other electricity distributors, and
- (c) no electricity supplier is unduly disadvantaged in competing with other electricity suppliers.”.

- (6) In subsection (5) (provision that may be made by an order in relation to the obligations it imposes)—

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- (a) in paragraph (a), before “electricity distributors” insert “electricity generators,”,
  - (b) after paragraph (b) insert—
    - “(ba) requiring the whole or any part of a carbon emissions reductions target to be met by action relating to—
      - (i) persons of a specified description,
      - (ii) specified areas or areas of a specified description, or
      - (iii) persons of a specified description in specified areas or areas of a specified description;”,
    - (c) in paragraph (d), before “distributors” insert “generators,” and
    - (d) in paragraph (f), before “distributors” insert “generators,”.
  - (7) In subsection (6) (power for order to authorise the Authority to require the provision of information), before “distributor” insert “generator,”.
  - (8) In subsection (7)(d) (power for order to make provision for transfer of person’s target to another distributor or supplier or to a gas transporter or supplier), before “electricity distributor” insert “electricity generator,”.
  - (9) In subsection (8)(d) (power for order to make different provision in relation to different distributors or suppliers), before “distributors” insert “generators,”.
  - (10) In subsection (11) (duty to consult before making order), before “electricity distributors” insert “electricity generators,”.
  - (11) In subsection (13) (interpretation), at the appropriate place insert—
 

““specified” means specified in the order.”.
  - (12) In the heading, before “electricity distributors” insert “electricity generators,”.
- 4 (1) Section 42AA of that Act (publication of statistical information about performance of suppliers and distributors) is amended as follows.
- (2) In subsection (1) (duty of Gas and Electricity Consumer Council to publish information about performance and consumer complaints)—
    - (a) in paragraph (a), before “electricity suppliers” insert “electricity generators,”, and
    - (b) in paragraph (b), before “suppliers” insert “generators,”.
  - (3) In subsection (2) (definition of “complaints”), before “electricity suppliers” insert “electricity generators,”.
- 5 In section 64(1) of that Act (interpretation etc of Part 1), in the definition of “electricity distributor” and “electricity supplier”, after ““electricity distributor”” insert “, “electricity generator””.

*Utilities Act 2000 (c. 27)*

- 6 (1) Section 103 of the Utilities Act 2000 (overall carbon emissions reduction targets) is amended as follows.

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- (2) In subsection (1)(b) (power by order to specify overall target for the promotion of measures mentioned in section 41A(2) of the 1989 Act), before “distributors” insert “generators.”.
- (3) After subsection (1) insert—
  - “(1A) The power conferred by this section may be exercised so as to specify more than one overall target in relation to the same period or to periods that overlap to any extent.”.
- (4) In subsection (2)(b) (power for order to specify criteria for apportionment of overall target between electricity and gas sectors), before “electricity distributors” insert “electricity generators.”.
- (5) In subsection (4) (duty to consult before making order), before “electricity distributors” insert “electricity generators.”.