

*Status: Point in time view as at 18/04/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009. (See end of Document for details)*

PROSPECTIVE

## SCHEDULE 1

*(introduced by section 25(3))*

### THE SCOTTISH COMMITTEE ON CLIMATE CHANGE

#### *Status*

- 1
- (1) The Committee is a body corporate.
  - (2) The Committee is not to be regarded as a servant or agent of the Crown, nor is it to be regarded as having any status, privilege or immunity of the Crown.
  - (3) The Committee's members and employees are not to be regarded as civil servants.
  - (4) The Committee's property is not to be regarded as property of, or held on behalf of, the Crown.

#### *Membership of the Committee*

- 2
- (1) The Committee is to consist of the following members—
    - (a) a person to chair the Committee (“the Chair”); and
    - (b) not fewer than five and not more than eight other members.
  - (2) The Scottish Ministers may, by order, modify sub-paragraph (1)(b) so as to alter the number of other members of the Committee.
  - (3) Members of the Committee are appointed by the Scottish Ministers.
  - (4) In appointing members to the Committee, the Scottish Ministers must have regard to the desirability of the Committee (taken as a whole) having expertise or experience in the following—
    - (a) business competitiveness;
    - (b) climate change policy at Scottish, UK and international level (in particular the social impact of such policy);
    - (c) climate science and other branches of environmental science;
    - (d) economic analysis and forecasting;
    - (e) emissions trading;
    - (f) energy production and supply;
    - (g) financial investment;
    - (h) technology development and diffusion.

#### *Period, and conditions, of appointment of members*

- 3
- (1) Each member of the Committee is to be appointed for a period not exceeding 5 years.
  - (2) A member holds and vacates office in accordance with the terms and conditions of appointment.

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- (3) A member may resign office as a member of the Committee by giving written notice to the Scottish Ministers.
- (4) On ceasing to be a member, a person is eligible to be reappointed for one further period.

*Persons not eligible for appointment*

- 4 No person may be appointed as a member of the Committee if that person is, or has at any time during the previous year been, a member of—
- (a) the House of Commons;
  - (b) the Scottish Parliament;
  - (c) the European Parliament.

*Removal of members of Committee*

- 5 (1) Subject to sub-paragraph (3), the Chair may, by giving written notice, remove a member from office if the Chair is satisfied that one of the situations set out in sub-paragraph (2) exists.
- (2) Those situations are—
- (a) that the member is insolvent;
  - (b) that the member has been convicted of a criminal offence;
  - (c) that the member has been absent from meetings of the Committee for a period longer than 6 months without the permission of the Chair;
  - (d) that the member is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.
- (3) The Chair may only remove a member from office with the agreement of the Scottish Ministers.
- (4) The Scottish Ministers may, by giving written notice, remove the Chair from office if the Scottish Ministers are satisfied that one of the situations set out in sub-paragraph (2) exists.
- (5) For the purposes of sub-paragraph (2)(a), a member is insolvent when—
- (a) a voluntary arrangement proposed by the member is approved;
  - (b) the member is adjudged bankrupt;
  - (c) the member's estate is sequestrated;
  - (d) the member enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;
  - (e) the member grants a trust deed for creditors.

*Remuneration, allowances and pensions of members*

- 6 (1) The Committee must pay its members such remuneration and allowances as the Scottish Ministers may in each case determine.
- (2) The Committee may, with the agreement of the Scottish Ministers—
- (a) pay (or make arrangements for the payment);
  - (b) make payments towards the provision;

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(c) provide and maintain schemes (whether contributory or not) for the payment, of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a member of the Committee, as the Committee may determine.

(3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

#### *Chief executive and other employees*

- 7
- (1) The Committee is to employ a chief executive.
  - (2) The chief executive is to be appointed by the Committee on such terms and conditions as the Committee may determine.
  - (3) The appointment of the chief executive and the terms and conditions of that appointment are subject to the agreement of the Scottish Ministers.
  - (4) The Committee may appoint other employees on such terms and conditions as the Committee may determine.
  - (5) The Scottish Ministers may give directions to the Committee as regards the appointment of employees under sub-paragraph (4), which may relate in particular to—
    - (a) the number of appointments;
    - (b) the terms and conditions of employment.
  - (6) The Committee must comply with directions given under sub-paragraph (5).
  - (7) The Committee may, with the agreement of the Scottish Ministers—
    - (a) pay (or make arrangements for the payment of);
    - (b) make payments towards the provision of;
    - (c) provide and maintain schemes (whether contributory or not) for the payment of,such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as the Committee may determine.
  - (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

#### *Accounts*

- 8
- (1) The Committee must—
    - (a) keep proper accounts and accounting records;
    - (b) prepare in respect of each financial year a statement of accounts;
    - (c) send the statement of accounts to the Scottish Ministers.
  - (2) The Committee must comply with any directions which the Scottish Ministers gives it in relation to the matters mentioned in sub-paragraph (1).
  - (3) The Scottish Ministers must, as soon as reasonably practicable after receiving the statement of accounts from the Committee—
    - (a) send the statement of accounts to the Auditor General for Scotland for auditing;
    - (b) lay the audited statement before the Scottish Parliament.

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- (4) The Committee must make its audited statement of accounts and its accounting records available so that they may be inspected by any person.
- (5) Those documents are to be made available—
  - (a) at any reasonable time; and
  - (b) without charge.
- (6) In this paragraph and paragraph 9, “financial year” means—
  - (a) the period beginning with the day the Committee is established and ending with 31 March in the following calendar year;
  - (b) each subsequent period of 12 months ending with 31 March.

#### *Reports*

- 9 (1) As soon as practicable after the end of each financial year, the Committee must prepare a report on—
  - (a) the discharge of the Committee's functions during that year;
  - (b) the actions that the Committee proposes to take during the following year in pursuance of its functions.
- (2) The Committee must—
  - (a) send a copy of the report to the Scottish Ministers; and
  - (b) publish the report.
- (3) The Committee must prepare and publish the report in accordance with any directions which the Scottish Ministers may give.
- (4) The Scottish Ministers must as soon as reasonably practicable after receiving the report from the Committee, lay a copy of it before the Scottish Parliament.
- (5) The Committee may publish such other reports on matters relevant to its functions as it considers appropriate.

#### *Sub-committees*

- 10 (1) The Committee may establish sub-committees for any purposes relating to its functions.
- (2) A sub-committee must comply with any directions given to it by the Committee.

#### *Proceedings*

- 11 (1) Subject to the remaining provisions of this paragraph, the Committee may regulate—
  - (a) its own procedure (including any quorum);
  - (b) the procedure of any sub-committee (including any quorum).
- (2) The Chair must, if present, chair meetings of the Committee or any sub-committee of the Committee.
- (3) If the Chair is not available to be present at a meeting of the Committee (or any sub-committee of the Committee), the Chair is to appoint another member to chair the meeting.

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- (4) The Chair has a casting vote and any person appointed by the Chair under sub-paragraph (3) has a casting vote for the purposes of that appointment.
- (5) The validity of any proceedings of the Committee (or any of its sub-committees) is not affected by a vacancy in membership nor by any defect in the appointment of a member.

#### *Delegation of functions*

- 12 (1) The Committee may, subject to sub-paragraph (2), authorise—
- (a) any of its members;
  - (b) any of its sub-committees;
  - (c) its chief executive;
  - (d) any other employee,
- to exercise such of its functions (and to such extent) as it may determine.
- (2) The Committee may not authorise the exercise of the following functions under sub-paragraph (1)—
- (a) the approval of annual reports and accounts;
  - (b) the approval of any budget or other financial plan.
- (3) Sub-paragraph (1) does not affect the responsibility of the Committee for the exercise of its functions.

#### *General powers*

- 13 (1) The Committee may do anything which appears to it—
- (a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions;
  - (b) to be conducive to the exercise of its functions.
- (2) In particular, the Committee may—
- (a) enter into contracts;
  - (b) with the agreement of the Scottish Ministers, borrow money;
  - (c) with the agreement of the Scottish Ministers, acquire and dispose of land;
  - (d) obtain advice and assistance from any person who, in the Committee's opinion, is qualified to give it.
- (3) The Committee may pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the Committee may, with the agreement of the Scottish Ministers, determine.

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[<sup>F1</sup>SCHEDULE 1A  
(introduced by section 88A(5))  
FIXED PENALTIES

**Textual Amendments**

**F1** Sch. 1A inserted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 43(3), 61(2); S.S.I. 2014/160, art. 2(1)(2), Sch.

*Preliminary*

- 1 In this schedule, unless the context otherwise requires—
- “enforcement authority” means the enforcement authority provided for in the regulations;
  - “notice” means a fixed penalty notice given under section 88A(1);
  - “the offence” means the offence to which the notice relates;
  - “prescribed” means prescribed by the regulations;
  - “the regulations” means regulations under section 88A(3).

*Content of fixed penalty notice*

- 2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (2) A notice must also contain the following information—
- (a) the amount of the fixed penalty;
  - (b) the payment deadline;
  - (c) the discounted amount and the discounted payment deadline;
  - (d) the name of—
    - (i) the enforcement authority to which payment should be made; or
    - (ii) a person acting on behalf of the enforcement authority to whom payment should be made;
  - (e) the address at which payment should be made; and
  - (f) the method by which payment should be made.
- (3) A notice given to a person must state that—
- (a) any liability to conviction of the offence is discharged if the person makes payment of—
    - (i) the fixed penalty before the payment deadline; or
    - (ii) the discounted amount before the discounted payment deadline;
  - (b) the payment of a fixed penalty is not a conviction nor may it be recorded as such;
  - (c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the discounted amount or fixed penalty has not been paid;
  - (d) the person has the right to make representations as mentioned in paragraph 8.

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*Period in which notice can be given*

- 3 A notice may not be given after such time relating to the offence as may be prescribed.

*Amount of penalty*

- 4 (1) The amount of the fixed penalty, and the discounted amount, are such amounts as may be prescribed.
- (2) The maximum amount of the fixed penalty that may be prescribed is an amount equal to level 2 on the standard scale (within the meaning of section 225(1) of the Criminal Procedure (Scotland) Act 1995).
- (3) The discounted amount prescribed must be less than the maximum amount of the fixed penalty.

*Deadlines for payment*

- 5 (1) The payment deadline is the first working day occurring at least 28 days after the day on which the notice is given.
- (2) But the enforcement authority may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (3) The discounted payment deadline is the first working day occurring at least 14 days after the day on which notice is given.
- (4) But the enforcement authority may extend the discounted payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (5) On extending the payment deadline under sub-paragraph (2), or the discounted payment deadline under sub-paragraph (4), the enforcement authority must notify the recipient of the notice.
- (6) In this paragraph, “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

*Method of payment*

- 6 The fixed penalty (and the discounted payment amount) is payable—
- (a) to the enforcement authority or the person acting on its behalf specified in the notice;
  - (b) at the address specified in the notice; and
  - (c) by the method specified in the notice.

*Restriction on proceedings and effect of payment*

- 7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.
- (2) But no such proceedings may be commenced against a person if—

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- (a) the person makes payment of the discounted amount on or before the discounted payment deadline (or that deadline as extended under paragraph 5(4)); or
  - (b) the person makes payment of the fixed penalty on or before the payment deadline (or that deadline as extended under paragraph 5(2)).
- (3) In proceedings for the offence, a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the enforcement authority; and
  - (b) states that payment of an amount specified in the certificate was, or was not, received by a date so specified,
- is sufficient evidence of the facts stated.
- (4) Where the enforcement authority is a local authority, the reference to a person having responsibility for the financial affairs of the enforcement authority in sub-paragraph (3)(a) is to be read as a reference to the person who has, as respects the local authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).

*Withdrawal of fixed penalty notice*

- 8 (1) A recipient of a notice may make representations to the enforcement authority as to why the notice ought not to have been given.
- (2) If, having considered any representations under sub-paragraph (1), the enforcement authority considers that the notice ought not to have been given, it may give to the person a notice withdrawing the notice.
- (3) Where a notice under sub-paragraph (2) is given—
- (a) the enforcement authority must repay any amount which has been paid in pursuance of the fixed penalty notice; and
  - (b) no proceedings may be commenced against the person for the offence.

*Effect of prosecution on fixed penalty notice*

- 9 Where proceedings for an offence in respect of which a notice has been given are commenced, the notice is to be treated as withdrawn.

*General and supplemental*

- 10 The regulations may make provision about—
- (a) the application by enforcement authorities of payments received under this schedule;
  - (b) the keeping of accounts, and the preparation and publication of statements of account, in relation to such payments.
- 11 (1) The regulations may prescribe—
- (a) the form of notices including notices under paragraph 8(2);
  - (b) the circumstances in which notices may not be given; and
  - (c) the method by which fixed penalties may be paid.
- (2) The regulations may modify sub-paragraphs (1) and (3) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.



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- 12 The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.]

## SCHEDULE 2

(introduced by section 99)

### MINOR AND CONSEQUENTIAL MODIFICATIONS

#### *Hill Farming Act 1946 (c. 73)*

- 1 In section 23(1) of the Hill Farming Act 1946 (prohibition of muirburn at certain times), after “section” insert “ and to section 23A, ”.

#### Commencement Information

- II** Sch. 2 para. 1 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(c\)](#)

#### *Environment Act 1995 (c. 25)*

- 2 In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (e), insert—  
“(f) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 79 of the Climate Change (Scotland) Act 2009 (asp 12), SEPA may require the payment to it of such charges as may from time to time be prescribed;”.

#### Commencement Information

- I2** Sch. 2 para. 2 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(c\)](#)

PROSPECTIVE

#### *Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)*

- 3 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies) at the appropriate place, insert— “ The Scottish Committee on Climate Change ”.

PROSPECTIVE

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

- 4 In the Scottish Public Services Ombudsman Act 2002, in Part 2 of schedule 2 (listed authorities) at the appropriate place, insert— “ The Scottish Committee on Climate Change ”.

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PROSPECTIVE

*Freedom of Information (Scotland) Act 2002 (asp 13)*

- 5 In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1 (Scottish public authorities) at the appropriate place, insert—  
 “The Scottish Committee on Climate Change”.

PROSPECTIVE

*Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)*

- 6 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) at the appropriate place in the list of advisory bodies, insert— “ The Scottish Committee on Climate Change ”.

*Housing (Scotland) Act 2006 (asp 1)*

- 7 In the Housing (Scotland) Act 2006, section 179 (duty of Scottish Ministers to prepare strategy for improving energy efficiency of living accommodation) is repealed.

**Commencement Information**

**I3** Sch. 2 para. 7 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(c\)](#)

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