

SCHEDULE 2
PARTICULAR PURPOSES FOR WHICH
PROVISION MAY BE MADE UNDER SECTION 18

PART 2

SUPPLEMENTARY PROVISIONS

Particular types of regulated activity

- 23 The regulations may provide for specified provisions of the regulations to have effect in relation only to—
- (a) specified regulated activities,
 - (b) the carrying on of regulated activities in specified circumstances, or
 - (c) the carrying on of regulated activities by specified persons or descriptions of persons.

Emissions trading scheme

- 24 (1) The regulations may authorise the inclusion in a trading scheme of—
- (a) provision for penalties in respect of contraventions of provisions of the scheme,
 - (b) provision for the amount of any penalty under the scheme to be such as may be set out in, or calculated in accordance with—
 - (i) the scheme, or
 - (ii) the regulations (including regulations made after the scheme).
- (2) In this paragraph, “trading scheme” means a scheme of the kind mentioned in paragraph 2(3).

General binding rules

- 25 (1) General binding rules may—
- (a) impose conditions or requirements,
 - (b) prescribe standards or objectives to be complied with or achieved, and
 - (c) require standards or objectives specified in or under other enactments to be complied with or achieved.
- (2) Before determining any general binding rules in accordance with a procedure specified under paragraph 4(5), a regulator must—
- (a) publish a draft of the proposed rules,
 - (b) publicise the opportunity to make representations about the proposed rules under sub-paragraph (3) in such manner as the regulator thinks fit,
 - (c) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as the regulator may determine.
- (3) Any person who wishes to make representation about the proposed rules to the regulator may do so within the period determined under sub-paragraph (2)(c).
- (4) The regulator must, in determining the rules, have regard to any representations on the proposed rules received by the regulator within that period.

Determination of matters by regulators

- 26 The regulations may make provision for anything which, by virtue of paragraphs 5 to 12, could be provided for by the regulations to be determined under the regulations by regulators.

Determination of rules and imposition of conditions

- 27 The regulations may provide—
- (a) for regulators to have regard to any specified general principles, and to any directions or guidance given under the regulations—
 - (i) in determining any general binding rules,
 - (ii) in imposing any conditions as mentioned in paragraph 6(2) or 10(3),
 - (iii) in setting any standard rules they may make by virtue of paragraph 11(2),
 - (b) for such guidance to include the sanctioning of reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing any such conditions,
 - (c) for such conditions to be imposed by reference to agreements between or among persons authorised to carry on regulated activities as to the carrying on by them of the activities.

Charging schemes

- 28 The regulations may—
- (a) require any such scheme as is mentioned in paragraph 9 or 13 to be so framed that the fees and charges payable under the scheme—
 - (i) are determined in the light of any specified general principles and any directions or guidance given under the regulations,
 - (ii) are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator to whom they are so payable) as is specified,
 - (b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

Fit and proper persons

- 29 The regulations may make provision that the conditions subject to which a registration or permit has effect include a condition that the person authorised to carry on the regulated activities to which the registration relates, or to whom the permit is granted, must remain a fit and proper person within the meaning of the regulations.

Power to specify EU instruments for the purposes of paragraph 22

- 30 The Scottish Ministers may, for the purposes of paragraph 22(1)(b), by order specify an EU instrument as one that is or contains an EU obligation mentioned in that paragraph.

Offences

- 31 (1) The regulations may provide for any such offence as is mentioned in paragraph 19 to be triable—

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- (a) only summarily,
 - (b) either summarily or on indictment.
- (2) The regulations may provide for such an offence to be punishable—
- (a) on summary conviction by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months),
 - (ii) a fine not exceeding such amount as is specified (which must not exceed £40,000), or
 - (iii) both,
 - (b) on conviction on indictment by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 5 years),
 - (ii) a fine, or
 - (iii) both.
- (3) The regulations may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified (in addition to any punishment provided for in pursuance of sub-paragraph (2)).
- (4) The Scottish Ministers may by order substitute for the sum for the time being specified in sub-paragraph (2)(a)(ii) such other sum as appears to them to be justified by a change in the value of money appearing to them to have taken place since the last occasion on which the sum was fixed.
- (5) An order under sub-paragraph (4) is not to affect the punishment for an offence committed before that order comes into force.

Service of notices

- 32 The regulations may make provision for or in connection with the service of any notice or other document required under the regulations to be served on or given to any person.

Powers exercisable in the regulations

- 33 The regulations may—
- (a) modify any enactment, instrument or document,
 - (b) in making different provision for different purposes, make different provision for different cases, persons, circumstances or areas,
 - (c) contain provision for the delegation of functions,
 - (d) impose requirements in relation to any standards or other matters set out in such documents as may be specified in the regulations.

Interpretation

- 34 In this schedule—
- “authorise”, in relation to regulated activities, means authorise the carrying on of the activities in accordance with a permit, subject to registration, subject to notification or subject to compliance with general binding rules; and related expressions are to be construed accordingly,

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“functions” includes powers and duties,

“general binding rules” means rules specified in or made under the regulations in pursuance of paragraph 4(3)(d),

“notification” means notification of the carrying on of, or of a proposal to carry on, a regulated activity in accordance with any provision made in the regulations in pursuance of paragraph 4(3)(c),

“permit” means a permit granted under any provision made in the regulations in pursuance of paragraph 4(3)(a),

“registration” means registration under any provision made in the regulations in pursuance of paragraph 4(3)(b),

“the regulations” means regulations under section 18,

“regulated activities” has the meaning given in section 17(3),

“regulators” has the meaning given in paragraph 3(1),

“specified” means specified in the regulations.