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## SCHEDULES

PROSPECTIVE

### SCHEDULE 1

Section 2.

#### MATTERS FOR, OR IN CONNECTION WITH, WHICH REGULATIONS MAY BE MADE UNDER SECTION 2

##### *Emissions*

- 1.—(1) Establishing standards, objectives or requirements in relation to emissions.
- (2) In relation to emissions, authorising the making of plans for—
  - (a) the setting of overall limits;
  - (b) the allocation of quotas; or
  - (c) the progressive improvement of standards or objectives.

##### *Emissions trading scheme*

- 2.—(1) Authorising the making of schemes for the trading or other transfer of quotas allocated as mentioned in paragraph 1(2)(b).
- (2) Authorising the inclusion in a scheme under sub-paragraph (1) of—
  - (a) provision for penalties in respect of contraventions of provisions of the scheme; or
  - (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).

##### *Regulators*

- 3.—(1) Enabling the Department to exercise functions conferred by the regulations for or in connection with regulating regulated activities.
- (2) Determining other persons by whom any such functions are to be exercisable.

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(3) Specifying any purposes for which any such functions are to be exercisable by regulators.

(4) Enabling the Department to give directions (whether general or specific) with which regulators are to comply, or guidance to which regulators are to have regard, in exercising functions under the regulations, including—

- (a) directions providing for any functions exercisable by one regulator to be exercisable instead by another;
- (b) directions given for the purposes of the implementation of any obligations of the United Kingdom under the EU Treaties or under any international agreement to which the United Kingdom is a party;
- (c) directions relating to the exercise of any function in a particular case or class of case; and
- (d) directions providing for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Department.

(5) Authorising regulators to appoint suitable persons to exercise functions or powers conferred on regulators by the regulations (including functions and powers with respect to compliance with, and enforcement of, the regulations) and conferring powers on persons so appointed.

#### *Regulation of activities*

4.—(1) Prohibiting persons from carrying on, or from causing or permitting others to carry on, any regulated activity.

(2) Prohibiting persons from carrying on any regulated activity except so far as it is—

- (a) authorised by or under the regulations; and
- (b) carried on in accordance with the regulations.

(3) Enabling the carrying on of regulated activities to be authorised by providing that they are to be carried on—

- (a) in accordance with a permit granted by a regulator under the regulations;
- (b) subject to a requirement to register the carrying on of the activity with a regulator; or
- (c) subject to compliance with rules specified in, or made under, the regulations (“general environmental rules”).

(4) Enabling the carrying on of regulated activities to be authorised by grant of a permit or by registration whether or not the carrying on of those activities is also subject to general environmental rules.

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(5) Specifying a procedure under which the Department may make general environmental rules.

(6) Treating as authorised the carrying on of regulated activities that are subject to general environmental rules.

(7) Specifying the subsistence of an authorisation to carry on regulated activities which are subject to general environmental rules.

### *Permits*

5.—(1) Prescribing the form and content of applications for permits.

(2) Regulating the procedure to be followed in connection with—

- (a) applications for permits;
- (b) the determination of such applications; or
- (c) the grant of permits.

(3) Prescribing the form and content of permits.

(4) Authorising permits to be granted subject to conditions imposed by regulators.

(5) Securing that permits have effect subject to specified conditions.

(6) Requiring permits, or the conditions to which permits are subject, to be reviewed by regulators (whether periodically or in specified circumstances).

(7) Authorising or requiring the variation of permits or such conditions by regulators (whether on an application made by the holder of the permit or otherwise).

(8) Regulating the making of changes in the carrying on of the activities to which permits relate.

(9) Regulating the transfer or surrender of permits.

(10) Authorising the suspension of permits by regulators.

(11) Authorising the revocation of permits by regulators.

### *Registration*

6.—(1) Prescribing the form and content of—

- (a) applications for registration; or
- (b) registration.

(2) Regulating the procedure for registration including the procedure to be followed in connection with—

- (a) applications for registration;
- (b) the determination of such applications;

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- (c) the grant of registration; or
- (d) the variation, transfer, surrender, suspension or revocation of registration.
- (3) Authorising registration to be granted subject to conditions imposed by regulators.
- (4) Securing that registrations have effect subject to specified conditions.
- (5) Specifying restrictions or other requirements in connection with registration, including—
  - (a) circumstances in which registration may be refused; and
  - (b) the subsistence of registration.

*Provisions common to permits and registration*

- 7.—(1) Enabling the granting of permits, or the registration of activities, authorising the carrying on of—
- (a) one or more regulated activities; or
  - (b) a regulated activity at one, or more than one, place.
- (2) Securing that permits and registrations have effect subject to standard rules specified in, or made under, the regulations.
- (3) Specifying a procedure under which the Department may make such rules.
- (4) Specifying conditions subject to which a permit or registration has effect including a condition that the person authorised to carry on the regulated activities by grant of a permit or by registration must—
- (a) carry out specified works or do other specified things on, or in relation to, any land despite not being entitled to do so without a right being granted in relation to the land by a person whose consent would be required; or
  - (b) remain a fit and proper person within the meaning of the regulations.
- (5) Specifying restrictions or other requirements in connection with—
- (a) applications for permits or registration;
  - (b) the grant of permits (including provisions for restricting the grant of permits to those who are fit and proper persons within the meaning of the regulations); or
  - (c) the registration of regulated activities (including provisions for restricting registration to the carrying on of such activities by those who are fit and proper persons within the meaning of the regulations).
- (6) Requiring persons carrying on regulated activities the carrying on of which is authorised by grant of a permit or by registration to submit to regulators, in respect of specified periods and at specified intervals, such information as may be specified relating to the carrying on of the activities and compliance with any conditions subject to which the permit or registration was granted.

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- (7) Specifying the circumstances in which, and conditions subject to which, persons or classes of persons may be treated as—
- (a) having control over activities the carrying on of which is authorised by grant of a permit or by registration (including complying with any conditions or requirements of the permit or registration);
  - (b) carrying on a regulated activity for the purposes of notices that may be served by regulators under paragraph 12(4); or
  - (c) authorised to carry on a regulated activity without having applied for a permit or registration in respect of that activity.
- (8) Enabling the granting of a permit to, or registration of the carrying on of regulated activities by, more than one person.
- (9) Enabling permits and registrations—
- (a) to be varied, transferred, surrendered, suspended or revoked wholly or in part;
  - (b) to be varied, suspended or revoked wholly or in part in consequence of the person to whom the permit was granted, or (as the case may be) who is authorised to carry on the regulated activities to which the registration relates, ceasing to be a fit and proper person within the meaning of the regulations; or
  - (c) to be consolidated.
- (10) Providing for the transfer of a permit or registration to be refused if the person to whom it is proposed to be transferred is not a fit and proper person within the meaning of the regulations.
- (11) Authorising the imposition by regulators of requirements with respect to the taking of preventative or remedial action (by holders of permits or other persons) in connection with the surrender, suspension or revocation of permits or registrations, including a requirement to carry out specified works or do other specified things on, or in relation to, any land despite not being entitled to do so without a right being granted in relation to the land by a person whose consent would be required.
- (12) Requiring a person whose consent would be required to the carrying out of works or the doing of other things on, or in relation to, any land under a condition of a permit or registration or by a requirement under sub-paragraph (11) to grant, or join in granting, such rights in relation to the land as will enable a person required to carry out those works or do those things to carry out those works or do those things.

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### *Determination of matters by regulators*

**8.** Providing for anything which, by virtue of paragraphs 5 to 7, could be provided for by the regulations to be instead determined under the regulations by regulators.

### *Making of rules and imposition of conditions*

**9.** Providing—

- (a) for the Department to have regard to any general principles specified under the regulations—
  - (i) in making any general environmental rules; or
  - (ii) in making any standard rules as mentioned in paragraph 7(2);
- (b) for regulators to have regard to any general principles specified, and to any directions or guidance given, under the regulations in imposing any conditions as mentioned in paragraph 5(4) or 6(3);
- (c) 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; or
- (d) 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*

**10.—(1)** Authorising, or authorising the Department to make, vary or revoke schemes for, the charging by the Department or public bodies of fees or other charges in respect of—

- (a) the testing, sampling or analysis of substances in cases mentioned in subparagraph (2);
- (b) the validating of, or of the results of, any testing, sampling or analysis of substances in such cases; or
- (c) assessing how the environment might be affected by the release into it of any substances in such cases.

**(2)** The cases are those where the testing, sampling, analysis, validating or assessing is carried out—

- (a) in anticipation of, or otherwise in connection with, the making of applications for permits or registration;
- (b) under any conditions subject to which a permit or registration was granted; or
- (c) in connection with the assessing of compliance with any such conditions.

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- (3) Authorising, or authorising the Department to make, vary or revoke schemes for, the charging by the Department or public bodies of fees or other charges—
- (a) in respect of, or in respect of applications for—
    - (i) the grant of a permit;
    - (ii) the variation of a permit or of the conditions to which it is subject;
    - (iii) the transfer, surrender or revocation of a permit;
    - (iv) registration; or
    - (v) the variation, transfer, surrender or revocation of registration;
  - (b) in respect of the subsistence of a permit or registration;
  - (c) in respect of consolidation of permits and registrations; or
  - (d) in respect of other specified matters.
- (4) Regulating the procedure for making, varying or revoking schemes referred to in sub-paragraph (1) or (3).
- (5) Requiring any scheme referred to in sub-paragraph (1) or (3) to be so framed that the fees and charges payable under it—
- (a) are determined in the light of any general principles specified under the regulations;
  - (b) are sufficient, taking one year with another, to cover such expenditure (incurred by the regulator to whom the fees and charges are so payable) as is specified.
- (6) Authorising any scheme referred to in sub-paragraph (1) or (3) to make different provision for different cases (and to specify particular kinds of such cases).

*Information, publicity and consultation*

- 11.—**(1) Enabling persons of any specified description (whether or not they are holders of permits or carrying on activities that are subject to registration or general environmental rules) to be required—
- (a) to provide such information in such manner as is specified in the regulations; or
  - (b) to compile information on—
    - (i) emissions;
    - (ii) energy consumption and the efficiency with which energy is used; or
    - (iii) waste and the origin, nature, quantity, treatment, storage, transportation and destination of waste.
- (2) Securing that—
- (a) publicity is given to specified matters;

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- (b) regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) that are open to public inspection free of charge;
- (c) regulators publish, in a manner specified in the regulations, such registers; or
- (d) copies of entries in such registers, or of specified documents, may be obtained by members of the public on payment of reasonable charges.

(3) Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions (including consultation on any guidance they propose to issue in connection with the exercise of those functions), and providing for them to take into account representations made to them on consultation.

(4) Requiring or authorising regulators to hold, in specified circumstances and in a specified manner, a public local inquiry of a specified kind in connection with the exercise of any of their functions and providing for them to take into account representations made to them at that inquiry.

#### *Enforcement and offences*

**12.—**(1) Conferring functions on regulators with respect to compliance with, and enforcement of, the regulations.

(2) Conferring power on regulators—

- (a) to arrange for preventative or remedial action to be taken at the expense of persons carrying on regulated activities;
- (b) to require such persons to provide such financial security as the regulators making the arrangements consider appropriate pending the taking of the preventative or remedial action; or
- (c) to take samples or to make copies of information.

(3) Regulating the procedure under which regulators may make arrangements, or impose requirements, such as are mentioned in sub-paragraph (2)(a) and (b).

(4) Authorising regulators to serve on any persons carrying on regulated activities (whether or not the carrying on of those activities is authorised by or under the regulations) notices, including notices requiring such persons—

- (a) to notify the regulated activities being carried on by them;
- (b) to take preventative or remedial action at their own expense, including such action in respect of contraventions (actual or potential) of authorisations, or of conditions of authorisations, relating to the regulated activities, and to provide such financial security as the regulators serving the notices consider appropriate pending the taking of such action;



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- (c) to take steps to remove risks of environmental harm (whether or not arising from any contraventions (actual or potential) of authorisations, or of conditions of authorisations, relating to the regulated activities); and
- (d) to stop the carrying on of regulated activities (whether or not the notice also requires the person to take such preventative or remedial action as may be specified in the notice).

(5) Authorising regulators who serve such notices to require the person on whom the notice is served to pay the costs incurred by the regulators in relation to the service of the notice up to the time of its service.

(6) Authorising regulators, if such notices are not complied with by persons on whom they are served, to take, or arrange for the taking of, preventative or remedial action at the expense of those persons.

(7) Providing for the enforcement of such notices in the High Court.

(8) Creating offences and dealing with matters relating to such offences, including—

- (a) the provision of defences; and
- (b) evidentiary matters.

(9) Providing for such an offence to be triable—

- (a) only summarily; or
- (b) either summarily or on indictment.

(10) Providing 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 6 months);
  - (ii) a fine not exceeding such amount as is specified (which must not exceed £50,000); or
  - (iii) both; or
- (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.

(11) Providing 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 under sub-paragraph (10)).

(12) Enabling, where a person has been convicted of an offence under the regulations—

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- (a) a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment);
- (b) regulators to arrange for such action to be taken at that person's expense; or
- (c) a court dealing with that person for the offence to order that person to pay to a regulator an amount in respect of, but not exceeding, the costs incurred by the regulator in relation to its investigation of the conduct constituting the offence (in addition to or instead of imposing any punishment).

### *Appeals*

**13.—**(1) Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations.

(2) Making provision for (or for the determination of) matters relating to the making, considering or determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

(3) Making provision for—

- (a) the payment of fees or costs in connection with such appeals; and
- (b) the determination of the amount of any such fees or costs.

### *Compensation*

**14.—**(1) Requiring the payment of compensation in specified circumstances by a regulator to any person in respect of any loss or damage sustained by that person as a result of action of a specified kind taken by the regulator.

(2) Requiring the payment of compensation in specified circumstances by a person who is authorised to carry on regulated activities by grant of a permit or by registration and who is required to carry out works or do other things on or in relation to any land under a condition of that permit or registration or by a requirement under paragraph 7(11) (“the authorised person”) to a person who has granted, or joined in granting, rights of a specified kind in relation to the land to enable the authorised person to carry out those works or do those other things.

(3) Without limiting sub-paragraph (2), making provision for—

- (a) the basis on which any amount to be paid by way of compensation as mentioned in that sub-paragraph is to be assessed;
- (b) compensation to be payable in respect of—
  - (i) any effect of any rights being granted; or
  - (ii) any consequence of the exercise of any rights which have been granted;

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- (c) the persons by whom, and the manner in which, any dispute—
  - (i) as to whether any, and (if so) how much and when, compensation is payable; or
  - (ii) as to the person to or by whom it is to be paid—  
is to be determined;
- (d) when or how applications may be made for compensation;
- (e) when or how applications may be made for the determination of any such disputes as are mentioned in head (c);
- (f) the form in which any such applications as are mentioned in heads (d) and (e) are to be made.

*Service of notices and other documents*

15. Providing 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.

*Application to the Crown*

16. Providing for the application of the regulations to the Crown.

*Interpretation*

17. In this Schedule—

“authorise”, in relation to regulated activities, means authorise the carrying on of the activities in accordance with a permit or subject to registration or compliance with general environmental rules;

“environmental activities” has the meaning given in section 6;

“functions” includes powers and duties;

“general environmental rules” means rules specified in, or made under, the regulations pursuant to paragraph 4(3)(c);

“permit” means a permit granted under any provision made in the regulations pursuant to paragraph 4(3)(a);

“public body” means a body established or constituted by or under a statutory provision;

“registration” means registration under any provision made in the regulations pursuant to paragraph 4(3)(b);

“the regulations” means regulations under section 2;

“regulated activities” has the meaning given in section 6;

“regulator” has the meaning given in section 6;

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“specified” means specified in the regulations.

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**Changes and effects yet to be applied to :**

- Sch. 1 para. 3(4)(b) words substituted by [S.I. 2019/584 reg. 28](#)