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## SCHEDULES

### SCHEDULE 5

Section 60

#### EMISSIONS LIMIT DUTY: MONITORING AND ENFORCEMENT

##### *Matters that may be contained in enforcement regulations*

- 1 (1) Provision that may be contained in enforcement regulations includes provision—
- (a) conferring functions for or in connection with monitoring or enforcing the compliance of operators with the emissions limit duty;
  - (b) determining the authorities by whom such functions are to be exercisable (“enforcing authorities”);
  - (c) requiring enforcing authorities to comply with directions given by the appropriate national authority in carrying out any of their functions under the regulations;
  - (d) requiring enforcing authorities to comply with requirements imposed on them under section 59(10);
  - (e) requiring or authorising enforcing authorities to carry out consultation in connection with the carrying out of any of their functions under the regulations;
  - (f) requiring enforcing authorities to publish guidance about the carrying out of any of their functions under the regulations;
  - (g) about the provision, use and publication of information in relation to the compliance of operators with the emissions limit duty;
  - (h) authorising the appropriate national authority to make schemes for the charging by enforcing authorities of fees or other charges in respect of or in connection with functions conferred on enforcing authorities under the regulations;
  - (i) about the enforcement of contraventions of the emissions limit duty through enforcement notices and financial penalties (see paragraphs 2 and 3);
  - (j) about the procedure to be followed in connection with the service of enforcement notices and imposition of financial penalties (including requirements for enforcement notices to be published in draft before being served for the purpose of enabling representations to be made about them);
  - (k) for the enforcement of—
    - (i) enforcement notices,
    - (ii) undertakings given in connection with such notices,
    - (iii) financial penalties, or
    - (iv) other obligations imposed on operators under the regulations,by proceedings in the High Court or any court of competent jurisdiction in Scotland;
  - (l) conferring rights of appeal in respect of decisions made, notices served, financial penalties imposed or other things done (or omitted to be done) by

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- enforcing authorities under the regulations (including provision in relation to the making, consideration and determination of such appeals);
  - (m) about the application of the regulations to the Crown.
- (2) Provision under sub-paragraph (1)(a) may in particular include provision—
  - (a) conferring power on enforcing authorities to take samples or to make copies of information;
  - (b) conferring power on enforcing authorities to arrange for preventative or remedial action to be taken at the expense of operators;
  - (c) authorising enforcing authorities to appoint suitable persons to exercise the functions mentioned in paragraph (a) or (b);
  - (d) conferring powers on persons so appointed (which may include, so far as relevant, the powers mentioned in section 108(4) of the Environment Act 1995).
- (3) Provision under sub-paragraph (1)(g) may in particular include provision—
  - (a) enabling enforcing authorities to use, for the purposes of their functions conferred under the regulations in respect of fossil fuel plant, information held for the purposes of their functions in relation to any such plant conferred under regulations implementing the ETS Directive;
  - (b) requiring operators, or other persons of a description specified in the regulations, to provide to an enforcing authority such information, and in such manner, as—
    - (i) the regulations may specify, or
    - (ii) the authority may reasonably require;
  - (c) requiring or authorising enforcing authorities to publish such information, and in such manner, as is specified in the regulations (whether such information is held as mentioned in paragraph (a) or is provided as mentioned in paragraph (b));
  - (d) requiring operators to publish such information, and in such manner, as—
    - (i) the regulations may specify, or
    - (ii) an enforcing authority may reasonably require.
- (4) Provision under sub-paragraph (1)(h) in relation to a scheme may—
  - (a) require the scheme to be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the enforcing authority or other person 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).

#### *Enforcement notices*

- 2 (1) Enforcement regulations may authorise an enforcing authority to serve an enforcement notice on an operator who has breached the emissions limit duty in respect of any fossil fuel plant—
  - (a) in relation to the year in which the notice is served, or
  - (b) in relation to the preceding year.
- (2) The regulations may specify the requirements that may be imposed on an operator under an enforcement notice.

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- (3) Those requirements may in particular include requirements—
- (a) to take such remedial action in respect of the breach as is specified in the notice,
  - (b) to provide such undertakings in respect of the breach as may be agreed between the operator and the enforcing authority (whether for the taking of remedial action or otherwise), or
  - (c) to comply with a modified emissions limit duty in relation to the fossil fuel plant for any year to take account of excess emissions in earlier years.

#### *Financial penalties*

- 3 (1) Enforcement regulations may authorise an enforcing authority to serve a notice on an operator who has breached the emissions limit duty requiring the operator to pay such a financial penalty in respect of the breach as is specified in, or calculated in accordance with, the notice or the regulations.
- (2) Enforcement regulations which provide for the imposition of financial penalties—
- (a) may not permit an enforcing authority to impose a financial penalty in respect of a breach of the emissions limit duty in any year which began more than 5 years before the year in which the notice imposing the penalty is served;
  - (b) may require enforcing authorities, in imposing such penalties, to have regard to any guidance issued by the appropriate national authority;
  - (c) may provide for such penalties to be instead of, or in addition to, requirements imposed under enforcement notices.

#### *General*

- 4 (1) Enforcement regulations may—
- (a) make provision which corresponds or is similar to any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 in connection with the ETS Directive (subject to any modifications that the appropriate national authority considers appropriate);
  - (b) apply or incorporate (with or without modifications) other enactments relating to the prevention or control of environmental pollution (including, in particular, regulations implementing the ETS Directive and directly applicable EU legislation).
- 5 (1) Provision included in enforcement regulations by virtue of section 62(9)(a) may affect legislation.
- (2) For this purpose, provision affects legislation if it amends, repeals or revokes any provision made by or under primary legislation.
- (3) Enforcement regulations made by the Scottish Ministers, the Welsh Ministers or the Department of Environment may not include any provision affecting legislation unless it is within legislative competence.
- (4) Enforcement regulations made by the Secretary of State—
- (a) may include provision affecting legislation that is made in consequence of any enforcement regulations made by the Scottish Ministers, the Welsh Ministers or the Department of Environment, but

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- (b) may not include any such provision that could be included in the regulations mentioned in paragraph (a) except with the consent of the authority making those regulations.
- (5) For this purpose, a provision of enforcement regulations is within legislative competence if—
- (a) in the case of regulations by the Scottish Ministers, it would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament;
  - (b) in the case of regulations by the Welsh Ministers, it would be within the legislative competence of the National Assembly for Wales if it were included in an Act of that Assembly;
  - (c) in the case of regulations by the Department of Environment, it would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.
- (6) Provision included in enforcement regulations by virtue of section 62(9)(b) may include provision modifying provision made by virtue of paragraph 2(3)(c) in cases where there is no applicable emissions limit in respect of any year.

#### *Interpretation*

- 6 In this Schedule “enforcement regulations” means regulations under section 60.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 68(4) inserted by [2023 c. 52 s. 302\(4\)](#)