

SCHEDULES

SCHEDULE 4

Section 50

PRODUCER RESPONSIBILITY OBLIGATIONS

PART 1

REQUIREMENTS

General power

- 1 (1) The relevant national authority may by regulations make provision for imposing producer responsibility obligations on specified persons in respect of specified products or materials.
- (2) The regulations may be made only for the purpose of—
 - (a) preventing a product or material becoming waste, or reducing the amount of a product or material that becomes waste;
 - (b) sustaining a minimum level of, or promoting or securing an increase in, the re-use, redistribution, recovery or recycling of products or materials.
- (3) In this Schedule “producer responsibility obligations” means steps required to be taken, in respect of products or materials, for a purpose in sub-paragraph (2).

Examples of provision that may be made

- 2 (1) The regulations may make provision about—
 - (a) the persons to whom producer responsibility obligations apply;
 - (b) the products or materials in relation to which producer responsibility obligations apply;
 - (c) the obligations imposed by the regulations.
- (2) The regulations may make provision about targets to be achieved in relation to the proportion of products or materials (by weight, volume or otherwise) to be re-used, redistributed, recovered or recycled (either generally or in a specified way).
- (3) The regulations may make provision about circumstances in which a producer responsibility obligation is to be treated as met (in whole or in part) by payment of a sum of money, including provision about—
 - (a) the manner in which and persons by whom the amount of such sums is to be determined, and
 - (b) the persons to whom such sums are to be paid.

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Registration of persons subject to producer responsibility obligations

- 3 (1) The regulations may make provision requiring the registration of persons who are subject to a producer responsibility obligation.
- (2) The regulations may make provision about—
- (a) applications for registration,
 - (b) the imposition and variation of requirements in connection with registration,
 - (c) the period for which registration is to remain in force, and
 - (d) the cancellation of registration.
- (3) The regulations may require registers to be published or made available for inspection.

Compliance schemes

- 4 (1) The regulations may make provision authorising or requiring persons who are subject to a producer responsibility obligation to become members of a compliance scheme.
- (2) The regulations may make provision about—
- (a) the approval, or withdrawal of approval, of compliance schemes by the relevant national authority,
 - (b) the establishment, maintenance or management of a compliance scheme by a person appointed by the relevant national authority.
- (3) In this Schedule “compliance scheme” means a scheme under which producer responsibility obligations of members of the scheme are discharged by the scheme operator on their behalf.

Registration of compliance schemes

- 5 (1) The regulations may make provision about the registration of compliance schemes, including provision about—
- (a) requirements and criteria to be met before a compliance scheme may be registered,
 - (b) applications for registration,
 - (c) the imposition and variation of conditions in connection with registration,
 - (d) the period for which registration is to remain in force,
 - (e) the cancellation of registration.
- (2) The regulations may make provision about—
- (a) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of registration,
 - (b) the procedure on the appeals.
- (3) The regulations may make provision about the position of persons and compliance schemes pending determination or withdrawal of an appeal, including provision about cases in which—
- (a) a compliance scheme is, or is not, to be treated as registered, or
 - (b) a person is, or is not, to be treated as a member of a registered compliance scheme.

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- (4) The regulations may require registers to be published or made available for inspection.

Power to direct compliance scheme operators

- 6 (1) If it appears to the relevant national authority that any action proposed to be taken by the operator of a compliance scheme would be incompatible with an international agreement to which the United Kingdom is a party, it may direct the operator not to take the action in question.
- (2) If it appears to the relevant national authority that any action which the operator of a compliance scheme has power to take is required for the purpose of implementing an international agreement to which the United Kingdom is a party, it may direct the operator to take the action in question.
- (3) A direction under this paragraph—
- (a) may include consequential, supplementary, incidental, transitional or saving provision;
 - (b) on the application of the relevant national authority, is enforceable—
 - (i) by injunction, or
 - (ii) in Scotland, by interdict or by an order for specific performance under section 45 of the Court of Session Act 1988.

Certificates of compliance

- 7 (1) The regulations may make provision about certificates of compliance.
- (2) The regulations may make provision—
- (a) requiring persons who are not members of compliance schemes to provide certificates of compliance to an enforcement authority;
 - (b) about the approval of persons by an enforcement authority for the purposes of issuing certificates of compliance.
- (3) In this Schedule “certificate of compliance” means a certificate which—
- (a) is issued by a person approved by an enforcement authority, and
 - (b) states that the person issuing the certificate is satisfied that the person to whom it relates is complying with their producer responsibility obligations.
- (4) The regulations may include provision requiring an enforcement authority to give guidance to persons issuing certificates of compliance, including guidance as to matters which are, or are not, to be treated as evidence of compliance or non-compliance.
- (5) In this paragraph “enforcement authority” means a person on whom functions are conferred by regulations under Part 2 of this Schedule.

Consultation etc requirements

- 8 (1) Before making regulations under this Part of this Schedule the relevant national authority must consult persons appearing to it to represent the interests of those likely to be affected.

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- (2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.
- 9 (1) Before making regulations under this Part of this Schedule the relevant national authority must be satisfied that—
- (a) making the regulations would be likely to achieve one or more of the purposes in paragraph 1(2);
 - (b) making the regulations would produce environmental or economic benefits;
 - (c) those benefits are significant as against the likely costs resulting from the imposition of the producer responsibility obligations;
 - (d) the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits;
 - (e) those burdens are imposed on the persons most able to make a contribution to securing those benefits—
 - (i) having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials, and
 - (ii) taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for which it is imposed.
- (2) Nothing in sub-paragraph (1)(e)(i) prevents regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others.
- (3) Sub-paragraph (1) does not apply to regulations for the implementation of an international agreement to which the United Kingdom is a party.
- 10 The relevant national authority must exercise the power to make regulations under this Part in the way it considers best calculated to secure that—
- (a) the regulations do not have the effect of restricting, distorting or preventing competition, or
 - (b) if the regulations are likely to have that effect, the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in paragraph 9(1).

Interpretation

- 11 (1) In this Part of this Schedule—
- “operator”, in relation to a compliance scheme, includes any person responsible for establishing, maintaining or managing the scheme;
 - “product” and “material” include a product or material at a time when it becomes, or has become, waste;
 - “recovery”, in relation to products or materials, includes—
 - (a) composting them, or any other transformation of them by biological processes, or
 - (b) obtaining energy from them by any means;
 - “specified” means specified in, or determined in accordance with, the regulations.

- (2) The regulations may specify, in relation to products or materials, activities, or the activities, which are to be treated for the purposes of this Part of this Schedule and the regulations as re-use, redistribution, recovery or recycling.

PART 2

ENFORCEMENT

General power

- 12 The relevant national authority may by regulations (“Part 2 regulations”) make provision about the enforcement of requirements imposed by regulations (“Part 1 regulations”) made by the authority under Part 1 of this Schedule.

Powers to confer functions

- 13 (1) Part 2 regulations may include provision conferring functions on one or more persons specified in the regulations (each of whom is an “enforcement authority” for the purposes of this Part).
- (2) Part 2 regulations may include provision—
- (a) conferring functions involving the exercise of discretion;
 - (b) for the functions of an enforcement authority to be exercised on its behalf by persons authorised in accordance with the regulations.
- (3) Part 2 regulations may include provision requiring an enforcement authority to issue guidance about the exercise of its functions.

Monitoring compliance

- 14 Part 2 regulations may include provision conferring on an enforcement authority the function of monitoring compliance with requirements imposed by Part 1 regulations.

Records and information

- 15 Part 2 regulations may include provision—
- (a) requiring persons on whom requirements are imposed by Part 1 regulations to keep records;
 - (b) requiring persons on whom requirements are imposed by Part 1 regulations to provide records or other information to an enforcement authority;
 - (c) requiring an enforcement authority to make reports or provide information to the relevant national authority.

Powers of entry etc

- 16 (1) Part 2 regulations may include provision conferring on an enforcement authority powers of entry, inspection, examination, search and seizure.
- (2) Part 2 regulations may include provision—
- (a) for powers to be exercisable only under the authority of a warrant issued by a justice of the peace, sheriff, summary sheriff or lay magistrate;

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- (b) about applications for, and the execution of, warrants.
- (3) Part 2 regulations must secure that the authority of a warrant is required for the exercise of any powers conferred by the regulations to—
 - (a) enter premises by force;
 - (b) enter a private dwelling without the consent of the occupier;
 - (c) search and seize material.

Sanctions

- 17 (1) Part 2 regulations may include provision—
 - (a) for, about or connected with the imposition of civil sanctions in respect of—
 - (i) failures to comply with Part 1 regulations or Part 2 regulations, or
 - (ii) the obstruction of or failure to assist an enforcement authority;
 - (b) for appeals against such sanctions.
- (2) Part 2 regulations may include provision—
 - (a) creating criminal offences punishable with a fine in respect of—
 - (i) failures to comply with Part 1 regulations or Part 2 regulations,
 - (ii) failures to comply with civil sanctions imposed under Part 2 regulations, or
 - (iii) the obstruction of or failure to assist an enforcement authority;
 - (b) about such offences.
- (3) In this paragraph “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- 18 Part 2 regulations may include provision for the imposition of sanctions of that kind whether or not—
 - (a) the conduct in respect of which the sanction is imposed constitutes an offence,
 - (b) the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008, or
 - (c) the relevant national authority may make provision for the imposition of sanctions under that Part.

Charges and costs

- 19 Part 2 regulations may include provision—
 - (a) requiring persons on whom requirements are imposed by Part 1 regulations to pay charges, as a means of recovering costs incurred by an enforcement authority in performing its functions;
 - (b) authorising a court or tribunal dealing with any matter under Part 1 regulations or Part 2 regulations to award to an enforcement authority costs incurred by it in performing its functions under the regulations in relation to that matter.

Consultation requirement

- 20 (1) Before making Part 2 regulations the relevant national authority must consult any persons the authority considers appropriate.
- (2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.