

## SCHEDULES

### SCHEDULE 5

Section 51

#### PRODUCER RESPONSIBILITY FOR DISPOSAL COSTS

##### PART 1

##### REQUIREMENTS

###### *General power*

- 1 (1) The relevant national authority may by regulations make provision requiring the payment of sums by specified persons, in respect of specified products or materials.
- (2) The regulations may be made only for the purpose of securing that those involved in manufacturing, processing, distributing or supplying products or materials meet, or contribute to, the disposal costs of the products or materials.

###### *“Disposal costs” and “disposal”*

- 2 (1) In this Schedule the “disposal costs” of products or materials means such costs incurred in connection with the disposal of the products or materials as may be specified in the regulations.
- (2) In this Schedule the “disposal” of products or materials includes their re-use, redistribution, recovery or recycling.
- (3) Disposal costs may include the costs of—
  - (a) collecting and transporting products or materials for disposal,
  - (b) sorting and treating products or materials,
  - (c) other steps preparatory to disposal of products or materials, and
  - (d) providing public information about the disposal of products or materials.
- (4) They may include costs incurred in relation to products or materials that have been disposed of unlawfully.
- (5) The regulations may make provision as to how the disposal costs of products or materials are to be calculated.

###### *Calculation of sums payable*

- 3 (1) The regulations may make provision as to how the sums payable under the regulations are to be calculated.
- (2) They may include provision for the sums payable under the regulations to vary according to the design or composition of the products or materials to which the regulations relate, the methods by which they were produced or any other factor.

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### *Administration*

- 4 (1) The regulations may appoint, or make provision for the appointment of, a person (an “administrator”) to administer provision made by the regulations.
- (2) More than one person may be appointed as an administrator.
- (3) The regulations may confer functions on an administrator (including functions involving the exercise of discretion).
- (4) References in this Schedule to an administrator include a person appointed by an administrator or exercising functions on an administrator’s behalf.

### *Registration*

- 5 (1) The regulations may require—
- (a) persons required to pay sums under the regulations to register with an administrator;
  - (b) administrators to register with an enforcement authority appointed by regulations under Part 2 of this Schedule.
- (2) The regulations may make provision—
- (a) about applications for registration;
  - (b) about the period for which registration has effect;
  - (c) about the cancellation of registration.
- (3) The regulations may require persons required to register to pay, in connection with their registration, fees of an amount determined by or in accordance with the regulations.
- (4) The regulations may require registers to be published or made available for inspection.

### *Payment of sums*

- 6 (1) The regulations may make provision for the sums payable under the regulations to be payable to an administrator.
- (2) The regulations may make provision as to how sums paid to the administrator are to be held by the administrator.

### *Distribution of sums paid*

- 7 The regulations may make provision for sums paid to an administrator—
- (a) to be distributed by the administrator, in accordance with the regulations, among persons who have incurred disposal costs in relation to products or materials to which the regulations relate, or
  - (b) to be paid to another administrator to be so distributed by that administrator.

### *Repayment of sums paid*

- 8 (1) The regulations may make provision for sums paid to an administrator to be repayable, in whole or in part, to the persons by whom they were payable (“liable persons”).

- (2) The regulations may make provision as to how sums repayable under the regulations are to be calculated.
- (3) They may include provision for the sums repayable under the regulations to vary according to the extent to which, or manner in which, liable persons dispose of products or materials to which the regulations relate, or meet or contribute to their disposal costs.

#### *Charges*

- 9 The regulations may include provision requiring the payment of charges to administrators, as a means of recovering costs incurred by administrators in performing functions under the regulations.

#### *Consultation requirements*

- 10 (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.
- (2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.

## **PART 2**

### ENFORCEMENT

#### *General power*

- 11 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*

- 12 (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*

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

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### *Records and information*

- 14 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 or (where the person is not an administrator) an administrator;
  - (c) requiring an enforcement authority to make reports or provide information to the relevant national authority.

### *Powers of entry etc*

- 15 (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;
  - (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*

- 16 (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 civil sanctions imposed under Part 2 regulations, or
    - (ii) 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).
- (4) 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,

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- (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*

- 17 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 in relation to that matter.

#### *Consultation requirements*

- 18 (1) Before making regulations under this Part of this Schedule 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.