

SCHEDULE 2

(introduced by section 18)

PARTICULAR PURPOSES FOR WHICH PROVISION MAY BE MADE UNDER SECTION 18

PART 1

LIST OF PURPOSES

Environmental activities

- 1 (1) Further defining environmental activities.
- (2) Modifying the definition of any of those activities.
- (3) Specifying other activities as environmental activities.

Emissions

- 2 (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.
- (3) Authorising the making of schemes for the trading or other transfer of quotas so allocated.

Regulators

- 3 (1) Determining the authorities (whether SEPA or any other public or local authority or the Scottish Ministers) by whom functions conferred by the regulations for or in connection with regulating regulated activities are to be exercisable (such authorities being referred to in this schedule as “regulators”).
- (2) Specifying any other purposes for which any such functions are to be exercisable.
- (3) Enabling the Scottish Ministers 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 purpose of the implementation of any obligations of the United Kingdom under the EU Treaties or under any international obligations to which the United Kingdom is a party,
 - (c) directions relating to the exercise of any function in a particular case or description of case,
 - (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 Scottish Ministers.

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 (a “permit”),
 - (b) subject to a requirement to register the carrying on of the activity with a regulator (“registration”),
 - (c) subject to a requirement to notify a regulator that the activity is being, or is proposed to be, carried on (“notification”),
 - (d) subject to compliance with rules specified in or made under the regulations (“general binding rules”).
- (4) Enabling the carrying on of regulated activities to be authorised by means of a permit, registration or notification whether or not the carrying on of those activities is also subject to general binding rules.
- (5) Specifying a procedure under which the regulators may determine general binding rules.
- (6) Treating as authorised the carrying on of regulated activities which are subject to general binding rules.
- (7) Specifying the subsistence of an authorisation to carry on regulated activities which are subject to general binding 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, and
 - (c) the grant of permits.
- 6 (1) Prescribing the form and content of permits.
- (2) Authorising permits to be granted subject to conditions imposed by regulators.
- (3) Securing that permits have effect subject to specified conditions.
- (4) Requiring persons carrying on regulated activities authorised by way of a permit 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 was granted.
- 7 (1) Requiring permits, or the conditions to which permits are subject, to be reviewed by regulators (whether periodically or in specified circumstances).

- (2) Authorising or requiring the variation of permits or such conditions by regulators (whether on applications made by holders of permits or otherwise).
 - (3) Regulating the making of changes in the carrying on of the activities to which permits relate.
- 8
- (1) Regulating the transfer and surrender of permits.
 - (2) Authorising the suspension of permits by regulators.
 - (3) Authorising the revocation of permits by regulators.
 - (4) Authorising the imposition by regulators of requirements with respect to the taking of preventive or remedial action (by holders of permits or other persons) in connection with the surrender and revocation of permits.
- 9
- (1) Authorising, or authorising the Scottish Ministers to make schemes for, the charging by the Scottish Ministers or public or local authorities of fees or other charges in respect of—
 - (a) the testing or analysis of substances in cases mentioned in sub-paragraph (2),
 - (b) the validating of, or of the results of, any testing 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, analysis, validating or assessing is in any way in anticipation of, or otherwise in connection with, the making of applications for the grant of permits or is carried out in pursuance of conditions to which any permit is subject.

Registration

- 10
- (1) Prescribing the form and content of—
 - (a) applications for registration,
 - (b) registration.
 - (2) Regulating the procedure for registration including—
 - (a) the procedure to be followed in connection with—
 - (i) applications for registration,
 - (ii) the determination of such applications, and
 - (iii) the grant of registration, and
 - (b) variation, transfer, surrender, suspension and revocation of registrations.
 - (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,
 - (b) the subsistence of registration.

Provisions common to permits and registration

- 11 (1) Enabling the granting of permits, or the registration of activities, authorising the carrying on of—
- (a) one or more regulated activities,
 - (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 in respect of permits and registrations.
- (3) Specifying a procedure under which regulators may determine such rules.
- (4) 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),
 - (c) the registration of regulated activities (including provision for restricting registration to the carrying on of such activities by those who are fit and proper persons within the meaning of the regulations).
- (5) Specifying the circumstances in which persons or descriptions of persons may be deemed—
- (a) to have 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) to be carrying on a regulated activity for the purposes of notices that may be served by regulators under paragraph 18,
 - (c) to be authorised to carry on a regulated activity without having applied for a permit or registration, or having given notification, in respect of that activity.
- (6) Enabling the granting of a permit to, or registration of the carrying on of regulated activities by, more than one person.
- (7) Enabling permits and registrations—
- (a) to be varied, transferred, surrendered, suspended or revoked wholly or in part,
 - (b) to be varied, suspended or revoked as mentioned in paragraph (a) 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,
 - (c) to be consolidated.
- (8) 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.

Notification of regulated activities

- 12 (1) Prescribing the form and content of notifications and otherwise regulating the procedure for notifying the carrying on or proposed carrying on of regulated activities.

- (2) Specifying restrictions or other requirements in connection with notifications, including—
- (a) the subsistence of a notification,
 - (b) the subsistence of an authorisation to carry on a regulated activity in respect of which the notification is given.

Charging schemes

- 13 (1) Authorising, or authorising regulators to make, vary and revoke schemes for the charging by regulators 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 the conditions to which it is subject,
 - (iii) the transfer, surrender or revocation of a permit,
 - (iv) registration,
 - (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,
 - (d) in respect of notifications,
 - (e) in respect of other specified matters.
- (2) Regulating the procedure for making, varying and revoking such schemes.

Information, publicity and consultation

- 14 Enabling persons of any specified description (whether or not they are holders of permits or carrying on activities that are subject to registration, a requirement of notification or general binding rules) to be required—
- (a) to provide such information in such manner as is specified in the regulations,
 - (b) to compile information—
 - (i) on emissions,
 - (ii) on energy consumption and on the efficiency with which energy is used,
 - (iii) on waste and on the origins and destinations of waste.
- 15 Securing that—
- (a) publicity is given to specified matters,
 - (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) which are open to public inspection,
 - (c) regulators publish, in a manner specified in the regulations, such registers,
 - (d) copies of entries in such registers, or of specified documents, may be obtained by members of the public.
- 16 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.

Enforcement and offences

- 17 (1) Conferring functions on regulators with respect to compliance with, and enforcement of, the regulations.
- (2) Conferring power on regulators—
- (a) to arrange for preventive 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.
- (3) Authorising regulators to appoint suitable persons to exercise the functions mentioned in sub-paragraph (1) and the powers in sub-paragraph (2); and conferring powers (such as those specified in section 108(4) of the Environment Act 1995 (powers of entry, etc.)) on persons so appointed.
- (4) Regulating the procedure under which regulators may make arrangements, or impose requirements, such as are mentioned in sub-paragraph (2).
- 18 (1) 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 conditions of authorisations, relating to the regulated activities,
 - (c) to provide such financial security as the regulators serving the notices consider appropriate pending the taking of preventative or remedial action required by virtue of paragraph (b),
 - (d) to take steps to remove imminent risks of serious adverse impacts on the environment (whether or not arising from any contraventions such as are mentioned in paragraph (b)),
 - (e) 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).
- (2) Authorising regulators, where such notices are not complied with by persons on whom they are served—
- (a) to take, or arrange for the taking of, preventative or remedial action at the expense of those persons,
 - (b) to impose monetary penalties on those persons.
- (3) Authorising regulators who serve such notices to require the persons on whom the notice is served to pay the cost incurred by the regulators in relation to the service of the notice up to the time of its service.
- (4) Providing for the enforcement of such notices by civil proceedings.
- (5) Specifying a procedure under which monetary penalties such as are mentioned in sub-paragraph (2)(b) may be imposed.
- (6) Authorising regulators, where they are required by virtue of such a procedure to serve a notice, 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.

- (7) Providing for the enforcement of such notices by civil proceedings.
- 19 Creating offences and dealing with matters relating to such offences, including—
- (a) the provision of defences, and
 - (b) evidentiary matters.
- 20 Enabling, where a person has been convicted of an offence under the regulations, 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).

Appeals

- 21 (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 and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

General

- 22 (1) Making provision which, subject to any modifications that the Scottish Ministers consider appropriate, corresponds or is similar to—
- (a) any provision made by or under, or capable of being made under, Part 2 of the Environmental Protection Act 1990, or
 - (b) any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 in connection with an EU obligation relating to protecting and improving the environment.
- (2) Making provision about the application of the regulations to the Crown.

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—
- (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,
 - “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.