



# Climate Change Act 2008

## 2008 CHAPTER 27

### PART 3

#### TRADING SCHEMES

##### *Trading schemes*

#### **44 Trading schemes**

- (1) The relevant national authority may make provision by regulations for trading schemes relating to greenhouse gas emissions.
- (2) A “trading scheme” is a scheme that operates by—
  - (a) limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions, or
  - (b) encouraging activities that consist of, or that cause or contribute, directly or indirectly, to reductions in greenhouse gas emissions or the removal of greenhouse gas from the atmosphere.

#### **45 Activities to which trading schemes may apply**

- (1) For the purposes of this Part activities are regarded as indirectly causing or contributing to greenhouse gas emissions if they involve, in particular—
  - (a) the consumption of energy,
  - (b) the use of materials in whose production energy was consumed,
  - (c) the disposal otherwise than for recycling of materials in whose production energy was consumed, or
  - (d) the production or supply of anything whose subsequent use directly causes or contributes to greenhouse gas emissions.

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- (2) Correspondingly, for the purposes of this Part activities are regarded as indirectly causing or contributing to the reduction of greenhouse gas emissions if they involve a reduction under any of those heads.
- (3) This Part applies to activities carried on in the United Kingdom, regardless of where the related emissions, reductions or removals of greenhouse gas occur.

#### **46 Matters that may or must be provided for in regulations**

- (1) Schedule 2 specifies matters that may or must be provided for in regulations under section 44.
- (2) In that Schedule—
  - Part 1 deals with schemes that operate by limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions;
  - Part 2 deals with schemes that operate by encouraging activities that consist of, or that cause or contribute, directly or indirectly, to reductions in greenhouse gas emissions or the removal of greenhouse gas from the atmosphere;
  - Part 3 deals with administration and enforcement.
- (3) Regulations under section 44 may also make provision about the application of the regulations to the Crown.

#### *Authorities and regulations*

#### **47 Relevant national authorities**

- (1) This section identifies “the relevant national authority” for the purposes of this Part.
- (2) The Scottish Ministers are the relevant national authority in relation to matters within the legislative competence of the Scottish Parliament.
- (3) The Welsh Ministers are the relevant national authority in relation to matters that—
  - (a) are within the legislative competence of the National Assembly for Wales, or
  - (b) relate to limiting or encouraging the limitation of activities in Wales that consist of the emission of greenhouse gas, other than activities in connection with offshore oil and gas exploration and exploitation.
- (4) In subsection (3)(b)—
  - “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32); and
  - “offshore oil and gas exploration and exploitation” has the same meaning as in the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958).
- (5) The Secretary of State or the relevant Northern Ireland department is the relevant authority in relation to reserved matters within the meaning of the Northern Ireland Act 1998 (c. 47).
- (6) The relevant Northern Ireland department is the relevant authority in relation to all other matters within the legislative competence of the Northern Ireland Assembly.

(7) The Secretary of State is the relevant national authority in relation to all other matters.

#### **48 Procedure for making regulations**

- (1) Before making regulations under this Part, a national authority must—
  - (a) obtain, and take into account, the advice of the Committee on Climate Change, and
  - (b) consult such persons likely to be affected by the regulations as the authority considers appropriate.
- (2) In particular, before making regulations under this Part that set a limit on the total amount of the activities to which a trading scheme applies for a trading period or periods, a national authority must obtain, and take into account, the advice of the Committee on Climate Change on the amount of that limit.
- (3) Regulations under this Part are subject to affirmative resolution procedure if they contain provision—
  - (a) setting up a trading scheme,
  - (b) extending the class of participants or activities to which a trading scheme applies,
  - (c) extending the duration of a trading scheme,
  - (d) making the overall requirements of a trading scheme significantly more onerous,
  - (e) conferring new powers to enforce the requirements of a trading scheme,
  - (f) imposing or providing for the imposition of new financial or other penalties or increasing the amount of existing financial penalties,
  - (g) creating an offence or increasing the penalties for an existing offence, or
  - (h) amending or repealing a provision of an enactment contained in primary legislation.
- (4) Regulations under this Part are subject to affirmative resolution procedure if they are the first such regulations to contain provision under paragraph 31 of Schedule 2 (appeals).
- (5) Other regulations under this Part are subject to negative resolution procedure.
- (6) The relevant Northern Ireland department may only make regulations under this Part dealing with a reserved matter within the meaning of the Northern Ireland Act 1998 (c. 47) with the consent of the Secretary of State.

#### **49 Further provisions about regulations**

- (1) Schedule 3 makes further provision about regulations under this Part.
- (2) In that Schedule—
  - Part 1 relates to regulations made by a single national authority;
  - Part 2 relates to regulations made by two or more national authorities; and
  - Part 3 confers power to make provision by Order in Council.

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*Other supplementary provisions*

**50 Information**

- (1) Schedule 4 confers powers to require information for the purposes of enabling a trading scheme to be established.
- (2) Paragraphs 1 to 5 of that Schedule shall cease to have effect on 1st January 2011.

**51 Powers to give guidance**

- (1) The relevant national authority may give guidance to the administrator of a trading scheme.
- (2) The power to give guidance under this section includes power to vary or revoke it.
- (3) The administrator must have regard to any guidance given under this section.

**52 Powers to give directions**

- (1) The relevant national authority may give directions to the administrator of a trading scheme.
- (2) The power to give directions under this section includes power to vary or revoke the directions.
- (3) The administrator must comply with any directions given under this section.

**53 Grants to administrators and participants**

- (1) A national authority may make, or arrange for the making of, grants to—
  - (a) the administrator of a trading scheme, or
  - (b) the participants in a trading scheme.
- (2) A grant under this section may be made subject to such conditions as may be determined by, or in accordance with arrangements made by, the national authority that makes the grant.

**54 Power to make consequential provision**

A national authority may by regulations—

- (a) make such provision amending, repealing or revoking any enactment as the authority considers appropriate in consequence of provision made by that authority by regulations under section 44 (trading schemes);
- (b) make such transitional provision and savings as the authority considers appropriate in connection with the coming into effect of such provision.

*Interpretation*

**55 Interpretation of Part 3**

In this Part—

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“administrator”, in relation to a trading scheme, means a person appointed as the administrator of the scheme by regulations under paragraph 21 of Schedule 2;

“participant”, in relation to a trading scheme, means a person to whom the scheme applies by virtue of regulations under paragraph 4 or 15 of Schedule 2;

“trading period”, in relation to a trading scheme, means a period by reference to which the scheme is to operate by virtue of regulations under paragraph 2 or 13 of Schedule 2.