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SCHEDULES

SCHEDULE 8

Section 61

REGULATION OF THE WATER ENVIRONMENT

PART 1

PURPOSES FOR WHICH PROVISION MAY BE MADE

Interpretation

- 1 In this Schedule—
- “fish regulations” means regulations containing provision which—
 - (a) satisfies section 61(2)(c), or
 - (b) is for the purpose mentioned in paragraph 8(2) or 30(3);
 - “flood regulations” means regulations containing provision which—
 - (a) satisfies section 61(2)(b), or
 - (b) is for the purpose mentioned in paragraph 8(2) or 30(2);
 - “water regulations” means regulations containing provision which—
 - (a) satisfies section 61(2)(a), or
 - (b) is for the purpose mentioned in paragraph 8(2) or 30(1).
- 2 In this Schedule—
- “functions” includes powers and duties;
 - “regulated activity” means—
 - (a) in relation to water regulations, the use of water resources;
 - (b) in relation to flood regulations, any activity that affects, or could affect, the drainage of land, flood risk or the management of flood risk;
 - (c) in relation to fish regulations, any activity that affects, or could affect, the movement of fish through regulated waters;
 - “regulated field” means—
 - (a) in relation to water regulations, regulating the use of water resources;
 - (b) in relation to flood regulations, securing the drainage of land or the management of flood risk;
 - (c) in relation to fish regulations, safeguarding the movement of fish through regulated waters;
 - “the regulations” means regulations under section 61;
 - “specified” means specified in the regulations.

Preliminary

- 3 (1) Establishing standards, objectives or requirements in relation to—
 - (a) regulated activities, and

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- (b) in the case of fish regulations, structures or obstructions that affect, or could affect, the movement of fish through regulated waters.
- (2) In the case of water regulations, authorising the making of plans for—
 - (a) the setting of overall limits,
 - (b) the allocation of rights, or
 - (c) the progressive improvement of standards or objectives,
 relating to the use of water resources.
- (3) In the case of water regulations, authorising the making of schemes for the trading or other transfer of rights so allocated.
- 4 (1) Determining the authorities (whether public or local or the Minister) by whom functions conferred by the regulations—
 - (a) in relation to permits under the regulations, or
 - (b) otherwise for or in connection with the regulated field,
 are to be exercisable (in this Schedule referred to as “regulators”).
- (2) Specifying any purposes for which any such functions are to be exercisable by regulators.
- 5 Enabling the Minister to give directions which regulators are to comply with, or guidance which regulators are to have regard to, in exercising functions under the regulations, including—
 - (a) directions providing for any functions exercisable by one regulator to be instead exercisable 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 agreement to which the United Kingdom is a party;
 - (c) directions relating to the exercise of any function in a particular case or class of case (except functions in relation to the investigation or prosecution, in a particular case, of an offence under the regulations).

Permits

- 6 Prohibiting persons from carrying on any activities of any specified description, except—
 - (a) under a permit in force under the regulations, and
 - (b) in accordance with any conditions to which the permit is subject.
- 7 Specifying restrictions or other requirements in connection with 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); and otherwise regulating the procedure to be followed in connection with the grant of permits.
- 8 (1) Prescribing the contents of permits.
- (2) Authorising permits to be granted subject to conditions imposed by regulators (the nature of any such condition not being restricted by section 61(2)).
- (3) Securing that permits have effect subject to—
 - (a) conditions specified in the regulations; or
 - (b) rules of general application specified in or made under the regulations.

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- 9 (1) Requiring permits or the conditions to which permits are subject to be reviewed by regulators (whether periodically or in any 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.
- 10 (1) Regulating the transfer or surrender of permits.
- (2) Authorising the revocation of permits by regulators.
- (3) Authorising the imposition by regulators of requirements with respect to the taking of preventive action (by holders of permits or other persons) in connection with the surrender or revocation of permits.
- 11 Authorising the Minister to make schemes for the charging by regulators of fees or other charges in respect of, or in respect of an application for—
- (a) the grant of a permit,
- (b) the variation of a permit or the conditions to which it is subject, or
- (c) the transfer or surrender of a permit,
- or in respect of the subsistence of a permit.
- 12 Authorising, or authorising the Minister to make schemes for, the charging by the Minister or public or local authorities of fees or other charges in respect of—
- (a) any advice given, or
- (b) any testing, assessment or investigation done or other action taken,
- in cases where the advice or action 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.

Further regulation

- 13 (1) Requiring persons who propose to carry out activities of a specified description to give notice of their proposals to regulators.
- (2) Requiring owners or occupiers of land to give notice to regulators of any obstruction of a specified description occurring on the land.
- 14 Requiring persons to apply for a permit under the regulations in respect of activities of a specified description.
- 15 (1) Authorising a regulator, where a person is carrying on an activity of a specified description—
- (a) to serve notice on the person requiring them to cease carrying on the activity or, at their own cost, to take such action in connection with the activity as may be specified in the notice, or
- (b) to arrange itself for action to be taken in connection with the activity.
- (2) Authorising a regulator to—
- (a) to serve notice on persons of a specified description requiring them, at their own cost, to take such action as may be specified in the notice, or
- (b) to arrange itself for action to be taken,
- in respect of a structure or obstruction of a specified description.

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- 16 Imposing requirements, or authorising regulators to impose requirements, on persons of a specified description in relation to the operation and maintenance of specified structures.

Information, publicity and consultation

- 17 Enabling persons of any specified description (whether or not they are holders of permits) to be required—
- (a) to compile information about—
 - (i) regulated activities, and
 - (ii) in the case of fish regulations, structures or obstructions that affect, or could affect, the movement of fish through regulated waters;
 - (b) to provide such information in such manner as is specified in the regulations.
- 18 Securing—
- (a) that publicity is given to specified matters;
 - (b) that 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) that copies of entries in such registers, or of specified documents, may be obtained by members of the public.
- 19 Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions; and providing for them to take into account representations made to them on consultation.

Enforcement and offences

- 20 (1) Conferring on regulators functions with respect to the monitoring and inspection of—
- (a) the carrying on of regulated activities, or
 - (b) regulated structures or obstructions.
- (2) Authorising regulators to appoint suitable persons to exercise any such functions and conferring on persons so appointed powers such as those specified in—
- (a) sections 169 to 174 of the Water Resources Act 1991;
 - (b) section 108(4) of the Environment Act 1995;
 - (c) regulation 26 of the Eels (England and Wales) Regulations 2009 (S.I. 2009/3344);
 - (d) sections 31 and 32 of the Salmon and Freshwater Fisheries Act 1975.
- (3) Functions which may be conferred in reliance on sub-paragraph (1) include—
- (a) power to take samples or to make copies of information;
 - (b) power to arrange for preventive or remedial action to be taken at the expense of holders of permits.
- (4) In sub-paragraph (1) “regulated structures or obstructions” means structures or obstructions which—
- (a) may be the subject of notices served by regulators under the regulations, or
 - (b) may be subject to requirements imposed under the regulations.

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- 21 Authorising regulators to serve on holders of permits—
- (a) notices requiring them to take remedial action in respect of contraventions, actual or potential, of conditions to which their permits are subject;
 - (b) notices requiring them to provide such financial security as the regulators serving the notices consider appropriate pending the taking of remedial action in respect of any such contraventions;
 - (c) notices requiring them to take steps to remove or reduce, or to mitigate the effect of the potential consequences of, the following imminent risks (whether or not arising from any such contraventions)—
 - (i) an imminent risk of a significant waste of water resources or of significant damage to the environment, in the case of water regulations;
 - (ii) an imminent risk of a significant impediment to drainage or of a flood, in the case of flood regulations;
 - (iii) an imminent risk of a significant impediment to the movement of fish through regulated waters, in the case of fish regulations.
- 22 Authorising regulators to suspend the operation of permits so far as having effect to authorise the carrying on of activities to which they relate.
- 23 Establishing a procedure for the resolution of disputes in relation to notices served by regulators under the regulations.
- 24 Providing for the enforcement of notices served by regulators under the regulations by proceedings in—
- (a) the High Court, or
 - (b) in the case of fish regulations applying as mentioned in section 61(11)(b), the Sheriff Court.
- 25 Where action is required to be taken by a person under the regulations or pursuant to a notice served under the regulations, authorising regulators in specified circumstances to take action instead of that person; and making provision for the liability of that person in respect of reasonable costs incurred by the regulators in taking such action.
- 26 Creating offences and dealing with matters relating to such offences, including—
- (a) the provision of defences, and
 - (b) evidentiary matters.
- 27 Enabling, where a person has been convicted of an offence under the regulations—
- (a) 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), or
 - (b) a regulator to arrange for such action to be taken at that person's expense.
- 28 Where a person causes damage to any structure constructed, altered or maintained by a regulator under these regulations, authorising the regulator to require the person to pay the expenses of the regulator in repairing the damage and providing for the manner in which such expenses may be recovered.

Appeals

- 29 Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations; and making provision for (or for the determination of) matters relating to the making, considering and

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

Corresponding provision

- 30 (1) Making provision which, subject to any modifications that the Minister considers appropriate, corresponds or is similar to any provision made by or under, or capable of being made under—
- (a) section 71 of the Water Industry Act 1991 (waste from water sources);
 - (b) Chapter 2 of Part 2 of the Water Resources Act 1991 (abstraction and impounding);
 - (c) Part 1 of the Water Act 2003 (abstraction and impounding).
- (2) Making provision which, subject to any modifications that the Minister considers appropriate, corresponds or is similar to—
- (a) any provision made by section 339 of the Highways Act 1980 (saving for works etc of drainage authorities etc);
 - (b) any provision made by or under, or capable of being made under, sections 109 and 110 of the Water Resources Act 1991 (erecting structures over main rivers etc prohibited without consent);
 - (c) any provision made by any byelaw, or capable of being made by any byelaw, under paragraph 5 of Schedule 25 to that Act (byelaws for flood defence and drainage purposes).
- (3) Making provision which, subject to any modifications that the Minister considers appropriate, corresponds or is similar to—
- (a) sections 9 to 15 and 18 of the Salmon and Freshwater Fisheries Act 1975 (obstructions to passage of fish);
 - (b) Part 4 of the Eels (England and Wales) Regulations 2009 (S.I. 2009/3344) (passage of eels).
- (4) Each reference to an enactment in sub-paragraph (1), (2) or (3) is a reference to that enactment as it has effect on the coming into force of that sub-paragraph.
- (5) Provision made under this paragraph is not subject to the requirement in section 61(2).

Crown application

- 31 Making provision about the application of the regulations to the Crown.

PART 2

SUPPLEMENTARY PROVISION

Water regulations trading schemes: penalties

- 32 (1) The regulations may, if they are water regulations, authorise the inclusion in a trading scheme of—
- (a) provision for penalties in respect of contraventions of provisions of the scheme;

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- (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 starts to operate).

(2) In this paragraph “trading scheme” means a scheme of the kind mentioned in paragraph 3(3).

Determination of matters by regulators

33 The regulations may make provision for anything which, by virtue of paragraphs 7 to 10, could be provided for by the regulations to be determined under the regulations by regulators.

Delegation between regulators

34 The regulations may make provision authorising regulators to arrange for specified functions to be exercised on their behalf by other regulators.

Imposition of conditions

35 In connection with the determination of conditions as mentioned in paragraph 8(3)
(a) the regulations may in particular provide—

- (a) for such conditions to be determined in the light of any specified general principles and any directions or guidance given under the regulations;
- (b) for such guidance to include guidance sanctioning reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing a condition.

Charging schemes

36 The regulations may—

- (a) require any such scheme as is mentioned in paragraph 11 or 12 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 regulator 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).

Offences

37 (1) The regulations may provide for any such offence as is mentioned in paragraph 26 to be triable—

- (a) only summarily, or
- (b) either summarily or on indictment.

(2) The regulations may provide for any such offence to be punishable on summary conviction with—

- (a) imprisonment for a term not exceeding such period as is specified in the regulations (which may not exceed the normal maximum term), or

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- (b) a fine not exceeding such amount as is so specified (which may not exceed £20,000),
or both.
- (3) The “normal maximum term” means—
- (a) in relation to England and Wales—
- (i) in the case of an offence triable only summarily, 51 weeks, and
- (ii) in the case of an offence triable either summarily or on indictment, twelve months;
- (b) in relation to Scotland—
- (i) in the case of an offence triable only summarily, 6 months, and
- (ii) in the case of an offence triable either summarily or on indictment, twelve months.
- (4) Regulations that—
- (a) are made before the date on which section 281(5) of the Criminal Justice Act 2003 comes into force, and
- (b) in relation to England and Wales, make provision for a summary offence to be punishable with a term of imprisonment exceeding six months,
- must provide that, where the offence is committed before that date, it is punishable with imprisonment for a term not exceeding six months.
- (5) Regulations that—
- (a) are made before the date on which section 154(1) of the Criminal Justice Act 2003 comes into force, and
- (b) in relation to England and Wales, make provision for an offence triable either summarily or on indictment to be punishable on summary conviction with a term of imprisonment exceeding six months,
- must provide that, where the offence is committed before that date, it is punishable on summary conviction with imprisonment for a term not exceeding six months.
- (6) The regulations may provide for such an offence to be punishable on indictment with—
- (a) imprisonment for a term not exceeding such period as is specified (which may not exceed two years), or
- (b) a fine,
- or both.

Restrictions on Crown application

- 38 (1) To the extent that the regulations bind the Crown (by virtue of provision made under paragraph 31), they are subject to the following restrictions.
- (2) No contravention of any provision of the regulations may make the Crown criminally liable; but the regulations may provide that the High Court may, on the application of a regulator, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Sub-paragraph (2) does not affect the criminal liability of persons in the service of the Crown.

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- (4) The regulations must provide that if the Secretary of State certifies that it appears to him, as respects any Crown premises and any relevant powers of entry, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.
- (5) Subject to sub-paragraph (6), where a power is conferred in relation to land by any provision of the regulations, the regulations must provide that—
- (a) that power is to be exercisable in relation to any land in which there is a Crown or Duchy interest only with the consent of the appropriate authority, and
 - (b) that a consent for such purposes may be given on such financial and other conditions as the appropriate authority giving the consent may consider appropriate.
- (6) But provision contained in the regulations in accordance with sub-paragraph (5) is not to require any consent to be given for the exercise of any power in relation to any land in which there is a Crown or Duchy interest to the extent that that power would be so exercisable apart from provision in the regulations made by virtue of paragraph 31.
- (7) In this paragraph—
- “the appropriate authority” has the same meaning as in section 293 of the Town and Country Planning Act 1990;
 - “Crown or Duchy interest” means an interest belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department;
 - “Crown premises” means premises held by or on behalf of the Crown;
 - “relevant powers of entry” means powers of entry that are—
 - (a) contained in the regulations,
 - (b) exercisable in relation to the premises in question, and
 - (c) specified in the Secretary of State's certificate under sub-paragraph (4).

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