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## SCHEDULES

### SCHEDULE 8

#### REGULATION OF THE WATER ENVIRONMENT

#### 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;
  - (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.

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### *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
  - (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,

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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.
- (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—

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- (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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