STATUTORY INSTRUMENTS

2016 No. 1189

CLIMATE CHANGE LEVY

The Climate Change Agreements (Administration) (Amendment and Related Provision) Regulations 2016

Made - - - -	*7th December 2016*
Laid before the House of Commons	*8th December 2016*
Coming into force - -	*30th December 2016*

The Secretary of State, in exercise of the powers conferred by paragraphs 52D, 52E and 146(7) of Schedule 6 to the Finance Act 2000(**a**), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Climate Change Agreements (Administration) (Amendment and Related Provision) Regulations 2016 and come into force on 30th December 2016.

(2) In these Regulations, "the 2012 Regulations" means the Climate Change Agreements (Administration) Regulations 2012(**b**).

Amendment to Regulation 2 of the 2012 Regulations

2. In regulation 2 of the 2012 Regulations (interpretation), after the definition of "target period" insert—

> ""target period 1" means the target period from 1st January 2013 to 31st December 2014;
>
> "target period 2" means the target period from 1st January 2015 to 31st December 2016;
>
> "target period 3" means the target period from 1st January 2017 to 31st December 2018;
>
> "target period 4" means the target period from 1st January 2019 to 31st December 2020."

Amendment to Regulation 12 of the 2012 Regulations

3.—(1) Regulation 12 of the 2012 Regulations (terms to be included in an underlying agreement relating to the buy-out fee) is amended as follows.

(2) For paragraph (2)(c), substitute—

> "(c) if sub-paragraph (a)(i) applies, the amount of the fee is—

(**a**) 2000 c.17. Paragraphs 52D and 52E were inserted by paragraph 9 of Schedule 31 to the Finance Act 2012 (c.14).
(**b**) SI 2012/1976, as amended by SI 2013/508. There are other amendments not relevant to these Regulations.

$$A \times (W - S)$$

where—

(i) A is £12 where the finding is of a failure to meet a target for target period 1 or target period 2, or £14 where the finding is of a failure to meet a target for target period 3 or target period 4;

(ii) W in units of tCO_2 equivalent represents the amount by which the emissions for the target period exceed the target; and

(iii) S in units of tCO_2 equivalent represents any surplus;".

(3) For paragraph (2)(d), substitute—

"(d) if sub-paragraph (a)(ii) applies, the amount of the fee is—

$$A \times W$$

where—

(i) A is £12 where the finding is of a failure to meet a target for target period 1 or target period 2, or £14 where the finding is of a failure to meet a target for target period 3 or target period 4; and

(ii) W in units of tCO_2 equivalent represents the amount by which the emissions for the target period exceed the target;".

Amendment to insert new Regulation 12A in the 2012 Regulations

4. After regulation 12 of the 2012 Regulations insert—

"Terms to be included in an umbrella agreement relating to the buy-out fee

12A.—(1) This regulation applies to an umbrella agreement if it contains terms corresponding with the terms set out in regulation 12(2).

(2) The terms must provide that, where the administrator's finding is of a failure to meet a target for target period 3 or target period 4, the fee is to be calculated in accordance with paragraph (3) or (4).

(3) If the circumstances set out in regulation 12(2)(a)(i) apply, the amount of the fee is—

$$£14 \times (W - S)$$

where—

(i) W in units of tCO_2 equivalent represents the amount by which the emissions for the target period exceed the target; and

(ii) S in units of tCO_2 equivalent represents any surplus.

(4) If the circumstances set out in regulation 12(2)(a)(ii) apply, the amount of the fee is—

$$£14 \times W$$

where W in units of tCO_2 equivalent represents the amount by which the emissions for the target period exceed the target.".

Administrator's power to vary an agreement relating to the buy-out fee terms

5.—(1) The administrator may vary an agreement to take account of the specified changes in the terms that must be included in an agreement.

(2) If the administrator varies an umbrella agreement, the administrator must also vary each underlying agreement with which it forms a combination of agreements for the purposes of paragraph 48 of Schedule 6 to the Finance Act 2000(**a**).

(3) If the administrator varies an umbrella agreement, the administrator must give notice in writing of the variation to the sector association which is a party to that agreement.

(4) If the administrator varies an underlying agreement, the administrator must give notice in writing of the variation to the operator which is a party to that agreement.

(5) Notice may be given by first class post or by electronic communication to the address of the sector association or operator as notified to the administrator.

(6) In this regulation—

"the administrator" means the Environment Agency;

"agreement" means an umbrella agreement or an underlying agreement;

"operator" means a party to an underlying agreement other than the administrator;

"sector association" means a party to an umbrella agreement other than the administrator;

"the specified changes" means the changes made by regulations 3 and 4 to the terms which must be included in an agreement;

"umbrella agreement" means an agreement that is an umbrella agreement for the purposes of paragraph 48 of Schedule 6 to the Finance Act 2000;

"underlying agreement" means an agreement that is an underlying agreement for the purposes of paragraph 48 of Schedule 6 to the Finance Act 2000 or, if there is no umbrella agreement, an agreement falling within paragraph 47 of Schedule 6 to the Finance Act 2000(**b**).

Neville-Rolfe
Minister of State
7th December 2016 Department of Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Climate Change Agreements (Administration) Regulations 2012 with regard to the terms which must be included in both umbrella agreements (which are the agreements between the administrator and the sector associations) and underlying agreements (which are the agreements between the administrator and the operators). These Regulations also make provision for the administrator (the Environment Agency) to be able to vary existing agreements as a result of those amendments.

Regulation 2 specifies the time periods covered by target period 1, target period 2, target period 3 and target period 4 respectively.

Regulation 3 amends the provision on the terms which must be included in underlying agreements relating to the buy-out fee. The provision for terms relating to the buy-out fee enable the operator, where a target unit has failed to meet a target for a target period, to pay a sum of money (the 'buy-out fee') in order to retain its Climate Change Levy discount. The buy-out fee is calculated by reference to the difference between a target unit's emissions of tonnes of carbon dioxide equivalent and its target for the target period. Regulation 2 amends the terms which must be included in underlying agreements relating to the buy-out fee so that, for failures to meet a target for target period 3 (1st January 2017 to 31st December 2018) or for target period 4 (1st January 2019 to 31st December 2019), the buy-out fee will be calculated on the basis of £14 for each tonne

(**a**) Paragraph 48 of Schedule 6 to the Finance Act 2000 was amended by paragraph 7 of Schedule 31 to the Finance Act 2012 (c.14).
(**b**) Paragraph 47 of Schedule 6 to the Finance Act 2000 was amended by paragraphs 5 and 6 of Schedule 31 to the Finance Act 2012 (c.14).

of carbon dioxide equivalent by which a target is missed. Regulation 3 amends the terms in such a way as to preserve the position that, for failures to meet a target for the target period 1 (1st January 2013 to 31st December 2014) or for target period 2 (1st January 2015 to 31st December 2016), the buy-out fee is calculated on the basis of £12 for each tonne of carbon dioxide equivalent by which a target is missed.

Regulation 4 inserts a new regulation 12A that applies to umbrella agreements which contain terms relating to the buy-out fee. Such terms must provide that, for failures to meet a target for target period 3 (1st January 2017 to 31st December 2018) or for target period 4 (1st January 2019 to 31st December 2020), the buy-out fee will be calculated on the basis of £14 for each tonne of carbon dioxide equivalent by which a target is missed.

Regulation 5 provides that the administrator can vary existing underlying agreements and umbrella agreements as a result of these changes to the terms which must be included in agreements. If the administrator varies an umbrella agreement, it must also vary the underlying agreements that relate to that umbrella agreement. Regulation 5 also provides that, if the administrator does vary existing agreements, the administrator must give notice of the variation in writing to the other party to the agreement.

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