EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE AGREEMENTS (ADMINISTRATION AND ELIGIBLE FACILITIES) (AMENDMENT) REGULATIONS 2020

2020 No. 958

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this statutory instrument is to make amendments to the Climate Change Agreements (Administration) Regulations 2012 (S.I. 2012/1976) and the Climate Change Agreements (Eligible Facilities) Regulations 2012 (S.I. 2012/2999) to enable a two-year extension to the Climate Change Agreements scheme, adding a new Target Period (Target Period 5) and enabling eligibility for a reduced rate of Climate Change Levy through to 31 March 2025.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 30 of, and Schedule 6 to, the Finance Act 2000 make provision for Climate Change Levy (CCL) to be charged on certain supplies of energy. Part IV of Schedule 6 to the Finance Act 2000 makes provision for a reduced rate of CCL to be charged if a facility which receives supplies of energy is certified as being covered by a Climate Change Agreement (CCA) for a certification period. Part IV of Schedule 6 to the Finance Act 2000 also makes provision for a CCA to be a combination of an umbrella

agreement and an agreement that, in relation to the umbrella agreement, is an underlying agreement.

6.2 A facility can only be certified as being covered by a CCA if it has made satisfactory progress towards meeting energy use or emissions targets set out in a CCA. This means that participants in the CCA scheme are only entitled to receive the reduction in the rate of CCL if they have made satisfactory progress towards meeting their targets. Part IV of Schedule 6 also provides that satisfactory progress towards meeting targets may be based on satisfying alternative requirements provided for by the CCA.

6.3 Section 207 of, and Schedule 31 to, the Finance Act 2012 amended Schedule 6 to the Finance Act 2000 to confer powers on the Secretary of State to make regulations for the administration of the CCA scheme. These include powers to make regulations:

- specifying terms which must be included in underlying agreements and umbrella agreements (including terms providing that the absence of progress towards meeting any targets may be made up for by payment of a fee to the administrator); and,
- conferring power on the administrator to vary such agreements to take account of any changes in the terms specified by regulations as terms which must be included in agreements from time to time.

6.4 The Climate Change Agreements (Administration) Regulations 2012 (S.I. 2012/1976) appoint the Environment Agency to administer CCAs entered into under Part IV of Schedule 6 to the Finance Act 2000 and set out procedures for the administration of CCAs. The Climate Change Agreements (Eligible Facilities) Regulations 2012 (S.I. 2012/2999) define what is an eligible facility for the purposes of entering into a CCA and how reckonable energy is to be calculated.

6.5 This instrument makes amendments to those statutory instruments to extend the scheme providing for a reduced rate of CCL until 31st March 2025, add a new Target Period, amend the terms to be included in agreements relating to the Target Period 5 buy-out fee, which is being increased to £18/tCO2e, and amend the formulas to provide that any surplus will not be taken into account in calculating the buy-out fee for the new target period.

6.6 This instrument also amends the financial penalty provisions in the Climate Change Agreements (Administration) Regulations 2012 and amends those Regulations to confer power on the administrator to vary existing CCAs to take account of the changes to the terms specified in those Regulations for inclusion in CCAs for the purpose of this extension.

7. Policy background

What is being done and why?

7.1 Climate Change Levy (CCL) is a tax on the supply of a range of fuels including electricity, natural gas, liquefied petroleum gas and solid fuels when supplied for use by the business and public sectors. It was introduced on 1 April 2001.

7.2 The CCA scheme is a voluntary scheme pursuant to which CCA scheme participants have entered into agreements with the Government to reduce their energy use or emissions and, in exchange, are entitled to pay reduced rate of CCL.

7.3 The CCA scheme supports the Government's objectives to deliver affordable and secure energy and decarbonisation while also helping productivity and the growth agenda.

7.4 In the CCA scheme, the agreements between sector associations, which are industry sector representative bodies for the eligible industry sectors in the scheme, and the administrator are called umbrella agreements. Agreements between operators and the administrator are called underlying agreements, while 'Target Unit' means the facility or group of facilities to which an underlying agreement applies.

7.5 CCA operators can remain compliant with the CCA scheme and retain their entitlement to the reduced rate of CCL either by meeting agreed energy efficiency or carbon reduction targets or by paying the buy-out fee. The buy-out fee is payable on each tonne of carbon dioxide equivalent by which a Target Unit falls short of meeting any target for a Target Period. There were four initial Target Periods in the CCA scheme for which Target Units are required to meet their targets, covering the four two-year periods from 2013 to 2020 inclusive. Alternatively, operators who do not meet their targets may choose not to pay the buy-out fee and lose their certification to claim the discount on CCL for the next certification period. If a Target Unit overachieves against its target for a Target Period, there will be a surplus, being the amount by which the reduction in emissions has exceeded the target.

7.6 Operators who comply with the scheme (either by meeting their targets or by paying the buy-out fee) will benefit from the reduced rate of CCL until the present CCA scheme ends, which was 31 March 2023 prior to these amendments.

7.7 The policy intent behind this instrument is to extend the CCA scheme to 31 March 2025. It does so by amending the Climate Change Agreements (Administration) Regulations 2012 (S.I. 2012/1976) to provide for a new target period (Target Period 5) from 1st January 2021 to 31st December 2022, and amending the Climate Change Agreements (Eligible Facilities) Regulations 2012 (S.I. 2012/2999) so they remain in force until 31 March 2025.

7.8 It makes an amendment to the terms to be included in an underlying agreement relating to the buy-out fee, which is being increased to £18/tCO2e for the added target period, and amends the formulas to provide that any surplus will not be taken into account in calculating the buy-out fee for the new target period. The amendments to the financial penalty provisions include a new definition of "base year", and amendments linking the calculation of a financial penalty to the relevant target period. In order to enable the administrator to vary existing Climate Change Agreements to take account of any changes in the terms specified by the Climate Change Agreements (Administration) Regulations 2012 from time to time as terms which must be included in agreements, an appropriate provision has been inserted to provide power for the administrator to do so.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidation of the amended instrument.

10. Consultation outcome

10.1 A consultation on the details of the extension to the CCA scheme ran from 16 April 2020 to 11 June 2020, 101 responses were received. Nearly all respondents welcomed the extension and certainty on CCL reduced rate. There was broad support for maintaining existing rules and eligibility criteria as this provided consistency for operators during a time of economic uncertainty.

10.2 While responses to the proposals were generally positive, many raised concerns about the tight timelines as well as specific aspects, such as an increase to the buy-out price and inability to use surplus in the added Target Period. The justification for these decisions is set out in the Government response. Additional time is being allowed for the target counter proposal process and new entrant applications to mitigate some of the concerns raised.

10.3 This instrument implements the changes listed in the Government response to the CCA scheme extension.

10.4 There has been ongoing engagement with the Environment Agency, who administer the scheme, on this instrument.

11. Guidance

11.1 Guidance previously issued under paragraph 52D(6) of Schedule 6 to the Finance Act 2000 is being updated to take account of the extension to the scheme and will be published in October 2020 at https://www.gov.uk/government/publications/climate-change-agreements-statutory-guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. CCAs are voluntary and provide eligible energy intensive businesses with the opportunity to receive reduced rate of CCL they pay if they meet energy efficiency or emission reduction targets. For those businesses signed up to agreements there is a potential positive impact on their CCL tax bill. The vast majority of current scheme rules will remain in place for the extension and therefore the additional administrative burden is expected to be minimal for businesses to continue their voluntary participation in the scheme. The buy-out fee increase is commensurate with the increased value of the reduced rate of CCL provided since the buy-out was last reviewed in 2016.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the CCA scheme relates to a tax and is therefore treated as non-regulatory.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that this is an extension to an existing, voluntary scheme which small businesses do not have to participate in. If they do, then they will receive the reduced rate of CCL which should outweigh any of the voluntary participatory costs.

14. Monitoring & review

14.1 This instrument is exempt from the requirement under section 28(2) of the Small Business, Enterprise and Employment Act 2015 to make provision to carry out a review as it falls within the exception in section 28(3) of that Act.

14.2 No further monitoring or review is planned. The regulations add a further two years to the current scheme through extending the reduced rate of CCL through to 31 March 2025, and its application is therefore time-limited.

15. Contact

15.1 Craig Mellis at the Department for Business, Energy and Industrial Strategy (BEIS) Telephone: 020 7215 1940 or email: craig.mellis@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Michael Rutter, Deputy Director for Business Energy Use, at the Department for Business, Energy and Industrial Strategy (BEIS) can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kwasi Kwarteng at the Department for Business, Energy and Industrial Strategy (BEIS) can confirm that this Explanatory Memorandum meets the required standard.