Draft Order in Council laid under paragraph 11 of Schedule 3 to the Climate Change Act 2008 before Parliament, for approval by resolution of each House of Parliament, and before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly for their approval.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

CLIMATE CHANGE

The CRC Energy Efficiency Scheme Order 2013

Made - - - - **** 2013*

Coming into force in accordance with article 1



£13.75

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D R A F T S T A T U T O R Y I N S T R U M E N T S

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CONTENTS

PART 1

Introduction

CHAPTER 1

General

1. Citation and commencement 6
2. The trading scheme: phases and application 6
3. Interpretation 6
4. Supplies and emissions 11
5. Registration and requirements of participants and others 11
6. Powers and duties of the administrator 12
7. Penalties, offences, appeals, revocations, continuing effect and amendments 12
8. Groups: liability to comply with this Order 12

CHAPTER 2

The administrator and co-operation

9. The administrator 12
10. Co-operation and provision of information 13

PART 2

Registration as a participant

CHAPTER 1

General

11. Applications, information and charges 13
12. Time for applications 14
13. Registration and certificates 14

CHAPTER 2
Public bodies
14. Government departments and the devolved administrations 14
15. Other public bodies 14
16. Public bodies: applications by groups 14
17. Public bodies: applications other than by groups 15
18. Determinations by the administrator 15

CHAPTER 3
Universities and colleges: England
19. Universities and colleges: England 15
20. Qualifying electricity 15
21. Universities and colleges: groups 15
22. Applications 16

CHAPTER 4
Undertakings
23. Groups of undertakings 16
24. Undertakings: applications by groups 16
25. Undertakings: applications other than by groups 17
26. Undertakings: disaggregation 17
27. Changes to undertakings and groups 17
28. Determinations by the administrator 17

CHAPTER 5
Trustees
29. Trustees: separate participation 18

CHAPTER 6
Operators
30. Operators: separate participation 18

PART 3
Annual reports

31. Provision of annual reports 19
32. Annual report 19
33. CRC emissions 19
34. Changes affecting participants 19

PART 4
Allowances and trading of CRC emissions

35. Validity of allowances 20
36. Allowances and CRC emissions 20
37. Cancellation of allowances and surplus surrendered allowances 20
38. Allowances and trading 21

PART 5
Records and notification

39. General 21
40. Records: general 21
41. Records: public disclosure 22
42. Audit of records 22

PART 6
Information and assistance requirements

43. Supplies of electricity and gas under Part 6 22
44. Information on electricity and gas supplied from authorised suppliers 22
45. Information from electricity suppliers 23
46. Information and assistance by occupiers 23
47. Information and assistance by franchisees 23
48. Information and assistance: public bodies 23
49. Information and assistance by administrators, receivers and insolvency practitioners 24

PART 7
Administration of the scheme

50. The Registry 24
51. Security of the Registry 24
52. Security and identities 24
53. Preventing or suspending use of the Registry 25
54. Cancellation of registrations of participants 25
55. Account holders 25
56. Notification 26
57. Determinations 26

PART 8
Performance information and publication

58. Publication of performance information 26
59. Further publication 26

PART 9
Charging

60. Charges 27
61. Chargeable activities 27
62. Amount of charges 28
63. Revised charges 28
64. Collection and remittance of charges 28

PART 10
Monitoring compliance

65. Compliance notices 29
66. Inspections 29

PART 11
Enforcement

67. Powers of the administrator in respect of enforcement 30
68. Notices to provide information: compliance with articles 40 and 41 30
69. Enforcement notices 30

PART 12
Civil penalties

70. Civil penalties 30
71. Effect and recovery of civil penalties 31
72. Discretion in waiving, imposition and modification of civil penalties 31
73. Failures in respect of registration 31
74. Failures in respect of annual reports 32
75. Failures to provide information or notifications 33
76. Inaccurate annual reports 33
77. Failures to surrender allowances contrary to Part 4 33
78. Later discovered failures to surrender allowances contrary to Part 4 34
79. Failures to maintain records 34
80. Failures to provide information under article 44 34
81. Blocking and publication 34

PART 13
Criminal offences and penalties

82. Offences 35
83. Penalties 35
84. Bodies corporate 36
85. Scottish partnerships 36
86. The Crown 36

PART 14
Appeals, service of notices and national security

87. Appeals: general 36
88. Grounds of appeal 37
89. Appeal body 37
90. Effect of an appeal 37
91. Standard of proof 37
92. Determination of an appeal 38
93. Procedure for appeals 38
94. Service of documents 38
95. National security 38

PART 15
Revocations, continuing effect and amendments

96. Revocations, continuing effect and amendments 38

SCHEDULE 1 — Supplies and emissions 39
SCHEDULE 2 — Public bodies 49
SCHEDULE 3 — Undertakings and participant equivalents 54
SCHEDULE 4 — Information on registration 55
SCHEDULE 5 — Changes to participants 56
PART 1 — Public bodies: government 56
PART 2 — Other public bodies 59
PART 3 — Undertakings 60
SCHEDULE 6 — The Registry 64
SCHEDULE 7 — Appeals procedure 66
SCHEDULE 8 — Service of documents 68
SCHEDULE 9 — Amendments to the CRC Energy Efficiency Scheme Order 2010 69

At the Court at Buckingham Palace, the [ ] day of [May] 2013

Present,

The Queen's Most Excellent Majesty in Council

Whereas:

(a) the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of the Environment of Northern Ireland have in accordance with section 48 of and paragraph 10 of Schedule 3 to the Climate Change Act 2008(**a**)—

(i) obtained, and taken into account, the advice of the Committee on Climate Change in respect of this Order; and

(ii) consulted such persons likely to be affected by this Order as they considered appropriate;

and

(b) in accordance with paragraph 11 of Schedule 3 to the Climate Change Act 2008, a draft of the statutory instrument containing this Order has been approved by resolution of each House of Parliament, the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly,

Her Majesty, in exercise of the powers conferred by sections 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008, is pleased, by and with the advice of Her Privy Council, to order as follows:

(**a**) 2008 c. 27.

PART 1

Introduction

CHAPTER 1

General

Citation and commencement

1. This Order may be cited as the CRC Energy Efficiency Scheme Order 2013 and comes into force on the fifth day after the day on which it is made.

The trading scheme: phases and application

2.—(1) This Order establishes a trading scheme in relation to scheme activities for a trading period of six phases which comprise—

(a) five consecutive phases, each of five years, where the initial phase commences on 1st April 2014; and

(b) a final phase of four years, commencing on 1st April 2039.

(2) This Order does not apply to an organisation which enjoys an exemption or relief from taxes under Schedule 1 to the International Organisations Act 1968(**a**).

Interpretation

3. In this Order—

"the 2000 Act" means the Freedom of Information Act 2000(**b**);

"the 2010 Order" means the CRC Energy Efficiency Scheme Order 2010(**c**);

"the 2011 Order" means the CRC Energy Efficiency Scheme (Amendment) Order 2011(**d**);

"the 2012 Regulations" means the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2012(**e**);

"Academy" has the same meaning it has in section 579 of the Education Act 1996(**f**);

"account holder" means the public body, undertaking or other person in whose name an account in the Registry is held;

"the Act" means the Climate Change Act 2008;

"the administrator" has the meaning given by article 9;

"allowance" means a tradeable allowance issued under regulation 10 of the 2012 Regulations;

"annual report" means the report described in article 32;

"annual reporting year" means each year of the phase;

"appeal body" has the meaning given by article 89;

"appellant" means a public body or undertaking that has made an appeal under article 87;

"applicant" means—

(a) a public body or group of public bodies; or

(b) an undertaking or group of undertakings,

(**a**) 1968 c. 48. Schedule 1 to the Act was amended by section 55(5) and (7) of the Finance Act 1972 (c. 41) and section 177(1) and paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c. 2).
(**b**) 2000 c. 36.
(**c**) S.I. 2010/768, amended by S.I. 2011/234.
(**d**) S.I. 2011/234.
(**e**) S.I. 2012/1386.
(**f**) 1996 c. 56. Section 579 was amended by section 14 and paragraphs 1 and 6 of Schedule 2 to the Academies Act 2010 (c. 32).

required to submit an application for registration as a participant under Part 2 or Schedule 5;

"appointed practitioner" means a person appointed under the Insolvency Act 1986(**a**) to manage—

(a) a group member's affairs and business so far as carried on in the United Kingdom, and

(b) that group member's property in the United Kingdom;

"authorised person" has the meaning given by article 66(3);

"authorised supplier" means—

(a) in respect of electricity, a person who is licensed to supply electricity (or is exempt from requiring a licence to do so) as defined by—

(i) section 64(1) of the Electricity Act 1989(**b**); or

(ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992(**c**);

(b) in respect of gas, a person who is licensed to supply gas (or is exempt from requiring a licence to do so) as defined by—

(i) section 48(1) of the Gas Act 1986(**d**); or

(ii) Article 6(1)(c) of the Gas (Northern Ireland) Order 1996(**e**);

"blocking" has the meaning given by article 81(3);

"cancellation account" means the account provided by the administrator into which allowances must be surrendered by a participant in compliance with article 36;

"CCA" means a climate change agreement within the meaning given in paragraph 46 of Schedule 6 to the Finance Act 2000(**f**);

"CCA facility" means a facility which is subject to a CCA target during a year of a phase;

"CCA target" means a target in respect of energy use or carbon emissions under a CCA;

"charitable purpose" has the meaning given by—

(a) section 2 of the Charities Act 2011(**g**) in relation to England and Wales;

(b) section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005(**h**) in relation to Scotland;

(c) section 2 of the Charities Act (Northern Ireland) 2008(**i**) in relation to Northern Ireland;

"chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003(**j**);

"city college for the technology of the arts" has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;

"city technology college" has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;

"civil penalty" means a penalty which may be imposed under Part 12;

"combined heat and power generation" means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;

"compliance account" means the account of a participant from which allowances must be surrendered to the cancellation account in compliance with article 36;

(**a**) 1986 c. 45.
(**b**) 1989 c. 29. Section 64(1) is subject to various amendments.
(**c**) S.I. 1992/231 (N.I. 1), amended by S.R. (NI) 2007 No 321; there are other amending instruments which are not relevant.
(**d**) 1986 c. 44. Section 48(1) is subject to various amendments.
(**e**) S.I. 1996/275 (N.I. 2).
(**f**) 2000 c. 17.
(**g**) 2011 c. 25.
(**h**) 2005 asp 10.
(**i**) 2008 c. 12.
(**j**) S.R. (NI) 2003 No 46, amended by S.I. 2003/496 and 2003/3311; there is another amending instrument which is not relevant.

"CRC" means carbon reduction commitment;

"CRC emissions" has the meaning given by article 33(1);

"CRC supplies" has the meaning given by article 33(2);

"day" means a working day except in article 1 and paragraph 3 of Schedule 6;

"domestic accommodation" has the meaning given by paragraph 18(3) of Schedule 1;

"enforcement notice" has the meaning given by article 69;

"EU ETS Directive" means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(**a**);

"EU ETS installation" means—

(a) an activity or installation within scope of the EU ETS Directive; and

(b) any additional activity not included within Annex 1 of that Directive but approved in the United Kingdom under Article 24 of that Directive;

"first phase" means the first phase of the trading scheme established under article 2(1) of the 2010 Order;

"franchise" and the related expressions "franchise agreement", "franchise premises", "franchise supply", "franchisee" and "franchisor" have the meanings given in section 3 of Schedule 1;

"government decision" has the meaning given by paragraph 14 of Schedule 2;

"group" has the meaning given by—

(a) paragraph 6 of Schedule 2, in respect of public bodies;

(b) paragraph 1 of Schedule 3, in respect of undertakings;

"group undertaking" except where article 21 applies, has the meaning given by paragraph 1(b) of Schedule 3;

"highest parent undertaking" has the meaning given by paragraph 1(c) of Schedule 3;

"independent college group" has the meaning given by article 21(1)(b)(ii);

"kWh" means kilowatt hour;

"local authority" has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act;

"local authority decision" has the meaning given by paragraph 16 of Schedule 2;

"maintained nursery school" has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(**b**);

"maintained school" has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(**c**);

"metering device" means (except in Schedule 9)—

(a) in relation to England, Wales and Scotland, a device where the electricity supplied is charged for as measured by the device but not including meters allocated to the following profile classes under the Balancing and Settlement Code Procedure BSCP516(**d**)—

(i) Domestic Unrestricted;

(ii) Domestic Economy 7;

(**a**) OJ No L 275, 25.10.03, p. 32. The Directive was amended by: Directive 2004/101/EC (OJ No L 338, 13.11.2004, p. 18); Directive 2008/101/EC (OJ No L 8, 13.1.2009, p. 3); Regulation (EC) No 219/2009 (OJ No L 87, 31.3.2009, p. 109); Directive 2009/29/EC (OJ No L 140, 5.6.2009, p. 63).

(**b**) The definition of "maintained nursery school" in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).

(**c**) The definition of "maintained school" in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).

(**d**) Balancing and Settlement Code. BSC Procedure. Allocation of profile classes & SSCs for non-half hourly SVA metering systems registered in SMRs. BSCP5/6. Version 7.0. 26 June 2008.

(b) in relation to Northern Ireland, a device where the electricity supplied is charged for as measured by the device but not including meters that measure supplies to domestic accommodation;

(c) a device which during a year of a phase measures more than 73,200 kWh of gas supplied, in relation to the supply of gas;

"MWh" means megawatt hour;

"operator" means a person with permission under Part 4 of the Financial Services and Markets Act 2000(**a**) to carry on a regulated activity;

"parent undertaking" has the meaning given by paragraph 1(e) of Schedule 3;

"participant" means the following registered by the administrator as a participant—

(a) a public body or group of public bodies; or

(b) an undertaking or group of undertakings,

which carries out a scheme activity; and where a participant is a group, subject to Schedule 5, the participant constitutes the members from time to time of that group;

"participant equivalent" has the meaning given by paragraph 2 of Schedule 3;

"phase" means one of the six phases of the scheme described in article 2(1);

"post-application period" means the period after an application has been made in accordance with article 12 but before the first day of the first annual reporting year of a phase;

"post-qualification period" has the meaning given by article 27;

"premises" means any—

(a) land, vehicle or vessel; or

(b) plant which is designed to move or be moved whether on roads or otherwise;

"principal place of activity" means the principal place—

(a) where the applicant, participant or representative carries on the scheme activity applicable to it; or

(b) if an applicant or participant carries on more than one scheme activity, where it carries on the main scheme activity;

"proper address" means in the case of—

(a) a body corporate or their director, secretary, clerk, person exercising management control, representative or an appointed practitioner—

(i) the registered or principal office of that body, representative or appointed practitioner; or

(ii) the email address of the director, secretary, clerk or person exercising management control;

(b) a partnership or a partner or person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of a partner or a person having that control or management;

(c) any other person, that person's last known address, which includes an email address;

"publication" has the meaning given by article 81(3);

"public function" means any activity carried out by a public body;

"public body" has the meaning given in section 1 of Schedule 2;

"qualification day" means the last day of a qualification year;

"qualification criteria" means that—

(**a**) 2000 c. 17.

(a) qualifying electricity is supplied to an applicant for the purposes of a scheme activity; and

(b) the amount of that qualifying electricity satisfies the qualifying amount;

"qualification year" means, in respect of a phase, the years commencing as shown in the following table—

Phases: qualification years commencement dates

	Commencement date of qualification years
Initial phase	1st April 2012
Second phase	1st April 2017
Third phase	1st April 2022
Fourth phase	1st April 2027
Fifth phase	1st April 2032
Final phase	1st April 2037

"qualifying amount" means 6000 MWh or more;

"qualifying electricity" means electricity supplied to a public body or undertaking in accordance with sections 1 to 5 of Schedule 1, measured by a settled half hourly meter;

"the Registry" has the meaning given by article 50;

"regulated activity" means an activity specified in article 51(1)(a) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**);

"renewables generation" has the meaning given by paragraph 32 of Schedule 1;

"representative" means a person appointed under article 55(2);

"ROC" means a renewables obligation certificate issued further to an order made under—

(a) sections 32 to 32M of the Electricity Act 1989(**b**); or

(b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003(**c**);

"scheme" means the trading scheme established by this Order;

"scheme activity" means to carry on a business or a public function or an activity which has a charitable purpose;

"settled half hourly meter" applies in relation to a supply of electricity and means a meter which—

(a) is able to measure electricity at least every half hour; and

(b) enables the supplier to comply with provisions of its licence—

(i) in relation to Great Britain, granted under section 6(1)(d) of the Electricity Act 1989(**d**);

(ii) in relation to Northern Ireland, granted under Article 10(1) of the Electricity (Northern Ireland) Order 1992,

to determine charges between that supplier and another licence holder in respect of the transmission and trading of wholesale electricity;

"specified facility certificate" means a certificate given by the Secretary of State or the Environment Agency to Her Majesty's Revenue and Customs under paragraph 44(1)(a) of Schedule 6 to the Finance Act 2000(**e**);

(**a**) S.I. 2001/514.

(**b**) 1989 c. 29. Section 32 was substituted by, and sections 32A to 32M added by, section 37 of the Energy Act 2008 (c. 32).

(**c**) S.I. 2003/419 (N.I. 6); Articles 52 to 55F were substituted by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. (NI) 2009 No 35).

(**d**) 1989 c. 29. Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c. 27) and sections 136(1), 145(1) and (5) and 197(9) of and Part 1 of Schedule 3 to the Energy Act 2004 (c. 20).

(**e**) Paragraph 44(1)(a) was substituted by section 207(a) and paragraphs 1 and 2 of Schedule 31 to the Finance Act 2012 (c. 14).

"subsidiary undertaking" has the meaning given by paragraph 1(e) of Schedule 3;

"tCO_2" means tonne or tonnes of carbon dioxide;

"third party" means a person, other than a participant, for whom the administrator has opened an account in the Registry;

"turnover" means—

(a) where a participant is an undertaking or group of undertakings, its turnover as defined in section 474(1) of the Companies Act 2006(**a**) as if that section—

(i) applied to undertakings as defined in this Order; but

(ii) did not apply to turnover arising outside the United Kingdom;

or

(b) where a participant is a public body or group of public bodies, the revenue expenditure of the participant;

"undertaking" has the meaning given in paragraph 1 of Schedule 3;

"vessel" means, except under paragraph 24 of Schedule 1, any boat or ship;

"working day" means 9 am to 5 pm on Mondays to Fridays excluding—

(a) bank holidays within the meaning of section 1 of the Banking and Financial Dealings Act 1971(**b**), including those bank holidays in part only of the United Kingdom;

(b) Good Friday; and

(c) when it falls on a day that would otherwise be a working day, Christmas Day;

"year" means 1st April to the following 31st March, inclusive of those dates.

Supplies and emissions

4. As provided under this Order, Schedule 1 (supplies and emissions) has effect concerning—

(a) whether a supply is made of electricity or gas;

(b) the amount of such a supply; and

(c) the emissions from such a supply.

Registration and requirements of participants and others

5.—(1) Part 2 provides for registration as a participant for a phase of the scheme.

(2) In respect of a phase a participant must comply with—

(a) Part 3 to provide annual reports on CRC supplies;

(b) Part 4 to surrender allowances equal to the participant's CRC emissions; and

(c) Part 5 to keep and audit records relating to the requirements of Part 2 to 4.

(3) The following have effect in respect of Parts 2 to 5—

(a) Schedule 2 (public bodies);

(b) Schedule 3 (undertakings and participant equivalents);

(c) Schedule 4 (information on registration);

(d) Schedule 5 (changes to participants).

(4) Part 6 provides for persons to provide information and assistance to participants and the administrator.

(**a**) 2006 c. 46.
(**b**) 1971 c. 80.

Powers and duties of the administrator

6. The administrator has the powers and duties set out under the following Parts of this Order—

(a) Part 7 to administer the scheme;

(b) Part 8 to publish information relating to a participant's performance;

(c) Part 9 to impose charges;

(d) Part 10 to monitor compliance;

(e) Part 11 to enforce failures to comply with this Order.

Penalties, offences, appeals, revocations, continuing effect and amendments

7.—(1) A participant which fails to comply with this Order may be liable under—

(a) Part 12 to a civil penalty;

(b) Part 13 to a criminal penalty.

(2) Part 14 provides for appeals.

(3) Part 15 provides for revocations, continuing effect and amendments.

Groups: liability to comply with this Order

8.—(1) Paragraph (2) applies where an applicant or a participant is—

(a) a group of undertakings; or

(b) an independent college group.

(2) Each member of a group described in paragraph (1)—

(a) is jointly and severally liable to comply with requirements placed on the group under Parts 2 to 12;

(b) may be liable to a criminal penalty under Part 13.

(3) For a group of public bodies (except an independent college group)—

(a) the body listed in article 55(4) which is a member of that group is liable to comply with Part 2 and not any other member of the group;

(b) the body in whose name the compliance account is set up is liable to comply with requirements placed on the group under Parts 3 to 12 and not any other member of the group;

(c) subject to article 86, any member of that group may be liable to a criminal penalty under Part 13.

CHAPTER 2

The administrator and co-operation

The administrator

9.—(1) Reference to "the administrator" in the provisions which appear in—

(a) column 1 of the following table, means the Environment Agency;

(b) column 2 of the following table, subject to paragraphs (2) and (3), means—

(i) the Environment Agency, in respect of England;

(ii) the Natural Resources Body for Wales, in respect of Wales;

(iii) the Scottish Environment Protection Agency, in respect of Scotland;

(iv) the chief inspector, in respect of Northern Ireland.

Table of provisions

Column 1	*Column 2*
Part 2 except articles 18(1) and 28	Articles 18(1), 28, 31(3), 45, 52(3), 54, 57
Parts 3 and 4 except article 31(3)	Parts 9 to 14
Articles 50, 51, 53 and 63	
Part 8	

(2) Where the administrator is a participant, reference to "the administrator" in Parts 10 to 12 means, where the participant is—

(a) the Environment Agency, the Secretary of State;

(b) the Natural Resources Body for Wales, the Welsh Ministers;

(c) the Scottish Environment Protection Agency, the Scottish Ministers;

(d) the chief inspector, the Department of the Environment.

(3) The administrator may exercise the powers in Parts 10 to 12 anywhere in the United Kingdom.

Co-operation and provision of information

10.—(1) The bodies constituting the administrator must—

(a) co-operate with each other; and

(b) provide each other with such of the information provided to or obtained by them under any of Parts 2 to 4, 6 to 8, 10 or 11 of this Order as they may require to enable them to carry out their duties as an administrator under this Order.

(2) The administrator must provide to a national authority such of the information described in paragraph (1)(b) as that authority may lawfully require in relation to compliance with and enforcement of this Order.

PART 2

Registration as a participant

CHAPTER 1

General

Applications, information and charges

11.—(1) A requirement to apply for registration as a participant means that an application for registration must—

(a) be made to the administrator and, unless otherwise agreed by the administrator, be made using the Registry; and

(b) include—

(i) the information described in Schedule 4; and

(ii) the charge for registration as a participant under article 60.

(2) When requested by the administrator, the applicant must provide such suitable and up to date evidence of identity as the administrator may require in respect of—

(a) the intended account holder of the compliance account; and

(b) the individuals who will access the compliance account.

(3) The administrator may require other information from applicants or any particular applicant in order to effect a registration.

(4) The requirements to apply for registration as a participant under this Part apply in respect of each phase.

Time for applications

12. Subject to article 27(2), an application for registration as a participant under this Part must be made no later than 2 months before the beginning of the phase.

Registration and certificates

13.—(1) Where the administrator is satisfied that an application has been duly made, it must—

(a) register the applicant as a participant;

(b) issue a certificate of registration to the participant, the certificate to be in such form as the administrator thinks fit.

(2) An applicant registered under paragraph (1) is a participant for the relevant phase, unless the administrator cancels that registration.

(3) The administrator must maintain an up to date list of participants.

CHAPTER 2

Public bodies

Government departments and the devolved administrations

14.—(1) The following public bodies must apply for registration as a participant—

(a) a government department;

(b) the Scottish Ministers;

(c) the Welsh Assembly Government;

(d) a Northern Ireland Department;

(e) a public body in respect of which a local authority decision is made.

(2) Where a public body listed in paragraph (1) is a member of a group, paragraph (1) applies to that group.

(3) Paragraph (1) is not satisfied in respect of a body described in sub-paragraphs (a) to (d) where part only of that body is registered as a participant.

Other public bodies

15.—(1) Paragraph (2) applies to a public body except a public body to which article 14 or chapter 3 applies.

(2) Except where a government decision provides to the contrary, for the purposes of articles 16 and 17, whether—

(a) a group exists or not; and

(b) whether a public body is or is not a member of a group,

are matters determined on the qualification day of the qualification year, whatever applied earlier in that year.

Public bodies: applications by groups

16.—(1) Paragraph (2) applies to a group of public bodies except a group to which article 14(2) or chapter 3 applies.

(2) Where this paragraph applies, the group must apply for registration as a participant where during the qualification year for the phase or any part of that year, it meets the qualification criteria.

Public bodies: applications other than by groups

17.—(1) Paragraph (2) applies to a public body which is not a member of a group and is not a body to which article 14(1) or chapter 3 applies.

(2) Where this paragraph applies, the public body must apply for registration as a participant in respect of a phase where, during the qualification year for that phase or any part of that year, it meets the qualification criteria.

Determinations by the administrator

18.—(1) Subject to paragraph (2), the administrator may determine(**a**) whether or not a public body is a member of a group.

(2) Paragraph (1) does not apply to a public body or group to which any of the following apply—

(a) chapter 3;

(b) paragraph 7, 8 or 9 of section 2 of Schedule 2;

(c) a government decision or local authority decision.

CHAPTER 3

Universities and colleges: England

Universities and colleges: England

19.—(1) This chapter applies to governing bodies of a college of a university and a university—

(a) described in Part 4 of Schedule 1 to the 2000 Act; and

(b) where the university is wholly or mainly situated in England.

(2) For the purposes of this chapter, whether a college is a college of a university is determined on the qualification day of the qualification year, whatever applied earlier in that year.

Qualifying electricity

20.—(1) The governing bodies of colleges of a university and the university ("the university and colleges") are a group for the purposes of paragraph (2) whether or not those bodies have a legal identity separate from each other.

(2) Articles 21 and 22 apply where the university and colleges meet the qualification criteria.

(3) Where the university and colleges do not meet the qualification criteria, none of them are required to apply for registration as a participant in respect of a phase.

Universities and colleges: groups

21.—(1) Where this article applies—

(a) the governing body of a college of the university which has a legal identity separate from the governing body of the university is "an independent college";

(b) for the purposes of article 22—

(i) the university and colleges are a group but that group does not include an independent college unless the university and colleges and the independent college otherwise agree;

(**a**) Such a determination must be made in accordance with article 57(2).

(ii) an independent college which is not part of the group under paragraph (1)(b)(i) may agree with another such independent college to form a group ("an independent college group").

(2) Any agreement under paragraph (1)(b) must be made before the group makes an application for registration.

Applications

22.—(1) Where this article applies, the following which exist must apply for registration as separate participants in respect of a phase—

(a) the university and colleges;

(b) an independent college group;

(c) an independent college which is not a member of one of the groups listed in sub-paragraph (a) or (b).

(2) The administrator must be notified with the application—

(a) by the university and colleges—

(i) whether or not an independent college is a member of the group; and

(ii) if not, the identity of the independent college;

(b) by an independent college or an independent college group, the identity of the university.

CHAPTER 4

Undertakings

Groups of undertakings

23.—(1) This article applies to undertakings.

(2) For the purposes of articles 24 and 25—

(a) whether a group exists or not; and

(b) whether an undertaking is or is not a member of a group,

are matters determined on the qualification day of the qualification year, whatever applied earlier in that year.

(3) Subject to article 27, any change in the members of a group after the qualification day is to be ignored for the purposes of this Part.

Undertakings: applications by groups

24.—(1) This article applies to a group of undertakings but is subject to article 27.

(2) Subject to paragraph (4), a group must apply for registration as a participant in respect of a phase where during the qualification year for that phase, it meets the qualification criteria.

(3) Paragraph (2) applies notwithstanding the fact that an insolvency procedure is applied to a group member during the qualification year or post-qualification period.

(4) Paragraph (2) does not apply where the whole of that group has permanently ceased carrying on a scheme activity in the United Kingdom in accordance with article 12.

(5) An insolvency procedure is applied to an undertaking for the purposes of this article in the circumstances described by paragraph 120(7) or 120(9) of Schedule 6 to the Finance Act 2000(**a**).

(**a**) 2000 c. 17. Paragraphs 120(7) and 120(9) were amended by article 4 and paragraphs 31 and 33 of Part 1 of the Schedule to the Enterprise Act 2002 Insolvency Order 2003 (S.I. 2003/2096).

Undertakings: applications other than by groups

25.—(1) Subject to paragraph (2) and article 27, an undertaking must apply for registration as a participant in respect of a phase where—

(a) it is not a member of a group; and

(b) during the qualification year for that phase, it meets the qualification criteria.

(2) Paragraph (1) applies notwithstanding the fact that an insolvency procedure is applied to an undertaking during the qualification year or post-qualification period;

(3) Paragraph (1) does not apply where an undertaking has permanently ceased carrying on a scheme activity in the United Kingdom in accordance with article 12.

(4) An insolvency procedure is applied to an undertaking for the purposes of this article in the circumstances described by paragraph 120(7) or 120(9) of Schedule 6 to the Finance Act 2000.

Undertakings: disaggregation

26.—(1) This article applies where—

(a) an undertaking or a group of undertakings ("B") is a member of a group ("A"); and

(b) at the time A applies for registration in accordance with article 12, B is not or does not include the highest parent undertaking registered in the United Kingdom that is a member of A.

(2) Paragraph (3) applies where—

(a) A applies for registration in accordance with article 11; and

(b) B applies for registration as a participant separate from A by the last working day of April in the following year.

(3) When this paragraph applies and the applications by A and B are duly made the administrator must register A and B as separate participants.

Changes to undertakings and groups

27.—(1) Paragraph (2) applies where—

(a) a requirement to register applies to a group or undertaking under article 24 or 25;

(b) a change described in section 1 of Part 3 of Schedule 5 applies to that group or undertaking after the qualification day but before the group or undertaking makes an application for registration in accordance with article 12 ("the post-qualification period").

(2) Where this paragraph applies—

(a) a group or undertaking to which article 24 or 25 would otherwise apply must instead register as a participant as provided by section 1 of Part 3 of Schedule 5; and

(b) other undertakings affected by such change must comply with that section.

Determinations by the administrator

28. The administrator may determine(**a**) whether or not—

(a) an undertaking is a member of a group;

(b) article 27(2) applies to a group or undertaking.

(**a**) Such a determination must be made in accordance with article 57(2).

CHAPTER 5

Trustees

Trustees: separate participation

29.—(1) This article applies where—

(a) a public body or undertaking ("T") is a trustee of a relevant trust; and

(b) T is required to register as a participant, whether on its own or as a member of a group.

(2) T may apply for registration as a separate participant in respect of any scheme activities of any relevant trust of which T is a trustee.

(3) Where—

(a) T is registered as a participant in respect the scheme activities of a relevant trust; and

(b) T would otherwise be part of a group which is a participant for the relevant phase,

T is not to be regarded as part of that group for the phase in respect of the scheme activities of the relevant trust.

(4) In this article, "relevant trust" means a trust where—

(a) the assets of the trust include premises to which a supply of electricity or gas is made;

(b) the trust is not managed by an operator;

(c) no beneficiary of the trust is entitled to half or more of the assets of the trust; and

(d) the trust carries on scheme activities.

CHAPTER 6

Operators

Operators: separate participation

30.—(1) This article applies where—

(a) an undertaking ("O") is an operator; and

(b) O is required to register as a participant, whether on its own or as a member of a group.

(2) O may apply for registration as a separate participant in respect of any relevant trust in relation to which O carries on a regulated activity.

(3) Where—

(a) O is registered as a participant in respect of a relevant trust as described in sub- paragraph (2); and

(b) O would otherwise be part of a group which is a participant for the relevant phase,

O is not to be regarded as part of that group for the phase in respect of the scheme activities of the relevant trust.

(4) In this article, "relevant trust" means a trust where—

(a) the assets of the trust include premises to which a supply of electricity or gas is made;

(b) no beneficiary of the trust is entitled to half or more of the assets of the trust; and

(c) the trust carries on scheme activities.

PART 3

Annual reports

Provision of annual reports

31.—(1) A participant must provide to the administrator a report which complies with article 32 on its CRC supplies during an annual reporting year ("an annual report").

(2) A participant must provide the annual report—

(a) unless otherwise agreed by the administrator, using the Registry; and

(b) by no later than the last working day of July after the end of the annual reporting year.

(3) Where by 40 days after the due date a participant has failed to provide the annual report, the administrator may determine(**a**) the report.

Annual report

32.—(1) A participant must provide in the annual report—

(a) the amount of the CRC supplies under article 33(2);

(b) the amount of the supplies to each participant equivalent member of the group;

(c) whether or not the following apply to the participant—

(i) an estimation adjustment under paragraph 31 of section 6 of Schedule 1; or

(ii) renewables generation,

and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation.

(2) Where the administrator receives the annual report in accordance with article 31, it must calculate the participant's CRC emissions.

CRC emissions

33.—(1) "CRC emissions" means the emissions calculated in accordance with paragraph 33 of Schedule 1 from CRC supplies.

(2) "CRC supplies" means the supplies of electricity and gas supplied to a participant and participant equivalent in accordance with sections 1 to 4 of Schedule 1 and the additions in section 6 of that Schedule less the deductions under section 5 of that Schedule.

(3) The lowest value of CRC emissions is zero.

Changes affecting participants

34. Where changes affecting a participant take place in an annual reporting year as described in Part 1 or 2, or section 2 of Part 3, of Schedule 5—

(a) the participant; and

(b) in respect of section 2 of Part 3 of Schedule 5, undertakings which are not participants,

must comply with such of those provisions as are applicable to them.

(**a**) Such a determination must be made in accordance with article 57(2).

PART 4

Allowances and trading of CRC emissions

Validity of allowances

35.—(1) Subject to paragraph (2), an allowance is valid for the purposes of compliance with article 36—

(a) for the year in respect of which it was issued; and

(b) for any subsequent year,

but an allowance issued in a phase is not valid in respect of CRC emissions made in a subsequent phase.

(2) Where—

(a) a participant is required to acquire and surrender additional allowances under article 74(4)(b) or 77(2)(a) in respect of an annual reporting year; and

(b) the participant holds an allowance which is valid for the following year ("year 2"),

the participant may not surrender the allowance which is valid for year 2 in order to comply with those articles.

(3) A participant must acquire the additional allowances from a special allocation or from a third party.

(4) An allowance is not valid for any purpose other than a purpose for which it is valid under paragraphs (1) and (2).

(5) In paragraph (3), "special allocation" means the issue of allowances conducted by the Environment Agency under regulation 10 of the 2012 Regulations.

Allowances and CRC emissions

36.—(1) Subject to paragraph (2), for each year of a phase, the participant must surrender a quantity of allowances from its compliance account to the cancellation account which is at least equal to the participant's CRC emissions for that year.

(2) Paragraph (1) does not apply in respect of a year where the participant's CRC emissions for that year are less than one tCO_2.

(3) A surrender of allowances must be made by the participant—

(a) by the last working day of October after the end of the applicable year; and

(b) using the Registry.

Cancellation of allowances and surplus surrendered allowances

37.—(1) The administrator must in respect of a participant cancel such quantity of allowances in the cancellation account which is equal to the participant's CRC emissions for the relevant year of the phase—

(a) except where sub-paragraph (b) or (c) applies, as stated in the annual report;

(b) further to a determination under article 31(3); or

(c) as provided under article 74(4)(a) or (5), 77(2)(a) or (3) or 78(2)(a).

(2) Where a participant surrenders to the cancellation account more allowances ("surplus allowances") than required under article 36(1), the surplus allowances—

(a) must remain in the cancellation account;

(b) subject to article 35—

(i) are to be treated as surrendered in respect of the subsequent year ("year 2") in which the participant is required to comply with article 35 where that year is in the same phase; and

(ii) must be cancelled by the administrator in accordance with paragraph (1) before any other allowances which are surrendered.

(3) Where the surplus allowances exceed the quantity required to be surrendered in year 2, subject to article 35, paragraph (2)(b) applies to the years after year 2 until no surplus allowances remain.

(4) Where—

(a) a participant surrenders to the cancellation account surplus allowances; and

(b) the account holder makes a request to the Secretary of State for the repayment of the balance,

the Secretary of State may repay the balance to the account holder.

(5) Any repayment made by the Secretary of State under paragraph (4) may be subject to a deduction of any banking charges incurred during that transaction.

Allowances and trading

38.—(1) The administrator must maintain a record in respect of an allowance which shows—

(a) the year in which the allowance issued;

(b) the allocation in which the allowance was issued;

(c) the date of issue of the allowance;

(d) to whom the allowance was issued;

(e) the account in which the allowances are held from time to time;

(f) transfers of the allowances;

(g) when the allowance is cancelled.

(2) Trading in allowances is permitted by participants and third parties.

PART 5

Records and notification

General

39.—(1) A participant must maintain the records provided for by this Part.

(2) Those records must be kept for at least six years after the end of the scheme year to which they relate.

(3) Records must be—

(a) adequate to show to the satisfaction of the administrator that the participant has complied with its obligations under this Order;

(b) up to date and, so far as possible, kept together; and

(c) available for inspection by the administrator at any time.

Records: general

40. A participant must maintain records in respect of the information—

(a) used to compile its annual report;

(b) relevant to any of the changes described in Schedule 5.

Records: public disclosure

41.—(1) Where a participant has informed the administrator that—

(a) it discloses publicly each year—

(i) its emissions reduction targets; and

(ii) its performance against them;

(b) a person with management control has responsibility in respect of those matters; or

(c) it operates an employee engagement programme,

the participant must maintain records of the disclosure, the person or the programme, as applicable.

(2) In paragraph (1)(c), "employee engagement programme" means a programme organised or supported by the participant which enables employees of that participant to make regular contributions to the ways in which the participant may reduce the emissions made or caused by the participant.

Audit of records

42.—(1) A participant must, on at least an annual basis, carry out audits of the records required to be maintained under this Part and do so to ensure its compliance with those requirements.

(2) The satisfactory completion of such an audit must be evidenced in writing ("an audit certificate").

(3) The audit certificate may be in such form as the participant sees fit but must be—

(a) signed by a person who exercises management control in respect of the activities of the participant; and

(b) kept with its records.

PART 6

Information and assistance requirements

Supplies of electricity and gas under Part 6

43. In this Part except article 44, information which may be requested or required in respect of a supply of electricity or gas includes information relating to all sections of Schedule 1.

Information on electricity and gas supplied from authorised suppliers

44.—(1) A participant may request in writing the information under paragraph (2) from those authorised suppliers of electricity or gas that hold a licence to make such a supply.

(2) The information under this paragraph is the amount of electricity or gas supplied to the participant by an authorised supplier in——

(a) the annual reporting year in which the request is made;

(b) the alternative period.

(3) The information under paragraph (2)—

(a) may be calculated on the basis of the amount of electricity or gas supply billed to the participant during the annual reporting year or the alternative period;

(b) may cover a different 12 month period from the annual reporting year, which commences no more than 31 calendar days before the beginning of the annual reporting year or no more than 31 calendar days after the beginning of the annual reporting year.

(4) Where a supplier described in paragraph (1) receives such a request, that supplier must reply in writing within 6 weeks of the end of the annual reporting year or the alternative period to which the information relates.

(5) In this article "alternative period" means a period of 12 months which—

(a) commences no earlier than 31 calendar days before an annual reporting year begins; and

(b) finishes no later than 31 calendar days after an annual reporting year ends.

Information from electricity suppliers

45.—(1) The administrator may by notice require an electricity supplier to provide it with information as if—

(a) the notice was one provided for in paragraph 2 of Schedule 4 to the Act; but

(b) in respect of such a notice—

(i) section 50(2) of the Act did not apply; and

(ii) the modifications in paragraph (2) applied.

(2) The modifications referred to in paragraph (1) are that—

(a) the purpose for which the power may be exercised is to identify public bodies or undertakings which should or should not be participants in the scheme;

(b) reference to the environmental authority in paragraph 2 of Schedule 4 to the Act is a reference to the administrator;

(c) in paragraph 4(2) of Schedule 4 to the Act, the date referred to must not be earlier than two months after the date of the notice; and

(d) paragraphs 4(3) and 5 of that Schedule do not apply.

Information and assistance by occupiers

46.—(1) Where paragraph 16 of Schedule 1 applies, A may request B (where "A" and "B" are as described in that paragraph) to provide A with such reasonable assistance as A may require to comply with Part 2 or to comply with A's obligations as a participant.

(2) B must comply with the request within a reasonable time.

Information and assistance by franchisees

47.—(1) Where paragraph 7 of Schedule 1 applies, the franchisor may request the franchisee to provide it with such reasonable information and assistance as it may require to comply with Part 2 or to comply with the franchisor's obligations as a participant.

(2) The franchisee must comply with the request within a reasonable time.

Information and assistance: public bodies

48.—(1) This article applies where an applicant or a participant is a group of public bodies.

(2) In paragraph (3), "A" means the public body under article 55(4) or (5) in whose name the compliance account in the Registry is, or is to be, set up.

(3) A may request any other member ("B") of the group to provide A with such reasonable information and assistance as A may require to comply with Part 2 or to comply with its obligations as a participant.

(4) B must comply with the request within a reasonable time.

Information and assistance by administrators, receivers and insolvency practitioners

49.—(1) Where article 24(3) applies, the group member to which an insolvency procedure is applied may request the appointed practitioner to provide it with such reasonable information and assistance as it may require to comply with its obligations as a participant.

(2) The appointed practitioner must comply with the request within a reasonable time.

PART 7

Administration of the scheme

The Registry

50.—(1) The administrator must establish and operate an electronic system ("the Registry") and Schedule 6 has effect.

(2) Communications between—

(a) the administrator;

(b) a participant; and

(c) a third party account holder,

must, so far as possible, take place using the Registry.

(3) The administrator—

(a) must take reasonable steps to ensure the Registry is available to those entitled to use it during each working day; and

(b) may make it available at such other times as the administrator believes reasonable.

(4) The administrator may establish administrative arrangements in relation to the operation of the Registry.

Security of the Registry

51. The administrator—

(a) must take reasonable steps to ensure that the operation of the Registry is secure from misuse, including use by those not entitled to use it;

(b) may suspend the operation of the Registry or any account where it believes security of the Registry may be at risk by not doing so;

(c) must ensure that information which relates to an account holder or a participant (other than information to which article 58 or 59 applies) is not accessible by another account holder or participant.

Security and identities

52.—(1) A participant must not allow an individual to operate its compliance account on its behalf unless the administrator has notified it that it is satisfied as to the identity of that individual.

(2) The administrator must take reasonable steps to check the identity of—

(a) any such individual; and

(b) the intended account holder of the compliance account.

(3) The administrator may determine(**a**)—

(**a**) Such a determination must be made in accordance with article 57(2).

(a) to prevent or suspend any individual from operating a compliance account where it has reason to believe that evidence of the individual's identity may be incorrect or incomplete;

(b) to refuse to open a compliance account where the administrator has not been able to satisfy itself of the identity of—

(i) an individual whom the participant intends will operate that account on its behalf; or

(ii) the intended account holder of that account,

and the administrator has given the participant a reasonable opportunity to provide suitable and up to date evidence of such identity.

Preventing or suspending use of the Registry

53.—(1) The administrator may suspend or restrict a participant's use of the Registry if that participant or any individual acting on its behalf—

(a) is in breach of this Order or any administrative rules concerning the operation of the Registry; or

(b) in the belief of the administrator, is using or intends to use the Registry for or in connection with a criminal offence.

(2) The administrator must give notice to the participant of such suspension or restriction except in relation to the registration of an applicant or where paragraph (1)(b) applies.

Cancellation of registrations of participants

54.—(1) Subject to paragraphs (3) and (4), the administrator must cancel the registration of a participant where the administrator is satisfied that a participant has permanently ceased to carry on a scheme activity in the United Kingdom.

(2) Where a participant ("A") leaves a group ("B") and—

(a) A does not register as a separate participant from B in a subsequent phase; or

(b) B no longer requests that A is a separate participant in a subsequent phase,

the administrator must cancel the registration of A.

(3) The administrator must give a participant notice that it intends to cancel its registration and unless the participant agrees otherwise, the registration must not be cancelled earlier than 3 months after the date of the notice.

(4) Cancellation of the registration of a participant must be made by removing the participant from the list of participants held by the administrator and notice that the cancellation has been made must be given in writing to the former participant as soon as possible.

(5) Where the registration of a participant is cancelled, the compliance account must be closed and any allowances held in the account immediately prior to its closure must be cancelled by the administrator.

(6) The administrator is not required to cancel a registration until such time as the administrator is satisfied that the participant has complied with any outstanding requirement under this Order applicable to that participant.

(7) Where cancellation of a registration is required under section 2 of Part 3 of Schedule 5, the administrator must comply with paragraphs (4) and (5).

Account holders

55.—(1) The account holder in respect of the compliance account for a group of undertakings is, as the applicant or participant chooses—

(a) the highest parent undertaking of the group; or

(b) a member of the group,

with its principal place of activity in the United Kingdom.

(2) Where no undertaking exists as provided under paragraph (1), the highest parent undertaking of the group must appoint a representative with a principal place of activity in the United Kingdom as the account holder.

(3) Where a participant is a group of undertakings and it intends to change the account holder—

(a) the participant must notify the administrator of the intended new account holder;

(b) that account holder must be an undertaking which complies with paragraph (1) or, as appropriate, paragraph (2); and

(c) the administrator must approve the change.

(4) Where a group of public bodies includes the following—

(a) a government department;

(b) the Scottish Ministers;

(c) the Welsh Assembly Government;

(d) a Northern Ireland Department;

(e) a local authority;

(f) a university,

subject to paragraph (5), the account holder in respect of the compliance account is that body.

(5) Where—

(a) a body listed in paragraph (4) is part of more than one group; or

(b) a public body other than one listed in paragraph (4) is a participant,

the account holder in respect of the compliance account is such body as the administrator agrees.

Notification

56. A participant must notify any change in its proper address to the administrator within 10 days of the change.

Determinations

57.—(1) This article applies in respect of a determination by the administrator under—

(a) article 18(1), 28, 31(3), 52(3) or 65(5); or

(b) paragraph 8 of Part 3 of Schedule 5.

(2) A determination must be made in writing by the administrator and, within 10 days of making the determination, notified to such persons as the administrator decides may be affected by it.

PART 8

Performance information and publication

Publication of performance information

58. The administrator may, for each annual reporting year, publish information on a participant's performance in relation to its energy efficiency achievements on the basis of the information—

(a) in the participant's annual report;

(b) submitted as part of the information described in Schedule 4.

Further publication

59.—(1) Paragraph (2) applies where an appeal is made against—

(a) a determination under article 31(3);

(b) the imposition of a penalty described in article 74(4)(a)(ii).

(2) Where this paragraph applies—

(a) the administrator may publish a list of those participants which have in respect of the annual reporting year made any such appeal;

(b) subject to paragraph (3), where any such appeal results in the information published under article 58 being changed, the administrator must as soon as possible publish the amended information.

(3) Publication under paragraph (2)(b) must not take place until the completion of all such appeals made by all participants.

(4) The administrator may publish amended information at any time where it discovers any error or omission in the published information.

PART 9

Charging

Charges

60.—(1) The administrator may charge an applicant or participant for the chargeable activities in article 61.

(2) Payment of a charge is not received by the administrator until the administrator has cleared funds for the full amount due and a charge if unpaid may be recovered by the administrator as a civil debt.

(3) A charge must be calculated by reference to the costs of administering the scheme.

(4) The administrator may apply different charges for—

(a) the same chargeable activity;

(b) different classes of applicant or participant in respect of the same chargeable activity.

Chargeable activities

61.—(1) In article 60, "chargeable activity" means any of the following—

(a) registration of a participant;

(b) maintaining a participant for each year of a phase where it is a participant;

(c) establishing an account, other than a compliance account;

(d) maintaining such account for each year of a phase where it is required;

(e) making a determination under article 31(3).

(2) The administrator—

(a) must require the charge for registration as a participant to be paid before it makes the registration;

(b) in respect of any other charge, may require it to be paid before it carries out the relevant chargeable activity;

(c) is not required to reimburse a charge paid where—

(i) the chargeable activity is not completed; or

(ii) an applicant or participant liable to pay it does not remain within the scheme for all the period in respect of which the charge is payable or has been calculated.

Amount of charges

62.—(1) The amount of a charge payable under article 60(1) is that set out in—

(a) version 1 of the document named "CRC Energy Efficiency Scheme Charges"(**a**) made available by the administrator on or before this Order is made; or

(b) any replacement or revision of that document ("revised charging document").

(2) Article 60(3) must be complied with in respect of the amount of a charge under paragraph (1).

Revised charges

63.—(1) The administrator may draw up a revised charging document.

(2) Subject to paragraph (3), the administrator must not apply a revised charging document unless—

(a) in such manner as it considers appropriate for bringing a proposed document to the attention of those likely to be affected by it, the administrator—

(i) sets out its proposals; and

(ii) specifies the period within which representations or objections must be made to it; and

(b) it receives approval to the revised charging document from the Secretary of State.

(3) The Secretary of State must consider any representations or objections made by any person to the proposed revised charging document before the Secretary of State decides whether or not to approve it.

(4) The administrator must not take the steps required under paragraph (2)(a) unless it first consults the following on its proposals—

(a) the Secretary of State;

(b) the Scottish Ministers;

(c) the Welsh Ministers; and

(d) the Northern Ireland departments.

(5) A revised charging document must be published and made available before it is to take effect.

Collection and remittance of charges

64.—(1) An administrator (other than the Environment Agency) must pay to the Secretary of State any charge received by it.

(2) An administrator——

(a) may collect a charge on behalf of another administrator;

(b) must remit charges received to the Secretary of State or, where the Secretary of State directs, as directed to—

(i) the Scottish Ministers;

(ii) the Welsh Ministers; or

(iii) the Department of the Environment.

(**a**) The document is available on behalf of all the administrators from the Environment Agency at, National Customer Contact Centre, PO Box 544, Rotherham S60 1BY or from www.environment-agency.gov.uk/business/regulation/31857.aspx.

PART 10

Monitoring compliance

Compliance notices

65.—(1) The administrator may request a person to provide it with such information as it believes it requires in relation to monitoring compliance with Parts 2 to 9 of this Order.

(2) The administrator must request the information referred to in paragraph (1) by a written notice ("a compliance notice") served on the person to whom it is addressed.

(3) A compliance notice may be in such form as the administrator sees fit but must state the date by which compliance with the notice is required.

(4) A compliance notice may be varied or revoked in writing by the administrator at any time.

(5) Where a person—

(a) fails to comply with a compliance notice; or

(b) in the opinion of the administrator, supplies incomplete or inaccurate information,

the administrator may instead determine(**a**) the information requested.

Inspections

66.—(1) Subject to the following paragraphs, the administrator may inspect any premises and any thing in or on those premises in order to monitor compliance with Parts 2 to 9 of this Order.

(2) Reasonable prior notice must be given before exercising the power of inspection.

(3) An administrator may authorise such persons ("authorised persons") who appear suitable to exercise the administrator's powers of inspection under this article.

(4) A person in control of the premises to which the administrator or authorised person reasonably requires access must allow the administrator or authorised person to have access to those premises.

(5) A person acting on behalf of the administrator may, when inspecting premises—

(a) require the production of any record;

(b) take measurements, photographs, recordings or copies of any thing;

(c) require any person at the premises to provide facilities and assistance to the extent that is within that person's control.

(6) The power of inspection does not apply to—

(a) a prohibited place for the purposes of the Official Secrets Act 1911(**b**); or

(b) any other premises to which the Crown restricts access on the grounds of national security,

except to the extent agreed by the person in control of such place or premises.

(**a**) Such a determination must be made in accordance with article 57(2).
(**b**) 1911 c. 28.

PART 11

Enforcement

Powers of the administrator in respect of enforcement

67. The powers of enforcement in this Part may be exercised where the administrator reasonably believes that there has been a failure (except in respect of this article) to comply with a provision of this Order.

Notices to provide information: compliance with articles 40 and 41

68.—(1) The administrator may, by a written notice served on a participant, require that participant—

(a) to furnish information in relation to a failure or suspected failure to comply with article 40 or 41; and

(b) to do so in the form specified in the notice and within such period following service of the notice or at such time as is specified in the notice.

(2) A notice to provide information under paragraph (1) may be withdrawn at any time.

Enforcement notices

69.—(1) The administrator may serve an enforcement notice on any person who fails to comply with a provision of this Order.

(2) An enforcement notice must be in writing and specify—

(a) the provision of this Order in respect of which there has been a failure;

(b) the matters constituting the failure;

(c) the steps that must be taken to remedy the failure; and

(d) the period within which those steps must be taken.

(3) An enforcement notice may be varied or withdrawn at any time.

(4) If a person fails to comply with an enforcement notice, the administrator—

(a) may do what that person was required to do; and

(b) may recover from an applicant or participant served with a notice the costs of doing so.

PART 12

Civil penalties

Civil penalties

70.—(1) Where the administrator is satisfied that a person is liable to a civil penalty under this Part, the administrator may serve a notice on that person ("penalty notice").

(2) A penalty notice must specify—

(a) the article of and, where applicable, the provision of the Schedule to this Order that is breached; and

(b) to whom the penalty must be paid.

(3) A penalty notice in respect of a financial penalty must specify—

(a) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of service of the notice—

(i) the total amount due;

(ii) where applicable, how it has been calculated; and

(iii) the date by which it must be paid;

(b) where a daily penalty rate applies and the total amount of the daily penalty cannot be determined at the date of service of the notice—

(i) the amount of the initial penalty; and

(ii) details of the applicable daily rate.

(4) Where a notice has been served under paragraph (3)(b) and the total amount of the daily penalty can be determined after the date of service of the notice, the administrator must serve a further notice on the person liable to the penalty which complies with paragraph (3)(a).

(5) The administrator must remit a financial penalty received to the Secretary of State.

Effect and recovery of civil penalties

71.—(1) Except for a financial penalty, a civil penalty has effect once the notice of that penalty is given unless that notice provides otherwise.

(2) A financial penalty—

(a) is due 60 days after notice of that penalty is given; and

(b) if unpaid, is recoverable as a civil debt by the administrator.

Discretion in waiving, imposition and modification of civil penalties

72.—(1) Where the administrator considers appropriate, the administrator may—

(a) waive a civil penalty;

(b) allow additional time to pay;

(c) impose a lower financial penalty or substitute a lower financial penalty where one has already been imposed; or

(d) modify the application of a publication or blocking penalty.

(2) Where at any time before a financial penalty is due to be paid the administrator ceases to be satisfied that the person is liable for that penalty, the administrator may serve a further notice on that person to—

(a) withdraw the penalty notice; or

(b) modify the penalty notice by substituting a lower financial penalty.

Failures in respect of registration

73.—(1) The penalties in paragraph (2) apply where a public body or undertaking—

(a) fails to apply for registration as a participant contrary to—

(i) article 11; or

(ii) Schedule 5, where an application for registration is required under that Schedule;

or

(b) applies late for registration as a participant contrary to—

(i) article 12; or

(ii) paragraph 2(1) of Part 1, paragraph 2(1) of Part 2, or paragraph 1 or 7 of Part 3, of Schedule 5, where an application for registration is required under those Parts of that Schedule.

(2) The penalties are—

(a) the financial penalties of—

(i) £5000; and

(ii) £500 for each day starting on the day after an application under article 11 must be made until the application for registration is made, subject to a maximum of 80 days;

and

(b) publication.

(3) The penalties in paragraph (4) apply where—

(a) a public body or undertaking fails to report details of each settled half hourly meter under paragraph 6 of Schedule 4 where an application for registration is required under Part 2 or Schedule 5; or

(b) an undertaking fails to provide the information required under paragraph 4(2)(d) of Part 3 of Schedule 5.

(4) The penalties are—

(a) the financial penalty of £500 for each meter not reported; and

(b) publication.

Failures in respect of annual reports

74.—(1) The penalties in the following paragraphs apply where a participant—

(a) fails to provide an annual report contrary to article 31(1); or

(b) provides late an annual report contrary to article 31(2)(b).

(2) The penalties are—

(a) a financial penalty of £5000 and publication; and

(b) where the report is provided—

(i) no more than 40 days after the due date, a financial penalty of £500 for each day the report is late after the due date; or

(ii) more than 40 days after the due date or not at all, a financial penalty of £40,000.

(3) Paragraphs (4) and (5) apply where the annual report is provided more than 40 days after the due date or not at all.

(4) Where this paragraph applies, the following additional penalties apply to the participant—

(a) the CRC emissions of the participant for the year to which the annual report relates are—

(i) double the CRC emissions reported in the annual report of the previous year; or

(ii) where no such report exists, double the CRC emissions which the administrator calculates the participant made in the year for which the annual report is not provided;

(b) the participant must immediately acquire allowances and surrender them in accordance with Part 4 equal to the CRC emissions which apply under sub-paragraph (a) (or such additional allowances having regard to any allowances surrendered on time for the annual reporting year);

(c) a financial penalty of £40 per tCO_2 of so much of the CRC emissions which apply under sub-paragraph (a) but—

(i) deducting the emissions represented by those allowances (if any) which are surrendered by the participant on time for the year to which the annual report relates; and

(ii) before the doubling is applied;

(d) blocking.

(5) Where this paragraph applies and a participant—

(a) fails to comply with paragraph (4)(b) by the 31st March after the annual report was due; and

(b) continues in the scheme,

the allowances required to be surrendered under paragraph (4)(b) are added to the quantity of allowances required to be surrendered in the next year that compliance with Part 4 is required.

Failures to provide information or notifications

75.—(1) The penalties in paragraph (2) apply where a participant—

(a) fails to provide the information described in Schedule 4 where required under Part 2 or Schedule 5;

(b) in purported compliance with the requirements in sub-paragraph (a), provides inaccurate information;

(c) fails to provide a notification to the administrator as required under Part 1, 2 or 3 of Schedule 5.

(2) The penalties are the financial penalty of £5000 and publication.

Inaccurate annual reports

76.—(1) The penalties in paragraph (3) apply where a participant provides an inaccurate annual report contrary to article 31.

(2) In paragraph (1), "inaccurate" means where any of the supplies or emissions reported differ by more than 5% from the supplies or emissions which should have been reported, ignoring any estimation adjustment under paragraph 31 of section 6 of Schedule 1.

(3) The penalties are—

(a) a financial penalty of £40 per tCO_2 of so much of those supplies or emissions which were inaccurately reported; and

(b) publication.

Failures to surrender allowances contrary to Part 4

77.—(1) The penalties in paragraphs (2) and (3) apply where—

(a) a participant fails to surrender sufficient allowances contrary to Part 4; and

(b) that failure is apparent to the administrator at the time compliance is required,

but do not apply where a penalty is imposed under article 74(4) or (5).

(2) The penalties are—

(a) the participant must—

(i) immediately acquire such additional allowances as are equal to the amount which should have been surrendered ("the shortfall allowances"); and

(ii) surrender the shortfall allowances in accordance with Part 4;

(b) a financial penalty of £40 per tCO_2 of so much of the emissions represented by the shortfall allowances;

(c) publication; and

(d) blocking.

(3) Where a participant—

(a) fails to comply with paragraph (2)(a) by the 31st March after the surrender should have been made; and

(b) continues in the scheme,

the shortfall allowances are added to the quantity of allowances required to be surrendered in the next year that compliance with Part 4 is required.

Later discovered failures to surrender allowances contrary to Part 4

78.—(1) The penalties in paragraph (2) apply where—

(a) by reference to its annual report, a participant complied with Part 4;

(b) the administrator finds, within five years of the date on which compliance with Part 4 is required in respect of that report, that the participant reported fewer CRC supplies in that report than it should have done; and

(c) in consequence, the participant surrendered fewer allowances than it should have done to comply with Part 4 ("the shortfall allowances").

(2) The penalties are—

(a) where the participant is a participant at the time paragraph (1)(b) applies—

(i) the shortfall allowances are added to the quantity of allowances required to be surrendered in the next annual reporting year that the shortfall is found; and

(ii) publication;

or

(b) where the participant is not a participant at the time paragraph (1)(b) applies, a financial penalty which represents the value of the shortfall allowances.

(3) The value under paragraph (2)(b) means the value of allowances in the sale of allowances by the Environment Agency immediately before the shortfall was found.

Failures to maintain records

79.—(1) The penalties in paragraph (2) apply where—

(a) the administrator has given notice under article 68 in respect of a failure to comply with article 40 or 41; and

(b) the participant has failed to comply by the time stated in that notice.

(2) The penalties are—

(a) a financial penalty at the rate of £40 per tCO_2 of so much of the CRC emissions of the participant in the annual reporting year immediately preceding the year in which the non-compliance is discovered; and

(b) publication.

(3) Where a participant fails to keep records as provided by article 40 and 41, the penalties are a financial penalty of £5000 and publication.

Failures to provide information under article 44

80.—(1) The penalties in paragraph (2) apply where—

(a) the administrator has served a notice as provided under article 46 on an electricity supplier or distributor; and

(b) at least one previous such notice has not been complied with by that supplier.

(2) The penalties are—

(a) a financial penalty of £500,000 or, if lower, 0.5% of the supplier's turnover; and

(b) publication.

Blocking and publication

81.—(1) The administrator may impose the penalty of blocking until—

(a) the failure is remedied; and

(b) any financial penalty imposed in respect of the same failure is paid.

(2) Publication—

(a) must not take place until the time to appeal against the penalty under Part 14 has expired and—

(i) no appeal against the penalty has been made; or

(ii) where an appeal against the penalty has been made and the participant is unsuccessful in that appeal, until after the disposal of that appeal;

(b) lasts for one year but the administrator may impose the penalty for a longer period, if it believes the seriousness of the failure justifies such longer period.

(3) In this Part—

"blocking" means to prevent or restrict the operation of an account of a participant;

"publication" means to publish on a part of the Registry which is accessible to the public—

(a) the name of the participant;

(b) details of the failure in respect of which a civil penalty has been imposed; and

(c) the penalty amount.

PART 13

Criminal offences and penalties

Offences

82.—(1) It is an offence for a person to make a statement—

(a) which that person knows to be false or misleading in a material particular; or

(b) recklessly and which is false or misleading in a material particular,

where the statement is made in purported compliance with a provision of this Order.

(2) It is an offence for a person to fail to comply with an enforcement notice.

(3) It is a defence for a person charged with an offence under paragraph (2) to prove that such person had a reasonable excuse for the matters charged.

(4) It is an offence for a person to pretend to be an authorised person.

(5) It is an offence for a person in control of any premises to refuse to allow the administrator or an authorised person access to those premises contrary to article 66(4) where such access is reasonably required.

Penalties

83.—(1) A person guilty of an offence under article 82(1) or (2) is liable—

(a) in England and Wales or Northern Ireland—

(i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 3 months, or both;

(ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;

and

(b) in Scotland—

(i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 12 months, or both;

(ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.

(2) A person guilty of an offence under article 82(4) or (5) is liable—

(a) in England and Wales or Northern Ireland—

(i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 3 months, or both;

(ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;

and

(b) in Scotland—

(i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 12 months, or both;

(ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.

Bodies corporate

84.—(1) Where an offence under this Part is committed by a body corporate and—

(a) it is committed with the consent or connivance of an officer; or

(b) it is attributable to any neglect on the officer's part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) An "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate.

Scottish partnerships

85.—(1) Where an offence under this Part is committed by a Scottish partnership and—

(a) it is committed with the consent or connivance of a partner; or

(b) it is attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) "partner" includes a person purporting to act as a partner.

The Crown

86.—(1) This Order applies to the Crown but no contravention of it by the Crown makes the Crown criminally liable.

(2) Notwithstanding paragraph (1), this Order applies to persons in the public service of the Crown as it applies to other persons.

PART 14

Appeals, service of notices and national security

Appeals: general

87. The following appeals may be made to the appeal body under this Order—

(a) an appeal by a public body or undertaking notified of a determination referred to in article 57(1), against that determination;

(b) an appeal by a person served with an enforcement notice, against that notice;

(c) an appeal by a public body or undertaking given notice that they are liable to a civil penalty, against the imposition of that penalty.

Grounds of appeal

88. The grounds on which a determination, notice or penalty may be appealed are—

(a) that it was based on an error of fact;

(b) that it was wrong in law; or

(c) that it was unreasonable.

Appeal body

89.—(1) In the case of an appeal against a determination, notice or penalty made or given by—

(a) the Secretary of State, the appeal body is the First-tier Tribunal;

(b) the Environment Agency, the appeal body is the First-tier Tribunal;

(c) the Natural Resources Body for Wales, the appeal body is the First-tier Tribunal;

(d) the Scottish Environment Protection Agency, the appeal body is the Scottish Ministers;

(e) the chief inspector, the appeal body is the Planning Appeals Commission.

(2) Paragraph (3) applies where the appellant is or includes—

(a) the Natural Resources Body for Wales;

(b) the Scottish Environment Protection Agency.

(3) Where this paragraph applies, the appeal body is an independent person which the following appoint in writing—

(a) the Welsh Ministers, where the appellant is or includes the Natural Resources Body for Wales;

(b) the Scottish Ministers, where the appellant is or includes the Scottish Environment Protection Agency.

(4) Where the appellant is or includes the chief inspector, the appeal body is the Planning Appeals Commission.

(5) For the purposes of this article, "independent person" means a person who has no individual interest in the matter subject to the appeal and is independent of the parties to the appeal.

Effect of an appeal

90. The bringing of an appeal—

(a) suspends an enforcement notice, financial penalty or publication taking effect;

(b) does not suspend a determination referred to in article 57(1) or a civil penalty not described in sub-paragraph (a) taking effect.

Standard of proof

91.—(1) Paragraph (2) applies where an appeal is made to—

(a) the Scottish Ministers;

(b) the Planning Appeals Commission;

(c) an independent person appointed under paragraph (3) of article 89.

(2) Where this paragraph applies, the standard of proof to be applied by the appeal body in respect of—

(a) a breach of a provision of this Order; or

(b) in respect of any determination by the administrator under this Order,

is proof on the balance on probabilities.

Determination of an appeal

92. The appeal body may—

(a) in respect of a determination, enforcement notice or penalty—

(i) cancel or affirm it; and

(ii) if it affirms it, do so in its original form or with such modification as it sees fit;

(b) instruct the administrator to do or not to do any thing which is within the power of the administrator.

Procedure for appeals

93. Schedule 7 (appeals procedure) has effect in relation to the making and determination of appeals under this Order by—

(a) the Scottish Ministers;

(b) the Planning Appeals Commission;

(c) an independent person appointed under article 89(3).

Service of documents

94. Schedule 8 (service of documents) has effect.

National security

95. No provision of this Order requires the Crown to provide information to the administrator or to any other person where to do so would, in the opinion of the person who holds or controls the information, be contrary to the interests of national security.

PART 15

Revocations, continuing effect and amendments

Revocations, continuing effect and amendments

96.—(1) Subject to paragraph (2), the 2010 Order and the 2011 Order are revoked.

(2) The 2010 Order and the 2011 Order continue to have effect in relation to the first phase under the 2010 Order, subject to the amendments contained in Schedule 9.

(3) Schedule 9 (amendments to the CRC Energy Efficiency Scheme Order 2010) has effect.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 4

Supplies and emissions

SECTION 1

Electricity and gas: general

Electricity

1.—(1) Subject to sub-paragraph (3), and sections 3 and 4—

(a) a public body or undertaking ("A") is supplied with electricity where—

(i) A agrees with a person ("B") that B will supply electricity to A;

(ii) A receives a supply further to that agreement; and

(iii) that supply is measured by a metering device or is an unmetered supply;

(b) A is supplied with electricity received by another public body or undertaking ("C") where—

(i) A agrees with B that B will supply electricity to C;

(ii) C receives a supply further to that agreement; and

(iii) that supply is measured by a metering device or is an unmetered supply.

(2) A supply of electricity is made at the time it is received.

(3) Sub-paragraph (1) does not apply to the extent that the electricity is used directly for—

(a) the generation, transmission or distribution of electricity; or

(b) the transport, supply or shipping of gas.

(4) In this paragraph,—

"unmetered supply" is a supply of electricity to premises which is—

(a) supplied otherwise than through a metering device; and

(b) is connected to a distribution system of an electricity distributor within the meaning of section 6 of the Electricity Act 1989(**a**).

Gas

2.—(1) Subject to sub-paragraph (3), and sections 3 and 4—

(a) a public body or undertaking ("A") is supplied with gas received by A where—

(i) A agrees with a person ("B") that B will supply gas to A;

(ii) A receives a supply further to that agreement; and

(iii) that supply is measured by a metering device;

(b) A is supplied with gas received by another public body or undertaking ("C") where—

(i) A agrees with B that B will supply gas to C;

(ii) C receives a supply further to that agreement; and

(iii) that supply is measured by a metering device.

(2) A supply of gas is made at the time it is received.

(3) Sub-paragraph (1) does not apply to the extent that the gas is used directly for—

(a) the transport, supply or shipping of gas; or

(b) the generation, transmission or distribution of electricity.

(**a**) 1989 c. 29.

Measurement units

3. Where in this Order information must be provided concerning a supply of electricity or gas, the amount of that supply must be expressed in kWh.

SECTION 2

Electricity and gas: self-supply

Self-supply of electricity by generators, transmitters, distributors and authorised suppliers

4.—(1) Where a public body or undertaking—

(a) is described in sub-paragraph (3); and

(b) supplies electricity to itself,

subject to sub-paragraph (2), it is supplied with that electricity.

(2) Sub-paragraph (1) does not apply to the extent that the electricity—

(a) is used directly for—

(i) the generation, transmission or distribution of electricity;

(ii) the transport, supply or shipping of gas; or

(b) is supplied to the public body or undertaking in any year in the initial phase.

(3) The public bodies or undertakings referred to in sub-paragraph (1) are—

(a) an authorised supplier of electricity;

(b) in Great Britain, a public body or undertaking which—

(i) holds a generation, transmission or distribution licence within the meaning of section 6 of the Electricity Act 1989(**a**); or

(ii) generates, transmits or distributes electricity and which is exempt under that Act from the requirement to hold a licence to do so;

(c) in Northern Ireland, a public body or undertaking which—

(i) holds a generation or a distribution and transmission licence made under Article 10 of the Electricity (Northern Ireland) Order 1992(**b**); or

(ii) generates, distributes or transmits electricity and which is exempt under that Order from the requirement to hold a licence to do so.

Self-supply by authorised gas suppliers

5.—(1) Where an authorised supplier of gas supplies natural gas to itself, it is supplied with that natural gas except to the extent which it uses that natural gas directly for—

(a) the transport, supply or shipping of gas; or

(b) the generation, transmission or distribution of electricity.

(2) In this paragraph, "natural gas" means any gas derived from natural strata.

(**a**) 1989 c. 29. Section 6 has been amended by: section 30 of the Utilities Act 2000 (c. 27); sections 89(3), 136, 143, 145, 146, and 197(9) of the Energy Act 2004 (c. 20) and Schedules 3 and 19 to that Act; section 79 of, and Schedule 8 to, the Climate Change Act 2008 (c. 27).

(**b**) S.I. 1992/231 (N.I. 1). Article 10 has been amended by: regulations 19(a) and 47 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), articles 1(2) and 28(4) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and articles 1(3) and 4(4)(a) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)).

SECTION 3

Franchise agreements

Supplies under franchise agreements

6.—(1) This section applies to supplies of electricity or gas in relation to franchise agreements and varies the provisions under section 1 concerning to whom a supply is made.

(2) The variation applies only where provided under this Order.

Franchise agreements

7.—(1) A "franchise agreement" exists where one undertaking ("the franchisee") and another undertaking ("the franchisor") agree that—

(a) the franchisee carries on a business activity which is the sale or distribution of goods or the provision of services ("the franchise business");

(b) the franchise business is carried on under a name which the franchisor provides to the franchisee;

(c) the premises where the franchise business is carried on are used exclusively for that business by the franchisee; and

(d) those premises have an internal or external appearance agreed by the franchisor and that appearance is similar to that of other premises in respect of which the franchisor has entered into a franchise agreement.

(2) Where a franchise agreement exists, "franchise premises" means—

(a) the premises described in sub-paragraph (1); and

(b) other premises used by the franchisee in relation to carrying on the franchise business.

Franchise agreements not existing

8. A franchise agreement does not exist where—

(a) the franchisee and the franchisor are group undertakings in relation to each other; or

(b) in relation to franchise premises, the franchisee occupies those premises with the permission of the franchisor.

Supplies to franchisees regarded as supplies to franchisors

9.—(1) Sub-paragraphs (2) and (3) apply where—

(a) there is a franchise agreement; and

(b) the franchisee is supplied with electricity or gas under section 1 of this Schedule in relation to the franchise premises ("a franchise supply").

(2) For the purposes of Part 2 of this Order, where—

(a) the franchise agreement exists on the qualification day; and

(b) during the qualification year there is a franchise supply of electricity which is qualifying electricity,

that franchise supply of electricity is a supply to the franchisor and not the franchisee.

(3) For the purposes of Part 3 of this Order, where—

(a) the franchisor is a participant or is a member of a group which is a participant; and

(b) the franchise agreement exists during a year of a phase,

the franchise supply during that year is a supply to the franchisor and not the franchisee.

SECTION 4

Trusts of land

Supplies to trustees in relation to trust premises

10. Subject to paragraphs 11 and 12, where—

(a) a public body or undertaking ("T") holds land on trust ("the trust premises"); and

(b) T is supplied with electricity or gas under section 1 of this Schedule in relation to the trust premises,

that supply of electricity or gas in relation to the trust premises is a supply to T.

Supplies to beneficiaries

11. Where a public body or undertaking ("B") is beneficially entitled to more than a half share of the assets of the trust under which the trust premises are held, the supply of electricity or gas in relation to the trust premises is a supply to B and not T.

Supplies to operators

12.—(1) Subject to sub-paragraph (2), where—

(a) an operator ("O") carries on a regulated activity in relation to the trust premises; and

(b) O is a public body or undertaking,

the supply of electricity or gas in relation to the trust premises is a supply to O and not T.

(2) This paragraph does not apply where paragraph 11 applies.

SECTION 5

Deductions from supplies

Deductions from supplies

13.—(1) This section provides for deductions in calculating the amount of a supply of electricity or gas under section 1, 2, 3 or 4 of this Schedule.

(2) The deductions apply only where provided under this Order.

Unconsumed supply: electricity

14.—(1) Sub-paragraph (3) applies where A does not consume for its own use some or all of the supply to it of electricity.

(2) The amount not consumed by A is "unconsumed supply".

(3) Subject to paragraph 16(3), A may deduct from its electricity supply the unconsumed supply measured by—

(a) a metering device; or

(b) a device which measures electricity supplied but the measurements are not used for the purpose of charging for that electricity.

Unconsumed supply: gas

15.—(1) Sub-paragraph (3) applies where A does not consume for its own use some or all of the supply to it of gas.

(2) The amount not consumed by A is "unconsumed supply".

(3) Subject to paragraph 16(3), A may deduct from its gas supply the unconsumed supply measured by—

(a) a metering device; or

(b) a device which measures gas supplied but the measurements are not used for the purpose of charging for that gas.

Occupation of premises

16.—(1) Sub-paragraph (2) applies where—

(a) A has an unconsumed supply; and

(b) that unconsumed supply is consumed by a person ("B") in respect of premises which B occupies with the permission of A.

(2) Subject to sub-paragraph (3), paragraphs 14(3) and 15(3) do not apply to an unconsumed supply to which sub-paragraph (1) applies.

(3) Sub-paragraph (2) does not apply where—

(a) B is a Northern Ireland Department which occupies premises with the permission of A, and A is another Northern Ireland Department; or

(b) B has entered into a construction lease with A in respect of the premises described in paragraph (1)(b).

(4) A "construction lease" is a lease entered into between A and B for a minimum period of 30 years where—

(a) B covenants—

(i) to obtain all necessary consents and approvals and to erect fencing or erect a building on the premises within a period of not more than 2 years from the lease commencement date;

(ii) to install all necessary gas, electricity and water supplies to the premises to comply with statutory requirements within a period of not more than 2 years from the lease commencement date; and

(iii) if required by A, to remove any buildings or works constructed by B on the premises at termination of the lease; and

(b) A covenants to compensate B for any improvements made to the premises by B during the period of the lease.

Consumption outside the United Kingdom

17. A is not supplied with electricity or gas to the extent that supply is consumed by A outside the United Kingdom.

Domestic accommodation

18.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas—

(a) to the extent that supply is consumed by A for the purposes of domestic accommodation; and

(b) where the conditions in sub-paragraph (4) are satisfied concerning that accommodation.

(2) A is supplied with electricity or gas in respect of common areas described in sub-paragraph (5)(b) where a decision has been made under sub-paragraph (6) that those common areas are not part of the domestic accommodation.

(3) "Domestic accommodation" means premises or that part of premises intended to be used as a person's permanent home.

(4) The conditions referred to in sub-paragraph (1) are—

(a) the accommodation is not provided in relation to a person's education, employment or service; and

(b) no services are provided for the care of a person in residence in that accommodation by the person to whom the supply of electricity or gas is made.

(5) Where common areas of premises are used in relation to domestic accommodation and the premises are used—

(a) solely for domestic accommodation; or

(b) partly for domestic accommodation,

the common areas are part of that accommodation.

(6) A may decide that the common areas where sub-paragraph (5)(b) applies are not part of the domestic accommodation.

(7) A decision made under sub-paragraph (6)—

(a) may be made in respect of—

(i) the supply in the qualification year of a phase and where so made, applies to the phase;

(ii) a phase where it was not made in respect of the qualification year, where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.

Caravan sites: accommodation

19.—(1) A is not supplied with electricity or gas to the extent that supply is consumed by A directly for the purposes of accommodation at a caravan site.

(2) "Caravan site" means—

(a) in England and Wales and Scotland, a caravan site within the meaning of section 1(4) of the Caravan Sites and Control of Development Act 1960(**a**) which is in accordance with Part 1 of that Act—

(i) licensed;

(ii) exempt from requiring a licence; or

(iii) provided by a local authority as defined by that Part;

(b) in England and Wales, land licensed under section 269 of the Public Health Act 1936(**b**) for use as a site for a moveable dwelling within the meaning of that section;

(c) in Northern Ireland, a caravan site within the meaning of section 1(4) of the Caravans Act (Northern Ireland) 1963(**c**) which is—

(i) licensed in accordance with section 1(1) of that Act;

(ii) exempt from requiring a licence under section 2 of that Act;

(iii) provided by a district council as defined by section 21 of that Act(**d**); or

(iv) provided by the Northern Ireland Housing Executive pursuant to Article 28A of the Housing (Northern Ireland) Order 1981(**e**).

Emergency and temporary accommodation

20.—(1) Where A is a housing body, A is not supplied with electricity or gas to the extent the supply is consumed by A for the purposes of emergency or temporary accommodation.

(**a**) 1960 c. 62.

(**b**) 1936 c. 49. Section 269 was amended by sections 30(1) and 48(1) of and Schedule 4 to the Caravan Sites and Control of Development Act 1960 (c. 62). There are other amendments to section 269 which are not relevant.

(**c**) 1963 c. 17. Paragraph 9 of the Schedule was amended by article 133(1) of and Schedule 5 to the Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11)).

(**d**) Section 21 was amended by S.R. (NI) 1973 No 285.

(**e**) S.I. 1981/156 (N.I. 3). Article 28A was inserted by S.I. 2003/412 (N.I. 2).

(2) In sub-paragraph (1)—

(a) "emergency or temporary accommodation" means accommodation provided in discharge of a duty on the housing body under—

(i) in England and Wales, Part VII of the Housing Act 1996(**a**);

(ii) in Scotland, Part II of the Housing (Scotland) Act 1987(**b**);

(iii) in Northern Ireland, Part II of the Housing (Northern Ireland) Order 1988(**c**);

(b) "housing body" means—

(i) in England and Wales, a local housing authority within the meaning of Part VII of the Housing Act 1996;

(ii) in Scotland, a local authority within the meaning of Part II of the Housing (Scotland) Act 1987;

(iii) in Northern Ireland, the Northern Ireland Housing Executive.

Transport consumption

21.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas to the extent that supply is consumed by A for the purposes of transport.

(2) A is supplied with an un-metered electricity or gas transport supply where a decision has been made that such a supply is not consumed for the purposes of transport under paragraph 22 or 23.

Un-metered transport supply: electricity

22.—(1) Sub-paragraph (2) applies where—

(a) A has consumed a supply of electricity for the purposes of transport; and

(b) part of that supply so consumed was not measured by a meter of any sort ("un-metered electricity transport supply").

(2) Where this sub-paragraph applies, A may decide that un-metered electricity transport supply is not consumed for the purposes of transport.

(3) A decision made under sub-paragraph (2)—

(a) may be made in respect of—

(i) qualifying electricity in the qualification year of a phase and where so made, applies also to supplies of electricity during the phase;

(ii) a phase where it was not made in respect of the qualification year, where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.

Un-metered transport supply: gas

23.—(1) Sub-paragraph (2) applies where—

(a) A has consumed gas for the purposes of transport; and

(b) part of that supply so consumed was not measured by a meter of any sort ("un-metered gas transport supply").

(**a**) 1996 c. 52. Part VII is subject to various amendments under Schedule 1 to the Homelessness Act 2002 (c. 7).

(**b**) 1987 c. 26. Part II is subject to various amendments under section 3 of and Schedule 10 to the Housing (Scotland) Act 2001 (asp. 10) and section 25 is amended by section 1 of the Homelessness etc (Scotland) Act 2003 (asp. 10).

(**c**) S.I. 1988/1990 (N.I. 23). Part II is subject to various amendments under chapter IV of the Housing (Northern Ireland) Order 2003 (S.I. 2003/412 (N.I. 2)).

(2) Where this sub-paragraph applies, A may decide that un-metered gas transport supply during a phase is not consumed for the purposes of transport.

(3) A decision made under sub-paragraph (2)—

(a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.

Purposes of transport

24.—(1) In paragraph 21, electricity or gas is consumed for the purposes of transport where it is used—

(a) by a road going vehicle, a vessel, an aircraft or a train;

(b) in relation to railways, for network services except where electricity or gas is used to provide power, heat or light to a building; or

(c) to provide power for the operation of a conveyor belt which is—

(i) at least 8 kilometres in length; and

(ii) used to transport materials to an off site facility from which facility the materials will be transported on a railway or a vessel using inland waters.

(2) The following definitions have effect for the purposes of sub-paragraph (1)—

"aircraft" means a self-propelled machine that can move through the air other than against the earth's surface;

"inland waters" means—

(a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;

(b) any lough, lake or pond, whether natural or artificial, and any reservoir or dock; and

(c) any channel, creek, bay, estuary or arm of the sea;

"network services" has the same meaning it has in section 82 of the Railways Act 1993(**a**) but as if section 82(3)(h) of that Act did not apply;

"railway" has the meaning given in section 67(1) of the Transport and Works Act 1992(**b**);

"road going vehicle" means any vehicle—

(a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994(**c**);

(b) which is an exempt vehicle under that Act; or

(c) which is required to display a certificate of Crown exemption under regulation 31 of the Road Vehicles (Registration and Licensing) Regulations 2002(**d**);

"train" has the same meaning it has in section 83 of the Railways Act 1993;

"vessel" means any boat or ship which is self-propelled and operates in or under water.

Consumption of gas for purposes other than heating

25. A is not supplied with gas to the extent that supply is consumed by A for purposes other than for the purposes of heating.

(**a**) 1993 c. 43.
(**b**) 1992 c. 42.
(**c**) 1994 c. 22.
(**d**) S.I. 2002/2742.

Purposes of heating

26.—(1) In paragraph 25, gas is consumed for the purposes of heating where it is used as part of a process where the primary purpose of that process is the generation of heat.

(2) Gas used in the process of combined heat and power generation is not consumed for the purposes of heating.

Minimal gas heating supply levels

27.—(1) Sub-paragraph (2) applies where the amount of gas supplied to A for the purposes of heating is less than 2% of the amount of electricity supplied to A in the first annual reporting year of a phase ("minimal gas heating supply").

(2) Where this sub-paragraph applies, A may decide that minimal gas heating supply is not consumed for the purposes of heating.

(3) A decision under sub-paragraph (2)—

(a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.

EU ETS installations

28.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas to the extent that supply is consumed by A for the purposes of operating an EU ETS installation.

(2) A is supplied with electricity or gas where A decides that such a supply is not consumed for the purposes of operating an EU ETS installation.

(3) A decision made under sub-paragraph (2)—

(a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.

CCA facility consumption

29.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas to the extent that supply is consumed by A for the purposes of operating a CCA facility specified in a current specified facility certificate.

(2) A is supplied with electricity or gas where A decides that such a supply is not consumed for the purposes of operating a CCA facility specified in a specified facility certificate.

(3) A decision made under sub-paragraph (2)—

(a) may be made in respect in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.

(4) For the purposes of the initial phase, A is not supplied with electricity or gas to the extent that it is consumed by A for the purposes of operating a CCA facility that is subject to a CCA target that ends no earlier than 2 months before the beginning of that phase.

SECTION 6

Additions to supplies: estimation adjustments

Additions to supplies

30.—(1) This section provides for additions in calculating the amount of a supply of electricity or gas under section 1, 2, 3 or 4 of this Schedule.

(2) The additions apply only where provided under this Order.

Estimation adjustment: electricity and gas

31.—(1) Sub-paragraph (2) applies to a supply to A of electricity or gas measured by a specific metering device ("device 1") during a year where,—

(a) for at least half of the year in which the supply is made, the amount of that supply is estimated by the supplier; and

(b) A cannot provide evidence to the satisfaction of the administrator that A has measured such estimated supply by a meter reading from device 1.

(2) Where this sub-paragraph applies, the "estimation adjustment" is 10% of the amount of the supply during the year which is measured by device 1.

SECTION 7

Renewables generation and amount of emissions from supplies

Renewables generation: electricity

32.—(1) Sub-paragraph (2) applies where—

(a) A generates electricity;

(b) in respect of that generation,—

(i) A is issued with a ROC; or

(ii) A is in receipt of a financial incentive made by virtue of a scheme under section 41 of the Energy Act 2008(**a**); and

(c) A supplies some or all of that generated electricity to itself under paragraph 4 of this Schedule at the premises where it is generated.

(2) Where this sub-paragraph applies, "renewables generation" is the amount of the electricity generated which A supplies to itself.

Amount of emissions

33. The emissions in tCO_2 from an amount of electricity or gas supplied is found by applying to that amount the relevant conversion factor.

Conversion factors

34. In paragraph 33, "relevant conversion factor" means a factor listed—

(a) in version 2 of the document named "CRC Energy Efficiency Scheme Order: Table of Conversion Factors" published by the Secretary of State and made available on the website address at www.gov.uk/decc, on or before the date on which this Order is made; or

(b) in any replacement or revision of the document described in sub-paragraph (a) which is published and made available in the same way as that document.

(**a**) 2008 c. 32.

SCHEDULE 2

Article 5

Public bodies

SECTION 1

Interpretation

Public bodies

1. In this Order, "public body" means a public body described in this section.

Public authorities and the National Assembly for Wales Commission

2.—(1) A public authority is a public body.

(2) In sub-paragraph (1), a "public authority" means—

(a) a public authority within the meaning of section 3(1)(a) of the 2000 Act; and

(b) a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002(**a**) ("the 2002 Act"),

but not any such authority listed in sub-paragraph (4) or paragraph 4.

(3) Where a public authority is included within the 2000 Act or the 2002 Act subject to a limitation, that limitation does not apply in respect of this Order.

(4) The public authorities referred to in sub-paragraph (2) are—

(a) the House of Commons;

(b) the House of Lords;

(c) the force or any unit described in sub-paragraph (a) or (b) of paragraph 6 (the armed forces of the Crown) of Schedule 1 to the 2000 Act;

(d) a person described in paragraph 64 (persons nominating special constables) of Schedule 1 to the 2000 Act;

(e) the National Assembly for Wales.

(5) The National Assembly for Wales Commission is a public body(**b**).

Public bodies: bodies corporate

3.—(1) A body corporate is a public body where it is a body in which a public body under paragraph 2 is a majority member.

(2) A public body is a majority member of a body ("body A") under sub-paragraph (1) where—

(a) the member;

(b) a person acting on behalf of the member; or

(c) a body corporate in which the member or person acting on its behalf is a majority member,

(any of whom is "person B") satisfies the provisions in sub-paragraph (3).

(3) The provisions referred to in sub-paragraph (2) are—

(a) person B holds a majority of the voting rights in body A;

(b) person B is a member of body A and has the right to appoint or remove a majority of its board of directors; or

(c) person B is a member of body A and controls alone, pursuant to an agreement with other members, a majority of the voting rights in body A.

(**a**) 2002 asp 13.
(**b**) The Commission was established under section 27 of the Government of Wales Act 2006 (c. 32).

Public bodies: proprietors of Academies and colleges

4.—(1) The proprietor of—

(a) an Academy;

(b) a city technology college or city college for the technology of the arts,

is a public body.

(2) Where—

(a) a proprietor described in sub-paragraph (1) is the proprietor of more than one Academy or college; and

(b) those Academies or colleges are situated in more than one local authority area,

the proprietor is a separate public body in respect of those Academies or colleges in different local authority areas.

(3) Where a proprietor would be required to register as a participant under Part 2—

(a) if it were not a public body under sub-paragraph (1); and

(b) excluding the scheme activities in respect of which it is such a public body,

the proprietor is, as applicable, a separate public body or undertaking in respect of its other scheme activities.

Public bodies: one public body part of another

5.—(1) Except where paragraph 4(2) or (3) applies, where a public body ("A") is part of another public body ("B")—

(a) A is not a public body; and

(b) B including A is a public body.

(2) A government department is not part of another government department.

SECTION 2

Public bodies: groups

Groups and members

6. In relation to public bodies—

"group" means those public bodies which are members of a group—

(a) as provided by paragraphs 7 to 9;

(b) further to—

(i) a government decision under paragraph 14;

(ii) a local authority decision under paragraph 16;

or

(c) as provided under article 20 for the purposes of that article or under article 21;

"member" means a public body which is part of a group together with one or more other public bodies.

Bodies corporate

7. Subject to a government decision under paragraph 14, where a body corporate is a public body and where the majority member is—

(a) a government department, that body is a member of a group with that department;

(b) the Scottish Ministers, that body is a member of a group with the Ministers;

(c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, that body is a member of a group with the Welsh Assembly Government;

(d) a relevant Northern Ireland department, that body is a member of a group with the relevant department.

Educational bodies: Wales

8. In Wales, where a public body is the governing body of a maintained school or a maintained nursery school, that public body is a member of a group with the local authority which maintains the school.

Grant-aided schools: Northern Ireland

9.—(1) This paragraph applies in Northern Ireland and to a public body which is a grant-aided school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(**a**) ("a grant-aided school").

(2) Subject to sub-paragraph (3), a grant-aided school is a member of a group with the Education and Library Board(**b**) which funds that school.

(3) Where the Education and Skills Authority has been established(**c**), subject to sub-paragraph (4), a grant-aided school is a member of a group with that Authority.

(4) Sub-paragraph (3) does not apply in respect of a phase where that phase has commenced before the Authority is established.

SECTION 3

Public bodies: government and local authority decisions

Government and local authority decisions

10.—(1) Except in relation to the Treasury and Her Majesty's Revenue and Customs, the Secretary of State may make a government decision in relation to a government department.

(2) The Treasury may make a government decision in relation to the Treasury.

(3) Her Majesty's Revenue and Customs may make a government decision in relation to Her Majesty's Revenue and Customs.

(4) Where—

(a) the Secretary of State, the Treasury or Her Majesty's Revenue and Customs intend to make a government decision described in paragraph 14(2)(a) in relation to a public authority described in Part VI of Schedule 1 to the 2000 Act; and

(b) that authority exercises functions partly other than in England,

the Secretary of State, the Treasury or Her Majesty's Revenue and Customs must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(5) The Secretary of State, the Treasury or Her Majesty's Revenue and Customs must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(6) A local authority decision may be made by—

(**a**) S.I. 1986/594 (N.I. 3). The definition of "grant-aided" under Article 2(2) was amended by the Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20)).

(**b**) Boards are established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986.

(**c**) The Northern Ireland Assembly Education Bill 3/08 makes provision for the establishment of the Education and Skills Authority.

(a) the Secretary of State in relation to a local government public body or a local government group in England;

(b) the Welsh Ministers in relation to a local government public body or a local government group in Wales.

(7) A government decision—

(a) must not be made such that a public body, on its own or part of a group—

(i) which is a participant, is no longer a participant;

(ii) which is required to be a participant, is no longer required to be a participant;

(b) may be made for the better administration of the scheme.

The Scottish Ministers

11.—(1) The Scottish Ministers may make a government decision as if reference in paragraph 14(2) to "a government department" were a reference to the Scottish Ministers.

(2) The Scottish Ministers may make a government decision described in paragraph 14(2)(a) only in respect of the public bodies described in the following paragraphs of this Schedule—

(a) paragraph 2(2)(b);

(b) paragraph 3 where the majority member is a body described in paragraph 2(2)(b).

The Welsh Assembly Government and Welsh Ministers

12.—(1) The Welsh Ministers may make a government decision as if reference in paragraph 14(2) to "a government department" were a reference to the Welsh Assembly Government.

(2) The Welsh Ministers must not make a government decision under paragraph 14(2)(a) unless the public body exercises functions in or as regards Wales and—

(a) those functions are exercised in relation to matters within the legislative competence of the National Assembly for Wales; or

(b) functions are exercisable in relation to that body by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

Northern Ireland departments

13.—(1) The relevant Northern Ireland department may make a government decision as if reference in paragraph 14(2) to "a government department" were a reference to a relevant department.

(2) The relevant Northern Ireland department must not make a government decision under paragraph 14(2)(a) unless the Northern Ireland Assembly has legislative competence in respect of the functions of the public body.

Government decisions

14.—(1) "A government decision" means any decision described in sub-paragraph (2) in relation to—

(a) qualification for a phase; or

(b) participation during a phase or any part of a phase.

(2) The decisions referred to in sub-paragraph (1) are—

(a) that a public body (which is not a government department) is or is not a member of a group together with the department;

(b) that any part of a government department as described in the decision must register as a participant separately from the remainder of the department;

(c) subject to paragraph 15(2), that a government department is a member of a group with another government department;

(d) under paragraph 13 only and where the Education and Skills Authority referred to in paragraph 9(3) has been established, that—

(i) paragraph 9(2) does not apply to a grant-aided school referred to in sub-paragraph (1) of that paragraph; and

(ii) such a school is a member of a group with the Authority.

Government decisions: supplies and departments

15.—(1) A government decision under paragraph 14(2)(b) must state—

(a) which supplies of electricity or gas are supplied to which part of the department for the phase;

(b) where a public body is a member of a group with the department, with which part of the department it is a group member.

(2) A government decision under paragraph 14(2)(c) must only be made in respect of a department which, had it been subject to article 17 on qualification for the phase, would not have been required to register as a participant.

Local authority decisions

16.—(1) In paragraph 10(6), a "local authority decision" means a decision described in sub-paragraph (2) in relation to qualification for a phase in respect of—

(a) a public body ("a local government public body") which is—

(i) in England, a public authority described in any of paragraphs 7(a) and 8 to 11 of Part II (local government) of Schedule 1 to the 2000 Act; or

(ii) in Wales, a public authority described in paragraph 7(b) of that Part;

or

(b) where the local government public body is a member of a group under section 2 of this Schedule ("the local government group"), such a group.

(2) A decision referred to in sub-paragraph (1) means that a local government public body or group is a public body to which article 14(1)(e) applies.

(3) Where such a decision is made, the decision may also provide—

(a) that the body or group is a member of a group with another public body required to register as a participant;

(b) where applicable, that the decision only applies to the local government public body and not any other member of the local government group.

(4) Where a decision is made under sub-paragraph (3)(b)—

(a) the local government group ceases to exist; and

(b) other members of the group are separate public bodies.

Notification of government and local authority decisions

17.—(1) The administrator must be notified in writing of the application for registration as a participant in respect of—

(a) a government decision in relation to qualification for a phase;

(b) a local authority decision.

(2) A government decision in relation to participation during a phase or any part of a phase must be notified in writing as soon as possible to the administrator.

(3) A notification required under sub-paragraph (1) or (2) must—

(a) state the period for which the decision has effect, which may commence before the date of the notification but must not commence in a phase which has completed; and

(b) identify the public bodies affected.

(4) A government decision or local authority decision may be varied or revoked in writing.

SCHEDULE 3

Article 5

Undertakings and participant equivalents

Undertakings and participant equivalents

Undertakings

1. In this Order, subject to paragraph 4—

(a) in relation to an undertaking, "group" means those undertakings which are group undertakings in respect of each other;

(b) "group undertaking" has the meaning given by section 1161(5) of the Companies Act 2006(**a**) but where "undertaking" has the meaning given in this Order;

(c) "highest parent undertaking" is the undertaking in the group which is not a subsidiary of any other undertaking in the group;

(d) "member" in relation to group undertakings means an undertaking which is part of a group;

(e) "parent undertaking", "subsidiary undertaking" and related expressions have the same meanings as in Part 38 of the Companies Act 2006 but where "undertaking" has the meaning given in this Order;

(f) "undertaking" means—

(i) an undertaking as defined in section 1161(1) of the Companies Act 2006; and

(ii) as if that definition included an unincorporated association that has a charitable purpose,

but an undertaking does not include a public body.

Participant equivalents

2.—(1) An undertaking is a "participant equivalent" when so provided under this paragraph—

(a) for the purposes of Part 2; and

(b) for the whole phase.

(2) Subject to sub-paragraph (3), for the purposes of Part 2 where an undertaking ("B")—

(a) is a member of a group that is a participant ("G"); and

(b) would, if B was not a member of G, have been required to register as a participant under Part 2,

B is a participant equivalent as a member of G.

(3) Where—

(a) B would be a participant equivalent as a member of G under sub-paragraph (2); but

(b) G is subject to article 27(2),

(**a**) 2006 c. 46.

the provisions of section 1 of Part 3 of Schedule 5 vary sub-paragraph (2).

Participant equivalents: movement between groups during a phase

3.—(1) Subject to paragraph 4, where—

(a) B was a participant equivalent as a member of a group under paragraph 2; and

(b) during a phase B becomes a member of another participant group of undertakings ("G2"),

B is a participant equivalent as a member of G2 for the remainder of that phase.

(2) Paragraph 12 of section 2 of Part 3 of Schedule 5 makes provision in relation to the change described in sub-paragraph (1).

(3) Subject to paragraph 4, where—

(a) B is a participant equivalent as a member of a group under paragraph 2; and

(b) during a phase B becomes a member of a group of undertakings which is not a participant ("G3"),

paragraph 10 of section 2 of Part 3 of Schedule 5 makes provision in relation to that change.

(4) Subject to paragraph 4, where—

(a) B is a participant equivalent as a member of G under paragraph 2; and

(b) during a phase B together with B's subsidiary undertakings cease to be a member of G,

paragraph 9 of Part 3 of Schedule 5 makes provision in relation to that change.

Undertakings or groups of undertakings as participants

4. Where during a phase an undertaking or group of undertakings—

(a) is a member of a group; but

(b) is a participant separate from the group,

for such time as it is a participant separate from the group, it must be treated as if it was not a member of the group for the phase.

SCHEDULE 4

Article 5

Information on registration

General

1. Information in this section is required under Part 2 and Schedule 5.

Contact information

2. Subject to paragraph 4, as applicable to the applicant—

(a) name, postal address, email address and telephone number;

(b) the principal place of activity;

(c) any company registration number and registered office;

(d) any trading or other name by which the applicant is commonly known.

3. Where the applicant is a group of undertakings—

(a) the information in paragraph 2 in respect of—

(i) the registering member of the group;

(ii) each participant equivalent;

(iii) the highest parent undertaking located in the United Kingdom; and

(iv) where applicable, the highest parent undertaking located outside the United Kingdom;

and

(b) where an undertaking other than the highest parent undertaking is to be the account holder of the compliance account, the information in paragraph 2 in respect of that undertaking.

4. Where the applicant is a group of public bodies, the information in paragraph 2 is required only in respect of the following in that group—

(a) a government department;

(b) the Scottish Ministers;

(c) the Welsh Assembly Government;

(d) a Northern Ireland Department;

(e) a local authority;

(f) a university;

(g) for a group which does not include a public body described in sub-paragraphs (a) to (f), the body in the group intended to be the account holder in respect of the compliance account.

5. The name, postal address, email address and telephone number of at least three individuals who will act as contacts for the applicant, one of whom must exercise management control in respect of the public body or undertaking which is to be the account holder of the compliance account.

Total supplies of qualifying electricity

6.—(1) A list of all settled half hourly meters which measured the supply of qualifying electricity to the applicant in the qualification year.

(2) The total amount of qualifying electricity in the qualification year and the amount of qualifying electricity for each individual participant equivalent that is a member of the group.

SCHEDULE 5

Article 5

Changes to participants

PART 1

Public bodies: government

SECTION 1

Government departments, Northern Ireland departments, the Scottish Ministers and the Welsh Assembly Government

Application of Part 1

1.—(1) Where the changes described in sections 2 to 5 of this Part occur in a year of a phase ("year 1") in relation to a participant which is or includes—

(a) a government department or part of it;

(b) a relevant Northern Ireland department or part of it,

such a participant must comply with the requirements in those sections.

(2) Under sub-paragraph (1)(b), in relation to a relevant Northern Ireland department, reference in paragraphs 7 and 10 to the Secretary of State includes reference to the relevant department.

(3) Where the changes described in sections 3 to 5 occur in year 1 in relation to a participant which is or includes the Scottish Ministers or part of that body, such a participant must comply with the requirements in those sections.

(4) Under sub-paragraph (3), in relation to the Scottish Ministers, reference to—

(a) the Secretary of State in paragraph 10 includes the Scottish Ministers;

(b) a department in paragraph 11 includes those Ministers or part of that body.

(5) Where the changes described in section 4 or 5 occur in year 1 in relation to a participant which is or includes the Welsh Assembly Government or part of that body, such a participant must comply with the requirements in those sections.

(6) Under sub-paragraph (5), in relation to the Welsh Assembly Government, reference to a department in paragraph 11 includes the Welsh Assembly Government or part of that body.

Notifications and applications: time to comply and the administrator

2.—(1) A notification or application for registration required under this Part must be made using the Registry and within 3 months of the change occurring.

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

SECTION 2

Creation of new departments

Creation of a new department

3. This section applies where—

(a) from part of a participant ("A") and part of another participant ("B"), a department ("C") is created in year 1; and

(b) A and B continue as participants.

Creation of a new department: year 1

4. In year 1—

(a) C must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) comply with Part 5 as if C existed for the whole of year 1;

(b) A and B must comply with this Order as if C had not been created.

Creation of a new department: year 2

5. In the year after year 1 ("year 2")—

(a) C must comply with Parts 4 and 5 of this Order; and

(b) A and B must comply with this Order as if C had not been created.

Creation of a new department: after year 2

6. In the years after year 2—

(a) C must comply with this Order as applicable to the years after year 2; and

(b) A and B must comply with this Order as applicable to the years after year 2 but where A and B do not include C.

Deemed supplies of the new department

7.—(1) For the purposes of this section, the Secretary of State may declare in writing that a supply of electricity or gas—

(a) to A or B is deemed to be a supply to C;

(b) to C is deemed to be a supply to A or B.

(2) A declaration made under sub-paragraph (1) must be provided by the Secretary of State to the administrator as soon as possible.

SECTION 3

Transfers of parts of government departments, Northern Ireland departments, the Scottish Ministers and the Welsh Assembly Government

Transfer of part of a department to another department

8. This section applies where from a participant ("D"), a part ("E") transfers to another participant ("F") in year 1 ("the transfer").

Transfers: year 1

9. In year 1, D and F must—

(a) notify the administrator of—

(i) the transfer; and

(ii) as soon as possible, the percentage of the emissions of D which are attributable to E;

(b) comply with this Order as if the transfer had not occurred.

Deemed supplies

10.—(1) For the purposes of this section, the Secretary of State may declare in writing that a supply of electricity or gas—

(a) to D which is attributable to E is deemed to be a supply to F;

(b) to F which is attributable to E is deemed to be a supply to D.

(2) A declaration made under sub-paragraph (1) must be provided by the Secretary of State to the administrator as soon as possible.

SECTION 4

Mergers in respect of government departments, Northern Ireland departments, the Scottish Ministers or the Welsh Assembly Government

Mergers of departments

11.—(1) Sub-paragraphs (2) to (4) apply where a participant ("G") merges with another participant ("H") in year 1 ("the merger") to form a new department ("J").

(2) J must notify the administrator of the merger.

(3) J must—

(a) apply for registration as a participant in accordance with article 11; and

(b) comply with this Order as if J existed for the whole of year 1.

(4) On the registration of J, the administrator must cancel the registration of G and H for the remainder of the phase.

SECTION 5

Government decisions and separate participation

Government decisions

12. This section applies where a government decision is made in respect of a participant ("K") that a part of K is a separate participant ("L").

Separate participants: year 1

13. In year 1,—

(a) L must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) comply with Parts 4, 5 and 7 as if L existed for the whole of year 1;

(b) K must comply with this Order as if the government decision had not been made.

PART 2

Other public bodies

Application of Part 2

1. This Part applies where the change described occurs in a year of a phase ("year 1") and to a participant which is or includes a public body other than a public body to which Part 1 applies.

Notifications and applications: time to comply and the administrator

2.—(1) The notification and application for registration required under this Part must be made using the Registry in accordance with article 11 and within 3 months of the change occurring.

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

Mergers of public bodies

3.—(1) Sub-paragraphs (2) to (4) apply where a participant ("A") merges with another participant ("B") in year 1 ("the merger") to form a new public body ("C").

(2) C must notify the administrator of the merger.

(3) C must—

(a) apply for registration as a participant in accordance with article 11; and

(b) comply with this Order as if C existed for the whole of year 1.

(4) On the registration of C, the administrator must cancel the registration of A and B for the remainder of the phase.

PART 3

Undertakings

SECTION 1

Post-qualification period

Time for applications

1. Where an application for registration is required under this section(**a**), that application must be made in accordance with article 12.

Participant equivalents leaving a group but not joining another group

2.—(1) Sub-paragraph (2) applies to a group ("A") where the following change occurs in the post-qualification period—

(a) a participant equivalent ("B") leaves A; and

(b) B does not become a member of another group.

(2) In respect of the change—

(a) B must—

(i) apply to be registered as a participant in accordance with article 11; and

(ii) when doing so notify the administrator that it was a member of A and when it ceased to be so;

(b) A must—

(i) apply to be registered as a participant in accordance with article 11; and

(ii) when doing so notify the administrator that B was a member of A and when it ceased to be so.

Joining of a participant or participant equivalent with a non-participant

3.—(1) Sub-paragraph (2) applies to a participant or participant equivalent ("C") where the following change occurs in the post-qualification period—

(a) C becomes a member of another group or undertaking ("D"); and

(b) D is not required to register under article 24.

(2) In respect of the change—

(a) C or D must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) when doing so notify the administrator that C is a member of D and when that occurred;

(b) D is only a participant in respect of C when D registers on behalf of C.

Joining of a participant with another participant

4.—(1) Sub-paragraphs (2) applies to a participant ("E") where the following change occurs in the post-qualification period—

(a) E becomes a member of another group or undertaking ("F"); and

(b) F is required to register under article 24 but has not applied for registration.

(2) In respect of the change, F must—

(**a**) This section applies to an undertaking or a group of undertakings further to article 27(2).

(a) apply for registration as a participant in accordance with article 11;

(b) when doing so notify the administrator that E is a member of F and when that occurred;

(c) in that notification by F under paragraph (b) F must inform the administrator whether or not F requests that E may apply for registration as a separate participant; and

(d) in respect of the information required under paragraph 6 of Schedule 4, include the information which applied to E in the qualification year.

(3) Where a request is made under sub-paragraph (2)(c), that must be treated as an application for registration under article 26(2).

Participant equivalents leaving a group and joining another group

5.—(1) Sub-paragraphs (2) to (4) apply to a participant equivalent ("B") of a group ("H") where—

(a) B joins another group ("J") in the post-qualification period; and

(b) H and J are groups to which article 27(2) applies.

(2) In respect of the change H and J must—

(a) apply for registration as participants in accordance with article 11; and

(b) when doing so notify the administrator of the change and when it occurred; and

(c) in the notification by J under paragraph (b), it must inform the administrator whether or not J requests that B may apply for registration as a separate participant.

(3) Where a request is made under sub-paragraph (2)(c), that must be treated as an application for registration under article 26(2).

(4) In respect of the information required under paragraph 6 of Schedule 4, J must include the information which applied to B in the qualification year.

SECTION 2

Annual reporting years and post-application periods

Application during annual reporting years and post-application periods

6.—(1) This section applies where any of the changes described in this section occur to that participant in the annual reporting year or in the post-application period.

(2) Except as otherwise provided in this section, where a participant is a group—

(a) the members of the group are those members from time to time during the annual reporting year or the post-application period;

(b) CRC supplies must be determined in relation to the supplies of electricity or gas to members of the group only for such time as they are members during the year.

Notifications and applications: time to comply and the administrator

7.—(1) A notification required under this section must be made using the Registry and no later than the earliest of the following dates—

(a) the last working day of April in the year immediately following the year of the change occurring;

(b) within 3 months of the change occurring.

(2) An application for registration required under this section must be made no later than the last working day of April in the year immediately following the year of the change occurring.

(3) On the receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

Determinations

8. The administrator may make a determination(**a**)—

(a) whether any change as described in this section has occurred;

(b) whether a notification or application for registration is required as provided under this section.

Participant equivalents becoming participants

9.—(1) Sub-paragraphs (2) and (3) apply where the following change occurs—

(a) a participant ("A") consists of a group;

(b) a participant equivalent ("B") leaves that group; and

(c) B does not become a member of another group.

(2) In respect of the change—

(a) B must apply for registration as participants in accordance with article 11;

(b) A and B must notify the administrator of the change and when it occurred.

(3) Where the change occurs in an annual reporting year, B must provide an annual report in respect of the annual reporting year as if B were a participant for the whole of that year.

Joining of a participant or participant equivalent with a non-participant

10.—(1) Sub-paragraphs (2) to (8) apply where the following change occurs—

(a) a participant or participant equivalent ("C") becomes a member of a group ("D"); and

(b) D is not a participant.

(2) In respect of the change, where C is a participant—

(a) C must notify the administrator of the change and when it occurred; or

(b) D must apply for registration as a participant in accordance with article 11 and notify the administrator of the change and when it occurred.

(3) In respect of the change, where C is a participant equivalent—

(a) C must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) notify the administrator of the change and when it occurred; or

(b) D must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) notify the administrator of the change and when it occurred.

(4) Where—

(a) D applies for registration under sub-paragraph (2)(b) or (3)(b); and

(b) C is a participant,

C's registration is cancelled.

(5) Where—

(a) D does not apply for registration under sub-paragraph (2)(b) or (3)(b); and

(b) C is a participant,

C's registration is not cancelled.

(6) Where—

(**a**) Such a determination must be made in accordance with article 57(2).

(a) the change occurs in an annual reporting year; and

(b) D has registered on behalf of C,

D must provide an annual report in respect of those emissions that relate to C and as if C were a member of D for the whole of that year.

(7) Where—

(a) the change occurs in an annual reporting year; and

(b) D has not registered on behalf of C,

C must provide an annual report in respect of those emissions that relate to C for the whole of that year.

(8) Where a non participant equivalent member of C is a participant, that member—

(a) continues as a participant; or

(b) must—

(i) notify the administrator of the change and when it occurred; and

(ii) in the notification, inform the administrator whether or not its registration is to be cancelled.

(9) Sub-paragraphs (10) to (12) apply where the following change occurs—

(a) a participant equivalent ("C") is a member of a participant ("A");

(b) C becomes a member of a group ("D"); and

(c) D is not a participant.

(10) In respect of the change—

(a) A and D must notify the administrator of the change and when it occurred and D must apply for registration as a participant in accordance with article 11; or

(b) C must apply for registration as a participant in accordance with article 11 and notify the administrator of the change and when it occurred.

(11) Where—

(a) the change occurs in an annual reporting year; and

(b) D has registered on behalf of C,

D must provide an annual report in respect of those emissions that relate to C and any of C's subsidiary undertakings that become a member of D and as if C were a member of D, for the whole of that year.

(12) Where—

(a) the change occurs in an annual reporting year; and

(b) D has not registered on behalf of C,

C must provide an annual report in respect of those emissions that relate to C and any of C's subsidiaries that become a member of D, for the whole of that year.

Joining of a participant as a member of another participant

11.—(1) Sub-paragraphs (2) to (4) apply where the following change occurs—

(a) a participant ("E") becomes a member of a group ("F"); and

(b) F is a participant.

(2) In respect of the change—

(a) E and F must notify the administrator of the change and when it occurred; and

(b) in the notification by F, F must inform the administrator whether or not F requests that E continues as a separate participant.

(3) Where F requests that E continues as a separate participant under sub-paragraph (2)(b), E and F continue as separate participants.

(4) Where E and F do not continue as separate participants—

(a) E is a member of F for the whole of the year of the phase in which the change occurs;

(b) subject to the administrator being satisfied that E and F are complying with this Order, the administrator must cancel the registration of E for the remainder of that phase.

Participant equivalents transferring to another participant

12.—(1) Sub-paragraphs (2) and (3) apply where the following change occurs—

(a) a participant ("G") consists of a group; and

(b) a participant equivalent ("H") which was a member of G becomes a participant equivalent as a member of another participant ("J").

(2) In respect of the change—

(a) G and J must notify the administrator of the change and when it occurred;

(b) in the notification of J, J must inform the administrator whether or not J requests that H may apply for registration as a separate participant; and

(c) if such a request is made, H must apply for registration as a participant in accordance with article 11.

(3) Where H is not registered as a separate participant, H is treated as if it were a participant equivalent as a member of J for the whole of the year in which the change occurs.

Trustees: separate participation

13.—(1) Sub-paragraphs (2) and (3) apply where—

(a) a public body or undertaking ("T") is a trustee of a relevant trust; and

(b) T is required to register as a participant, whether on its own or as a member of a group.

(2) Sub-paragraph (3) applies where—

(a) during or after the first year of a phase, T applies for registration as a separate participant in respect of any scheme activities of any relevant trust of which T is a trustee; and

(b) the administrator is satisfied that the application has been duly made.

(3) Where this sub-paragraph applies, the administrator must register T as a separate participant in respect of—

(a) any scheme activities of any relevant trust of which T is the trustee; and

(b) any other scheme activities of T.

(4) In this paragraph, "relevant trust" means a trust where—

(a) the assets of the trust include premises to which a supply of electricity or gas is made;

(b) the trust is not managed by an operator;

(c) no beneficiary of the trust is entitled to half or more of the assets of the trust; and

(d) the trust carries on a scheme activity.

SCHEDULE 6

Article 50

The Registry

Setting up accounts

1.—(1) The administrator must ensure the Registry allows the following accounts to be held—

(a) a compliance account for a participant; and

(b) as agreed by the administrator—

(i) additional accounts for a participant; and

(ii) accounts for third parties.

(2) The administrator may—

(a) limit the number of accounts in respect of a participant or third party; and

(b) set up other accounts.

(3) The administrator must set up one compliance account for a participant where—

(a) it has registered an applicant as a participant; and

(b) it has completed to its satisfaction the identity checks required under article 52(2).

(4) The public body or undertaking in whose name an account is held is the account holder.

Account holders and information

2. The administrator must ensure that the Registry provides the following information—

(a) to an account holder—

(i) the number of allowances it holds; and

(ii) a summary of any transfer, surrender or cancellation of allowances relating to that account holder made during the previous five years;

(b) to a participant, its CRC emissions—

(i) from CRC supplies in its most recent annual report, where so provided;

(ii) from CRC supplies determined under article 33(2); or

(iii) applied under article 74(4)(a);

(c) to a participant—

(i) the number of allowances in its compliance account which are available to comply with Part 4; and

(ii) matters notified to the participant by the administrator.

Recording of transfers between accounts

3. The administrator must ensure that the Registry records the transfer of allowances between accounts made by account holders and to make that record—

(a) for a transfer made on a working day, if possible, that working day or otherwise the following working day;

(b) for a transfer made on a non-working day, if possible the following working day or otherwise the next following working day.

Updating of accounts

4. The administrator must ensure that the cancellation and surrender of allowances is recorded in the relevant accounts and that record is made as soon as practicable.

Non-compliance accounts and third party accounts

5.—(1) A participant may request the administrator to provide accounts for it in the Registry in addition to a compliance account, on terms agreed by the administrator.

(2) A person who is not a participant ("a third party") may request the administrator to provide accounts for it in the Registry on terms agreed by the administrator.

(3) Such terms must require that the participant or third party complies with any administrative rules drawn up by the administrator under article 50(4).

SCHEDULE 7

Article 93

Appeals procedure

SECTION 1

Procedure for appeals against determinations, notices or penalties made or given by the Scottish Environment Protection Agency

1. The section applies to appeals against determinations, notices or penalties made or given by the Scottish Environment Protection Agency.

2. A person who wishes to appeal to the Scottish Ministers ("the appeal body") under article 87 must give to the appeal body written notice of the appeal together with a statement of the grounds of appeal.

3. The appeal body must as soon as is reasonably practicable send to the administrator a copy of that notice and statement.

4. An appellant may withdraw an appeal by notifying the appeal body and the appeal body must as soon as is reasonably practicable notify the administrator.

5. Notice of appeal in accordance with paragraph 2 is to be given before the expiry of the period of 40 calendar days after the date of—

(a) the determination referred to in article 57(1);

(b) service of an enforcement notice;

(c) imposition of a civil penalty.

SECTION 2

Procedure for appeals against determinations, notices or penalties made or given by the chief inspector or the Department of the Environment

6. This section applies to appeals against determinations, notices or penalties made or given by—

(a) the chief inspector;

(b) the Department of the Environment.

7. A person who wishes to appeal to the Planning Appeals Commission ("the appeal body") under article 87 must give to the appeal body written notice of the appeal together with a statement of the grounds of appeal.

8. The appeal body must as soon as is reasonably practicable send to the administrator a copy of that notice and that statement.

9. An appellant may withdraw an appeal by notifying the appeal body and the appeal body must as soon as is reasonably practicable notify the administrator.

10. Notice of appeal in accordance with paragraph 7 is to be given before the expiry of the period of 47 calendar days beginning with the date of—

(a) the determination referred to in article 57(1);

(b) service of an enforcement notice;

(c) imposition of the civil penalty.

11. The appeal body must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991(**a**) apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

12. The Planning Appeals Commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

13. An appeal under this section must be accompanied by a fee and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order included a reference to an appeal under this Order.

SECTION 3

Procedure for appeals against determinations, notices or penalties made or given by the Welsh Ministers or the Scottish Ministers

14. This section applies where the appellant is or includes—

(a) the Natural Resources Body for Wales;

(b) the Scottish Environment Protection Agency.

15. Where the appellant wishes to appeal to an independent person appointed by the Welsh Ministers or the Scottish Ministers under article 89(3) ("the appeal body") the appellant must give written notice of the appeal together with a statement of the grounds of appeal.

16.—(1) Where the appellant is or includes the Natural Resources Body for Wales, the notice of appeal in accordance with paragraph 15 is to be given before the dates described in sub-paragraph (2).

(2) The dates referred to in sub-paragraph (1) are 28 calendar days after the date of—

(a) the determination referred to in article 57(1);

(b) service of an enforcement notice;

(c) imposition of the civil penalty.

17.—(1) Where the appellant is or includes the Scottish Environment Protection Agency, the notice of appeal in accordance with paragraph 15 is to be given before the dates described in sub-paragraph (2).

(2) The dates referred to in sub-paragraph (1) are 40 calendar days after the date of—

(a) the determination referred to in article 57(1);

(b) service of an enforcement notice;

(c) imposition of the civil penalty.

18. The appeal body may decide an appeal received late.

19. An appellant may withdraw an appeal by notifying the appeal body, and as soon as is reasonably practicable the appeal body must notify the administrator.

20. The appeal body may publicise the appeal where it considers it appropriate to do so.

21. The Welsh Ministers or the Scottish Ministers as appropriate must appoint an independent person to hear an appeal on behalf of that body.

22. The appeal body may—

(a) adopt such procedures as it sees fit to determine an appeal, taking into account any requests of the parties to the appeal;

(**a**) S.I. 1991/1220 (N.I. 11).

(b) request an independent person to make a determination in relation to any subject matter of the appeal.

23. On request by the administrator, the appeal body may award the administrator its reasonable costs of an appeal where the appeal body has given the appellant written notice that in its opinion—

(a) the appeal is frivolous or vexatious or otherwise has no reasonable prospects of success; or

(b) the appeal is conducted in an unreasonable or vexatious manner.

24. The costs under paragraph 23—

(a) are those agreed by the parties to the appeal or in default of agreement, as found by the appeal body;

(b) if unpaid, are recoverable as a civil debt by the administrator.

SCHEDULE 8

Article 94

Service of documents

1. The provisions of this Schedule apply to the service of a document.

2. A document must be in writing.

3. Subject to paragraph 5, a document may be served on or given to a person (which includes a member of an unincorporated association) by—

(a) delivering it to that person in person;

(b) leaving it at that person's proper address; or

(c) sending it by post or electronic means to that person's proper address.

4. For the purposes of paragraph 3, a document is served on or given to a person under paragraph 3 in the case of—

(a) a body corporate, where it is served on or given to the director, secretary or clerk of that body;

(b) a partnership, where it is served on or given to a partner or a person having control or management of the partnership business;

(c) an unincorporated association, where it is served on or given to a person having management responsibilities in respect of the association.

5. A document may be served on an applicant or participant by sending it to the email address provided under paragraph 2, 3(a)(ii) or (b) or 4 of Schedule 4, as applicable to the applicant or participant.

6. Except where paragraph 5 applies, if a person to be served with or given a document has specified an address in the United Kingdom (other than that person's proper address) as one at which that person or someone on that person's behalf will accept documents of that description, that address must instead be treated as that person's proper address.

7. For the purposes of paragraph 3, the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

8. Where—

(a) a participant is a group; and

(b) the administrator gives any communication to the public body or undertaking in whose name the compliance account is set up under article 55,

that communication is made to each member of the group.

SCHEDULE 9

Article 96

Amendments to the CRC Energy Efficiency Scheme Order 2010

1. The 2010 Order is amended as follows.

2. In article 3 (interpretation)—

(a) for the definition of "allowance", substitute—

""allowance" means a tradeable allowance issued under regulation 10 of the 2012 Regulations;";

(b) for the definition of "CCA emissions", substitute—

""CCA emissions" has the meanings given by paragraph 12(3) of Schedule 5, as that paragraph had effect before its amendment by the 2013 Order;";

(c) for the definition of "core supply", substitute—

""core supply" means a supply of electricity or gas described in Schedule 2, as that Schedule had effect before its amendment by the 2013 Order;";

(d) for the definition of "EU ETS emissions", substitute—

""EU ETS emissions" has the meanings given by paragraph 12(2) of Schedule 5, as that paragraph had effect before its amendment by the 2013 Order;";

(e) for the definition of "EU ETS installation", substitute—

""EU ETS installation" means—

(a) an activity or installation within the scope of the EU ETS Directive; and

(b) any additional activity not included within Annex 1 of that Directive but approved in the United Kingdom under Article 24 of that Directive;";

(f) for the definition of "footprint report", substitute—

""footprint report" has the meaning given by article 39(1)(a), as that article had effect before its amendment by the 2013 Order;";

(g) for the definition of "footprint supplies", substitute—

""footprint supplies" has the meaning given by article 41(5), as that article had effect before its amendment by the 2013 Order;";

(h) in the definition of "franchise", after "franchise premises,", insert ""franchise supply",";

(i) for the definition of "performance table", substitute—

""performance table" has the meaning given by article 77(1), as that article had effect before its amendment by the 2013 Order;";

(j) for the definition of "qualifying electricity", substitute—

""qualifying electricity" means electricity supplied to a public body or undertaking in accordance with sections 1 to 5 of Schedule 1, measured by a settled half hourly meter;";

(k) for the definition of "residual measurement list", substitute—

""residual measurement list" has the meaning given by article 44(4), as that article had effect before its amendment by the 2013 Order;";

(l) for the definition of "residual supplies", substitute—

""residual supplies" has the meaning given by article 44(5), as that article had effect before its amendment by the 2013 Order;";

(m) for the definition of "settled half hourly meter", substitute—

""settled half hourly meter" applies in relation to a supply of electricity and has the meaning given by paragraph 2(1) of Schedule 2, as that paragraph had effect before its amendment by the 2013 Order;";

(n) omit the definitions of "community tradeable emissions", "core emissions", "daily meter", "dynamic supply", "early action", "footprint emissions", "fuel", "hourly meter", "non-settled half hourly meter" and "relative change";

(o) at the appropriate place, insert the following definitions—

""the 2012 Regulations" means the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2012(**a**);"

""the 2013 Order" means the CRC Energy Efficiency Scheme Order 2013(**b**);"

""Academy" has the same meaning it has in section 579 of the Education Act 1996(**c**);"

""CCA certification period" means the period beginning on 1st April 2011 and ending on 31st March 2013;"

""city college for the technology of the arts" has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;"

""city technology college" has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;"

""local authority" has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act;"

""maintained nursery school" has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(**d**);"

""maintained school" has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(**e**);"

""specified facility certificate" means a certificate given by the Secretary of State to Her Majesty's Revenue and Customs under paragraph 44(1)(a) of Schedule 6 to the Finance Act 2000 for the CCA certification period(**f**);".

3. For paragraph (a) of article 4 (supplies and emissions), substitute—

"(a) whether a supply is made of electricity or gas;".

4. In article 5 (registration and requirements of participants and others)—

(a) omit paragraph 3(a);

(b) omit paragraph 4(a);

(c) for paragraph 4(d), substitute—

"(d) Schedule 5 (information on registration);".

5. In article 6(b) (powers and duties of the administrator), substitute—

"(b) Part 10 to publish information relating to a participant's performance;".

(**a**) S.I. 2012/1386.
(**b**) S.I. 2013/[ ].
(**c**) 1996 c.56. Section 597 was amended by section 14 and paragraphs 1 and 6 of Schedule 2 to the Academies Act 2010 (c. 32).
(**d**) The definition of "maintained nursery school" in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).
(**e**) The definition of "maintained school" in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).
(**f**) 2000 c. 17. Paragraph 441(1)(a) was substituted by section 207(a) and paragraphs 1 and 2 of Schedule 31 to the Finance Act 2012 (c. 14).

6.—(1) Article 9 (the administrator) is amended as follows.

(2) In the table of provisions—

(a) in column 1—

(i) for "Parts 4 to 6 except articles 39(3) and 47(3)", substitute "Parts 5 and 6 except article 47(3)";

(ii) for "Articles 59(2), 68 to 73", substitute "Articles 59(1), 68 to 73";

(b) in column 2, omit "39(3)".

7. For article 12 (time for applications), substitute—

"**Time for application**

12. Subject to article 27(2), an application for registration as a participant under this Part must be made no later than 2 months before the beginning of the phase.".

8.—(1) Part 3 (exemptions) is amended as follows.

(2) In article 29(1)(b) (CCA emissions and target periods), omit "subject to article 36,".

(3) In paragraph (1)(a)(ii) of article 30 (total emissions), for ", gas and fuel" substitute "and gas".

(4) For article 31 (electricity generating credits), substitute—

"**Electricity generating credit**

31.—(1) In article 30, "electricity generating credit" applies where—

(a) an applicant generates electricity without using an excluded fuel;

(b) the applicant is not issued with a ROC and is not in receipt of a financial incentive made by virtue of the Energy Act 2008(**a**) in respect of that generation;

(c) the generation does not occur at a place described in paragraph (3); and

(d) the electricity generated is supplied to a public body or undertaking and that supply is a supply of electricity under paragraph 1 or 6 of Schedule 1, such electricity being "the generated and supplied electricity".

(2) Electricity generating credit is the amount of emissions calculated in accordance with paragraph 29 of Schedule 1 in respect of the generated and supplied electricity.

(3) The places referred to in paragraph (1) are—

(a) an EU ETS installation where electricity is generated;

(b) a nuclear power station;

(c) a hydro-generating station which was ineligible for a ROC.

(4) In this article—

"excluded fuel" means any fuel that has been or should be reported by the applicant in its annual report and any fuel included in the applicant's residual measurement list;

"hydro-generating station" has the meaning given by article 2(1) of the Renewables Obligation Order 2009(**b**) and as if that article applied to Scotland and Northern Ireland. ".

(5) After article 34 (group CCA exemptions), insert—

(**a**) 2008 c. 32.
(**b**) S. I. 2009/785.

"**First phase participant exemptions**

34A.—(1) Where in a year of the first phase the member of a participant to which a member CCA exemption applies does not have energy use or carbon emissions subject to a CCA target, the member CCA exemption applies in any subsequent year of the phase where the member operates a facility that is specified in a specified facility certificate.

(2) Where in a year of the first phase, a participant which has a general CCA exemption does not have energy use or carbon emissions subject to a CCA target, the general CCA exemption applies in any subsequent year of the phase where the participant operates a facility that is specified in a specified facility certificate.".

(6) Omit article 36 (requirements for exemption to apply: exception).

(7) For article 37(1) (effect of exemptions and records), substitute—

"(1) Subject to article 38, as a participant, an applicant is exempt from Parts 5 to 7 of this Order for the phase where a general CCA exemption applies to it.".

(8) In article 38 (loss of exemptions and further exemptions)—

(a) for paragraphs (2) and (3), substitute—

"(2) Where in a year of a phase, the member of a participant to which a member CCA exemption applies does not operate a facility that is specified in a specified facility certificate, the member CCA exemption does not apply—

(a) in the next year of the phase; and

(b) any subsequent year where the member does not operate a CCA facility that is specified in a specified facility certificate.

(3) Where in a year of a phase, a participant which has a general CCA exemption does not operate a CCA facility that is specified in a specified facility certificate, the general CCA exemption does not apply—

(a) in the next year of the phase; and

(b) any subsequent year where the participant does not operate a facility that is specified in a specified facility certificate.";

(b) in paragraph (5), omit ", as applicable, the footprint report or".

9. Omit Part 4 (footprint reports and residual measurement lists).

10.—(1) Part 5 is amended as follows.

(2) For article 48 (member CCA exemptions), substitute—

"**Member CCA exemptions**

48. Where a participant has a member CCA exemption, supplies of electricity and gas under article 50 excludes any supplies or emissions of a member of the group to which a member CCA exemption applies.".

(3) For article 49 (annual report), substitute—

"**Annual report**

49.—(1) A participant must provide in the annual report—

(a) the amount of supplies under article 50(2);

(b) whether or not the following apply to the participant—

(i) an estimation adjustment; or

(ii) renewables generation,

and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation; and

(c) whether or not electricity generating credit applies to the participant and, if so, the amount of the generated and supplied electricity.

(2) In addition to the information in paragraph (1), local authority participants in England must provide the following information by 30th November 2013 as a supplement to the annual report for the third annual reporting year in the first phase—

(a) the amount of the supplies in article 50(2) that are measured by a settled half hourly meter;

(b) the amount of the supplies in article 50(2) that are supplied to—

(i) Academies;

(ii) city technology colleges;

(iii) city technology colleges for the technology of the arts;

(iv) maintained schools;

(v) maintained nursery schools;

(c) the amount of the supplies in sub-paragraph (b) that are measured by settled half hourly meters.".

(4) For article 50 (CRC emissions), substitute—

"**CRC emissions**

50.—(1) "CRC emissions" means the emissions calculated in accordance with paragraph 29 of Schedule 1 from CRC supplies.

(2) "CRC supplies" means the supplies of electricity and gas supplied to a participant in accordance with sections 1 to 3 of Schedule 1 and the additions in section 6 of that Schedule less the deductions of any electricity generating credits and the deductions under sections 4 and 5 of that Schedule but excluding—

(a) supplies of gas made to an EU ETS installation; and

(b) supplies of electricity and gas made to a facility specified in a specified facility certificate.

(3) The lowest value of CRC emissions is zero.".

11.—(1) Part 6 (allowances and CRC emissions) is amended as follows.

(2) After paragraph (3) of article 52 (validity of allowances), insert—

"(4) A participant must acquire the additional allowances from a special allocation or from a third party.

(5) In paragraph (4), "special allocation" means the issue of allowances conducted by the Environment Agency under regulation 10 of the 2012 Regulations.".

(3) In sub-paragraph (a) of article 53(3) (allowances and CRC emissions), for "July" substitute "October".

(4) In article 54 (cancellation of allowances and surplus surrendered allowances)—

(a) for paragraph (2)(b), substitute—

"(b) subject to article 52—

(i) are to be treated as surrendered in respect of the subsequent year ("year 2") in which the participant is required to comply with article 53 where that year is in the same phase; and

(ii) must be cancelled by the administrator in accordance with sub-paragraph (1) before any other allowances which are surrendered.";

(b) after paragraph (3), insert—

"(4) Where—

(a) a participant surrenders to the cancellation account surplus allowances; and

(b) the account holder makes a request to the Secretary of State for the repayment of the balance,

the Secretary of State may repay the balance to the account holder.

(5) Any repayment made by the Secretary of State under paragraph (4) may be subject to a deduction of any banking charges incurred during that transaction.".

(5) In article 55 (allowances and trading)—

(a) in paragraph (1), for "paragraphs (2) and (3)", substitute "paragraph (2)";

(b) omit paragraph (3).

(6) Omit article 56 (community tradeable allowances).

12. In paragraph (a) of article 58 (records), omit "and section 2 of Schedule 5".

13. In article 59 (records: residual measurements lists and public disclosure)—

(a) in the heading, for "Records: residual measurements lists and public disclosure", substitute "Records: public disclosure";

(b) omit paragraph (1).

14. For article 61 (supplies of electricity, gas and fuel under Part 8), substitute—

"**Supplies of electricity and gas under Part 8**

61. In this Part except articles 62 and 63, information which may be requested or required in respect of a supply of electricity or gas includes information relating to all sections of Schedule 1.".

15. For Part 10 (achievement and performance tables, publication and verification), substitute—

"PART 10

Performance information and publication

Publication of performance information

75. The administrator may, for each annual reporting year, publish information on a participant's performance in relation to its energy efficiency achievements on the basis of the information—

(a) contained in the participant's annual report; or

(b) submitted as part of the information described in Schedule 5.

Further publication

76.—(1) Paragraph (2) applies where an appeal is made against—

(a) a determination under article 47(3);

(b) the imposition of a penalty described in article 97(4)(a)(ii).

(2) Where this paragraph applies—

(a) the administrator may publish a list of those participants which have in respect of the annual reporting year made any such appeal;

(b) subject to paragraph (3), where any such appeal results in the information published under article 75 being changed, the administrator must as soon as possible publish the amended information.

(3) Publication under paragraph (2)(b) must not take place until the completion of all such appeals made by all participants.

(4) The administrator may publish amended information at any time where it discovers any error or omission in the published information.".

16.—(1) Part 14 (civil penalties) is amended as follows.

(2) Omit article 96 (failures in respect of footprint reports).

(3) In sub-paragraph (a) of article 98(1) (failures to provide information or notifications), omit "section 1 of".

(4) In article 99 (inaccurate footprint reports and annual reports)—

(a) in the heading, "Inaccurate footprint reports and annual reports", substitute "inaccurate annual reports";

(b) for paragraph (1), substitute—

"(1) the penalties in paragraph (3) apply where a participant provides an inaccurate annual report contrary to article 47.";

(c) omit paragraph (4).

17.—(1) Schedule 1 (supplies and emissions) is amended as follows.

(2) In section 1 (electricity, gas and fuels: general)—

(a) in the heading "Electricity, gas and fuels: general", substitute "Electricity and gas: general";

(b) in paragraph 1 (electricity)—

(i) in sub-paragraph (1)(c), omit "or is a dynamic supply";

(ii) for sub-paragraph (3) (electricity), substitute—

"(3) In sub-paragraph (1)(c), "metering device" means—

(a) in relation to England, Wales and Scotland, a device where the electricity supplied is charged for as measured by the device but not including meters allocated to the following profile classes under the Balancing and Settlement Code Procedure BSCP516(**a**)—

(i) Domestic Unrestricted;

(ii) Domestic Economy 7;

(b) in relation to Northern Ireland, a device where the electricity supplied is charged for as measured by the device but not including meters that measure supplies to domestic accommodation.";

(c) for paragraph 2(3) (gas), substitute—

"(3) In sub-paragraph (1)(c), a "metering device" is a device which during a year of a phase measures more than 73,200 kWh of gas supplied, in relation to the supply of gas.";

(d) omit paragraphs 3 (fuels) and 4 (fuels table);

(e) for paragraph 5 (measurement units), substitute—

"**Measurement units**

5. Where in this Order information must be provided concerning a supply of electricity or gas, the amount of that supply must be expressed in kWh.".

(3) In section 3 (franchise agreements), wherever ", gas or fuel" appears substitute in each case "or gas".

(4) In section 4 (deductions from supplies)—

(a) wherever ", gas or fuel" appears substitute in each case "or gas";

(**a**) Balancing and Settlement Code. BSC Procedure. Allocation of profile classes & SSCs for non-half hourly SVA metering systems registered in SMRs. BSCP5/6. Version 7.0. 26 June 2008.

(b) for paragraph 22 (purposes of transport), substitute—

"**Purposes of transport**

22.—(1) In paragraph 19, electricity or gas is consumed for the purposes of transport where it is used—

(a) by a road going vehicle, a vessel, an aircraft or a train;

(b) in relation to railways, for network services except where electricity or gas is used to provide power, heat or light to a building; or

(c) to provide power for the operation of a conveyor belt which is—

(i) at least 8 kilometres in length; and

(ii) used to transport materials to an off site facility from which facility the materials will be transported on a railway or a vessel using inland waters.

(2) The following definitions have effect for the purposes of sub-paragraph (1)—

"aircraft" means a self-propelled machine that can move through the air other than against the earth's surface;

"inland waters" means—

(a) any river, steam or other watercourse, whether natural or artificial and whether tidal or not;

(b) any lough, lake or pond, whether natural or artificial, and any reservoir or dock; and

(c) any channel, creek, bay, estuary or arm of the sea;

"network services" has the same meaning it has in section 82 of the Railways Act 1993(**a**) but as if section 82(3)(h) of that Act did not apply;

"railway" has the meaning given in section 67(1) of the Transport and Works Act 1992(**b**);

"road going vehicle" means any vehicle—

(a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994(**c**);

(b) which is an exempt vehicle under that Act; or

(c) which is required to display a certificate of Crown exemption under regulation 31 of the Road Vehicles (Registration and Licensing) Regulations 2002(**d**);

"train" has the same meaning it has in section 83 of the Railways Act 1993;

"vessel" means any boat or ship which is self-propelled and operates in or under water.

Consumption of gas for purposes other than heating

22A. A is not supplied with gas to the extent that supply is consumed by A for purposes other than for the purposes of heating.

Purposes of heating

22B.—(1) In paragraph 22A, gas is consumed for the purposes of heating where it is used as part of a process where the primary purpose of that process is the generation of heat.

(**a**) 1993 c. 43.
(**b**) 1992 c. 42.
(**c**) 1994 c. 22.
(**d**) S. I. 2002/2742.

(2) Gas used in the process of combined heat and power generation is not consumed for the purposes of heating.

Minimal gas heating supply levels

22C.—(1) Sub-paragraph (2) applies where the amount of gas supplied to A for the purposes of heating is less than 2% of the amount of electricity supplied to A in the first annual reporting year of a phase ("minimal gas heating supply").

(2) Where this sub-paragraph applies, A may decide that minimal gas heating supply is not consumed for the purposes of heating.

(3) A decision under sub-paragraph (2)—

(a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.".

(5) In section 5 (deductions from supplies during the first phase in Northern Ireland), wherever ", gas or fuel" appears substitute in each case "or gas".

(6) In section 6 (additions to supplies: estimation adjustments)—

(a) in paragraph 25(1) (additions to supplies), for ", gas or fuel" substitute "or gas";

(b) omit paragraph 27 (estimation adjustment: fuels).

(7) In section 7 (renewables generation and amount of emissions from supplies)—

(a) for paragraph 28(1)(b)(ii) (renewables generation: electricity), substitute—

"(ii) A is in receipt of a financial incentive made by virtue of a scheme under section 41 of the Energy Act 2008(**a**); and";

(b) for paragraph 29 (amount of emissions), substitute—

"**Amount of emissions**

29. The emissions in tCO_2 from an amount of electricity or gas supplied is found by applying to that amount the relevant conversion factor.";

(c) in paragraph 30(a) (conversion factors), for "www.decc.gov.uk", substitute "www.gov.uk/decc".

18. Omit Schedule 2 (core supplies).

19.—(1) Schedule 3 is amended as follows.

(2) In paragraph 4(1) (public bodies: proprietors of Academies and colleges), substitute—

"(1) The proprietor of—

(a) an Academy;

(b) a city college for the technology of the arts or city technology college,

is a public body.".

(3) In paragraph 8 (educational bodies: England and Wales), omit sub-paragraph (2).

(4) For paragraph 10 (government and local authority decisions), substitute—

"**Government and local authority decisions**

10.—(1) Except in relation to the Treasury and Her Majesty's Revenue and Customs, the Secretary of State may make a government decision in relation to a government department.

(2) The Treasury may make a government decision in relation to the Treasury.

(**a**) 2008 c. 32.

(3) Her Majesty's Revenue and Customs may make a government decision in relation to Her Majesty's Revenue and Customs.

(4) Where—

(a) the Secretary of State, the Treasury or Her Majesty's Revenue and Customs intend to make a government decision described in paragraph 14(2)(a) in relation to a public authority described in Part VI of Schedule 1 to the 2000 Act; and

(b) that authority exercises functions partly other than in England,

the Secretary of State, the Treasury or Her Majesty's Revenue and Customs must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(5) The Secretary of State, the Treasury or Her Majesty's Revenue and Customs must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(6) A local authority decision may be made by—

(a) the Secretary of State in relation to a local government public body or a local government group in England;

(b) the Welsh Ministers in relation to a local government public body or a local government group in Wales.

(7) A government decision—

(a) must not be made such that a public body, on its own or part of a group—

(i) which is a participant, is no longer a participant;

(ii) which is required to be a participant, is no longer to be a participant;

(b) may be made for the better administration of the scheme.".

(5) In paragraph 15(1)(a) (government decisions: supplies and departments), for ", gas or fuel" substitute "or gas".

(6) In paragraph 16(1) (local authority decisions), for "In paragraph 10(5)" substitute "In paragraph 10(6)".

20.—(1) Schedule 5 (information) is amended as follows.

(2) For the heading "Information", substitute "Information on registration".

(3) Omit the headings "Section 1" and "Information on registration".

(4) Omit section 2.

21.—(1) Schedule 6 (changes to participants) is amended as follows.

(2) Wherever ", gas or fuel" appears, substitute " or gas".

(3) In Part 1—

(a) in paragraph 6 (creation of a new department: after year 2), omit sub-paragraph (2);

(b) omit paragraph 10 (transfers: year 2);

(c) in paragraph 12 (mergers of departments), omit sub-paragraph (3).

(4) In Part 2, paragraph 3 (mergers of public bodies), omit sub-paragraph (3).

(5) In Part 3—

(a) in sub-paragraph 3(b) (joining of undertakings with a group which is not required to register as a participant), omit "and non-settled half hourly meters";

(b) omit sub-paragraph (3) of paragraph 7 (notification and applications: time to comply and the administrator);

(c) for sub-paragraph (3) of paragraph 9 (significant group undertakings becoming participants), substitute—

"(3) Subject to sub-paragraph (4), where the change occurs in an annual reporting year, B must provide an annual report in respect of the annual reporting year as if B was a participant for the whole of that year.";

(d) in paragraph 10 (joining of a participant or significant group undertaking with a non-participant)—

(i) for sub-paragraph (3), substitute—

"(3) Subject to sub-paragraph (6), where the change occurs in an annual reporting year, D must provide an annual report in respect of the year but only in respect of those emissions which relate to C and as if C was a member of D for the whole of that year.";

(ii) omit sub-paragraphs (4) and (5);

(iii) for sub-paragraph (6)(b), substitute "sub-paragraph (3) does not apply to D;";

(e) in paragraph 11 (joining of a participant as a member of another participant)—

(i) omit sub-paragraphs (5) and (6);

(ii) for sub-paragraph (7), substitute—

"(7) "Where E and F do not continue as separate participants and E had a general or group CCA exemption, F has a member CCA exemption in respect of E.";

(f) in paragraph 12 (significant group undertakings transferring to another participant)—

(i) in sub-paragraph (1), for "sub-paragraphs (2) to (5) apply", substitute "sub-paragraph (2) applies";

(ii) omit sub-paragraphs (5) and (6).

22. Omit Schedule 8 (achievement and performance tables).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes in the United Kingdom an emissions trading scheme in respect of greenhouse gases under sections 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008 (c. 27). It applies to direct and indirect emissions from supplies of electricity and gas by public bodies and undertakings.

PART 1

By article 2, the trading scheme is established for six phases, comprising five consecutive phases, each of five years, where the initial phase commences on 1st April 2014, and a final phase of four years, commencing on 1st April 2039.

Article 3 lists definitions used in the Order, including that participants required to comply with this Order means public bodies defined in Schedule 2 and undertakings defined in Schedule 3, where such bodies or undertakings carry on a business, a charitable activity or a public function ("a scheme activity").

Articles 4 to 7 set out obligations on participants and powers and duties of the administrator under this Order and provide that supplies of electricity and gas are defined under Schedule 1. Article 8 provides for liability to comply with this Order for groups of public bodies and undertakings.

Article 9 sets out in respect of the provisions of this Order when the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency and the chief inspector are the administrator. Article 10 provides for co-operation between those bodies and national authorities.

PART 2

Article 11 provides how an application for registration as a participant must be made and article 12 by when that application must be made. Under article 13, a certificate of registration is provided to a participant whose application for registration is duly made and a list of participants must be maintained by the administrator.

Article 14 provides for applications for registration to be made by government departments, the devolved administrations and certain local authorities and groups including those bodies. Article 15 sets out when a group of other public bodies exists for the purposes of articles 16 and 17 and those articles provide for registration by public bodies and groups of those bodies not subject to article 14. Under article 18, the administrator may determine whether or not a public body is a member of a group.

Under articles 19 to 22, separate provision is made for the registration of colleges of a university and universities in England.

Article 23 sets out when a group of undertakings exists for the purposes of articles 24 to 25. Articles 24 and 25 provide for applications for registration by groups of undertakings and undertakings not part of a group.

Article 26 provides for applications for registration by undertakings or groups of undertakings that are part of a group where that group disaggregates.

Article 27 provides for different provisions for applications for registration by undertakings where the organisational changes described in section 1 of Part 3 of Schedule 5 take place. Under article 28, the administrator may determine whether or not an undertaking is a member of a group and whether or not article 27 applies.

Article 29 provides for applications for registration by public bodies or undertakings that are trustees of a relevant trust.

Article 30 provides for applications for registration by undertakings that are operators who have permission carry on a regulated activity.

PART 3

Article 31 requires a participant to provide an annual report concerning supplies during an annual reporting year and provides for the administrator to determine such a report if the participant fails to do so. Article 32 provides for the content of an annual report. The administrator must calculate CRC emissions using the information on supplies in the annual report or as it determines. Article 33 defines CRC supplies. Under article 34, where organisational changes described in Part 1 or 2 or section 2 of Part 3 of Schedule 5 occur, the requirements in that Schedule must be complied with.

PART 4

Article 35 provides for the validity of allowances for the purposes of compliance with the provisions of article 36 which require allowances to be surrendered by a participant equal to its CRC emissions in an annual reporting year. Article 37 provides for the cancellation of allowances surrendered and for surplus surrendered allowances. Under article 38 the administrator must maintain records in relation to allowances.

PART 5

Articles 39 to 42 provide for the maintenance and audit of records.

PART 6

Article 43 defines supplies in relation to Part 6. Under article 44, a participant may request information on electricity supplied to it. The administrator may require information from electricity suppliers under article 45. Occupiers of premises must give assistance to participants under article 46 and franchisees must give information and assistance to franchisors under article 47. Members of public bodies must give information and assistance to participants under article 48. Article 49 provides that where a group member is subject to an insolvency procedure, appointed practitioners must give information and assistance to that group member.

PART 7

Article 50 provides for the Registry to be established, article 51 provides for security of the Registry, article 52 contains provisions about access to the Registry and article 53 provides for preventing or suspending a person using the Registry.

Article 54 sets out how a registration as a participant may be cancelled where the participant ceases to carry on a scheme activity. Article 55 defines account holders. Article 56 requires participants to notify the administrator of any change in its proper address. Article 57 provides how a determination by the administrator under the provisions listed in that article must be carried out.

PART 8

Article 58 provides for the administrator to publish information on a participant's performance in relation to its energy efficiency achievements. Article 59 provides for the administrator to publish a list of participants that have appealed against a determination of a penalty, or where an appeal results in information published under article 58 being changed, publication of the amended information.

PART 9

Article 60 allows the administrator to charge for certain activities set out in article 61 and sets out when a charge must be paid and how it must be calculated. Articles 62 and 63 provide for the amounts of charges and revisions to those amounts. Article 64 provides for the collection and remittance of charges.

PART 10

The administrator may request information concerning compliance with this Order under article 65 and may do so by way of a compliance notice set out in that article. The administrator may inspect premises in relation to monitoring compliance under article 66.

PART 11

Articles 67 to 69 provide powers to the administrator to enforce this Order where a failure of compliance arises.

PART 12

By articles 70 to 81, the administrator may impose civil penalties for failures to comply with provisions of this Order. A penalty may be financial, require additional allowances to be acquired and surrendered or increase what must be regarded as the amount of a participant's emissions. Use of accounts in the Registry may be blocked and failure of compliance may be publicised. Under article 72, the administrator has discretion to waive penalties.

PART 13

Criminal offences are imposed under article 82 and penalties for those offences are set out in article 83. Article 84 deals with offences by corporate bodies and article 85 with offences by Scottish partnerships. Article 86 provides for application of this Order to the Crown.

PART 14

Article 87 sets out where an appeal arises. Article 88 sets out the grounds on which an appeal under article 87 may be made.

Under article 89 sets out the appeal body where appeals are made against determinations, notices or penalties made or given by the Secretary of State, the Environment Agency or the Natural Resources Body for Wales. Such appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chamber) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to these appeals.

Article 90 sets out the effect of an appeal.

Article 91 sets out the standard of proof to be applied when an appeal is made to the Scottish Ministers, the Planning Appeals Commission or an independent person appointed under article 89. Article 92 sets out what the appeal body may decide in respect an appeal.

Article 93 sets out the appeal procedure to be followed in relation to the making and determination of appeals by the Scottish Ministers, the Planning Appeals Commission and an independent person appointed under article 89.

Article 94 provides for service of documents and article 95 for national security.

PART 15

Article 96 provides for revocations, continuing effect and amendments to the CRC Energy Efficiency Scheme Order 2010 and the CRC Energy Efficiency Scheme (Amendment) Order 2011.

SCHEDULES

Schedule 1 defines supplies and emissions.

Schedule 2 defines public bodies and Schedule 3 undertakings and significant group undertakings.

Schedule 4 provides for information required on an application for registration as a participant.

Schedule 5 sets out organisational changes before and after a phase of the scheme and requirements in relation to those changes.

Schedule 6 provides for requirements of the Registry in relation to Part 7 of this Order.

Schedule 7 sets out appeal bodies and procedures and Schedule 8 provides for the service of documents under Part 16 of this Order.

Schedule 9 provides for amendments to the CRC Energy Efficiency Scheme Order 2010.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Climate Change Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2HH and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

Published by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone: 0870 240 3701

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ISBN 978-0-11-153537-0

9 780111 535370