

1 Climate change levy: climate change agreements

Schedule 1 makes provision about climate change agreements for the purposes of climate change levy.

S C H E D U L E S

SCHEDULE 1

Section 1

CLIMATE CHANGE LEVY: CLIMATE CHANGE AGREEMENTS

- 1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- 2 In paragraph 44(1)(a), (2A) and (2C) for “Secretary of State” substitute “Administrator”.
- 3 In paragraph 45(1) for “Secretary of State” substitute “Administrator”.
- 4 In paragraph 45B(2) and (6) for “Secretary of State” (wherever occurring) substitute “Administrator”.
- 5 In the cross-heading before paragraph 47 omit “with Secretary of State”.
- 6 In paragraph 47(1) –
 - (a) in paragraph (a) for “Secretary of State” substitute “Administrator”,
 - (b) omit the “and” after paragraph (f),
 - (c) in paragraph (g) –
 - (i) for “five-yearly” substitute “seven-yearly”, and
 - (ii) after “Secretary of State” insert “or the Administrator”, and
 - (d) after paragraph (g) insert “, and
 - (h) containing any terms required by regulations falling within paragraph 52E”.
- 7 (1) Paragraph 48 is amended as follows.
 - (2) In sub-paragraph (3)(c) –
 - (a) for “five-yearly” substitute “seven-yearly”, and
 - (b) after “Secretary of State” insert “or the Administrator”.
 - (3) In sub-paragraph (4) –
 - (a) in paragraph (a) for “Secretary of State” substitute “Administrator”,
 - (b) omit the “and” after paragraph (c), and
 - (c) after paragraph (d) insert “, and
 - (e) containing any terms required by regulations falling within paragraph 52E”.
 - (4) In sub-paragraph (5) –
 - (a) for paragraph (b) substitute –
 - “(b) entered into with the Administrator,”,
 - (b) omit paragraph (c),
 - (c) omit the “and” after paragraph (d), and

- (d) after paragraph (e) insert “, and
- (f) containing any terms required by regulations falling within paragraph 52E”.

- 8 (1) Paragraph 49 is amended as follows.
- (2) In sub-paragraph (3) for “Secretary of State” (wherever occurring) substitute “Administrator”.
- (3) In sub-paragraph (7) for “paragraphs 47 and 48 and this paragraph” substitute “this Part of this Schedule”.
- (4) In sub-paragraph (8) –
- (a) for “Secretary of State” substitute “Administrator”,
 - (b) after paragraph (a) insert “or”, and
 - (c) omit paragraph (c) and the “or” before it.

9 After paragraph 52 insert –

“The Administrator etc

- 52A (1) In this Part of this Schedule references to “the Administrator” are to the body appointed as such by regulations made by the Secretary of State.
- (2) The body appointed must be a body established by an enactment (as defined in section 97 of the Climate Change Act 2008).
- (3) Different bodies may be appointed in relation to facilities in different parts of the United Kingdom.
- 52B (1) The Administrator is responsible for administering the scheme set out in paragraphs 44 to 52.
- (2) This covers (in particular) the administration of climate change agreements.
- (3) In this Part of this Schedule “administrative function” means –
- (a) the Administrator’s function imposed by sub-paragraph (1), or
 - (b) any other function of the Administrator conferred or imposed by or under a provision of this Part of this Schedule.
- 52C (1) The Administrator may require persons falling within sub-paragraph (2) to pay to the Administrator such charges as may from time to time be specified to cover any costs incurred by the Administrator in carrying out any administrative function.
- (2) The persons falling within this sub-paragraph are parties or potential or former parties to agreements falling within paragraph 47 or to umbrella or underlying agreements within the meaning of paragraph 48.
- (3) In sub-paragraph (1) “specified” means specified in, or determined in accordance with, a scheme made by the Administrator for the purposes of this paragraph.

- (4) A scheme may provide for the times at which, and the manner in which, charges are to be paid.
 - (5) Paragraph 146(7) applies in relation to the Administrator's power to make a scheme under this paragraph as it applies in relation to a power to make regulations under this Schedule.
 - (6) A scheme may revoke or vary any previous scheme.
 - (7) A scheme may be made only with the consent of the Secretary of State.
 - (8) Charges received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.
 - (9) Sub-paragraph (8) does not apply if the Administrator is the Environment Agency.
- 52D (1) The Secretary of State may by regulations make provision about the administration of the scheme set out in paragraphs 44 to 52.
- (2) Sub-paragraph (1) covers (in particular) –
 - (a) provision about climate change agreements, and
 - (b) provision about how the Administrator is to carry out any administrative function.
 - (3) Without prejudice to the generality of the sub-paragraphs above, regulations may contain any provision falling within any of paragraphs 52E to 52F.
 - (4) Regulations may –
 - (a) require the Administrator to obtain the Secretary of State's consent to any course of action,
 - (b) confer or impose other functions on the Secretary of State or the Administrator, or
 - (c) confer or impose functions on other persons.
 - (5) The Secretary of State may give directions to the Administrator about how the Administrator is to carry out any administrative function (and this power to give directions includes power to vary or revoke directions previously given).
 - (6) The Secretary of State may issue guidance to the Administrator about how the Administrator is to carry out any administrative function; and the Administrator must have regard to any guidance issued.
- 52E (1) Regulations may –
- (a) specify terms which must be included in agreements falling within paragraph 47 or in umbrella or underlying agreements within the meaning of paragraph 48, and
 - (b) confer power on the Administrator to vary such agreements to take account of any changes in the terms specified under paragraph (a) from time to time.
- (2) The terms which may be specified under sub-paragraph (1)(a) include (in particular) terms falling within paragraph 49(4) under which the absence (or partial absence) of any progress towards

meeting any targets for a facility may be made up for by the payment to the Administrator of a sum specified in, or determined in accordance with, the regulations.

- (3) Sums received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.

52F (1) Regulations may confer power on the Administrator –

- (a) to impose a financial penalty of a specified amount on a person who, as a representative of a facility to which a climate change agreement applies, contravenes a term of the agreement, and
- (b) to terminate, with effect from a specified date, the agreement so far as it applies to the facility if –
 - (i) the financial penalty is not paid to the Administrator within a specified period, or
 - (ii) the contravention is not remedied to the Administrator's satisfaction within a specified period.

- (2) Regulations may also confer power on the Administrator to terminate, with effect from a specified date and without first imposing a financial penalty, a climate change agreement so far as it applies to a facility if there is a contravention of the agreement by a person who is a representative of the facility.

- (3) Neither sub-paragraph (1)(a) nor sub-paragraph (2) covers a failure to meet, or to make progress towards meeting, any targets set for a facility under a climate change agreement.

- (5) If regulations falling within sub-paragraph (1) or (2) are made, the regulations must also –

- (a) confer rights of appeal against a decision taken by the Administrator to impose a financial penalty or to terminate a climate change agreement (as the case may be), and
- (b) specify the court, tribunal or person who is to hear and determine the appeal.

- (6) The Secretary of State may be specified for the purposes of sub-paragraph (5)(b).

- (7) Penalties received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.

- (8) Regulations may confer power on the Administrator to terminate, with effect from a specified date, a climate change agreement so far as it applies to a facility in specified circumstances not involving a contravention of the agreement.

- (9) In this paragraph –

“representative” has the meaning given by paragraph 47(2), and

“specified” means specified in, or determined in accordance with, the regulations.

- (10) If a climate change agreement is terminated in respect of a facility before the start of, or during, a period specified for the facility in

such a certificate as is mentioned in paragraph 44(1), the Administrator must, in respect of the facility, give a variation certificate in relation to the specified period—

- (a) within paragraph 45(1)(a), or (as the case may be)
- (b) within paragraph 45(1)(b) specifying the day on which the agreement is terminated.”

10 The amendments made by this Schedule have no effect in relation to climate change agreements entered into with the Secretary of State before the day on which this Act is passed.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: CLIMATE CHANGE AGREEMENTS

SUMMARY

1. This clause and Schedule amend Schedule 6 to the Finance Act 2000 (“Schedule 6”) to make changes to the administration of the climate change agreement (CCA) scheme from 1 April 2013. Participants of the scheme are entitled to a discount from the climate change levy (CCL) in return for meeting energy efficiency or emission reduction targets.

DETAILS OF THE SCHEDULE

2. Paragraph 2 substitutes “Administrator” for “Secretary of State” in paragraphs 44(1)(a), (2A) and (2C) of Schedule 6 to ensure that the reduced rate of levy applies where the Administrator issues and varies certificates.
3. Paragraph 3 substitutes “Administrator” for “Secretary of State” in paragraph 45(1) of Schedule 6 to provide for the issue of variation certificates by the Administrator.
4. Paragraph 4 substitutes “Administrator” for “Secretary of State” in paragraphs 45B(2) and (6) of Schedule 6 to provide for the Administrator to certify unsatisfactory progress towards meeting targets.
5. Paragraph 5 removes the words “with Secretary of State” in the heading before paragraph 47 of Schedule 6.
6. Paragraph 6 amends paragraph 47(1) of Schedule 6 to provide that direct agreements will be made with the Administrator rather than the Secretary of State, and contain any terms required by regulations, and to provide that the Administrator will review targets seven-yearly or more frequently.
7. Paragraph 7 amends paragraph 48 of Schedule 6 to provide that where there is a combination of umbrella and underlying agreements under the CCA scheme, both kinds of agreements will be entered into with the Administrator, who will also review targets seven-yearly or more frequently. It also provides that the agreements must contain any terms required by regulations.
8. Paragraph 8 makes a number of consequential amendments to paragraph 49 of Schedule 6.

9. Paragraph 9 inserts the following new paragraphs into Schedule 6:
 - Paragraph 52A provides for one or more bodies to be appointed as the Administrator(s) of the scheme by regulations made by the Secretary of State.
 - Paragraph 52B provides for the Administrator to administer the scheme in accordance with paragraphs 44 to 52 of Schedule 6.
 - Paragraph 52C provides for the Administrator to charge fees, with the consent of the Secretary of State, to recover costs incurred in carrying out its administrative function.
 - Paragraph 52D provides for the Secretary of State to make regulations, give directions and issue guidance concerning the administration of the scheme.
 - Paragraph 52E provides for the regulations to specify the terms of the umbrella and underlying agreements under the CCA scheme, and to provide for a buy-out fee to be paid to the Administrator to make up for a lack of satisfactory progress towards meeting targets.
 - Paragraph 52F provides for the regulations to give the Administrator the power to impose financial penalties for contravening a term of an agreement, and to terminate agreements if the financial penalty is not paid or the contravention is not remedied. Any regulations made must also confer the right of appeal against decisions to impose penalties, or to terminate agreements for failing to pay a penalty or failing to remedy a contravention. The paragraph also provides for regulations to give the Administrator the power to terminate an agreement in specified circumstances not involving a contravention of it.
10. Paragraph 10 provides for the changes contained in this Schedule to have no impact on CCAs entered into before the Finance Bill receives Royal Assent.

BACKGROUND NOTE

11. CCL is a tax on electricity, natural gas, liquefied petroleum gas and solid fuels when supplied for use by the business and public sectors. The levy is designed to encourage energy efficiency and the take up of electricity from renewable sources in order to reduce carbon emissions. It was introduced on 1 April 2001.

12. The CCA scheme was introduced at the same time as the levy. Specified energy intensive businesses were allowed to enter into agreements with the Department of Energy and Climate Change (DECC) to meet energy efficiency or emission reduction targets and, as a result, would be entitled to pay a reduced rate of CCL on all taxable commodities. Since 1 April 2011 the reduced rate has been 35 per cent of the full rates of levy for all taxable commodities but, as announced in the Autumn Statement on 29 November 2011, it is due to be amended to 10 per cent for electricity only from 1 April 2013.
13. The existing CCA scheme is due to come to an end on 31 March 2013. The Government intends to extend the scheme to 2023 and make changes to simplify its administration to reduce burdens on business, and allow a more flexible approach to the administration of the scheme.
14. CCAs are currently administered by DECC. It is the Government's intention that the future scheme will be administered by a Scheme Administrator to align with the EU Emissions Trading System (ETS) and the Carbon Reduction Commitment. The administrative costs to Government of delivering CCAs will be recovered via a charging regime, in line with the Government's general policy of seeking cost recovery.
15. Under the existing CCA scheme, if a business fails to meet its milestone target, it must purchase carbon credits via the UK ETS in order to be regarded as having made up for that lack of satisfactory progress. The UK ETS has largely been supplanted by the EU ETS. In addition to the overheads associated with a trading scheme, the small market outside of EU ETS is expected to make UK ETS highly volatile. The Government therefore intends to close the UK ETS. Under the new CCA scheme, a simple buy-out mechanism, operated by the Administrator, will be the means by which participants make up for any lack of satisfactory progress towards meeting their CCA targets.
16. If you have any questions about this change, or comments on the legislation, please contact Andy Jameson on 020 7147 2379 (email: andy.jameson@hmrc.gsi.gov.uk).