
DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

CLIMATE CHANGE

The CRC Energy Efficiency Scheme Order 2013

Made - - - -

Coming into force - - *in accordance with article 1*

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At the Court at Buckingham Palace, the [] day of December 2012

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 and 46(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:

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 it is made.

(a) 2008 c. 27.

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 five phases of six years commencing on 1st April 2014, and a sixth phase of five 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);

“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 regulations made by the Treasury under section 21 of the Finance Act 2008(e);

“annual report” means the report described in article 31;

“annual reporting year” means each year of the phase, except for the first year of the phase;

“appeal body” has the meaning given by article 90;

“applicant” means—

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

(b) an undertaking or group of undertakings,

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

“appropriate sub-metering device” means a device which measures electricity supplied but the measurements are not used for the charging of that electricity;

“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(f); or

(ii) Article 8(1)(c) of the Electricity (Northern Ireland) Order 1992(g);

(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(h); or

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

“blocking” has the meaning given by article 82(3);

(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) 2008 c. 9.

(f) 1989 c. 29.

(g) S.I. 1992/231 (N.I. 1).

(h) 1986 c. 44. Section 48(1) is subject to various amendments.

(i) S.I. 1996/275 (N.I. 2).

“cancellation account” means the account provided by the administrator into which allowances must be surrendered by a participant in compliance with article 35;

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

“CCA facility” means a facility which is subject to a CCA target;

“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 2006(b) in relation to England and Wales;

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

(c) section 2 of the Charities Act (Northern Ireland) 2008(d) 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(e);

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

“compliance account” means the account of a participant from which allowances must be surrendered to the cancellation account in compliance with article 35;

“CRC” means carbon reduction commitment;

“CRC emissions” has the meaning given by article 32(1);

“CRC supplies” has the meaning given by article 32(2);

“day” means a working day unless provided to the contrary;

“domestic accommodation” has the meaning given by paragraph 19(3) of Schedule 1;

“enforcement notice” has the meaning given by article 70;

“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(f), as amended from time to time;

“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 I of that Directive but approved in the United Kingdom under Article 24;

“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”, “franchisee” and “franchisor” have the meanings given in section 3 of Schedule 1;

“fuel” has the meaning given by paragraph 3(2) 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” has the meaning given by paragraph 1 of Schedule 3;

(a) 2000 c. 17.

(b) 2006 c. 50.

(c) 2005 asp 10.

(d) 2008 c. 12.

(e) S.R. (NI) 2003 No 46, amended by S.I. 2003/496 and 2003/3311; there is another amending instrument which is not relevant.

(f) 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).

- “highest parent undertaking” has the meaning given by paragraph 1 of Schedule 3;
- “independent college group” has the meaning given by article 21(1)(b)(ii);
- “independent person” means a person who has no individual interest in the matter subject to an appeal and is independent of the parties to the appeal;
- “kWh” means kilowatt hour or hours;
- “local authority decision” has the meaning given by paragraph 16 of Schedule 2;
- “MWh” means megawatt hour or hours;
- “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 within the time provided under 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 28;
- “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 or person exercising management control—
 - (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 82(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) an applicant is supplied with electricity by a settled half hourly meter;
 - (b) qualifying electricity is supplied to it for the purposes of a scheme activity; and
 - (c) the amount of that qualifying electricity satisfies the qualifying amount;

- “qualification year” means the year immediately before the beginning of the phase;
- “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 49;
- “renewables generation” has the meaning given by paragraph 36(2) of Schedule 1;
- “ROC” means a renewables obligation certificate issued further to an order made under—
- (a) sections 32 to 32M of the Electricity Act 1989**(a)**; or
 - (b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003**(b)**;
- “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) of the Electricity Act 1989**(c)**;
 - (ii) in relation to Northern Ireland, granted under Article 10(1) or (2) of the Electricity (Northern Ireland) Order 1992**(d)**,to determine charges between that supplier and another licence holder in respect of the transmission and trading of wholesale electricity;
- “tCO₂” 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**(e)** 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;
- “unit of turnover” means turnover expressed in pounds sterling rounded up to the nearest pound;
- “vessel” means, except under paragraph 25 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**(f)**, including those bank holidays in part only of the United Kingdom;

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

(b) 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).

(c) 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).

(d) S.I. 1992/231 (N.I. 1).

(e) 2006 c. 46.

(f) 1971 c. 80.

- (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, gas or fuel;
 - (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;
 - (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);
 - (d) Schedule 5 (changes to participants).
- (4) Part 6 provides for persons to provide information and assistance to participants and the administrator.

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 compile and publish achievement and performance tables;
 - (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, revocation and continuing effect

- 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 revocation and continuing effect.

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 54(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 5 to 12 and not any other member of the group;
 - (c) subject to article 87, 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 and Wales;
 - (ii) the Scottish Environment Protection Agency, in respect of Scotland;
 - (iii) the Chief inspector, in respect of Northern Ireland.

Table of provisions

<i>Column 1</i>	<i>Column 2</i>
Part 2 except articles 18(1) and 29	Articles 18(1), 29, 30(3), 44, 51(3), 53 and 56
Parts 5 and 6 except article 30(3)	Parts 9 to 14
Articles 49, 50, 52 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 Scottish Environment Protection Agency, the Scottish Ministers;
- (c) 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 in section 1 of 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(3) and (4), an application for registration as a participant under this Part must be made within 6 months of 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.

(a) Such a determination must be made in accordance with article 56(2).

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 IV 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;
 - (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 (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 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 28, 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 28.

(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 where 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 before the time required under article 12.

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

Undertakings: applications other than by groups

25.—(1) Subject to paragraph (2) and article 28, 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 where 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 before the time required under article 12.

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

Undertakings: applications by trusts

26. [This article, to be drafted, would make provision in the case of trusts for one of the following persons to apply for registration: (a) an operator of a trust that carries out a regulated activity under the Financial Services and Markets Act 2000; (b) a trustee of a discretionary trust; or (c) a trustee of an unincorporated joint venture.]

(a) 2000 c. 17.

Undertakings: disaggregation

27.—(1) This article applies where a member (“B”) of a group (“A”) is—

- (a) an undertaking as a member of A; or
- (b) a group of undertakings as a member of A.

(2) B must not be or include the highest parent undertaking in the United Kingdom of A.

(3) During the first year of a phase, where—

- (a) A has applied for registration as a separate participant to B in the time provided under article 12; and
- (b) B, together with any of its subsidiary undertakings, has applied for registration before the last working day of April in the following year,

the administrator must register A and B, together with any of B’s subsidiary undertakings, as a separate participants for the whole of that phase.

(4) After the first year of a phase, where—

- (a) A has applied for registration as a separate participant to B; and
- (b) B, together with any of its subsidiary undertakings, has applied for registration before the last working day of April in a year of that phase,

the administrator must register A and B, together with any of its subsidiary undertakings, as separate participants for the remaining years of that phase.

Changes to undertakings and groups

28.—(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 within the time provided under 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

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

- (a) an undertaking is a member of a group;
- (b) article 28(2) applies to a group or undertaking.

PART 3

Annual reports

Provision of annual reports

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

(a) Such a determination must be made in accordance with article 56(2).

(2) Each participant in the first phase of the scheme must also provide to the administrator a report which complies with article 31 on its CRC supplies during the first year of the first phase of the scheme.

(3) Any participant who was not a participant in a previous phase of the scheme must also provide to the administrator a report which complies with article 31 on its CRC supplies during the first year of the first phase in which it was a participant in the scheme.

(4) 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.

(5) 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

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

(a) the amount of the supplies under article 32(3);

(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; 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 30, it must calculate the participant's CRC emissions.

CRC emissions

32.—(1) “CRC emissions” means the emissions calculated in accordance with paragraph 37 of Schedule 1 from CRC supplies.

(2) “CRC supplies” means—

(a) the supplies listed in paragraph (3) during an annual reporting year; and

(b) in respect of those supplies during that year, applying the additions under section 6 of Schedule 1.

(3) The supplies referred to in paragraph (2)(a) are the supplies of electricity, gas and fuel supplied to each participant and participant equivalent in accordance with sections 1 to 4 of Schedule 1 less the deductions from those supplies under section 5 of that schedule

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

Changes affecting participants

33. 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 56(2).

PART 4

Allowances and trading of CRC emissions

Validity of allowances

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

- (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 75(4)(b) or 78(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 surrender the allowance which is valid for year 2 in order to comply with those articles.

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

Allowances and CRC emissions

35.—(1) Subject to paragraph (2), for the second and subsequent years 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 tCO₂.

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

- (a) by the last working day of September after the end of the applicable year; and
- (b) using the Registry.

Cancellation of allowances and surplus surrendered allowances

36.—(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 30(3); or
- (c) as provided under article 75(4)(a), 75(5), 78(2)(a), 78(3) or 79(2)(a).

(2) Where a participant surrenders to the cancellation account more allowances (“surplus allowances”) than required under paragraph (1), the surplus allowances—

- (a) must remain in the cancellation account;
- (b) subject to article 34—
 - (i) are surrendered in respect of the subsequent year (“year 2”) in which the participant is required to comply with article 35; and
 - (ii) must be cancelled 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 34, paragraph (2)(b) applies to the years after year 2 until no surplus allowances remain.

Allowances and trading

37. The administrator must maintain a record in respect of an allowance which shows—

- (a) the year in which an allowance issued;
- (b) the allocation in which an allowance was issued;
- (c) the date of issue of an allowance;
- (d) to whom an allowance was issued;
- (e) the account in which allowances are held from time to time;
- (f) transfers of allowances;
- (g) when an allowance is cancelled.

(2) Trading in allowances is permitted by participants and third parties to enable participants to comply with article 35(1).

PART 5

Records and notification

General

38.—(1) A participant must maintain the records provided 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

39. 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

40.—(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 to reduce its emissions,

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

41.—(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, gas and fuel under Part 6

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

Information on electricity, gas and fuel supplied from authorised suppliers and registered dealers

43.—(1) A participant may request in writing the information under paragraph (2) from—

- (a) those authorised suppliers of electricity that hold a licence to make such a supply;
- (b) those authorised suppliers of gas that hold a licence to make such a supply; or
- (c) those suppliers of fuel that are registered dealers in controlled oil under regulation 4 of the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2002^(a).

(2) The information under this paragraph is—

- (a) the amount of electricity, gas or fuel supplied to the participant in the annual reporting year in which the request is made; and
- (b) how much, if any, of that supply has been estimated by the supplier and the period to which such an estimate relates.

(3) The information under paragraph (2)—

- (a) may be calculated on the basis of the amount of electricity, gas or fuel supply billed to the participant during the 12 months immediately before the date of the annual statement;
- (b) may cover a different 12 month period to the reporting year, subject to that period being within 30 calendar days of the reporting year period.

(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 to which the information requests.

Information from electricity suppliers

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

- (a) it was a notice provided for in paragraph 2 of Schedule 4 to the Act; but
- (b) in respect of such a notice—

(a) S.I. 2002/3057.

- (i) section 50(2) of the Act did not apply; and
 - (ii) the modifications in paragraph (2) apply.
- (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.

Assistance by occupiers

45.—(1) Where paragraph 17 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

46.—(1) Where paragraph 10 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

47.—(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 54(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 liquidators

48.—(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.

(3) In this article “appointed practitioner” means a person appointed under the Insolvency Act 1986(a) to manage the group member’s United Kingdom affairs, business or property.

(a) 1986 c. 45.

PART 7

Administration of the scheme

The Registry

49.—(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 rules in relation to the operation of the Registry.

Security of the Registry

50. 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 57 or 59 applies) is not accessible by another account holder or participant.

Security and identities

51.—(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) 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,

(a) Such a determination must be made in accordance with article 74(2).

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

52.—(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

53.—(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 (3) and (4).

Account holders

54.—(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

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

Determinations

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

- (a) article 18(1), 29, 30(3), 51(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

Achievement and performance information, publication and verification

Publication of achievement and performance information

57.—(1) 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 contained in the participant's annual report.

(2) The information in paragraph (1) may be published in any form, including as a league table ranking a participant's performance against other participants.

Verification

58.—(1) If an administrator publishes a performance table, a participant may request the administrator to carry out a verification of the information on the participant's performance published under article 57.

(2) Such a request must be made in writing within 40 days of publication.

(3) Where such a request is made—

- (a) the verification must be carried out by an independent person;

- (b) the participant and the administrator must each pay their own costs incurred in carrying out the verification; and
- (c) the administrator must—
 - (i) seek the verification within 20 days of receiving the request; and
 - (ii) comply with the result of the verification.

(4) For the purposes of this article an “independent person” is such person as the administrator and participant agree or, in default of agreement within a reasonable time, as appointed by the administrator.

(5) In this article, “verification” means to check that the administrator has correctly calculated, where applicable, any of—

- (a) the participant’s CRC emissions;
- (b) absolute change and relative change;

as the participant believes may have been incorrectly calculated.

Further publication

59.—(1) Paragraph (2) applies where—

- (a) an appeal is made against—
 - (i) a determination under article 30(3);
 - (ii) the penalty imposed under article 75(4)(a)(ii);
- (b) a request for verification is made under article 58.

(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 or request;
- (b) subject to paragraph (3), where any such appeal or request results in the published information 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 or requests 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 30(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

(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.

(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 Agency any charge received by it.

(2) The Environment Agency—

- (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.

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 act on its behalf to do so.

(4) A person in control of the premises to which the administrator or authorised person 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;

(a) Such a determination must be made in accordance with article 56(2).

- (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(a); 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.

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.

Authorised persons

- 68.**—(1) The administrator may—
- (a) exercise the powers of entry and inspection in Schedule 7 and authorise in writing such persons (“authorised persons”) who appear suitable to act on its behalf to do so;
 - (b) make such authorisation subject to any limitations or conditions as the administrator sees fit.
- (2) Paragraph (3) applies in respect of—
- (a) any of the bodies which comprise the administrator; and
 - (b) a person authorised by such a body to exercise any of the functions of that body otherwise than under this Order.
- (3) Where this paragraph applies, a person referred to in paragraph (2)(b) is an authorised person for the purposes of paragraph (1)(a) in respect of that body unless the administrator provides otherwise.

Notices to provide information: compliance with articles 39 and 40

- 69.**—(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 39 or 40; 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

- 70.**—(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) 1911 c. 28.

- (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 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

71.—(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 regulation under which a person is liable for a penalty
 - (b) to whom the penalty must be paid; and
 - (c) in respect of a financial penalty—
 - (i) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of service of the notice, the total amount due and where applicable, how it has been calculated and the date by which it must be paid;
 - (ii) 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, the amount of the initial penalty and details of the applicable daily rate.
- (3) Where a notice has been served under paragraph (2)(c)(ii) 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 specifying—
- (a) the total amount due;
 - (b) how it has been calculated;
 - (c) the date by which it must be paid.
- (4) The administrator must remit a financial penalty received to the Secretary of State.

Effect and recovery of civil penalties

72.—(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

- 73.**—(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

74.—(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 8 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 (2) 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 of 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

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

- (a) fails to provide an annual report contrary to article 30(1); or
- (b) provides late an annual report contrary to article 30(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 tCO₂ 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

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

- (a) fails to provide the information in section 1 of 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—

- (a) the financial penalty of £5000 and publication; and
- (b) where the participant provides inaccurate information and—
 - (i) achieves a higher position in the performance table than it would have done had it provided the information accurately; and
 - (ii) in consequence the participant received a grant under section 53(1)(b) of the Act from the Secretary of State which is greater than it would otherwise have done, a penalty of double the amount of the grant which the participant should not have received.

Inaccurate annual reports

77.—(1) The penalties in paragraph (3) only apply where a participant provides an inaccurate annual report contrary to article 30.

(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 35 or 36 of section 6 of Schedule 1.

(3) The penalties are—

- (a) a financial penalty of £40 per tCO₂ of so much of those supplies or emissions which were inaccurately reported; and
- (b) publication.

Failures to surrender allowances contrary to Part 4

78.—(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 75(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 tCO₂ 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

79.—(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 auction or sale of allowances by the Environment Agency immediately before the shortfall was found.

Failures to maintain records

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

- (a) the administrator has given notice under article 69 in respect of a failure to comply with article 39; 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 tCO₂ 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, the penalties are a financial penalty of £5000 and publication.

Failures to provide information under article 44

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

- (a) the administrator has served a notice as provided under article 44 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

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

PART 13

Criminal offences and penalties

Offences

- 83.**—(1) It is an offence for a person—
- (a) intentionally to obstruct an authorised person in the exercise of the powers or duties of the authorised person under Schedule 7; or
 - (b) to make a statement—
 - (i) which that person knows to be false or misleading in a material particular; or
 - (ii) 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—
- (a) to fail to comply with an enforcement notice;
 - (b) where an authorised person exercises the powers or duties under Schedule 7—
 - (i) to fail or refuse to provide facilities or assistance or to permit any inspection, when reasonably required by an authorised person; or
 - (ii) to prevent any other person from appearing before an authorised person or answering any question to which an authorised person may require an answer.
- (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 access to those premises contrary to article 66(3) where such access is reasonably required.

Penalties

- 84.**—(1) A person guilty of an offence under article 83(1)(b) or (2)(a) 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 83(1)(a), (2)(b), (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

85.—(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) "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

86.—(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

87.—(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

88.—(1) The following appeals may be made under this Order—

- (a) an appeal by a public body or undertaking notified of a determination referred to in article 56(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

89.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;
- (c) that it was unreasonable; or
- (d) any other reason.

Appeal body

- 90.**—(1) In the case of an appeal against a determination, notice or penalty made or given by—
- (a) the Environment Agency, the appeal body is the First-tier Tribunal^(a);
 - (b) the Scottish Environmental Protection Agency, the appeal body is the Scottish Ministers;
 - (c) the Northern Ireland department, the appeal body is the Planning Appeals Commission (“the appeals commission”).
- (2) Sub-paragraph (3) applies in the case of an appeal made by an applicant or participant which is or includes—
- (a) the Environment Agency, against a determination, notice or penalty made or given by the Secretary of State;
 - (b) the Scottish Environmental Protection Agency, against a determination, notice or penalty made or given by the Scottish Ministers;
 - (c) the Chief Inspector, against a determination, notice or penalty made or given by the Department of the Environment.
- (3) Where this sub-paragraph applies, the appeal body is an independent person which the following appoints in writing—
- (a) the Secretary of State, in respect if an appeal made by an applicant or participant which is or includes the Environment Agency;
 - (b) the Scottish Ministers, in respect of an appeal made by an applicant or participant which
 - (c) the Department of the Environment, in respect of an appeal made by the applicant or participant which is or includes a Northern Ireland department.

Effect of an appeal

- 91.**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 56(1) or a civil penalty not described in sub-paragraph (a) taking effect.

Determination of an appeal

- 92.**—(1) The appeal body may—
- (a) in respect of a determination, enforcement notice or penalty—
 - (i) cancel or affirm it;
 - (ii) if it affirms it, may do so either 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.

(a) 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 such appeals.[Move this footnote to ex note].

Procedure for Appeals

93. Schedule 8 (appeals procedure) has effect in relation to the making and determination of appeals under this Order.

Service of documents and periods to comply

94. Schedule 9 (service of documents and periods to comply) 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 and continuing effect

Revocations and continuing effect

96.—(1) Subject to article 97, 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, as amended under article 97.

Amendments

97.—(1) The 2010 Order is amended as follows.

(2) In article 3 (interpretation), at the appropriate place, insert—

“CCA certification period” means the period beginning on 1 April 2011 and ending on 31st March 2013;”.

“commissioners” means the Commissioners of Customs and Excise;”.

“specified facility certificate” means a certificate given by the Secretary of State to the Commissioners under paragraph 44(1)(a) of Schedule 6 to the Finance Act 2000 for the CCA certification period;”.

(3) After article 34 (group CCA exemptions), insert—

“First phase participant exemptions

35A.—(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 CCA facility 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 CCA facility is specified in a specified facility certificate.”

(4) In paragraph (2) of article 38 (loss of exemptions and further exemptions), wherever “have energy use or carbon emissions subject to a CCA target” appears, substitute in each case “operate a CCA facility that is specified in a specified facility certificate”.

(5) In sub-paragraph (3)(b) of article 53 (allowances and CRC emissions), substitute the word “July” with “September”.

(6) Paragraph (3) of article 55 (allowances and trading) is revoked.

(7) Article 56 (community tradeable allowances) is revoked.

[]
Clerk of the Privy Council

SCHEDULE 1

Article 4

Supplies and emissions

SECTION 1

Electricity, gas and fuels: general

Electricity

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

(a) where a public body or undertaking (“A”) agrees with a person (“B”) that B will supply electricity to A and—

(i) A receives a supply further to that agreement;

(ii) that supply is measured by a metering device or is an unmetered supply,

A is supplied with the electricity received by A;

(b) where a public body or undertaking (“A”) agrees with a person (“B”) that B will supply electricity to another public body or undertaking (“C”) and—

(i) C receives a supply further to that agreement;

(ii) that supply is measured by a metering device or is an unmetered supply,

A is supplied with the electricity received by C.

(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—

“metering device” is a device where the electricity supplied is charged for as measured by the device with the exception of meters allocated to the following profile classes under the Balancing and Settlement Code Procedure BSCP516(a)—

(i) Domestic Unrestricted;

(ii) Domestic Economy 7;

“unmetered supply” is a supply of electricity to premises which is—

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

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

(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) 1989 c. 29.

Gas

- 2.—(1) Subject to sub-paragraph (3), and sections 3 and 4—
- (a) where a public body or undertaking (“A”) agrees with a person (“B”) that B will supply gas to A and—
 - (i) A receives a supply further to that agreement;
 - (ii) that supply is measured by a metering device,A is supplied with the gas received by A;
 - (b) where a public body or undertaking (“A”) agrees with a person (“B”) that B will supply gas to another public body or undertaking (“C”) and—
 - (i) C receives a supply further to that agreement;
 - (ii) that supply is measured by a metering device or is an unmetered supply,A is supplied with the gas received by C.
- (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.
- (4) In this paragraph—
- “metering device” is a device which during a year of a phase is capable of measuring more than 73,200 kWh of gas supplied.

Fuels

- 3.—(1) Subject to sub-paragraph (2) and section 3—
- (a) where a public body or undertaking (“A”) agrees with a person (“B”) that B will supply fuel to A and A receives that supply further to that agreement, A is supplied with the fuel received by A;
 - (b) a supply is made to A under sub-paragraph (1)(a)—
 - (i) at the time the supply is delivered to A; or
 - (ii) if later, at the time that B provides written confirmation to A of the delivery;
 - (c) where a public body or undertaking (“A”) agrees with a person (“B”) that B will supply fuel to another public body or undertaking (“C”) and C receives a supply further to that agreement, A is supplied with the fuel received by C;
 - (d) a supply is made to C under sub-paragraph (1)(c)—
 - (i) at the time the supply is delivered to C; or
 - (ii) if later, at the time that B provides written confirmation to C of the delivery.
- (2) In this paragraph—
- “fuel” means any of the fuels listed in column 1 of the table in paragraph 4 (“fuels table”);

Fuels table

4. The fuels table referred to in paragraph 3—

Fuels table

<i>Fuel</i>	<i>Measurement unit</i>
Burning oil/kerosene/paraffin(a)	litres

(a) BS2869: 2010 Class C1 and Class C2.

<i>Fuel</i>	<i>Measurement unit</i>
Gas oil(a)	litres

Measurement units

5.—(1) Where in this Order information must be provided concerning a supply of electricity, gas or fuel, the amount of that supply must be expressed in the applicable measurement unit.

(2) The following measurement units apply—

- (a) electricity and gas, kWh;
- (b) fuels, as stated in column 2 of the fuels table.

SECTION 2

Electricity and gas: self-supply

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

6.—(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 under sub-paragraph (1) from any year in the first phase and will stop being supplied at the end of the first year of the second 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(b); 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(c); 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

7.—(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

(a) BS 2869: 2010 Class D.

(b) 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).

(c) S.I. 1992/231 (N.I. 1).

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

(2) In the paragraph, “natural gas” means any gas derived from natural strata.

SECTION 3

Franchise agreements

Supplies under franchise agreements

8.—(1) This section applies to supplies of electricity, gas or fuel 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

9.—(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

10. 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

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

- (a) there is a franchise agreement; and
- (b) the franchisee is supplied with electricity, gas or fuel 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 Parts 4 and 5 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

Trust supplies

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

- (a) a public body or undertaking is the trustee of property held under—
 - (i) a bare trust of real property assets as defined in Schedule 16, paragraph 1(2) of the Finance Act 2003; or
 - (ii) a trust where a single beneficiary has a beneficial entitlement of more than 50% of real property assets; and
- (b) the property subject to the trust described in (a) is supplied with electricity, gas or fuel under section 1 of this Schedule.

(2) Where this sub-paragraph applies, for the purposes of Part 2 of this Order, the supply of electricity, gas or fuel described in sub-paragraph (1)(b) is a supply to the beneficiary of the bare trust, or to the beneficiary described in sub-paragraph (1)(a)(ii) as the case may be, and not to the trustee.

SECTION 5

Deductions from supplies

Deductions from supplies

13.—(1) This section provides for deductions in calculating the amount of a supply of electricity, gas or fuel 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 17, A is not supplied with the unconsumed supply.
- (4) A may deduct—
 - (a) unconsumed supply of 100% of the electricity supplied subject to all that electricity supply being measured by a metering device; or
 - (b) unconsumed supply of less than 100% of the electricity supplied subject to that supply being measured by an appropriate sub-metering device.

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 17, A is not supplied with the unconsumed supply.
- (4) A may deduct—
 - (a) unconsumed supply of 100% of the gas supplied subject to all that gas supply being metered by a metering device; or
 - (b) unconsumed supply of less than 100% of the gas supplied subject to that supply being measured by an appropriate sub-metering device.

Unconsumed supply: fuel

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

- (2) The amount not consumed by A is “unconsumed supply”.
- (3) Subject to paragraph 17, A is not supplied with the unconsumed supply.

Occupation of premises

17.—(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), A must not deduct the unconsumed supply.

(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 40 years where—

- (a) B covenants to—
 - (i) 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) 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 the tenant 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

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

Domestic accommodation

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

- (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, gas or fuel 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)—

- (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, gas or fuel 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

20.—(1) A is not supplied with electricity, gas or fuel 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).

(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.

(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).

Emergency and temporary accommodation

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

(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

22.—(1) Subject to sub-paragraph (2), A is not supplied with electricity, gas or fuel 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 23 or 24.

Un-metered transport supply: electricity

23.—(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

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

(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)).

- (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”).
- (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

25.—(1) In paragraph 22, electricity, gas or fuel is consumed for the purposes of transport where it is used—

- (a) by a road going vehicle, a vessel, an aircraft or a train; or
 - (b) in relation to railways, for network services except where electricity, gas or fuel is used to provide power, heat or light to a building.
- (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;
- “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;
- “road going vehicle” means any vehicle—
- (a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994(b);
 - (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(c);
- “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 fuels for purposes other than heating

26. A is not supplied with fuel to the extent that supply is consumed by A for purposes other than for the purposes of heating.

Purposes of heating

27.—(1) In paragraph 26, fuel 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) Fuel used in the process of combined heat and power generation is not consumed for the purposes of heating where the greatest proportion of energy generated is heat.

EU ETS installation consumption

28.—(1) Subject to sub-paragraph (2), A is not supplied with electricity, gas or fuel to the extent that supply is consumed by A for the purposes of operating an EU ETS installation.

(a) 1993 c. 43.
(b) 1994 c. 22.
(c) S.I. 2002/2742.

(2) A is supplied with electricity, gas or fuel where a decision has been made that such a supply is not consumed for the purposes of operating an EU ETS installation under paragraph 29.

EU ETS installation supply: electricity, gas or fuel

29.—(1) Sub-paragraph (2) applies where A has consumed electricity, gas or fuel for the purposes of operating an EU ETS installation (“EU ETS installation supply”).

(2) Where this sub-paragraph applies, A may decide that EU ETS installation 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

30.—(1) A is not supplied with electricity, gas or fuel to the extent that supply is consumed for the purposes of operating a CCA facility.

(2) A is supplied with electricity, gas or fuel where a decision has been made that such a supply is not consumed for the purposes of operating a CCA facility under paragraph 31.

CCA facility supply: electricity, gas or fuel

31.—(1) Sub-paragraph (2) applies where a supply of electricity, gas or fuel has been consumed for the purposes of operating a CCA facility (“CCA facility supply”).

(2) Where this sub-paragraph applies, A may decide that an electricity, gas or fuel CCA facility supply is not consumed for the purposes of operating a CCA facility.

(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.

Loss of energy use subject to a CCA target

32. A is not supplied with electricity, gas or fuel for the purposes of operating a CCA facility in a year of a phase where A has permanently ceased operating a CCA facility in the previous year of that phase.

SECTION 6

Additions to supplies: estimation adjustments

Additions to supplies

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

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

Estimation adjustment: electricity and gas

34.—(1) Sub-paragraph (2) applies—

- (a) to a supply to A of electricity or gas measured by a specific metering device (“device 1”) during a year;

- (b) for at least half of the year in which the supply is made, the amount of that supply is estimated by the supplier; and
- (c) 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.

Estimation adjustment: fuels

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

- (a) A is supplied with fuel during a year;
- (b) for at least half of the year in which the supply is made, the amount of that supply consumed by A is estimated by A; and
- (c) A cannot provide evidence to the satisfaction of the administrator of that amount.

(2) Where this sub-paragraph applies, the “estimation adjustment” is 10% of that amount which has been estimated.

SECTION 7

Renewables generation and amount of emissions from supplies

Renewables generation: electricity

36.—(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 section 41 of the Energy Act 2008(a); and
- (c) A supplies some or all of that generated electricity to itself under paragraph 6 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

37.—(1) The emissions in tCO₂ from an amount of electricity, gas or fuel supplied is found by applying to that amount the relevant conversion factor.

(2) Where in respect of fuel, the amount supplied is a blend of fuels, the requirement in sub-paragraph (1) applies in proportion to the fuels supplied.

Conversion factors

38. In paragraph 37, “relevant conversion factor” means a factor listed—

- (a) in version 1 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.decc.gov.uk, on or before the date 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 revised 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 Freedom of Information Act 2000(a) (“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(b)(“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(c).

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

(a) 2000 c. 36.

(b) 2002 asp 13.

(c) The Commission was established under section 27 of the Government of Wales Act 2006 (c. 32).

- (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.

Public bodies: proprietors of Academies and colleges

4.—(1) The proprietor of—

- (a) an Academy within the meaning of section 482 of the Education Act 1996(a);
- (b) a city technology college or city college for the technology of the arts within the meaning of section 482 of that Act as originally enacted,

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.

(a) 1996 c. 56. Section 482 was amended by section 65(1) of the Education Act 2002 (c. 32).

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: England and Wales

8.—(1) In England and Wales—

- (a) where a public body is the governing body of a maintained school or a maintained nursery school, that public body is member of a group with the local authority which maintains the school;
- (b) a public body described in paragraph 4(1) is a member of a group with the local authority which exercises educational functions in the area in which the Academy or college is situated.

(2) In this paragraph, the following have the same meanings given to them in the 2000 Act—

“local authority”;

“maintained nursery school”;

“maintained school(a)”.

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 of the Education and Libraries (Northern Ireland) Order 1986(b) (“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(c) which funds that school.

(3) Where the Education and Skills Authority has been established(d), 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, the Secretary of State may make a government decision in relation to a government department.

(a) The definitions of “maintained nursery school” and “maintained school” in the Freedom of Information Act 2000 (c. 36) derive from the School Standards and Framework Act 1998 (c. 31).

(b) 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)).

(c) Boards are established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986.

(d) The Northern Ireland Assembly Education Bill 3/08 makes provision for the establishment of the Education and Skills Authority.

(2) The Treasury may make a government decision in relation to the Treasury.

(3) Where—

(a) the Secretary of State or the Treasury 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 or the Treasury must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(4) The Secretary of State or the Treasury must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(5) 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.

(6) 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—

(i) those functions are exercised in relation to matters within the legislative competence of the National Assembly for Wales; or

(ii) 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 that sub-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, gas or fuel 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(5), 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 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 with 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) during a phase.

(a) 2006 c. 46.

(2) Sub-paragraph (3) applies—

- (a) to an undertaking (“B”) which is a subsidiary of a group participant (“G”); and
- (b) during the qualification year for that phase or any part of that year, it meets the qualification criteria.

(3) Subject to sub-paragraph (4), for the purposes of Part 3 where—

- (a) B; and
- (b) any subsidiary undertakings of 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, together with B’s subsidiary undertakings, if any.

(4) Where—

- (a) B would be a participant equivalent as a member of G under sub-paragraph (3); but
- (b) G is subject to article 28(2),

the provisions of section 1 of Part 3 of Schedule 5 vary sub-paragraph (3).

(5) Subject to sub-paragraph (3), where B is a participant equivalent as a member of—

- (a) G for the purposes of Part 2 under sub-paragraph (3); or
- (b) another group, where sub-paragraph (4) applies,

B is a participant equivalent, as a member of G or that other group for that phase, together with B’s subsidiary undertakings from time to time, if any.

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, together with B’s subsidiary undertakings, if any.

(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 participant group under paragraph 2; and
- (b) during a phase B becomes a member of a non-participant group of undertakings (“G3”), together with B’s subsidiary undertakings, if any,

paragraph 11 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 a group under paragraph 2; and
- (b) during a phase B together with B’s subsidiary undertakings, if any, does not join another group of undertakings,

paragraph 10 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

SECTION 1

Information on registration

General

1. Information in this section is required under Part 2 and Schedule 6.

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; and
 - (iii) the highest parent undertaking, whether located in the United Kingdom or 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.

(3) The amount of electricity under sub-paragraph (2) may be estimated.

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 11 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 11 includes the Scottish Ministers;
- (b) a department in paragraph 12 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 12 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.—(1) 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, gas or fuel—

- (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 or the Scottish Ministers

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, gas or fuel—

- (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 (5) 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) Subject to 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 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 (5) 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) Subject to 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 by the time provided under 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.

(a) This section applies to an undertaking or a group of undertakings further to article 27(2).

Joining of undertakings with a group which is not required to register as a participant

3.—(1) Sub-paragraph (2) applies to a group or undertaking (“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; and

Joining of undertakings with a group which is required to register as a participant

4.—(1) Sub-paragraphs (2) applies to a group or undertaking (“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) 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 5, include the information which applied to E in the qualification year.

Participant equivalents transferring between groups

5.—(1) Sub-paragraphs (2) to (4) apply to a participant equivalent (“G”) of a group (“H”) where—

- (a) G becomes a participant equivalent as a member of 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 G may apply for registration as a separate participant

(3) Where a request is made under sub-paragraph (2)(c), that must be treated as a request under article 27.

(4) In respect of the information required under paragraph 6 of Schedule 5, J must include the information which applied to G 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 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, gas or fuel 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 date of

- (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 using the Registry and no later than the last working day of April in the year immediately following the year of the change occurring.

(3) Subject to 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) A and 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) Except where a change occurs in 2013 or 2014 annual reporting years, 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.

Joining of a participant or participant equivalent with a non-participant

10.—(1) Sub-paragraphs (2) and (3) apply where the following change occurs—

(a) Such a determination must be made in accordance with article 74(2).

- (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 and continues as 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 and becomes a participant—
- (a) C must—
 - (i) apply for registration as a participant in accordance with article 11;
 - (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;
 - (ii) notify the administrator of the change and when it occurred.
- (4) Subject to the registration of D, and where C is a participant, the administrator must cancel the registration of C for the remainder of the phase.
- (5) When the change occurs in an annual reporting year, D must provide an annual report in respect of those emissions that relate to C and as if C was 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) and (3) 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.
 - (c) Where F requests that E continues as a separate participant under sub-paragraph (b), E and F continue as separate participants.
- (3) 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) to (4) apply where the following change occurs—
- (a) a participant (“G”) consists of a group;
 - (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 may 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 was a participant equivalent as a member of J for the whole of the year in which the change occurs.

SCHEDULE 6

Article 49

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 it—
 - (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 51(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) where provided, from CRC supplies in its most recent annual report;
 - (ii) from CRC supplies determined under article 47(3); or
 - (iii) applied under article 75(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 49(4).

SCHEDULE 7

Article 68

Powers of entry and inspection

SECTION 1

Powers of entry and inspection

1. The powers of the administrator and an authorised person acting on its behalf are—
 - (a) to enter at any reasonable time any premises which that person has reason to believe it is necessary to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to—
 - (i) be accompanied by any other person duly authorised by the administrator and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the authorised person’s duty, a constable;
 - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination and investigation as may in any circumstances be necessary;
 - (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) to take samples, or cause samples to be taken, of any thing found in or on any premises which the authorised person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
 - (g) in the case of any thing found in or on any premises which the authorised person has power to enter and which appears to that person to be in contravention of a provision of this Order, to cause it to be dismantled or subjected to any process or test (but not so as to destroy or damage it, unless that is necessary);
 - (h) in the case of any thing mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which the authorised person has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed; and

(iii) to ensure that it is available for use in any proceedings for an offence under this Order;

- (i) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of that person's answers;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect, and take copies of, or of any entry in, the records; and
- (k) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within the other person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by this section.

2. In any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of paragraph 1 must only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
- (b) either—
 - (i) with the consent of the person who is in occupation of those premises; or
 - (ii) under the authority of a warrant by virtue of section 2 of this Schedule.

3. Where an authorised person proposes to enter any premises and—

- (a) entry has been refused and the authorised person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) the authorised person apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of paragraph 1 must only be effected under the authority of a warrant by virtue of section 2 of this Schedule.

4. In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, the powers under paragraph 1 have effect subject to section 6(3) of the Atomic Energy Authority Act 1954(a) (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911(b)).

5. Where an authorised person proposes to exercise the power conferred by paragraph 1(g), that person must, if so requested by a person who at the time is present on and has responsibilities in relation to the premises, cause anything which is to be done by virtue of that power to be done in the presence of that other person.

6. Before exercising the power conferred by paragraph 1(g), an authorised person must consult—

- (a) such persons having duties on the premises where the thing is to be dismantled or subject to the process or test; and
- (b) such other persons,

(a) 1954 c. 32. Section 6(3) was amended by section 2(3)(a) of the Nuclear Safeguards and Electricity (Finance) Act 1978 (c. 25); section 11(1) of the Nuclear Safeguards Act 2000 (c. 5) and article 4 of and paragraph 29 of Schedule 2 to S.I. 1999/1820.

(b) 1911 c. 28.

as appear to the authorised person to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to do or cause to be done under the power.

7. No answer given by a person in pursuance of a requirement imposed under paragraph 1(i) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

8. Nothing in paragraph 1 compels the production by any person of a document of which—

- (a) in England and Wales or Northern Ireland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court; or
- (b) in Scotland, that person would on grounds of confidentiality of communications be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

SECTION 2

Warrants, evidence and compensation

Entry and inspection under warrant

9. Subject to paragraph 11, if it is shown to the satisfaction, in England and Wales of a justice of the peace, in Scotland of the sheriff or a justice of the peace, or in Northern Ireland of a lay magistrate, on sworn information in writing—

- (a) that there are relevant grounds for the exercise in relation to any premises of the powers under paragraph 1 (“the power”); and
- (b) that one or more of the conditions specified in paragraph 10 is fulfilled in relation to those premises,

the justice, sheriff or lay magistrate may by warrant authorise the administrator to designate a person who is authorised to exercise the power in relation to those premises, in accordance with the warrant.

10. The conditions mentioned in paragraph 9 are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

11. In a case where paragraph 2 applies, a justice of the peace, sheriff or lay magistrate must not issue a warrant under paragraph 9 by virtue only of being satisfied that the exercise of the power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless the justice of the peace, sheriff or lay magistrate is also satisfied that the notice required by paragraph 2 has been given and that the period of that notice has expired.

12. Every warrant under paragraph 9 continues in force until the purposes for which the warrant was issued have been fulfilled.

13. An authorised person must produce evidence of that person’s authorisation or designation and other authority before exercising the power.

14. A person who, in exercise of the power, enters on any premises which are unoccupied or whose occupier is temporarily absent must leave the premises as effectively secured against trespassers as that person found them.

Compensation in respect of entry and inspection

15. Where any person exercises any power conferred by paragraph 1(a) or (b), it is the duty of the administrator under whose authorisation that person acts to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise of a power under paragraph 1 by the authorised person; or
- (b) the performance of, or failure of the authorised person to perform, the duty imposed under paragraph 14.

16. Compensation is not payable by virtue of paragraph 15 in respect of any loss or damage if—

- (a) it is attributable to the default of the person who sustained it; or
- (b) it is loss or damage in respect of which compensation is payable by virtue of any other enactment.

17. Any dispute as to a person's entitlement to compensation under paragraph 15, or as to the amount of any such compensation—

- (a) in England, must be referred to the arbitration of a single arbitrator appointed by agreement between the administrator and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Secretary of State;
- (b) in Wales, must be referred to the arbitration of a single arbitrator appointed by agreement between the administrator and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Welsh Ministers.
- (c) in Scotland, must be referred to the arbitration of an arbiter, appointed by agreement between the administrator and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Scottish Ministers; or
- (d) in Northern Ireland, must be referred to and determined by the Lands Tribunal for Northern Ireland.

18. An authorised person is not to be liable in any civil proceedings for anything done in the purported exercise of the powers under paragraph 1 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

SCHEDULE 8

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 88 must give to the appeal body written notice of the appeal.

3. An appellant may withdraw an appeal by notifying the appeal body in writing.

4. Notice of appeal in accordance with paragraph 3 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 74(1);
- (b) service of an enforcement notice;
- (c) imposition of a civil penalty.

5. In any appeal where the commission of a breach is an issue requiring determination, the administrator must prove that breach on the balance of probabilities.

6. In any other case the appeal body must determine the standard of proof.

SECTION 2

Procedure for appeals against determinations, notices or penalties made or given by the Northern Ireland department

7. This section applies to appeals against determinations, notices or penalties made or given by the Northern Ireland department.

8. A person who wishes to appeal to the Planning Appeals Commission (“the appeal body”) under article 88 must give to the appeal body written notice of the appeal together with a statement of the grounds of appeal.

9. The appeal body must as soon as reasonably practicable send to the regulator a copy of that notice and that statement.

10. An appellant may withdraw an appeal by notifying the appeal body and the appeal body must as soon as is reasonably practicable notify the regulator of that withdrawal.

11. Notice of appeal in accordance with paragraph 8 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 56(1);
- (b) service of an enforcement notice;
- (c) imposition of the civil penalty.

12. 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

13. The appeals commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

14. 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 Secretary of State, the Scottish Ministers or the Department of the Environment

15. This section applies where an appeal is made by an applicant or participant which is or includes—

- (a) the Environment Agency;
- (b) the Scottish Environment Protection Agency;
- (c) the Chief Inspector.

16. A person who wishes to appeal to an independent person appointed by the Secretary of State, the Scottish Ministers or the Department of Environment (“the appeal body”) must give written notice of the appeal together with a statement of the grounds of appeal and the appeal body must as soon as reasonably practicable send to the administrator a copy of that notice together with the statement of the grounds of appeal.

17. Notice of appeal in accordance with paragraph 19 is to be given before the expiry of 40 days after the date of—

(a) S.I. 1991/1220 (N.I. 11).

- (a) the determination referred to in article 56(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 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;
- (b) appoint a person to hear an appeal on behalf of that body;
- (c) request a person to make a recommendation in relation to any subject matter of the appeal.

22. 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.

23. The costs under paragraph 25—

- (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 9

Article 94

Service of documents

1. The provisions of this Schedule apply to the service of a document except where a contrary provision applies under Schedule 7.

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), 3(b) or 4 of section 1 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) 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 6, 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 54,

that communication is made to each member of the group.

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 and 46(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, gas and fuel by public bodies and undertakings.

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