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STATUTORY INSTRUMENTS

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**2010 No. 768**

**The CRC Energy Efficiency Scheme Order 2010**

**PART 1**

Introduction

**CHAPTER 1**

General

**Citation and commencement**

1. This Order may be cited as the CRC Energy Efficiency Scheme Order 2010 and comes into force on the fifth day after it is made.

**The trading scheme: phases and application**

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

- (a) a first phase of three years commencing on 1st April 2010;
- (b) a second phase of seven years commencing on 1st April 2011;
- (c) subsequent phases of seven years commencing as shown in the following table—

**Third to seventh phases: commencement dates**

	<i>Commencement date of phase</i>
Third phase	1st April 2016
Fourth phase	1st April 2021
Fifth phase	1st April 2026
Sixth phase	1st April 2031
Seventh phase	1st April 2036

(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(1).

**Interpretation**

3. In this Order—

“the 2000 Act” means the Freedom of Information Act 2000(2);

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(1) 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).

(2) 2000 c. 36.

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

“achievement table” has the meaning given by article 75(3);

“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(3);

“annual report” means the report described in article 49;

“annual reporting year” means—

- (a) in respect of the first phase, each year of that phase;
- (b) in respect of the second and subsequent phases, the second and subsequent years of that phase;

“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 or Schedule 6;

“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(4); or
  - (ii) Article 8(1)(c) of the Electricity (Northern Ireland) Order 1992(5);
- (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(6); or
  - (ii) Article 6(1)(c) of the Gas (Northern Ireland) Order 1996(7);

“blocking” has the meaning given by article 105(3);

“cancellation account” means the account provided by the administrator into which allowances must be surrendered by a participant in compliance with article 53;

“CCA” means a climate change agreement within the meaning given in paragraph 46 of Schedule 6 to the Finance Act 2000(8);

“CCA emissions” has the meanings given by paragraph 12(3) of Schedule 5;

“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;

“CCA target period” means a period referred to as a target period in a CCA or in any rules applicable to a CCA in which a CCA target is to be achieved;

“charitable purpose” has the meaning given by—

- (a) section 2 of the Charities Act 2006(9) in relation to England and Wales;

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(3) 2008 c. 9.

(4) 1989 c. 29.

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

(6) 1986 c. 44. Section 48(1) is subject to various amendments.

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

(8) 2000 c. 17.

(9) 2006 c. 50.

- (b) section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005<sup>(10)</sup> in relation to Scotland;
- (c) section 2 of the Charities Act (Northern Ireland) 2008<sup>(11)</sup> in relation to Northern Ireland;
- “charge” and “charging” have the meanings given in Part 11;
- “Chief inspector” means the Chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>(12)</sup>;
- “civil penalty” means a penalty which may be imposed under Part 14;
- “Community tradeable emissions allowances” has the meaning given by Article 3a of the EU ETS Directive;
- “compliance account” means the account of a participant from which allowances must be surrendered to the cancellation account in compliance with article 53;
- “core emissions” has the meaning given by article 42(3);
- “core supply” means a supply of electricity or gas described in Schedule 2;
- “CRC” means carbon reduction commitment;
- “CRC emissions” has the meaning given by article 50(1);
- “CRC supplies” has the meaning given by article 50(2);
- “day” means a working day unless provided to the contrary;
- “daily meter” applies in relation to a supply of gas and has the meaning given by paragraph 7 of Schedule 2;
- “domestic accommodation” has the meaning given by paragraph 16(3) of Schedule 1;
- “dynamic supply” means a supply of electricity described in paragraph 5 of Schedule 2;
- “early action” has the meaning given by paragraph 5(2) of Schedule 8;
- “electricity generating credit” has the meaning given by article 31(2) but where it applies other than in Part 3, reference to “applicant” in that expression is to be read as a reference to “participant”;
- “enforcement notice” has the meaning given by article 91;
- “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<sup>(13)</sup>, as amended from time to time;
- “EU ETS emissions” has the meanings given by paragraph 12(2) of Schedule 5;
- “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,
- but not an installation approved as excluded in the United Kingdom under Article 27;
- “exemption CCA target period” has the meaning given by article 29;
- “footprint emissions” has the meaning given by article 41;
- “footprint report” has the meaning given by article 39(1)(a);

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(10) 2005 asp 10.

(11) 2008 c. 12.

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

(13) 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).

- “footprint year” means the first year of each phase;
- “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(3) of Schedule 1;
- “general CCA exemption” has the meaning given by article 33;
- “generated and supplied electricity” has the meaning given by article 31(1)(d);
- “government decision” has the meaning given by paragraph 14 of Schedule 3;
- “group” has the meaning given by—
- (a) paragraph 6 of Schedule 3, in respect of public bodies;
  - (b) paragraph 1 of Schedule 4, in respect of undertakings;
- “group CCA exemption” has the meaning given by article 34;
- “group undertaking” has the meaning given by paragraph 1 of Schedule 4;
- “highest parent undertaking” has the meaning given by paragraph 1 of Schedule 4;
- “hourly meter” applies in relation to a supply of gas and has the meaning given by paragraph 8(1) of Schedule 2;
- “independent college group” has the meaning given by article 21(1)(b)(ii);
- “kWh” means kilowatt hour or hours;
- “local authority decision” has the meaning given by paragraph 16 of Schedule 3;
- “member CCA exemption” has the meaning given by article 32;
- “MWh” means megawatt hour or hours;
- “non-settled half hourly meter” applies in relation to a supply of electricity and has the meaning given by paragraph 3(1) of Schedule 2;
- “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 6, the participant constitutes the members from time to time of that group;
- “performance table” has the meaning given by article 77(1);
- “phase” means one of the seven phases of the scheme described in article 2(1);
- “post-qualification period” has the meaning given by article 27;
- “premises” means any—
- (a) land, vehicle or vessel; or
  - (b) plant which is designed to move or be moved whether on roads or otherwise;
- “principal place of activity” means the principal place in the United Kingdom—
- (a) where the applicant or participant 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;
- “publication” has the meaning given by article 105(3);
- “public function” means any activity carried out by a public body;
- “public body” has the meaning given in section 1 of Schedule 3;
- “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—

- (a) in respect of the first phase, the 2008 calendar year;
- (b) in respect of the second and subsequent phases, 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—

- (a) measured by a meter described in paragraph 1 of Schedule 2 except a non-domestic meter; or
- (b) which is a dynamic supply;

“the Registry” has the meaning given by article 68;

“relative change” has the meaning given by paragraph 2 of Schedule 8;

“renewables generation” has the meaning given by paragraph 28 of Schedule 1;

“residual measurement list” has the meaning given by article 44(4);

“residual supplies” has the meaning given by article 44(5);

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

- (a) sections 32 to 32M of the Electricity Act 1989<sup>(14)</sup>; or
- (b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003<sup>(15)</sup>;

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

“significant group undertaking” has the meaning given by paragraphs 2 and 4 of Schedule 4;

“tCO<sub>2</sub>” 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;

“total emissions” has the meaning given by article 30;

“transport consumption” has the meaning given by paragraph 19 of Schedule 1;

“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<sup>(16)</sup> 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;

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<sup>(14)</sup> 1989 c. 29. Section 32 was substituted by, and sections 32A to 32M added by, section 37 of the Energy Act 2008 (c. 32).

<sup>(15)</sup> 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).

<sup>(16)</sup> 2006 c. 46.

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 4;

“unit of turnover” means turnover expressed in pounds sterling rounded up to the nearest pound;

“vessel” means, except under paragraph 22 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(17), including those bank holidays in part only of the United Kingdom;

- (b) Good Friday; and

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

“year” means (except for the qualification year in respect of the first phase) 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) Part 3 provides for exemptions from certain requirements of this Order.

- (3) Subject to any exemption, in respect of a phase a participant must comply with—

- (a) Part 4 to provide a footprint report and to compile a residual measurement list;

- (b) Part 5 to provide annual reports on CRC supplies;

- (c) Part 6 to surrender allowances equal to the participant’s CRC emissions;

- (d) Part 7 to keep and audit records relating to the requirements of Parts 2 to 6.

- (4) The following have effect in respect of Parts 2 to 7—

- (a) Schedule 2 (core supplies);

- (b) Schedule 3 (public bodies);

- (c) Schedule 4 (undertakings and significant group undertakings);

- (d) Schedule 5 (information);

- (e) Schedule 6 (changes to participants).

- (5) Part 8 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—

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(17) 1971 c. 80.

- (a) Part 9 to administer the scheme;
- (b) Part 10 to compile and publish achievement and performance tables;
- (c) Part 11 to impose charges;
- (d) Part 12 to monitor compliance;
- (e) Part 13 to enforce failures to comply with this Order.

### **Penalties, offences and appeals**

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

- (a) Part 14 to a civil penalty;
  - (b) Part 15 to a criminal penalty.
- (2) Part 16 provides for appeals.

### **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 14;
  - (b) may be liable to a criminal penalty under Part 15.
- (3) For a group of public bodies (except an independent college group)—
- (a) the body listed in article 73(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 4 to 14 and not any other member of the group;
  - (c) subject to article 110, any member of that group may be liable to a criminal penalty under Part 15.

## **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 28(1).	Articles 18(1), 28(1), 39(3), 47(3), 64, 70(3), 72 and 74.
Parts 4 to 6 except articles 39(3) and 47(3).	Parts 11 to 16.
Articles 68, 69, 71 and 84.	
Part 10	

(2) Where the administrator is a participant, reference to “the administrator” in Parts 12 to 14 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 12 to 14 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 6, 8 to 10, 12 or 13 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 5; and
  - (ii) the charge for registration as a participant under article 81.

(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. An application for registration as a participant under this Part must be made in respect of—
- (a) the first phase, on or before 30th September 2010;
  - (b) the second and subsequent phases, 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 (3), the administrator may determine<sup>(18)</sup> 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 3;
- (c) a government decision or local authority decision.

### CHAPTER 3

#### Universities and colleges: England

#### **Universities and colleges: England**

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

- (a) described in Part 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.

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<sup>(18)</sup> Such a determination must be made in accordance with article 74(2).

### **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 (i) may agree with another such independent college to form a group (“an independent college group”).

(2) Any agreement under sub-paragraph (1) 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 to 26—

- (a) whether a group exists or not; and
- (b) whether an undertaking is or is not a member of a group,

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

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

### **Undertakings: applications by groups**

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

(2) The group must apply for registration as a participant in respect of a phase where during the qualification year for the phase or any part of that year, it meets the qualification criteria.

### **Undertakings: applications by significant group undertakings**

**25.**—(1) Paragraph (2) applies where a group (“A”) includes a significant group undertaking (“B”) and A—

- (a) satisfies article 24(2) and would do so if it did not include B;
- (b) is not subject to article 27; and
- (c) complies with article 11 at least 3 months before the time required under article 12.

(2) Where this paragraph applies, A may in the application under article 11 request the administrator to register A and B as separate participants.

(3) Where such a request is made—

- (a) the administrator must notify A and B as soon as possible whether or not it agrees to it; and
- (b) if it does, B may make an application in accordance with article 11 if it does so by the time required under article 12.

(4) Where—

- (a) the request is not agreed; or
- (b) it is but B does not make an application or not in the time required,

the application by A under article 11 includes B as a member of A.

### **Undertakings: applications other than by groups**

**26.** Subject to article 27, an undertaking must apply for registration as a participant in respect of a phase where—

- (a) it is not a member of a group; and
- (b) during the qualification year for that phase or any part of that year, it meets the qualification criteria.

### **Changes to undertakings and groups**

**27.**—(1) Paragraph (2) applies where—

- (a) a requirement to register applies to a group or undertaking under article 24 or 26; and
- (b) a change described in section 1 of Part 3 of Schedule 6 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 26 would otherwise apply must instead register as a participant as provided by section 1 of Part 3 of Schedule 6; and
- (b) other undertakings affected by such change must comply with that section.

### **Determinations by the administrator**

**28.** The administrator may determine<sup>(19)</sup> whether or not—

- (a) an undertaking is a member of a group;
- (b) article 27(2) applies to a group or an undertaking.

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<sup>(19)</sup> Such a determination must be made in accordance with article 74(2).

## PART 3

### Exemptions

#### CCA emissions and target periods

**29.**—(1) In this Part—

- (a) an applicant or, where an applicant is a group, a member of that applicant has CCA emissions where it operates a CCA facility;
- (b) subject to article 36, “exemption CCA target period” means the CCA target period which ends in the qualification year for the phase.

(2) Where, in respect of the first phase, the exemption CCA target period ends at the end of 31st December 2008, that target period is deemed to end within the qualification year.

(3) This Part does not apply to a public body to which article 14 applies.

#### Total emissions

**30.**—(1) “Total emissions” means—

- (a) the sum of—
  - (i) EU ETS emissions and CCA emissions as defined by one of the ways given in paragraph 12 of Schedule 5 as chosen by the applicant; and
  - (ii) emissions calculated in accordance with paragraph 29 of Schedule 1 in respect of the amount of electricity, gas and fuel supplied to the applicant calculated in accordance with sections 1 to 5 of Schedule 1 but excluding any supplies in respect of which emissions are included under paragraph (i);

and

- (b) deducting any electricity generating credit of the applicant.

(2) In this Part, total emissions are calculated in respect of the exemption CCA target period.

#### Electricity generating credit

**31.**—(1) In article 30, “electricity generating credit” applies where—

- (a) an applicant generates electricity;
- (b) the applicant is not issued with a ROC and is not in receipt of a financial incentive made by virtue of section 41 of the Energy Act 2008(20) in respect of that generation;
- (c) the generation does not occur at a place described in paragraph (3); and
- (d) the electricity generated is supplied to a public body or undertaking and that supply is a supply of electricity under paragraph 1 or 6 of Schedule 1, such electricity being “the generated and supplied electricity”.

(2) Electricity generating credit is the amount of emissions calculated in accordance with paragraph 29 of Schedule 1 in respect of the generated and supplied electricity.

(3) The places referred to in paragraph (1) are—

- (a) an EU ETS installation where electricity is generated;
- (b) a nuclear power station;
- (c) a hydro-generating station which was ineligible for a ROC.

(4) In paragraph (3), “hydro-generating station” has the meaning given by article 2(1) of the Renewables Obligation Order 2009(21) and as if that article applied to Scotland and Northern Ireland.

### **Member CCA exemptions**

**32.**—(1) Paragraph (2) applies where an applicant—

- (a) consists of a group; and
- (b) during the exemption CCA target period, a member of the group has CCA emissions which are more than 25% of the total emissions of that member.

(2) Where this paragraph applies and where the applicant complies with article 35 or 36, as a participant it has a member CCA exemption in respect of such a member.

### **General CCA exemptions**

**33.**—(1) Paragraph (2) applies where an applicant—

- (a) does not consist of a group; and
- (b) during the CCA target period, has CCA emissions which are more than 25% of its total emissions.

(2) Where this paragraph applies and where the applicant complies with article 35 or 36, as a participant it has a general CCA exemption.

### **Group CCA exemptions**

**34.**—(1) Paragraph (3) applies where—

- (a) an applicant consists of a group; and
- (b)  $X$  minus  $Y$  is less than 1000 MWh.

(2) In paragraph (1)—

“ $X$ ” means the amount of qualifying electricity supplied to the applicant;

“ $Y$ ” means—

- (a) where a member of the group satisfies article 32(1)(b), the amount of  $X$  which is supplied to each member of the group which satisfies that article; or
- (b) where no member of the group satisfies article 32(1)(b), zero.

(3) Where this paragraph applies and where the applicant complies with article 35 or 36, as a participant it has a group CCA exemption.

### **Requirements for exemptions to apply: general**

**35.** Where an applicant intends that an exemption applies to it, the applicant must provide the following information with the application for registration under article 11—

- (a) which exemption applies; and
- (b) the information required under paragraph 7 of Schedule 5, as applicable to the exemption.

### **Requirements for exemption to apply: exception**

**36.**—(1) Paragraph (2) applies where—

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(21) [S.I. 2009/785](#).

- (a) a participant does not comply with article 35; and
  - (b) an exemption applies to the participant under articles 32 to 34 if the exemption CCA target period means the CCA target period which ends in the footprint year.
- (2) Where this paragraph applies and a participant intends that an exemption applies to it, the participant must provide the information in article 35(a) and (b) when it complies with article 39.

### **Effect of exemptions and records**

- 37.—**(1) Subject to article 38—
- (a) except where sub-paragraph (b) applies, as a participant, an applicant is exempt from Parts 4 to 7 of this Order for the phase where a general CCA exemption or a group CCA exemption applies to it;
  - (b) where a participant complies with article 36, the participant is exempt from Parts 5 to 7 of this Order for that phase where a general CCA exemption or a group CCA exemption applies to it.
- (2) In respect of each year of the phase where the participant is exempt under paragraph (1), it must keep records of the information in paragraph 7 of Schedule 5.

### **Loss of exemptions and further exemptions**

- 38.—**(1) Where—
- (a) a participant has a member CCA exemption; and
  - (b) the member to which the exemption applies ceases to be a member of the participant,
- the member CCA exemption does not apply for the subsequent years of the phase after the year in which sub-paragraph (b) applies.
- (2) Where in a year of a 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 does not apply—
- (a) in the next year of the phase; and
  - (b) any subsequent year where the member does not have energy use or carbon emissions subject to a CCA target.
- (3) Where in a year of a 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 does not apply—
- (a) in the next year of the phase; and
  - (b) any subsequent year where the participant does not have energy use or carbon emissions subject to a CCA target.
- (4) Where in a year of a phase, a participant has a group CCA exemption and—
- (a) paragraph (1) or (2) applies;
  - (b) the calculation in article 34(1) is made excluding the members to which a member CCA exemption is not to apply by reason of those paragraphs; and
  - (c) by that calculation, a group CCA exemption would not apply,
- the group CCA exemption does not apply in the next year of the phase and any subsequent year where by such a calculation, a group CCA exemption would not apply.
- (5) Where an exemption does not apply as provided under this article, the participant must notify the administrator of that fact when it provides, as applicable, the footprint report or the annual report.

(6) Where article 46 or 51 applies, further exemptions apply under section 2 of Part 3 of Schedule 6.

## PART 4

### Footprint reports and residual measurement lists

#### Provision of footprint reports

**39.**—(1) Subject to articles 37 and 40, a participant must—

- (a) provide to the administrator the information in section 2 of Schedule 5 (“a footprint report”); and
- (b) unless otherwise agreed by the administrator, provide the footprint report using the Registry.

(2) A participant must comply with paragraph (1) by no later than the last working day of July after the end of the footprint year.

(3) Where by 40 days after the due date, a participant has failed to provide a footprint report, the administrator may determine<sup>(22)</sup> the footprint report.

#### Member CCA exemptions

**40.** Where a participant has a member CCA exemption—

- (a) the provision of information on supplies and emissions in the footprint report; and
- (b) reference to supplies or emissions of the participant under the following articles in this Part,

excludes any supplies or emissions of a member of the group to which a member CCA exemption applies.

#### Footprint emissions

**41.**—(1) “Footprint emissions” means the emissions listed in paragraph (2) during the footprint year but deducting any electricity generating credit of the participant during that year.

(2) The emissions referred to in paragraph (1) are—

- (a) EU ETS emissions;
- (b) CCA emissions;
- (c) emissions calculated in accordance with paragraph 29 of Schedule 1 from footprint supplies.

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

(4) In paragraph (2), EU ETS emissions and CCA emissions are such emissions as defined by one of the ways given in paragraph 12 of Schedule 5 as chosen by the participant.

(5) In paragraph (2)(c), “footprint supplies” means—

- (a) the amount of electricity, gas and fuel supplied to the participant calculated in accordance with sections 1 to 6 of Schedule 1; but
- (b) excluding—

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<sup>(22)</sup> Such a determination must be made in accordance with article 74(2).



- (i) supplies of gas and fuel made to an EU ETS installation; or
- (ii) supplies of electricity, gas and fuel made to a CCA facility to which a member CCA exemption does not apply.

#### **Requirement for residual measurement lists**

**42.**—(1) Subject to article 37, a participant must compile a residual measurement list where the percentage which its emissions described in paragraph (2) bear to footprint emissions is less than the residual percentage.

- (2) The emissions referred to in paragraph (1) are—
  - (a) core emissions;
  - (b) EU ETS emissions; and
  - (c) CCA emissions.
- (3) In paragraph (2), “core emissions” means—
  - (a) emissions calculated in accordance with paragraph 29 of Schedule 1 in respect of core supplies less the deductions from those supplies under sections 4 and 5 of Schedule 1; but
  - (b) excluding—
    - (i) core supplies of gas made to an EU ETS installation; or
    - (ii) core supplies of electricity and gas made to a CCA facility to which a member CCA exemption does not apply.

#### **Residual percentage**

- 43.**—(1) Subject to paragraph (3), “the residual percentage” referred to in article 42(1) is 90%.
- (2) Paragraph (3) applies—
    - (a) to the second and subsequent phases; and
    - (b) where a participant compiled a residual measurement list for the immediately previous phase.
  - (3) Where this paragraph applies, “the residual percentage” referred to in paragraph (1) is the higher of—
    - (a) 90%; or
    - (b) where it applies, the percentage which the sum of emissions described in paragraph (4) bears to footprint emissions.
  - (4) The emissions referred to in paragraph (3) are—
    - (a) the emissions from residual supplies in the residual measurement list in the penultimate year of the previous phase; and
    - (b) the emissions described in article 42(2) in the footprint year.

#### **Content of residual measurement lists**

**44.**—(1) Paragraph (2) applies where a participant is required to compile a residual measurement list under article 42.

- (2) Where this paragraph applies, a participant must compile a list of residual supplies such that the percentage which—
  - (a) the emissions from those supplies; and
  - (b) the emissions described in article 42(2),

bear to footprint emissions is at least equal to the residual percentage referred to in article 43.

- (3) A participant may—
- (a) include in its list of residual supplies more residual supplies than required under paragraph (2);
  - (b) compile a list of residual supplies although it is not required to do so under article 42.
- (4) The list of residual supplies compiled under—
- (a) paragraph (2) including any additional residual supplies under paragraph (3)(a); or
  - (b) paragraph (3)(b),

is the participant’s residual measurement list.

(5) “Residual supplies” means supplies which the participant expects to be made to it during the annual reporting years of a phase which if made in the footprint year would be the participant’s footprint supplies other than core supplies.

#### **Compilation of residual measurement lists**

**45.** The residual measurement list must be compiled by the last working day of July after the end of the footprint year.

#### **Changes affecting participants**

**46.** Subject to article 37, where changes affecting a participant take place in a footprint year as described in Part 1 or 2 or section 2 of Part 3 of Schedule 6—

- (a) the participant; and
  - (b) in respect of section 2 of Part 3 of Schedule 6, undertakings which are not participants,
- must comply with such of those provisions as are applicable to them.

## **PART 5**

### **Annual reports**

#### **Provision of annual reports**

**47.—**(1) Subject to articles 37 and 48, a participant must provide to the administrator a report which complies with article 49 on its CRC supplies during an annual reporting year (“an annual report”).

- (2) A participant must provide the annual report—
- (a) unless otherwise agreed by the administrator, using the Registry; and
  - (b) by no later than the last working day of July after the end of the annual reporting year.

(3) Where by 40 days after the due date a participant has failed to provide the annual report, the administrator may determine<sup>(23)</sup> the report.

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

### **Member CCA exemptions**

**48.** Where a participant has a member CCA exemption, core supplies and residual supplies under article 50 excludes any supplies or emissions of a member of the group to which a member CCA exemption applies.

### **Annual report**

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

- (a) the amount of the supplies under article 50(3);
- (b) whether or not the following apply to the participant—
  - (i) an estimation adjustment; or
  - (ii) renewables generation,and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation;
- (c) whether or not electricity generating credit applies to the participant and, if so, the amount of the generated and supplied electricity; and
- (d) where the participant wishes to be included in the early action or relative change tables, the information required to determine early action or relative change in relation to the participant.

(2) Where the administrator receives the annual report in accordance with article 47, it must calculate the participant’s CRC emissions.

### **CRC emissions**

**50.**—(1) “CRC emissions” means the emissions calculated in accordance with paragraph 29 of Schedule 1 from CRC supplies.

(2) “CRC supplies” means—

- (a) the supplies listed in paragraph (3) during an annual reporting year; and
  - (b) in respect of those supplies during that year—
    - (i) applying the additions under section 6 of Schedule 1; and
    - (ii) deducting any electricity generating credit.
- (3) The supplies referred to in paragraph (2)(a) are—
- (a) the participant’s core supplies less the deductions from those supplies under sections 4 and 5 of Schedule 1 but excluding—
    - (i) core supplies of gas made to an EU ETS installation; and
    - (ii) core supplies of electricity and gas made to a CCA facility to which a member CCA exemption does not apply;
  - (b) residual supplies included in the participant’s residual measurement list, where such a list is required under article 42.

### **Changes affecting participants**

**51.** Subject to article 37, 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 6—

- (a) the participant; and
- (b) in respect of section 2 of Part 3 of Schedule 6, undertakings which are not participants,

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

## PART 6

### Allowances and CRC emissions

#### Validity of allowances

**52.**—(1) Subject to paragraph (2), an allowance is valid for the purposes of compliance with article 53—

- (a) for the year in respect of which it was issued; and
- (b) for any subsequent year,

but an allowance issued in the first 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 97(4) (b) or 100(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

**53.**—(1) Subject to paragraph (2) and article 37, for—

- (a) the second and third years of the first phase; and
- (b) the third and subsequent years of a subsequent phase,

the participant must surrender a quantity of allowances from its compliance account to the cancellation account which is at least equal to the participant’s CRC emissions for that year.

(2) Paragraph (1) does not apply in respect of a year where the participant’s CRC emissions for that year are less than one tCO<sub>2</sub>.

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

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

#### Cancellation of allowances and surplus surrendered allowances

**54.**—(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 47(3); or
- (c) as provided under article 97(4)(a), 97(5), 100(2)(a), 100(3) or 101(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 52,—
  - (i) are surrendered in respect of the subsequent year (“year 2”) in which the participant is required to comply with article 53; 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 52, paragraph (2)(b) applies to the years after year 2 until no surplus allowances remain.

### **Allowances and trading**

**55.**—(1) Subject to paragraphs (2) and (3), the administrator must maintain a record in respect of an allowance which shows—

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

(2) Trading in allowances is permitted by participants and third parties to enable participants to comply with article 53(1).

(3) This article does not apply to Community tradeable emissions allowances.

### **Community tradeable emissions allowances**

**56.**—(1) Subject to paragraph (2), the Environment Agency has the power to acquire Community tradeable emissions allowances as may be required to comply with requirements imposed on it under regulations made under section 21 of the Finance Act 2008<sup>(24)</sup>.

(2) No acquisition must be made under paragraph (1) by taking part in an allocation conducted pursuant to section 16 of the Finance Act 2007<sup>(25)</sup>.

## **PART 7**

### **Records**

#### **General**

**57.**—(1) Subject to article 37, a participant must maintain the records provided by this Part.

(2) Except where paragraph (3) applies, those records must be kept for at least seven years after the end of the phase to which they relate.

(3) The records in relation to the following must be kept for so long as the participant is part of the scheme—

- (a) the participant’s position in the performance table drawn up for the first year of the scheme in which the participant takes part;

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<sup>(24)</sup> 2008 c. 9.

<sup>(25)</sup> 2007 c. 11. Section 16 has been amended by section 164(1), (2) and (3) of the Finance Act 2008 (c. 9).

- (b) the participant's first footprint report and first annual report.
- (4) 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**

- 58.** A participant must maintain records in respect of the information—
- (a) in paragraph 7 and section 2 of Schedule 5, as applicable to the participant;
  - (b) used to compile its footprint report and annual report;
  - (c) relevant to any of the changes described in Schedule 6.

**Records: residual measurements lists and public disclosure**

**59.**—(1) Where a participant is required to compile a residual measurement list under article 42, that list must be kept with the records described in article 58.

- (2) 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.

(3) In paragraph (2)(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**

**60.**—(1) A participant must carry out regular 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 8

### Information and assistance requirements

#### Supplies of electricity, gas and fuel under Part 8

**61.** In this Part except articles 62 and 63, information which may be requested or required in respect of a supply of electricity, gas or fuel includes information relating to all sections of Schedule 1.

#### Information on half hourly meters and amount of supplies

- 62.**—(1) This article applies to a public body or undertaking (“A”) which—
- (a) during a qualifying year of a phase is supplied with electricity measured by a settled half hourly meter; and
  - (b) is not required to register, or is not a member of a group required to register, as a participant.
- (2) For the purposes of paragraph (1), A is supplied with electricity where that supply is made in accordance with sections 1 to 3 of Schedule 1.
- (3) A must provide to the administrator in respect of the qualifying year of a phase the information described in paragraph (4) and do so in respect of—
- (a) the first phase, on or before 30th September 2010; and
  - (b) the second and subsequent phases, within 6 months of the beginning of the phase.
- (4) The information referred to in paragraph (3) is—
- (a) the information in paragraph 2 of Schedule 5, as applicable to A;
  - (b) a list of the settled half hourly meters which measure the supply of electricity to A and the identification numbers of those meters; and
  - (c) in respect of the supply of electricity to A measured by settled half hourly meters and non-settled half hourly meters—
    - (i) whether or not the supply equalled or exceeded 3000 MWh and, if it did, the amount of the supply; and
    - (ii) if the supply exceeded 6000 MWh, why A is not required to register as a participant and which deductions, if any, under section 4 or 5 of Schedule 1 apply.
- (5) Unless otherwise agreed by the administrator, the information must be provided using the Registry.

#### Information on electricity and gas supplied from authorised suppliers holding a licence

- 63.**—(1) A participant may request in writing the following information from those authorised suppliers of electricity or gas which hold a licence to make such a supply—
- (a) the amount of electricity or gas supplied to the participant in the 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.
- (2) Where such an authorised supplier receives such a request, the supplier must reply in writing within 6 weeks of the end of the year of the phase to which the information relates.

### **Information from electricity suppliers**

**64.**—(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—
  - (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**

**65.**—(1) Where paragraph 14 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**

**66.**—(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**

**67.**—(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 73(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.



## PART 9

### Administration of the scheme

#### The Registry

**68.**—(1) The administrator must establish and operate an electronic system (“the Registry”) and Schedule 7 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

**69.** 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 78 or 80 applies) is not accessible by another account holder or participant whilst using the Registry.

#### Security and identities

**70.**—(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<sup>(26)</sup>—

- (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,

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<sup>(26)</sup> 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**

**71.**—(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**

**72.**—(1) Subject to paragraphs (2) and (3), the administrator must cancel the registration of a participant where the administrator is satisfied that a participant no longer carries on a scheme activity.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Where cancellation of a registration is required under section 2 of Part 3 of Schedule 6, the administrator must comply with paragraphs (3) and (4).

### **Account holders**

**73.**—(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.

### **Determinations**

- 74.—(1) This article applies in respect of a determination by the administrator under—
  - (a) article 18(1), 28(1), 39(3), 47(3), 70(3) or 86(5); or
  - (b) paragraph 8 of Part 3 of Schedule 6.
- (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 10**

### **Achievement and performance tables, publication and verification**

#### **Achievement tables**

- 75.—(1) The administrator must in accordance with this article compile the following tables—
  - (a) early action for each of the annual reporting years of the first phase; and
  - (b) absolute change and relative change for the annual reporting years in paragraph (2),and Schedule 8 has effect to calculate early action, absolute change and relative change.
- (2) The annual reporting years referred to in paragraph (1)(b) are—
  - (a) the second and third annual reporting years of the first phase; and
  - (b) the second and subsequent annual reporting years of subsequent phases.
- (3) The tables compiled under paragraph (1) are achievement tables.
- (4) An achievement table must rank participants such that—
  - (a) where a participant (“A”) has achieved x%; and
  - (b) another participant (“B”) has achieved less than x%,B ranks lower than A.
- (5) Participants which achieve the same percentage have equal ranking.
- (6) A participant’s ranking in an achievement table must be given a score, with the lowest ranking having a score of one.

### No information on relative change and early action

76. Where the administrator has not been provided by a participant with the information required to calculate for an annual reporting year early action or relative change, the participant does not appear in the relevant table for that year.

### Performance tables

77.—(1) Subject to paragraph (2), the administrator must in accordance with this article compile a table (“a performance table”) in respect of—

- (a) each of the annual reporting years of the first phase; and
- (b) the second and subsequent annual reporting years of subsequent phases.

(2) For the first annual reporting year of the first phase, the early action table is also the performance table.

(3) Except for the first annual reporting year of the first phase, the administrator must—

- (a) for the annual reporting year—
  - (i) calculate a participant’s scores in each applicable achievement table for that year; or
  - (ii) where a participant is not listed in the early action or relative change table for that year, apply to it a score of zero in respect of the table where it does not appear;
- (b) apply to those scores the applicable weighting percentage; and
- (c) add those scores as weighted to determine the total weighted score for a participant.

(4) A performance table must rank participants such that—

- (a) where a participant (“A”) has achieved a total weighted score of  $x$ ; and
- (b) another participant (“B”) has achieved a total weighted score less than  $x$ ,

B ranks lower than A.

(5) Participants which achieve the same total weighted score have equal ranking.

(6) In paragraph (3), “the weighting percentage” means the percentage stated in the following table—

#### Weighting percentages

	<i>Second year: first phase</i>	<i>Third year: first phase</i>	<i>Second to seventh phases</i>
Early action table	40%	20%	
Absolute change table	45%	60%	75%
Relative change table	15%	20%	25%

### Publication

78.—(1) The administrator must publish the matters set out in paragraph (3) for each annual reporting year to the extent that it holds information on those matters.

(2) Publication must be made as soon as possible after the last working day of July subsequent to the end of the annual reporting year.

(3) The matters referred to in paragraph (1) are—

- (a) the performance table;
- (b) in respect of each participant—

- (i) its name or its trading or other name by which it is commonly known;
  - (ii) its CRC emissions and CRC emissions per unit of turnover;
  - (iii) absolute change;
  - (iv) relative change;
  - (v) if applicable, early action;
- (c) where a participant is a group of undertakings, the significant group undertakings (if any) which are members of that participant;
  - (d) where a significant group undertaking is a participant separate from the group in which it would otherwise be a participant, that fact;
  - (e) the achievement tables;
  - (f) where applicable, that a participant has informed the administrator that—
    - (i) it discloses publicly each year—
      - (aa) its emissions reduction targets; and
      - (bb) its performance against them;
    - (ii) a person with management control has responsibility in respect of those matters; or
    - (iii) it operates an employee engagement programme to reduce its emissions.
- (4) The administrator may publish—
    - (a) the information provided in the annual report;
    - (b) tables concerning the performance of participants in the scheme, other than the achievement and performance tables.
  - (5) Where a participant is required to provide for the same year—
    - (a) an annual report in respect of the last year of one phase (“the first report”); and
    - (b) the second year of the subsequent phase,

the administrator must publish the matters in paragraph (3) using the information in the first report only, so far as those matters are included in that report.

### **Verification**

**79.**—(1) A participant may request the administrator to carry out a verification of the participant’s position in the performance table published under article 78.

- (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 half that person’s reasonable 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) The 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 any of—

- (a) the participant's CRC emissions under article 49(2) and any adjustments to those emissions under paragraph 4 of Schedule 8;
  - (b) the scores which are used to rank the participant in the performance table under article 77(3);
  - (c) absolute change and relative change under paragraphs 1 and 2 of Schedule 8;
  - (d) early action under paragraph 5 of Schedule 8,
- as the participant believes may have been incorrectly calculated.

### **Further publication**

- 80.**—(1) Paragraph (2) applies where—
- (a) an appeal is made against—
    - (i) a determination under article 47(3); or
    - (ii) the penalty imposed under article 97(4)(a)(ii);
  - (b) a request for verification is made under article 79.
- (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 a participant's position in the performance table being changed, the administrator must as soon as possible publish an amended table.
- (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 an amended performance table at any time where it discovers any error or omission in the table.

## **PART 11**

### **Charging**

#### **Charges**

- 81.**—(1) The administrator may charge an applicant or participant for the chargeable activities in article 82.
- (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**

- 82.**—(1) In article 81, “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 39(3) or 47(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**

- 83.**—(1) The amount of a charge payable under article 81(1) is that set out in—
- (a) version 1 of the document named “CRC Energy Efficiency Scheme Charges”(27) 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 81(3) must be complied with in respect of the amount of a charge under paragraph (1).

### **Revised charges**

- 84.**—(1) The administrator may draw up a revised charging document.
- (2) Subject to paragraph (3), the administrator must not apply a revised charging document unless—
- (a) in such manner as it considers appropriate for bringing a proposed document to the attention of those likely to be affected by it, the administrator—
    - (i) sets out its proposals; and
    - (ii) specifies the period within which representations or objections must be made to it;and
  - (b) it receives approval to the revised charging document from the Secretary of State.
- (3) The Secretary of State must consider any representations or objections made by any person to the proposed revised charging document before the Secretary of State decides whether or not to approve it.
- (4) The administrator must not take the steps required under paragraph (2)(a) unless it first consults the following on its proposals—
- (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers; and
  - (d) the Northern Ireland departments.

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(27) 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](http://www.environment-agency.gov.uk/business/regulation/31857.aspx).

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

### **Collection and remittance of charges**

**85.**—(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 12**

### **Monitoring compliance**

#### **Compliance notices**

**86.**—(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 11 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<sup>(28)</sup> the information requested.

#### **Inspections**

**87.**—(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 11 of this Order.

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

(3) A person in control of the premises to which the administrator requires access must allow the administrator to have access to those premises.

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

- (a) require the production of any record;
- (b) take measurements, photographs, recordings or copies of any thing;
- (c) require any person at the premises to provide facilities and assistance to the extent that is within that person’s control.

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<sup>(28)</sup> Such a determination must be made in accordance with article 74(2).



(5) An administrator may delegate another body which is an administrator to exercise the power of inspection on its behalf.

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

(a) a prohibited place for the purposes of the Official Secrets Act 1911(29); 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 13

### Enforcement

#### **Powers of the administrator in respect of enforcement**

**88.** 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**

**89.**—(1) The administrator may—

(a) exercise the powers of entry and inspection in Schedule 9 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 58 and 59**

**90.** 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 58 or 59; 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.

#### **Enforcement notices**

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

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

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

- (b) the matters constituting the failure;
  - (c) the steps that must be taken to remedy the failure; and
  - (d) the period within which those steps must be taken.
- (3) An enforcement notice may be 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 14

### Civil penalties

#### Civil penalties

- 92.**—(1) The administrator—
- (a) may impose a civil penalty as set out in this Part; and
  - (b) where it does so, it must give written notice of such penalty to the persons affected.
- (2) In respect of a financial penalty, a notice of such penalty must state—
- (a) the amount due;
  - (b) where the amount due includes a daily penalty, what that daily penalty is; and
  - (c) to whom the penalty must be paid.
- (3) The administrator must remit a financial penalty received to the Secretary of State.

#### Recovery of civil penalties

- 93.**—(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.

#### Waiver and modification of civil penalties

- 94.**—(1) Paragraph (2) applies in respect of a person (“A”) on whom a civil penalty may be or has been imposed and where the administrator is satisfied that A has provided evidence to the administrator within a reasonable time that—
- (a) A took all reasonable steps—
    - (i) to comply with the relevant provision of this Order; or
    - (ii) to rectify any failure in compliance as soon as it came to A’s notice;
 and
  - (b) in all the other circumstances it is reasonable to exercise the powers in paragraph (2) in relation to A.
- (2) Where this paragraph applies, the administrator may—
- (a) waive a 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.

#### **Failures in respect of registration**

- 95.**—(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 6, where an application for registration is required under that Schedule;or
  - (b) applies late for registration as a participant contrary to—
    - (i) article 12; or
    - (ii) paragraph 2(1) of Part 1, paragraph 2(1) of Part 2 or paragraph 1 or 7 of Part 3 of Schedule 6, 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 until the application for registration is made, subject to a maximum of 80 days;and
  - (b) publication.
- (3) The penalties in paragraph (4) apply where a public body or undertaking fails to report details of each settled half hourly meter under—
- (a) paragraph 6 of Schedule 5 where an application for registration is required under Part 2 or Schedule 6; or
  - (b) paragraph 3(4) of Part 3 of Schedule 6.
- (4) The penalties are—
- (a) the financial penalty of £500 for each meter not reported; and
  - (b) publication.

#### **Failures in respect of footprint reports**

- 96.**—(1) The penalties in paragraph (2) apply where a participant—
- (a) fails to provide a footprint report contrary to article 39(1); or
  - (b) provides late a footprint report contrary to article 39(2).
- (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 provided after the due date; or
    - (ii) more than 40 days after the due date or not at all, a financial penalty of £40,000.

### **Failures in respect of annual reports**

- 97.**—(1) The penalties in the following paragraphs apply where a participant—
- (a) fails to provide an annual report contrary to article 47(1); or
  - (b) provides late an annual report contrary to article 47(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 provided 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 6 equal to the CRC emissions which apply under sub-paragraph (a) (or such additional allowances having regard to any allowances surrendered on time for the annual reporting year);
  - (c) a financial penalty of £40 per tCO<sub>2</sub> 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) for the annual reporting year, the participant achieves the lowest ranking in the achievement and performance tables; and
  - (e) 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 6 is required.

### **Failures to provide information or notifications**

- 98.**—(1) The penalties in paragraph (2) apply where a participant—
- (a) fails to provide the information in section 1 of Schedule 5 where required under Part 2 or Schedule 6;

- (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—
  - (i) article 38(5); or
  - (ii) Part 1, 2 or 3 of Schedule 6.
- (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 footprint reports and annual reports**

- 99.**—(1) The penalties in paragraph (3) apply where a participant provides an inaccurate—
- (a) footprint report contrary to article 39; or
  - (b) annual report contrary to article 47.
- (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 26 or 27 of section 6 of Schedule 1.
- (3) The penalties are—
- (a) a financial penalty of £40 per tCO<sub>2</sub> of so much of those supplies or emissions which were inaccurately reported; and
  - (b) publication.
- (4) Where the provision of an inaccurate footprint report causes a participant to provide an inaccurate annual report, a penalty must be imposed only in respect of the former.

#### **Failures to surrender allowances contrary to Part 6**

- 100.**—(1) The penalties in paragraphs (2) and (3) apply where—
- (a) a participant fails to surrender sufficient allowances contrary to Part 6; 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 97(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 6;
  - (b) a financial penalty of £40 per tCO<sub>2</sub> 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 6 is required.

### **Later discovered failures to surrender allowances contrary to Part 6**

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

- (a) by reference to its annual report, a participant complied with Part 6;
- (b) the administrator finds, within five years of the date on which compliance with Part 6 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 6 (“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**

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

- (a) the administrator has given notice under article 90 in respect of a failure to comply with article 58; and
- (b) the participant has failed to comply by the time stated in that notice.

(2) The penalties are—

- (a) a financial penalty at the rate of £40 per tCO<sub>2</sub> 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 59, the penalties are a financial penalty of £5000 and publication.

### **Failures to provide information on half hourly meters under article 62**

**103.** Where a public body or undertaking fails to comply with article 62(4)(b), a financial penalty of £500 applies for each settled half hourly meter which measures electricity supplies to it which is not listed as required.

### **Failures to provide information under article 64**

- 104.**—(1) The penalties in paragraph (2) apply where—
- (a) the administrator has served a notice as provided under article 64 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**

- 105.**—(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 16 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 15**

### **Criminal offences and penalties**

#### **Offences**

- 106.**—(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 9; 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 9—
  - (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 87(3) where such access is reasonably required.

### **Penalties**

- 107.**—(1) A person guilty of an offence under article 106(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 106(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**

- 108.**—(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**

**109.**—(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**

**110.**—(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 16**

### **Appeals, service of notices and national security**

#### **Appeals**

**111.** In accordance with Schedule 10—

- (a) a public body or undertaking notified of a determination referred to in article 74(1) may appeal against that determination;
- (b) a person served with an enforcement notice may appeal against that notice;
- (c) a public body or undertaking given notice that they are liable to a civil penalty may appeal against the imposition of that penalty.

#### **Service of documents and periods to comply**

**112.** Schedule 11 (service of documents and periods to comply) has effect.

#### **National security**

**113.** 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.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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*Judith Simpson*  
Clerk of the Privy Council