

SCHEDULE 9

Article 96

Amendments to the CRC Energy Efficiency Scheme Order 2010

1. The 2010 Order is amended as follows.
2. In article 3 (interpretation)—
 - (a) for the definition of “allowance”, substitute—

““allowance” means a tradeable allowance issued under regulation 10 of the 2012 Regulations;”;
 - (b) for the definition of “CCA emissions”, substitute—

““CCA emissions” has the meanings given by paragraph 12(3) of Schedule 5, as that paragraph had effect before its amendment by the 2013 Order;”;
 - (c) for the definition of “core supply”, substitute—

““core supply” means a supply of electricity or gas described in Schedule 2, as that Schedule had effect before its amendment by the 2013 Order;”;
 - (d) for the definition of “EU ETS emissions”, substitute—

““EU ETS emissions” has the meanings given by paragraph 12(2) of Schedule 5, as that paragraph had effect before its amendment by the 2013 Order;”;
 - (e) for the definition of “EU ETS installation”, substitute—

““EU ETS installation” means—

 - (a) an activity or installation within the scope of the EU ETS Directive; and
 - (b) any additional activity not included within Annex 1 of that Directive but approved in the United Kingdom under Article 24 of that Directive;”;
 - (f) for the definition of “footprint report”, substitute—

““footprint report” has the meaning given by article 39(1)(a), as that article had effect before its amendment by the 2013 Order;”;
 - (g) for the definition of “footprint supplies”, substitute—

““footprint supplies” has the meaning given by article 41(5), as that article had effect before its amendment by the 2013 Order;”;
 - (h) in the definition of “franchise”, after “franchise premises,”, insert ““franchise supply”,”;
 - (i) for the definition of “performance table”, substitute—

““performance table” has the meaning given by article 77(1), as that article had effect before its amendment by the 2013 Order;”;
 - (j) for the definition of “qualifying electricity”, substitute—

““qualifying electricity” means electricity supplied to a public body or undertaking in accordance with sections 1 to 5 of Schedule 1, measured by a settled half hourly meter;”;
 - (k) for the definition of “residual measurement list”, substitute—

““residual measurement list” has the meaning given by article 44(4), as that article had effect before its amendment by the 2013 Order;”;
 - (l) for the definition of “residual supplies”, substitute—

““residual supplies” has the meaning given by article 44(5), as that article had effect before its amendment by the 2013 Order;”;
 - (m) for the definition of “settled half hourly meter”, substitute—

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““settled half hourly meter” applies in relation to a supply of electricity and has the meaning given by paragraph 2(1) of Schedule 2, as that paragraph had effect before its amendment by the 2013 Order;”;

(n) omit the definitions of “community tradeable emissions”, “core emissions”, “daily meter”, “dynamic supply”, “early action”, “footprint emissions”, “fuel”, “hourly meter”, “non-settled half hourly meter” and “relative change”;

(o) at the appropriate place, insert the following definitions—

““the 2012 Regulations” means the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2012(1);”

““the 2013 Order” means the CRC Energy Efficiency Scheme Order 2013(2);”

““Academy” has the same meaning it has in section 579 of the Education Act 1996(3);”

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

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

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

““local authority” has the same meaning it has in paragraph 7 of Schedule 1 to the 2000 Act;”

““maintained nursery school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(4);”

““maintained school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(5);”

““specified facility certificate” means a certificate given by the Secretary of State to Her Majesty’s Revenue and Customs under paragraph 44(1)(a) of Schedule 6 to the Finance Act 2000 for the CCA certification period(6);”.

3. For paragraph (a) of article 4 (supplies and emissions), substitute—

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

4. In article 5 (registration and requirements of participants and others)—

(a) omit paragraph 3(a);

(b) omit paragraph 4(a);

(c) for paragraph 4(d), substitute—

“(d) Schedule 5 (information on registration);”.

5. In article 6(b) (powers and duties of the administrator), substitute—

“(b) Part 10 to publish information relating to a participant’s performance;”.

(1) S.I. 2012/1386.

(2) S.I. 2013/1119.

(3) 1996 c.56. Section 597 was amended by section 14 and paragraphs 1 and 6 of Schedule 2 to the Academies Act 2010 (c. 32).

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

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

(6) 2000 c. 17. Paragraph 44(1)(a) was substituted by section 207(a) and paragraphs 1 and 2 of Schedule 31 to the Finance Act 2012 (c. 14).

- 6.—(1) Article 9 (the administrator) is amended as follows.
- (2) In the table of provisions—
- (a) in column 1—
- (i) for “Parts 4 to 6 except articles 39(3) and 47(3)”, substitute “Parts 5 and 6 except article 47(3)”;
- (ii) for “Articles 59(2), 68 to 73”, substitute “Articles 59(1), 68 to 73”;
- (b) in column 2, omit “39(3)”.
7. For article 12 (time for applications), substitute—

“Time for application

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

- 8.—(1) Part 3 (exemptions) is amended as follows.
- (2) In article 29(1)(b) (CCA emissions and target periods), omit “subject to article 36.”.
- (3) In paragraph (1)(a)(ii) of article 30 (total emissions), for “, gas and fuel” substitute “and gas”.
- (4) For article 31 (electricity generating credits), substitute—

“Electricity generating credit

- 31.—**(1) In article 30, “electricity generating credit” applies where—
- (a) an applicant generates electricity without using an excluded fuel;
- (b) the applicant is not issued with a ROC and is not in receipt of a financial incentive made by virtue of the Energy Act 2008(7) in respect of that generation;
- (c) the generation does not occur at a place described in paragraph (3); and
- (d) the electricity generated is supplied to a public body or undertaking and that supply is a supply of electricity under paragraph 1 or 6 of Schedule 1, such electricity being “the generated and supplied electricity”.
- (2) Electricity generating credit is the amount of emissions calculated in accordance with paragraph 29 of Schedule 1 in respect of the generated and supplied electricity.
- (3) The places referred to in paragraph (1) are—
- (a) an EU ETS installation where electricity is generated;
- (b) a nuclear power station;
- (c) a hydro-generating station which was ineligible for a ROC.
- (4) In this article—
- “excluded fuel” means any fuel that has been or should be reported by the applicant in its annual report and any fuel included in the applicant’s residual measurement list;
- “hydro-generating station” has the meaning given by article 2(1) of the Renewables Obligation Order 2009(8) and as if that article applied to Scotland and Northern Ireland.
- (5) After article 34 (group CCA exemptions), insert—

(7) 2008 c. 32.

(8) S. I. 2009/785.

“First phase participant exemptions

34A.—(1) Where in a year of the first phase the member of a participant to which a member CCA exemption applies does not have energy use or carbon emissions subject to a CCA target, the member CCA exemption applies in any subsequent year of the phase where the member operates a facility that is specified in a specified facility certificate.

(2) Where in a year of the first phase, a participant which has a general CCA exemption does not have energy use or carbon emissions subject to a CCA target, the general CCA exemption applies in any subsequent year of the phase where the participant operates a facility that is specified in a specified facility certificate.”

(6) Omit article 36 (requirements for exemption to apply: exception).

(7) For article 37(1) (effect of exemptions and records), substitute—

“(1) Subject to article 38, as a participant, an applicant is exempt from Parts 5 to 7 of this Order for the phase where a general CCA exemption applies to it.”

(8) In article 38 (loss of exemptions and further exemptions)—

(a) for paragraphs (2) and (3), substitute—

“(2) Where in a year of a phase, the member of a participant to which a member CCA exemption applies does not operate a facility that is specified in a specified facility certificate, the member CCA exemption does not apply—

(a) in the next year of the phase; and

(b) any subsequent year where the member does not operate a CCA facility that is specified in a specified facility certificate.

(3) Where in a year of a phase, a participant which has a general CCA exemption does not operate a CCA facility that is specified in a specified facility certificate, the general CCA exemption does not apply—

(a) in the next year of the phase; and

(b) any subsequent year where the participant does not operate a facility that is specified in a specified facility certificate.”;

(b) in paragraph (5), omit “, as applicable, the footprint report or”.

9. Omit Part 4 (footprint reports and residual measurement lists).

10.—(1) Part 5 is amended as follows.

(2) For article 48 (member CCA exemptions), substitute—

“Member CCA exemptions

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

(3) For article 49 (annual report), substitute—

“Annual report

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

(a) the amount of supplies under article 50(2);

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

(i) an estimation adjustment; or

- (ii) renewables generation,
and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation; and
 - (c) whether or not electricity generating credit applies to the participant and, if so, the amount of the generated and supplied electricity.
- (2) In addition to the information in paragraph (1), local authority participants in England must provide the following information by 30th November 2013 as a supplement to the annual report for the third annual reporting year in the first phase—
- (a) the amount of the supplies in article 50(2) that are measured by a settled half hourly meter;
 - (b) the amount of the supplies in article 50(2) that are supplied to—
 - (i) Academies;
 - (ii) city technology colleges;
 - (iii) city technology colleges for the technology of the arts;
 - (iv) maintained schools;
 - (v) maintained nursery schools;
 - (c) the amount of the supplies in sub-paragraph (b) that are measured by settled half hourly meters.”.
- (4) For article 50 (CRC emissions), substitute—

“CRC emissions

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

(2) “CRC supplies” means the supplies of electricity and gas supplied to a participant in accordance with sections 1 to 3 of Schedule 1 and the additions in section 6 of that Schedule less the deductions of any electricity generating credits and the deductions under sections 4 and 5 of that Schedule but excluding—

- (a) supplies of gas made to an EU ETS installation; and
 - (b) supplies of electricity and gas made to a facility specified in a specified facility certificate.
- (3) The lowest value of CRC emissions is zero.”.

11.—(1) Part 6 (allowances and CRC emissions) is amended as follows.

(2) After paragraph (3) of article 52 (validity of allowances), insert—

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

(5) In paragraph (4), “special allocation” means the issue of allowances conducted by the Environment Agency under regulation 10 of the 2012 Regulations.”.

(3) In sub-paragraph (a) of article 53(3) (allowances and CRC emissions), for “July” substitute “October”.

(4) In article 54 (cancellation of allowances and surplus surrendered allowances)—

- (a) for paragraph (2)(b), substitute—
 - “(b) subject to article 52—

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- (i) are to be treated as surrendered in respect of the subsequent year (“year 2”) in which the participant is required to comply with article 53 where that year is in the same phase; and
 - (ii) must be cancelled by the administrator in accordance with sub-paragraph (1) before any other allowances which are surrendered.”;
- (b) after paragraph (3), insert—
 - “(4) Where—
 - (a) a participant surrenders to the cancellation account surplus allowances; and
 - (b) the account holder makes a request to the Secretary of State for the repayment of the balance,the Secretary of State may repay the balance to the account holder.
 - (5) Any repayment made by the Secretary of State under paragraph (4) may be subject to a deduction of any banking charges incurred during that transaction.”.
- (5) In article 55 (allowances and trading)—
 - (a) in paragraph (1), for “paragraphs (2) and (3)”, substitute “paragraph (2)”;
 - (b) omit paragraph (3).
- (6) Omit article 56 (community tradeable allowances).
- 12. In paragraph (a) of article 58 (records), omit “and section 2 of Schedule 5”.
- 13. In article 59 (records: residual measurements lists and public disclosure)—
 - (a) in the heading, for “Records: residual measurements lists and public disclosure”, substitute “Records: public disclosure”;
 - (b) omit paragraph (1).
- 14. For article 61 (supplies of electricity, gas and fuel under Part 8), substitute—

“Supplies of electricity and gas under Part 8

61. In this Part except articles 62 and 63, information which may be requested or required in respect of a supply of electricity or gas includes information relating to all sections of Schedule 1.”.
- 15. For Part 10 (achievement and performance tables, publication and verification), substitute—

“PART 10

Performance information and publication

Publication of performance information

75. The administrator may, for each annual reporting year, publish information on a participant’s performance in relation to its energy efficiency achievements on the basis of the information—
- (a) contained in the participant’s annual report; or
 - (b) submitted as part of the information described in Schedule 5.

Further publication

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

- (a) a determination under article 47(3);
- (b) the imposition of a penalty described in article 97(4)(a)(ii).

(2) Where this paragraph applies—

- (a) the administrator may publish a list of those participants which have in respect of the annual reporting year made any such appeal;
- (b) subject to paragraph (3), where any such appeal results in the information published under article 75 being changed, the administrator must as soon as possible publish the amended information.

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

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

16.—(1) Part 14 (civil penalties) is amended as follows.

(2) Omit article 96 (failures in respect of footprint reports).

(3) In sub-paragraph (a) of article 98(1) (failures to provide information or notifications), omit “section 1 of”.

(4) In article 99 (inaccurate footprint reports and annual reports)—

- (a) in the heading, “Inaccurate footprint reports and annual reports”, substitute “inaccurate annual reports”;
- (b) for paragraph (1), substitute—

“(1) the penalties in paragraph (3) apply where a participant provides an inaccurate annual report contrary to article 47.”;
- (c) omit paragraph (4).

17.—(1) Schedule 1 (supplies and emissions) is amended as follows.

(2) In section 1 (electricity, gas and fuels: general)—

- (a) in the heading “Electricity, gas and fuels: general”, substitute “Electricity and gas: general”;
- (b) in paragraph 1 (electricity)—
 - (i) in sub-paragraph (1)(c), omit “or is a dynamic supply”;
 - (ii) for sub-paragraph (3) (electricity), substitute—

“(3) In sub-paragraph (1)(c), “metering device” means—

 - (a) in relation to England, Wales and Scotland, a device where the electricity supplied is charged for as measured by the device but not including meters allocated to the following profile classes under the Balancing and Settlement Code Procedure BSCP516(9)—
 - (i) Domestic Unrestricted;
 - (ii) Domestic Economy 7;

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

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- (b) in relation to Northern Ireland, a device where the electricity supplied is charged for as measured by the device but not including meters that measure supplies to domestic accommodation.”;
- (c) for paragraph 2(3) (gas), substitute—

“(3) In sub-paragraph (1)(c), a “metering device” is a device which during a year of a phase measures more than 73,200 kWh of gas supplied, in relation to the supply of gas.”;
- (d) omit paragraphs 3 (fuels) and 4 (fuels table);
- (e) for paragraph 5 (measurement units), substitute—

“Measurement units

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

- (3) In section 3 (franchise agreements), wherever “, gas or fuel” appears substitute in each case “or gas”.
- (4) In section 4 (deductions from supplies)—
 - (a) wherever “, gas or fuel” appears substitute in each case “or gas”;
 - (b) for paragraph 22 (purposes of transport), substitute—

“Purposes of transport

22.—(1) In paragraph 19, electricity or gas is consumed for the purposes of transport where it is used—

- (a) by a road going vehicle, a vessel, an aircraft or a train;
 - (b) in relation to railways, for network services except where electricity or gas is used to provide power, heat or light to a building; or
 - (c) to provide power for the operation of a conveyor belt which is—
 - (i) at least 8 kilometres in length; and
 - (ii) used to transport materials to an off site facility from which facility the materials will be transported on a railway or a vessel using inland waters.
- (2) The following definitions have effect for the purposes of sub-paragraph (1)—
- “aircraft” means a self-propelled machine that can move through the air other than against the earth’s surface;
- “inland waters” means—
- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
 - (b) any lough, lake or pond, whether natural or artificial, and any reservoir or dock; and
 - (c) any channel, creek, bay, estuary or arm of the sea;
- “network services” has the same meaning it has in section 82 of the Railways Act 1993⁽¹⁰⁾ but as if section 82(3)(h) of that Act did not apply;
- “railway” has the meaning given in section 67(1) of the Transport and Works Act 1992⁽¹¹⁾;

(10) 1993 c. 43.

(11) 1992 c. 42.

“road going vehicle” means any vehicle—

- (a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994⁽¹²⁾;
- (b) which is an exempt vehicle under that Act; or
- (c) which is required to display a certificate of Crown exemption under regulation 31 of the Road Vehicles (Registration and Licensing) Regulations 2002⁽¹³⁾;

“train” has the same meaning it has in section 83 of the Railways Act 1993;

“vessel” means any boat or ship which is self-propelled and operates in or under water.

Consumption of gas for purposes other than heating

22A. A is not supplied with gas to the extent that supply is consumed by A for purposes other than for the purposes of heating.

Purposes of heating

22B.—(1) In paragraph 22A, gas is consumed for the purposes of heating where it is used as part of a process where the primary purpose of that process is the generation of heat.

(2) Gas used in the process of combined heat and power generation is not consumed for the purposes of heating.

Minimal gas heating supply levels

22C.—(1) Sub-paragraph (2) applies where the amount of gas supplied to A for the purposes of heating is less than 2% of the amount of electricity supplied to A in the first annual reporting year of a phase (“minimal gas heating supply”).

(2) Where this sub-paragraph applies, A may decide that minimal gas heating supply is not consumed for the purposes of heating.

(3) A decision under sub-paragraph (2)—

- (a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.”.

(5) In section 5 (deductions from supplies during the first phase in Northern Ireland), wherever “, gas or fuel” appears substitute in each case “or gas”.

(6) In section 6 (additions to supplies: estimation adjustments)—

- (a) in paragraph 25(1) (additions to supplies), for “, gas or fuel” substitute “or gas”;
- (b) omit paragraph 27 (estimation adjustment: fuels).

(7) In section 7 (renewables generation and amount of emissions from supplies)—

- (a) for paragraph 28(1)(b)(ii) (renewables generation: electricity), substitute—

“(ii) A is in receipt of a financial incentive made by virtue of a scheme under section 41 of the Energy Act 2008⁽¹⁴⁾; and”;

⁽¹²⁾ 1994 c. 22.

⁽¹³⁾ S. I. 2002/2742.

⁽¹⁴⁾ 2008 c. 32.

(b) for paragraph 29 (amount of emissions), substitute—

“Amount of emissions

29. The emissions in tCO₂ from an amount of electricity or gas supplied is found by applying to that amount the relevant conversion factor.”;

(c) in paragraph 30(a) (conversion factors), for “www.decc.gov.uk”, substitute “www.gov.uk/decc”.

18. Omit Schedule 2 (core supplies).

19.—(1) Schedule 3 is amended as follows.

(2) For paragraph 4(1) (public bodies: proprietors of Academies and colleges), substitute—

“(1) The proprietor of—

(a) an Academy;

(b) a city college for the technology of the arts or city technology college,

is a public body.”.

(3) In paragraph 8 (educational bodies: England and Wales), omit sub-paragraph (2).

(4) For paragraph 10 (government and local authority decisions), substitute—

“Government and local authority decisions

10.—(1) Except in relation to the Treasury and Her Majesty’s Revenue and Customs, the Secretary of State may make a government decision in relation to a government department.

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

(3) Her Majesty’s Revenue and Customs may make a government decision in relation to Her Majesty’s Revenue and Customs.

(4) Where—

(a) the Secretary of State, the Treasury or Her Majesty’s Revenue and Customs intend to make a government decision described in paragraph 14(2)(a) in relation to a public authority described in Part VI of Schedule 1 to the 2000 Act; and

(b) that authority exercises functions partly other than in England,

the Secretary of State, the Treasury or Her Majesty’s Revenue and Customs must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(5) The Secretary of State, the Treasury or Her Majesty’s Revenue and Customs must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(6) A local authority decision may be made by—

(a) the Secretary of State in relation to a local government public body or a local government group in England;

(b) the Welsh Ministers in relation to a local government public body or a local government group in Wales.

(7) A government decision—

(a) must not be made such that a public body, on its own or part of a group—

(i) which is a participant, is no longer a participant;

- (ii) which is required to be a participant, is no longer to be a participant;
- (b) may be made for the better administration of the scheme.”.

(5) In paragraph 15(1)(a) (government decisions: supplies and departments), for “, gas or fuel” substitute “or gas”.

(6) In paragraph 16(1) (local authority decisions), for “In paragraph 10(5)” substitute “In paragraph 10(6)”.

20.—(1) Schedule 5 (information) is amended as follows.

- (2) For the heading “Information”, substitute “Information on registration”.
- (3) Omit the headings “Section 1” and “Information on registration”.
- (4) Omit section 2.

21.—(1) Schedule 6 (changes to participants) is amended as follows.

- (2) Wherever “, gas or fuel” appears, substitute “ or gas”.
- (3) In Part 1—
 - (a) in paragraph 6 (creation of a new department: after year 2), omit sub-paragraph (2);
 - (b) omit paragraph 10 (transfers: year 2);
 - (c) in paragraph 12 (mergers of departments), omit sub-paragraph (3).
- (4) In Part 2, paragraph 3 (mergers of public bodies), omit sub-paragraph (3).
- (5) In Part 3—
 - (a) in sub-paragraph 3(b) (joining of undertakings with a group which is not required to register as a participant), omit “and non-settled half hourly meters”;
 - (b) omit sub-paragraph (3) of paragraph 7 (notification and applications: time to comply and the administrator);
 - (c) for sub-paragraph (3) of paragraph 9 (significant group undertakings becoming participants), substitute—

“(3) Subject to sub-paragraph (4), where the change occurs in an annual reporting year, B must provide an annual report in respect of the annual reporting year as if B was a participant for the whole of that year.”;
 - (d) in paragraph 10 (joining of a participant or significant group undertaking with a non-participant)—
 - (i) for sub-paragraph (3), substitute—

“(3) Subject to sub-paragraph (6), where the change occurs in an annual reporting year, D must provide an annual report in respect of the year but only in respect of those emissions which relate to C and as if C was a member of D for the whole of that year.”;
 - (ii) omit sub-paragraphs (4) and (5);
 - (iii) for sub-paragraph (6)(b), substitute “sub-paragraph (3) does not apply to D;”;
 - (e) in paragraph 11 (joining of a participant as a member of another participant)—
 - (i) omit sub-paragraphs (5) and (6);
 - (ii) for sub-paragraph (7), substitute—

“(7) “Where E and F do not continue as separate participants and E had a general or group CCA exemption, F has a member CCA exemption in respect of E.”;

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- (f) in paragraph 12 (significant group undertakings transferring to another participant)—
 - (i) in sub-paragraph (1), for “sub-paragraphs (2) to (5) apply”, substitute “sub-paragraph (2) applies”;
 - (ii) omit sub-paragraphs (5) and (6).
- 22.** Omit Schedule 8 (achievement and performance tables).