

## SCHEDULE 1

Article 4

### Supplies and emissions

#### SECTION 1

##### *Electricity, gas and fuels: general*

#### **Electricity**

1.—(1) Subject to section 3, a public body or undertaking (“A”) is supplied with electricity by a person (“B”) where—

- (a) A agrees with B that B will supply electricity to A and that A will pay B for that supply;
- (b) A receives a supply further to that agreement; and
- (c) that supply is measured by a metering device or is a dynamic supply.

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

(3) In sub-paragraph (1)(c) “metering device” is a device where the electricity supplied is charged for as measured by the device.

#### **Gas**

2.—(1) Subject to section 3, a public body or undertaking (“A”) is supplied with gas by a person (“B”) where—

- (a) A agrees with B that B will supply gas to A and that A will pay B for that supply;
- (b) A receives a supply further to that agreement; and
- (c) that supply is measured by a metering device.

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

(3) In sub-paragraph (1)(c), a “metering device” is a device where the gas supplied is charged for as measured by the device.

#### **Fuels**

3.—(1) Subject to sub-paragraph (2) and section 3, a public body or undertaking (“A”) is supplied with fuel by a person (“B”) where—

- (a) A agrees with B that B will supply fuel to A and that A will pay B for that supply; and
- (b) A receives a supply further to that agreement.

(2) No supply of fuel is made under sub-paragraph (1) where that fuel is supplied under paragraph 2.

(3) A supply is made to A—

- (a) at the time the supply is delivered to A; or
- (b) if later, at the time that B provides written confirmation to A of the delivery.

(4) In this paragraph—

“fuel” means any of the fuels listed in column 1 of the table in paragraph 4 (“fuels table”);

“waste” (including in “waste oil” and “waste solvents” in that table)—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The CRC Energy Efficiency Scheme Order 2010 No. 768

- (a) has the meaning given in section 75(2) of the Environmental Protection Act 1990(1); but
- (b) excludes—
  - (i) any other fuel (except waste oil or waste solvents);
  - (ii) biomass; or
  - (iii) gas derived from a landfill site or produced from the treatment of sewage.

(5) In sub-paragraph (4), “biomass” has the same meaning it has under article 4 of the Renewables Obligation Order 2009(2) and as if that article applied in Scotland and Northern Ireland.

## Fuels table

4. The fuels table referred to in paragraph 3—

**Fuels table**

<i>Fuel</i>	<i>Measurement unit</i>
Aviation spirit	tonnes
Aviation turbine fuel	tonnes
Basic Oxygen Steel (BOS) gas	kWh
Blast furnace gas	kWh
Burning oil/kerosene/paraffin	litres
Cement industry coal	tonnes
Coke oven gas	kWh
Commercial and public sector coal	tonnes
Coking coal	tonnes
Colliery methane	kWh
Diesel	litres
Fuel oil	tonnes
Gas oil	litres
Industrial coal	tonnes
Lignite	tonnes
Liquid petroleum gas (LPG)	litres
Peat	tonnes
Naphtha	tonnes
Natural gas	kWh
Other petroleum gas	kWh

- (1) [1990 c. 43](#). Section 75(2) was amended by section 120(1) of and paragraph 88(1) and (2) of Schedule 22 to the Environment Act 1995 (c. 25) under which the definition of “waste” was inserted. There are other amendments to that section which are not relevant.
- (2) [S.I. 2009/785](#).

<i>Fuel</i>	<i>Measurement unit</i>
Petrol	litres
Petroleum coke	tonnes
Scrap tyres	tonnes
Solid smokeless fuel	tonnes
Sour gas	kWh
Waste (other than waste oil or waste solvents)	tonnes
Waste oil	tonnes
Waste solvents	tonnes

### Measurement units

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

(2) The following measurement units apply—

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

## SECTION 2

### *Electricity and gas: self-supply*

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

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

- (a) is described in sub-paragraph (3); and
- (b) supplies electricity to itself,

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

(2) Sub-paragraph (1) does not apply to the extent that the electricity is used directly for the generation, transmission or distribution of electricity.

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

- (a) an authorised supplier of electricity;
- (b) in Great Britain, a public body or undertaking which—
  - (i) holds a generation, transmission or distribution licence within the meaning of section 6 of the Electricity Act 1989(3); or
  - (ii) generates, transmits or distributes electricity and which is exempt under that Act from the requirement to hold a licence to do so;
- (c) in Northern Ireland, a public body or undertaking which—
  - (i) holds a generation or a distribution and transmission licence made under Article 10 of the Electricity (Northern Ireland) Order 1992(4); or

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

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

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

### **Self-supply by authorised gas suppliers**

7. Where an authorised supplier of gas supplies gas to itself, it is supplied with that gas except to the extent which it uses that gas directly for the transport, supply or shipping of gas.

## *SECTION 3*

### *Franchise agreements*

#### **Supplies under franchise agreements**

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

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

#### **Franchise agreements**

9.—(1) A “franchise agreement” exists where one undertaking (“the franchisee”) and another undertaking (“the franchisor”) agree that—

- (a) the franchisee carries on a business activity which is the sale or distribution of goods or the provision of services (“the franchise business”);
- (b) the franchise business is carried on under a name which the franchisor provides to the franchisee;
- (c) the premises where the franchise business is carried on are used exclusively for that business by the franchisee; and
- (d) those premises have an internal or external appearance agreed by the franchisor and that appearance is similar to that of other premises in respect of which the franchisor has entered into a franchise agreement.

- (2) Where a franchise agreement exists, “franchise premises” means—

- (a) the premises described in sub-paragraph (1); and
- (b) other premises used by the franchisee in relation to carrying on the franchise business.

#### **Franchise agreements not existing**

10. A franchise agreement does not exist where—

- (a) the franchisee and the franchisor are group undertakings in relation to each other; or
- (b) in relation to franchise premises, the franchisee occupies those premises with the permission of the franchisor.

#### **Supplies to franchisees regarded as supplies to franchisors**

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

- (a) there is a franchise agreement; and
- (b) the franchisee is supplied with electricity, gas or fuel under section 1 of this Schedule in relation to the franchise premises (“a franchise supply”).

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

- (a) the franchise agreement exists on the qualification day; and
- (b) during the qualification year there is a franchise supply of electricity which is qualifying electricity,

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

(3) For the purposes of Parts 4 and 5 of this Order, where—

- (a) the franchisor is a participant or is a member of a group which is a participant; and
- (b) the franchise agreement exists during a year of a phase,

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

#### SECTION 4

##### *Deductions from supplies*

#### **Deductions from supplies**

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

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

#### **Unconsumed supply**

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

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

(3) Subject to paragraph 14, A is not supplied with the unconsumed supply.

#### **Occupation of premises**

**14.**—(1) Sub-paragraph (2) applies where—

- (a) A has an unconsumed supply; and
- (b) that unconsumed supply is consumed by a person (“B”) in respect of premises which B occupies with the permission of A.

(2) Paragraph 13(3) does not apply to an unconsumed supply to which sub-paragraph (1) applies.

#### **Consumption outside the United Kingdom**

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

#### **Domestic accommodation**

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

- (a) to the extent that supply is consumed by A for the purposes of domestic accommodation; and
- (b) where the conditions in sub-paragraph (4) are satisfied concerning that accommodation.

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

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

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

- (a) the accommodation is not provided in relation to a person’s education, employment or service; and
- (b) no services are provided for the care of a person in residence in that accommodation by the person to whom the supply of electricity, gas or fuel is made.

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

- (a) solely for domestic accommodation; or
- (b) partly for domestic accommodation,

the common areas are part of that accommodation.

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

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

- (a) may be made in respect of—
  - (i) the supply in the qualification year of a phase and where so made, applies to the phase;
  - (ii) a phase where it was not made in respect of the qualification year, where such a decision is made on or before the participant submits its footprint report;
- (b) must not be altered during the phase.

### **Caravan sites: accommodation**

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

(2) “Caravan site” means—

- (a) in England and Wales and Scotland, a caravan site within the meaning of section 1(4) of the Caravan Sites and Control of Development Act 1960<sup>(5)</sup> which is in accordance with Part 1 of that Act—
  - (i) licensed;
  - (ii) exempt from requiring a licence; or
  - (iii) provided by a local authority as defined by that Part;
- (b) in England and Wales, land licensed under section 269 of the Public Health Act 1936<sup>(6)</sup> for use as a site for a moveable dwelling within the meaning of that section;
- (c) in Northern Ireland, a caravan site within the meaning of section 1(4) of the Caravans Act (Northern Ireland) 1963<sup>(7)</sup> which is—
  - (i) licensed in accordance with section 1(1) of that Act;
  - (ii) exempt from requiring a licence under section 2 of that Act;
  - (iii) provided by a district council as defined by section 21 of that Act<sup>(8)</sup>; or

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<sup>(5)</sup> 1960 c. 62.

<sup>(6)</sup> 1936 c. 49. Section 269 was amended by sections 30(1) and 48(1) of and Schedule 4 to the Caravan Sites and Control of Development Act 1960 (c. 62). There are other amendments to section 269 which are not relevant.

<sup>(7)</sup> 1963 c. 17.

<sup>(8)</sup> Section 21 was amended by S.R. (NI) 1973 No 285.

- (iv) provided by the Northern Ireland Housing Executive pursuant to Article 28A of the Housing (Northern Ireland) Order 1981(9).

### **Emergency and temporary accommodation**

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

(2) In sub-paragraph (1)—

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

(i) in England and Wales, Part VII of the Housing Act 1996(10);

(ii) in Scotland, Part II of the Housing (Scotland) Act 1987(11);

(iii) in Northern Ireland, Part II of the Housing (Northern Ireland) Order 1988(12);

(b) “housing body” means—

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

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

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

### **Transport consumption**

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

(2) A is supplied with an un-metered electricity or gas transport supply where a decision has been made that such a supply is not consumed for the purposes of transport under paragraph 20 or 21.

### **Un-metered transport supply: electricity**

**20.**—(1) Sub-paragraph (2) applies where—

(a) A has consumed a supply of electricity for the purposes of transport; and

(b) part of that supply so consumed was not measured by a meter of any sort (“un-metered electricity transport supply”).

(2) Where this sub-paragraph applies, A may decide that un-metered electricity transport supply is not consumed for the purposes of transport.

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

(a) may be made in respect of—

(i) qualifying electricity in the qualification year of a phase and where so made, applies also to supplies of electricity during the phase;

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

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

(10) 1996 c. 52. Part VII is subject to various amendments under Schedule 1 to the Homelessness Act 2002 (c. 7).

(11) 1987 c. 26. Part II is subject to various amendments under section 3 of and Schedule 10 to the Housing (Scotland) Act 2001 (asp. 10) and section 25 is amended by section 1 of the Homelessness etc (Scotland) Act 2003 (asp. 10).

(12) S.I. 1988/1990 (N.I. 23). Part II is subject to various amendments under chapter IV of the Housing (Northern Ireland) Order 2003 (S.I. 2003/412 (N.I. 2)).

- (b) must not be altered during the phase.

**Un-metered transport supply: gas**

**21.**—(1) Sub-paragraph (2) applies where—

- (a) A has consumed gas for the purposes of transport; and
- (b) part of that supply so consumed was not measured by a meter of any sort (“un-metered gas transport supply”).

(2) Where this sub-paragraph applies, A may decide that un-metered gas transport supply during a phase is not consumed for the purposes of transport.

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

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

**Purposes of transport**

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

- (a) by a road going vehicle, a vessel, an aircraft or a train; or
- (b) in relation to railways, for network services except where electricity, gas or fuel is used to provide power, heat or light to a building.

(2) The following definitions have effect for the purposes of sub-paragraph (1)—

“aircraft” means a self-propelled machine that can move through the air other than against the earth’s surface;

“network services” has the same meaning it has in section 82 of the Railways Act 1993<sup>(13)</sup> but as if section 82(3)(h) of that Act did not apply;

“road going vehicle” means any vehicle—

- (a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994<sup>(14)</sup>;
- (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<sup>(15)</sup>;

“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.

*SECTION 5*

*Deductions from supplies during the first phase in Northern Ireland*

**Application of section 5**

**23.**—(1) This section provides for deductions in calculating the amount of a supply of electricity, gas or fuel under section 1, 2 or 3 of this Schedule in Northern Ireland.

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<sup>(13)</sup> 1993 c. 43.

<sup>(14)</sup> 1994 c. 22.

<sup>(15)</sup> S.I. 2002/2742.



- (2) The deductions apply only for the first phase and where provided under this Order.

### **Public lighting supplies**

**24.**—(1) A is not supplied with electricity, gas or fuel to the extent that supply is consumed by A for the purposes of public lighting.

(2) In sub-paragraph (1), “public lighting” means lighting to illuminate—

- (a) a public accessway, being a street, footpath, footway, cycle track or pedestrian subway open to public access;
- (b) a traffic sign or bollard provided in connection with a public accessway; or
- (c) a car park,

but only where such lighting is provided by or on behalf of the Department for Regional Development<sup>(16)</sup>.

## *SECTION 6*

### *Additions to supplies: estimation adjustments*

### **Additions to supplies**

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

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

### **Estimation adjustment: electricity and gas**

**26.**—(1) Sub-paragraph (2) applies—

- (a) to a supply to A of electricity or gas measured by a specific metering device (“device 1”) during a year;
- (b) for at least half of the year in which the supply is made, the amount of that supply is estimated by the supplier; and
- (c) A cannot provide evidence to the satisfaction of the administrator that A has measured such estimated supply by a meter reading from device 1.

(2) Where this sub-paragraph applies, the “estimation adjustment” is 10% of the amount of the supply during the year which is measured by device 1.

### **Estimation adjustment: fuels**

**27.**—(1) Sub-paragraph (2) applies where—

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

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

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(16) Public lighting as described in this paragraph is the responsibility of Northern Ireland Roads Service, an executive agency of the Department for Regional Development.

## SECTION 7

### *Renewables generation and amount of emissions from supplies*

#### **Renewables generation: electricity**

**28.**—(1) Sub-paragraph (2) applies where—

- (a) A generates electricity;
- (b) in respect of that generation,—
  - (i) A is issued with a ROC; or
  - (ii) A is in receipt of a financial incentive made by virtue of section 41 of the Energy Act 2008<sup>(17)</sup>; and
- (c) A supplies some or all of that generated electricity to itself under paragraph 6 of this Schedule at the premises where it is generated.

(2) Where this sub-paragraph applies, “renewables generation” is the amount of the electricity generated which A supplies to itself.

#### **Amount of emissions**

**29.**—(1) The emissions in tCO<sub>2</sub> from an amount of electricity, gas or fuel supplied is found by applying to that amount the relevant conversion factor.

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

#### **Conversion factors**

**30.** In paragraph 29, “relevant conversion factor” means a factor listed—

- (a) in version 1 of the document named “CRC Energy Efficiency Scheme Order: Table of Conversion Factors” published by the Secretary of State and made available on the website address at, [www.decc.gov.uk](http://www.decc.gov.uk), on or before the date this Order is made; or
- (b) in any replacement or revision of the document described in sub-paragraph (a) which is published and made available in the same way as that document (“a revised document”).

#### **Revisions to conversion factors**

**31.**—(1) Only the Secretary of State may draw up a revised document.

(2) The Secretary of State must—

- (a) consult publicly on a draft of a revised document; and
- (b) carry out that consultation for a minimum of 12 weeks.

(3) The Secretary of State must consult—

- (a) the Scottish Ministers;
- (b) the Welsh Ministers; and
- (c) the Northern Ireland departments,

before complying with sub-paragraph (2).

(4) A revised document must be published and made available at least 90 days before the end of the year of the phase in which the factors are to have effect.

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(17) 2008 c. 32.

## SCHEDULE 2

Article 5

### Core supplies

#### SECTION 1

#### *Core electricity supplies*

#### **Core electricity supplies**

1. A core supply of electricity means a supply to which sections 1 to 3 of Schedule 1 apply where the supply is—

- (a) measured by the following type of meter—
  - (i) a settled half hourly meter;
  - (ii) a non-settled half hourly meter, where paragraph 3 is satisfied; or
  - (iii) a non-domestic meter;
- or
- (b) a dynamic supply.

#### **Settled half hourly meters**

- 2.—(1) In paragraph 1, “a settled half hourly meter” is a meter which—
- (a) is able to measure electricity supplied at least every half hour; and
  - (b) enables the supplier to comply with provisions of its licence to determine charges between that supplier and another licence holder in respect of the transmission and trading of wholesale electricity.
- (2) In sub-paragraph (1), “licence” means—
- (a) in Great Britain, a licence within the meaning of section 6(1) of the Electricity Act 1989<sup>(18)</sup>;
  - (b) in Northern Ireland, a licence within the meaning of Article 10(1) or (2) of the Electricity (Northern Ireland) Order 1992<sup>(19)</sup>.

#### **Non-settled half hourly meters**

- 3.—(1) In paragraph 1, “a non-settled half hourly meter” is a meter which—
- (a) is able to measure electricity supplied at least every half hour; and
  - (b) subject to sub-paragraph (3), in respect of a phase has been read remotely.
- (2) In sub-paragraph (1)(b), “read remotely” means where the meter is read remotely by the public body or undertaking to which the supply is made (or by a person acting on its behalf) at any time during—
- (a) the qualification year for the phase; or
  - (b) a year of that phase.
- (3) Sub-paragraph (1)(b) is satisfied in and from the year in which the remote reading first takes place.

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<sup>(18)</sup> 1989 c. 29. Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c. 27) and sections 136(1), 145(1) and (5) and 197(9) of and Part 1 of Schedule 3 to the Energy Act 2004 (c. 20).

<sup>(19)</sup> S.I. 1992/231 (N.I. 1).

### **Non-domestic meters**

4. In paragraph 1, “a non-domestic meter” means a meter which—
- (a) is designed to measure supplies to non-domestic premises;
  - (b) measures such supplies; and
  - (c) is capable of measuring maximum electricity demand.

### **Dynamic supply**

5. In paragraph 1, a “dynamic supply” means a supply where—
- (a) a device, which is not a metering device, records daily when electricity is supplied or not to one item of a set of equipment on premises; and
  - (b) that record is used to determine the half hourly supply of electricity to the whole set of equipment.

## *SECTION 2*

### *Core gas supplies*

#### **Core gas supplies**

6.—(1) A core supply of gas means a supply to which sections 1 to 3 of Schedule 1 apply measured by a meter which is—

- (a) a daily meter;
- (b) an hourly meter; or
- (c) a large gas point meter.

(2) A meter under sub-paragraph (1) includes any ancillary device used in connection with that meter which allows the amount of the supply measured by that meter to be read.

#### **Daily meters**

7. In paragraph 6, “a daily meter” is a meter which—
- (a) is able to measure gas supplied at least daily; and
  - (b) is read in Great Britain by an authorised supplier or an authorised transporter under section 48(1) of the Gas Act 1986(20) or in Northern Ireland by a licence holder under Article 3(1) of the Gas (Northern Ireland) Order 1996(21).

#### **Hourly meters**

- 8.—(1) In paragraph 6, “an hourly meter” is a meter which—
- (a) is able to measure gas at least hourly; and
  - (b) subject to sub-paragraph (3), in respect of a phase has been read remotely.
- (2) In sub-paragraph (1), “read remotely” has the same meaning it has in paragraph 3(2).
- (3) Sub-paragraph (1)(b) is satisfied in respect of the year in which the remote reading first takes place and each subsequent year of the phase.

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(20) 1986 c. 44. Section 48(1) was amended by section 108 of and paragraphs 1 and 19(a) of Schedule 6 to the Utilities Act 2000 (c. 27) under which the definitions of “authorised supplier” and “authorised transporter” were inserted. There are other amendments to this section which are not relevant.

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

## Large gas point meters

9. In paragraph 6, “a large gas point meter” means a meter which during a footprint year of a phase measured greater than 73,200 kWh of gas supplied.

## SCHEDULE 3

Article 5

### Public bodies

#### SECTION 1

#### Interpretation

### Public bodies

1. In this Order, “public body” means a public body described in this section.

### Public authorities and the National Assembly for Wales Commission

2.—(1) A public authority is a public body.

(2) In sub-paragraph (1), a “public authority” means—

- (a) a public authority within the meaning of section 3(1)(a) of the Freedom of Information Act 2000<sup>(22)</sup> (“the 2000 Act”); and
- (b) a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002<sup>(23)</sup> (“the 2002 Act”),

but not any such authority listed in sub-paragraph (4) or paragraph 4.

(3) Where a public authority is included within the 2000 Act or the 2002 Act subject to a limitation, that limitation does not apply in respect of this Order.

(4) The public authorities referred to in sub-paragraph (2) are—

- (a) the House of Commons;
- (b) the House of Lords;
- (c) the force or any unit described in sub-paragraph (a) or (b) of paragraph 6 (the armed forces of the Crown) of Schedule 1 to the 2000 Act;
- (d) a person described in paragraph 64 (persons nominating special constables) of Schedule 1 to the 2000 Act;
- (e) the National Assembly for Wales.

(5) The National Assembly for Wales Commission is a public body<sup>(24)</sup>.

### Public bodies: bodies corporate

3.—(1) A body corporate is a public body where it is a body in which a public body under paragraph 2 is a majority member.

(2) A public body is a majority member of a body (“body A”) under sub-paragraph (1) where—

- (a) the member;

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<sup>(22)</sup> 2000 c. 36.

<sup>(23)</sup> 2002 asp 13.

<sup>(24)</sup> The Commission was established under section 27 of the Government of Wales Act 2006 (c. 32).

- (b) a person acting on behalf of the member; or
  - (c) a body corporate in which the member or person acting on its behalf is a majority member, (any of whom is “person B”) satisfies the provisions in sub-paragraph (3).
- (3) The provisions referred to in sub-paragraph (2) are—
- (a) person B holds a majority of the voting rights in body A;
  - (b) person B is a member of body A and has the right to appoint or remove a majority of its board of directors; or
  - (c) person B is a member of body A and controls alone, pursuant to an agreement with other members, a majority of the voting rights in body A.

#### **Public bodies: proprietors of Academies and colleges**

- 4.—(1) The proprietor of—
- (a) an Academy within the meaning of section 482 of the Education Act 1996<sup>(25)</sup>;
  - (b) a city technology college or city college for the technology of the arts within the meaning of section 482 of that Act as originally enacted,
- is a public body.
- (2) Where—
- (a) a proprietor described in sub-paragraph (1) is the proprietor of more than one Academy or college; and
  - (b) those Academies or colleges are situated in more than one local authority area,
- the proprietor is a separate public body in respect of those Academies or colleges in different local authority areas.
- (3) Where a proprietor would be required to register as a participant under Part 2—
- (a) if it were not a public body under sub-paragraph (1); and
  - (b) excluding the scheme activities in respect of which it is such a public body,
- the proprietor is, as applicable, a separate public body or undertaking in respect of its other scheme activities.

#### **Public bodies: one public body part of another**

- 5.—(1) Except where paragraph 4(2) or (3) applies, where a public body (“A”) is part of another public body (“B”)—
- (a) A is not a public body; and
  - (b) B including A is a public body.
- (2) A government department is not part of another government department.

### *SECTION 2*

#### *Public bodies: groups*

#### **Groups and members**

6. In relation to public bodies—

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(25) 1996 c. 56. Section 482 was amended by section 65(1) of the Education Act 2002 (c. 32).

“group” means those public bodies which are members of a group—

- (a) as provided by paragraphs 7 to 9;
- (b) further to—
  - (i) a government decision under paragraph 14;
  - (ii) a local authority decision under paragraph 16;
- or
- (c) as provided under article 20 for the purposes of that article or under article 21;

“member” means a public body which is part of a group together with one or more other public bodies.

### **Bodies corporate**

7. Subject to a government decision under paragraph 14, where a body corporate is a public body and where the majority member is—

- (a) a government department, that body is a member of a group with that department;
- (b) the Scottish Ministers, that body is a member of a group with the Ministers;
- (c) the Welsh Ministers, the First Minister for Wales or the Counsel General, that body is a member of a group with the Welsh Assembly Government;
- (d) a relevant Northern Ireland department, that body is a member of a group with the relevant department.

### **Educational bodies: England and Wales**

8.—(1) In England and Wales—

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

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

“local authority”;

“maintained nursery school”;

“maintained school(26)”.

### **Grant-aided schools: Northern Ireland**

9.—(1) This paragraph applies in Northern Ireland and to a public body which is a grant-aided school within the meaning of Article 2(2) of the of the Education and Libraries (Northern Ireland) Order 1986(27) (“a grant-aided school”).

(2) Subject to sub-paragraph (3), a grant-aided school is a member of a group with the Education and Library Board(28) which funds that school.

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

(27) S.I. 1986/594 (N.I. 3). The definition of “grant-aided” under Article 2(2) was amended by the Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20)).

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

(3) Where the Education and Skills Authority has been established<sup>(29)</sup>, subject to sub-paragraph (4), a grant-aided school is a member of a group with that Authority.

(4) Sub-paragraph (3) does not apply in respect of a phase where that phase has commenced before the Authority is established.

### SECTION 3

#### *Public bodies: government and local authority decisions*

#### **Government and local authority decisions**

**10.**—(1) Except in relation to the Treasury, the Secretary of State may make a government decision in relation to a government department.

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

(3) Where—

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

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

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

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

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

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

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

(6) A government decision—

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

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

(ii) which is required to be a participant, is no longer required to be a participant;

(b) may be made for the better administration of the scheme.

#### **The Scottish Ministers**

**11.**—(1) The Scottish Ministers may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to the Scottish Ministers.

(2) The Scottish Ministers may make a government decision described in paragraph 14(2)(a) only in respect of the public bodies described in the following paragraphs of this Schedule—

(a) paragraph 2(2)(b);

(b) paragraph 3 where the majority member is a body described in paragraph 2(2)(b).

<sup>(29)</sup> The Northern Ireland Assembly Education Bill 3/08 makes provision for the establishment of the Education and Skills Authority.



### **The Welsh Assembly Government and Welsh Ministers**

**12.**—(1) The Welsh Ministers may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to the Welsh Assembly Government.

(2) The Welsh Ministers must not make a government decision under paragraph 14(2)(a) unless the public body exercises functions in or as regards Wales and—

- (i) those functions are exercised in relation to matters within the legislative competence of the National Assembly for Wales; or
- (ii) functions are exercisable in relation to that body by the Welsh Ministers, the First Minister for Wales or the Counsel General.

### **Northern Ireland departments**

**13.**—(1) The relevant Northern Ireland department may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to a relevant department.

(2) The relevant Northern Ireland department must not make a government decision under paragraph 14(2)(a) unless the Northern Ireland Assembly has legislative competence in respect of the functions of the public body.

### **Government decisions**

**14.**—(1) “A government decision” means any decision described in sub-paragraph (2) in relation to—

- (a) qualification for a phase; or
  - (b) participation during a phase or any part of a phase.
- (2) The decisions referred to in sub-paragraph (1) are—
- (a) that a public body (which is not a government department) is or is not a member of a group together with the department;
  - (b) that any part of a government department as described in the decision must register as a participant separately from the remainder of the department;
  - (c) subject to paragraph 15(2), that a government department is a member of a group with another government department;
  - (d) under paragraph 13 only and where the Education and Skills Authority referred to in paragraph 9(3) has been established, that—
    - (i) paragraph 9(2) does not apply to a grant-aided school referred to in that sub-paragraph; and
    - (ii) such a school is a member of a group with the Authority.

### **Government decisions: supplies and departments**

**15.**—(1) A government decision under paragraph 14(2)(b) must state—

- (a) which supplies of electricity, gas or fuel are supplied to which part of the department for the phase;
- (b) where a public body is a member of a group with the department, with which part of the department it is a group member.

(2) A government decision under paragraph 14(2)(c) must only be made in respect of a department which, had it been subject to article 17 on qualification for the phase, would not have been required to register as a participant.

### **Local authority decisions**

**16.**—(1) In paragraph 10(5), a “local authority decision” means a decision described in sub-paragraph (2) in relation to qualification for a phase in respect of—

- (a) a public body (“a local government public body”) which is—
  - (i) in England, a public authority described in paragraphs 7(a) and 8 to 11 of Part II (local government) of Schedule 1 to the 2000 Act; or
  - (ii) in Wales, a public authority described in paragraph 7(b) of that Part;

or

- (b) where the local government public body is a member of a group under section 2 of this Schedule (“the local government group”), such a group.

(2) A decision referred to in sub-paragraph (1) means that a local government public body or group is a public body to which article 14(1)(e) applies.

(3) Where such a decision is made, the decision may also provide—

- (a) that the body or group is a member of a group with another public body required to register as a participant;
- (b) where applicable, that the decision only applies to the local government public body and not any other member of the local government group.

(4) Where a decision is made under sub-paragraph (3)(b)—

- (a) the local government group ceases to exist; and
- (b) other members of the group are separate public bodies.

### **Notification of government and local authority decisions**

**17.**—(1) The administrator must be notified in writing with the application for registration as a participant in respect of—

- (a) a government decision in relation to qualification for a phase;
- (b) a local authority decision.

(2) A government decision in relation to participation during a phase or any part of a phase must be notified in writing as soon as possible to the administrator.

(3) A notification required under sub-paragraph (1) or (2) must—

- (a) state the period for which the decision has effect, which may commence before the date of the notification but must not commence in a phase which has completed; and
- (b) identify the public bodies affected.

(4) A government decision or local authority decision may be varied or revoked in writing.

## SCHEDULE 4

Article 5

### Undertakings and significant group undertakings

#### *Undertakings and significant group undertakings*

#### **Undertakings**

1. In this Order, subject to paragraph 4—
  - (a) in relation to an undertaking, “group” means those undertakings which are group undertakings in respect of each other;
  - (b) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006<sup>(30)</sup> but where “undertaking” has the meaning given in this Order;
  - (c) “highest parent undertaking” is the undertaking in the group which is not a subsidiary of any other undertaking in the group;
  - (d) “member” in relation to group undertakings means an undertaking which is part of a group;
  - (e) “parent undertaking”, “subsidiary undertaking” and related expressions have the same meanings as in Part 38 of the Companies Act 2006 but where “undertaking” has the meaning given in this Order;
  - (f) “undertaking” means—
    - (i) an undertaking as defined in section 1161(1) of the Companies Act 2006; and
    - (ii) as if that definition included an unincorporated association which carries on a charitable activity,but an undertaking does not include a public body.

#### **Significant group undertakings**

- 2.—(1) An undertaking is a “significant group undertaking” of a group when so provided under this paragraph—
  - (a) for the purposes of Part 2; and
  - (b) during a phase.
- (2) Sub-paragraph (3) applies—
  - (a) to a group of undertakings (“G”);
  - (b) to an undertaking (“U”) which is a group undertaking of G; and
  - (c) where U is a subsidiary of another undertaking of G.
- (3) Subject to sub-paragraph (4), for the purposes of Part 2 where—
  - (a) U; and
  - (b) any subsidiary undertakings of U,would, if U was not a member of G, have been required to register as a participant under Part 2, U is a significant group undertaking as a member of G, together with U’s subsidiary undertakings, if any.
- (4) Where—
  - (a) U would be a significant undertaking as a member of G under sub-paragraph (3); but
  - (b) G is subject to article 27(2),

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(30) 2006 c. 46.

the provisions of section 1 of Part 3 of Schedule 6 vary sub-paragraph (3).

(5) Subject to paragraph 3, where U is a significant group undertaking as a member of—

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

U is a significant group undertaking as a member of G or that other group for that phase, together with U's subsidiary undertakings from time to time, if any.

### **Significant group undertakings: movement between groups during a phase**

3.—(1) Subject to paragraph 4, where—

- (a) U was a significant group undertaking as a member of a group under paragraph 2; and
- (b) during a phase U becomes a member of another group of undertakings ("G2"),

U is a significant group undertaking as a member of G2 for the remainder of that phase, together with U's subsidiary undertakings from time to time, if any.

(2) Paragraphs 10 and 12 of section 2 of Part 3 of Schedule 6 make provision in relation to the change described in sub-paragraph (1).

### **Significant group undertakings as participants**

4. Where during a phase a significant group undertaking—

- (a) is a member of a group; but
- (b) is a participant separate from the group,

for such time as it is a participant separate from the group, it must be treated as if it was not a member of the group for the phase<sup>(31)</sup>.

## SCHEDULE 5

Article 5

### Information

#### SECTION 1

##### *Information on registration*

### **General**

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

### **Contact information**

2. Subject to paragraph 4, as applicable to the applicant—

- (a) name, postal address, email address and telephone number;
- (b) the principal place of activity;
- (c) any company registration number and registered office;
- (d) any trading or other name by which the applicant is commonly known.

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(31) A participant may become a significant group undertaking as a member of a group during a phase. See paragraphs 10(2)(e) and 11(4)(a) of section 2 of Part 3 of Schedule 6.

3. Where the applicant is a group of undertakings—
  - (a) the information in paragraph 2 in respect of—
    - (i) each significant group undertaking; and
    - (ii) the highest parent undertaking;and
  - (b) where an undertaking other than the highest parent undertaking is to be the account holder of the compliance account, the information in paragraph 2 in respect of that undertaking.
4. Where the applicant is a group of public bodies, the information in paragraph 2 is required only in respect of the following in that group—
  - (a) a government department;
  - (b) the Scottish Ministers;
  - (c) the Welsh Assembly Government;
  - (d) a Northern Ireland Department;
  - (e) a local authority;
  - (f) a university;
  - (g) for a group which does not include a public body described in sub-paragraphs (a) to (f), the body in the group intended to be the account holder in respect of the compliance account.
5. The name, postal address, email address and telephone number of at least three individuals who will act as contacts for the applicant, one of whom must exercise management control in respect of the public body or undertaking which is to be the account holder of the compliance account.

#### **Total supplies of qualifying electricity**

- 6.—(1) A list of all settled half hourly meters which measured the supply of qualifying electricity to the applicant in the qualification year.
- (2) The total amount of qualifying electricity in the qualification year.
- (3) The amount of electricity under sub-paragraph (2) may be estimated.

#### **Exemptions**

7. Where the participant intends to claim—
  - (a) a member CCA exemption, in respect of the member its total emissions and its CCA emissions;
  - (b) a general CCA exemption, the participant's total emissions and CCA emissions;
  - (c) a group CCA exemption, "X" and "Y" referred to in article 34(2).

### *SECTION 2*

#### *Information in footprint years*

#### **General**

8. Information in this section is required from a participant under Part 4.

## **Supplies**

**9.**—(1) The amount of electricity, gas and fuel supplied to the participant in the footprint year calculated in accordance with sections 1 to 5 of Schedule 1 but excluding any such supplies to—

- (a) an EU ETS installation; or
- (b) a CCA facility to which a member CCA exemption does not apply.

(2) Core supplies calculated in accordance with sections 1 to 5 of Schedule 1 but excluding such supplies made to—

- (a) an EU ETS installation; or
- (b) a CCA facility to which a member CCA exemption does not apply.

(3) The amount of any supply of energy during the footprint year except electricity, gas or fuel, identifying the energy source.

## **Residual measurement list and residual supplies**

**10.** Whether or not the participant has compiled a residual measurement list and, if it has, the residual supplies in that list.

## **Electricity generating credit and renewables generation**

**11.** The amount, if any, of electricity generating credit and renewables generation.

## **EU ETS and CCA emissions**

**12.**—(1) The emissions from the participant's—

- (a) EU ETS installations (“EU ETS emissions”);
- (b) CCA facilities (“CCA emissions”) excluding a facility to which a member CCA exemption applies.

(2) “EU ETS emissions” means—

- (a) the emissions required to be reported by the participant to comply with the EU ETS Directive in the calendar year commencing on the 1st January immediately before the start of the footprint year; or
- (b) the emissions in respect of the amount of electricity, gas and fuel supplied at the EU ETS installations and where—
  - (i) those supplies are calculated in accordance with sections 1 to 5 of Schedule 1; and
  - (ii) the emissions from those supplies are calculated in accordance with paragraph 29 of Schedule 1.

(3) “CCA emissions” means—

- (a) the emissions required to be reported by the participant under the CCA for the CCA facilities, where those facilities are subject to a CCA target period ending in the footprint year; or
- (b) the emissions in respect of the amount of electricity, gas and fuel supplied at the CCA facilities and where—
  - (i) those supplies are calculated in accordance with sections 1 to 5 of Schedule 1; and
  - (ii) the emissions from those supplies are calculated in accordance with paragraph 29 of Schedule 1.

## Decisions in respect of domestic accommodation and un-metered transport supplies

13. Whether or not it has made a decision—

- (a) under paragraph 16 of Schedule 1 that common areas are not part of domestic accommodation;
- (b) under paragraph 20 of Schedule 1 that un-metered electricity transport supply is not consumed for the purposes of transport;
- (c) under paragraph 21 of Schedule 1 that un-metered gas transport supply is not consumed for the purposes of transport.

### SCHEDULE 6

Article 5

#### Changes to participants

### PART 1

#### Public bodies: government

#### SECTION 1

*Government departments, Northern Ireland departments,  
the Scottish Ministers and the Welsh Assembly Government*

#### Application of Part 1

1.—(1) Where the changes described in sections 2 to 5 of this Part occur in a year of a phase (“year 1”) in relation to a participant which is or includes—

- (a) a government department or part of it;
- (b) a relevant Northern Ireland department or part of it,

such a participant must comply with the requirements in those sections.

(2) Under sub-paragraph (1)(b), in relation to a relevant Northern Ireland department, reference in paragraphs 7 and 11 to the Secretary of State includes reference to the relevant department.

(3) Where the changes described in sections 3 to 5 occur in year 1 in relation to a participant which is or includes the Scottish Ministers or part of that body, such a participant must comply with the requirements in those sections.

(4) Under sub-paragraph (3), in relation to the Scottish Ministers, reference to—

- (a) the Secretary of State in paragraph 11 includes the Scottish Ministers;
- (b) a department in paragraph 12 includes those Ministers or part of that body.

(5) Where the changes described in section 4 or 5 occur in year 1 in relation to a participant which is or includes the Welsh Assembly Government or part of that body, such a participant must comply with the requirements in those sections.

(6) Under sub-paragraph (5), in relation to the Welsh Assembly Government, reference to a department in paragraph 12 includes the Welsh Assembly Government or part of that body.

### **Notifications and applications: time to comply and the administrator**

2.—(1) A notification or application for registration required under this Part must be made using the Registry and within 3 months of the change occurring.

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

## *SECTION 2*

### *Creation of new departments*

#### **Creation of a new department**

3. This section applies where—

- (a) from part of a participant (“A”) and part of another participant (“B”), a department (“C”) is created in year 1; and
- (b) A and B continue as participants.

#### **Creation of a new department: year 1**

4. In year 1—

- (a) C must—
  - (i) apply for registration as a participant in accordance with article 11; and
  - (ii) comply with Part 5 as if C existed for the whole of year 1;
- (b) A and B must comply with this Order as if C had not been created.

#### **Creation of a new department: year 2**

5. In the year after year 1 (“year 2”)—

- (a) C must comply with Parts 4 and 5 of this Order; and
- (b) A and B must comply with this Order as if C had not been created.

#### **Creation of a new department: after year 2**

6.—(1) In the years after year 2—

- (a) C must comply with this Order as applicable to the years after year 2; and
- (b) A and B must comply with this Order as applicable to the years after year 2 but where A and B do not include C.

(2) In the year after year 2, where A or B have a residual measurement list, that list must be amended to exclude any residual supplies of C.

#### **Deemed supplies of the new department**

7.—(1) For the purposes of this section, the Secretary of State may declare in writing that a supply of electricity, gas or fuel—

- (a) to A or B is deemed to be a supply to C;
- (b) to C is deemed to be a supply to A or B.

(2) A declaration made under sub-paragraph (1) must be provided by the Secretary of State to the administrator as soon as possible.



### SECTION 3

#### *Transfers of parts of government departments, Northern Ireland departments or the Scottish Ministers*

#### **Transfer of part of a department to another department**

**8.** This section applies where from a participant (“D”), a part (“E”) transfers to another participant (“F”) in year 1 (“the transfer”).

#### **Transfers: year 1**

**9.** In year 1, D and F must—

- (a) notify the administrator of—
  - (i) the transfer; and
  - (ii) as soon as possible, the percentage of the emissions of D which are attributable to E;
- (b) comply with this Order as if the transfer had not occurred.

#### **Transfers: year 2**

**10.**—(1) In the year after year 1 (“year 2”), where D has a residual measurement list, it must amend that list to exclude any residual supplies of E.

(2) In year 2 where—

- (a) D and F have residual measurement lists; and
- (b) residual supplies of E were included in D’s list,

F must amend its list to include the residual supplies of E which were in D’s list.

(3) In year 2 where—

- (a) D has a residual measurement list and residual supplies of E were included in D’s list; and
- (b) F does not have a residual measurement list,

F must compile a residual measurement list to include the residual supplies of E which were in D’s list.

#### **Deemed supplies**

**11.**—(1) For the purposes of this section, the Secretary of State may declare in writing that a supply of electricity, gas or fuel—

- (a) to D which is attributable to E is deemed to be a supply to F;
- (b) to F which is attributable to E is deemed to be a supply to D.

(2) A declaration made under sub-paragraph (1) must be provided by the Secretary of State to the administrator as soon as possible.

## SECTION 4

### *Mergers in respect of government departments, Northern Ireland departments, the Scottish Ministers or the Welsh Assembly Government*

#### **Mergers of departments**

**12.**—(1) Sub-paragraphs (2) to (5) apply where a participant (“G”) merges with another participant (“H”) in year 1 (“the merger”) to form a new department (“J”).

(2) J must notify the administrator of the merger.

(3) Where G or H had a residual measurement list before the merger, J must compile such a list from the residual supplies of G or H or, as appropriate, both.

(4) J must—

(a) apply for registration as a participant in accordance with article 11; and

(b) comply with this Order as if J existed for the whole of year 1.

(5) Subject to the registration of J, the administrator must cancel the registration of G and H for the remainder of the phase.

## SECTION 5

### *Government decisions and separate participation*

#### **Government decisions**

**13.** This section applies where a government decision is made in respect of a participant (“K”) that a part of K is a separate participant (“L”).

#### **Separate participants: year 1**

**14.** In year 1,—

(a) L must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) comply with Parts 4, 5 and 7 as if L existed for the whole of year 1;

(b) K must comply with this Order as if the government decision had not been made.

## PART 2

### Other public bodies

#### **Application of Part 2**

**1.** This Part applies where the change described occurs in a year of a phase (“year 1”) and to a participant which is or includes a public body other than a public body to which Part 1 applies.

#### **Notifications and applications: time to comply and the administrator**

**2.**—(1) The notification and application for registration required under this Part must be made using the Registry and within 3 months of the change occurring.

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

### **Mergers of public bodies**

**3.**—(1) Sub-paragraphs (2) to (5) apply where a participant (“A”) merges with another participant (“B”) in year 1 (“the merger”) to form a new public body (“C”).

(2) C must notify the administrator of the merger.

(3) Where A or B had a residual measurement list before the merger, C must compile such a list from the residual supplies of A or B or, as appropriate, both.

(4) C must—

(a) apply for registration as a participant in accordance with article 11; and

(b) comply with this Order as if C existed for the whole of year 1.

(5) Subject to the registration of C, the administrator must cancel the registration of A and B for the remainder of the phase.

## **PART 3**

### **Undertakings**

#### *SECTION 1*

#### *Post-qualification period*

### **Time for applications**

**1.** Where an application for registration is required under this section(**32**), that application must be made by the time provided under article 12.

### **Significant group undertakings leaving a group but not joining another group**

**2.**—(1) Sub-paragraph (2) applies to a group (“A”) where the following change occurs in the post-qualification period—

(a) a significant group undertaking (“B”) leaves A; and

(b) B does not become a member of another group.

(2) In respect of the change—

(a) B must—

(i) apply to be registered as a participant in accordance with article 11; and

(ii) when doing so notify the administrator that it was a member of A and when it ceased to be so;

(b) A must—

(i) apply to be registered as a participant in accordance with article 11;

(ii) when doing so notify the administrator that B was a member of A and when it ceased to be so; and

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

- (iii) in respect of the information required under paragraph 6 of Schedule 5, include the information which applied to B in the qualification year.

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

3.—(1) Sub-paragraph (2) applies to a group or undertaking (“C”) where the following change occurs in the post-qualification period—

- (a) C becomes a significant group undertaking as a member of another group (“D”); and
  - (b) D is not required to register under article 24.
- (2) In respect of the change—
- (a) D must—
    - (i) apply for registration as a participant in accordance with article 11; and
    - (ii) when doing so notify the administrator that C is a member of D and when that occurred;
  - (b) C must not apply for registration as a participant;
  - (c) D is only a participant in respect of C; and
  - (d) D must with the application for registration provide in respect of the qualification year the information in sub-paragraph (3).
- (3) The information referred to in sub-paragraph (2)—
- (a) a list of the settled half hourly meters which measured the supply of electricity to D and the identification numbers of those meters; and
  - (b) in respect of the supply of electricity to D 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 equalled or exceeded 6000 MWh—
      - (aa) why D was not required to register as a participant; and
      - (bb) which deductions from a supply in section 4 and, if applicable, section 5 of Schedule 1 are applicable to the supply.

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

4.—(1) Sub-paragraphs (2) to (4) apply to a group or undertaking (“E”) where the following change occurs in the post-qualification period—

- (a) E becomes a significant group undertaking as a member of another group (“F”); and
  - (b) F is required to register under article 24 but has not applied for registration.
- (2) In respect of the change F must—
- (a) apply for registration as a participant in accordance with article 11;
  - (b) when doing so notify the administrator that E is a member of F and when that occurred;
  - (c) in that notification F must inform the administrator whether or not F requests that E may apply for registration as a separate participant; and
  - (d) in respect of the information required under paragraph 6 of Schedule 5, include the information which applied to E in the qualification year.
- (3) Where a request is made under sub-paragraph (2)(c), that must be treated as a request under article 25(2) and paragraphs (3) and (4) of that article apply.

- (4) Except where sub-paragraph (3) applies, E must not apply for registration as a participant.

### **Significant group undertakings transferring between groups**

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

- (a) G becomes a significant group undertaking as a member of another group (“J”) in the post-qualification period; and
  - (b) H and J are groups to which article 27(2) applies.
- (2) In respect of the change H and J must—
- (a) apply for registration as participants in accordance with article 11;
  - (b) when doing so notify the administrator of the change and when it occurred; and
  - (c) in the notification by J, it must inform the administrator whether or not J requests that G may apply for registration as a separate participant.
- (3) Where a request is made under sub-paragraph (2)(c), that must be treated as a request under article 25(2) and paragraphs (3) to (6) of that article apply.
- (4) In respect of the information required under paragraph 6 of Schedule 5—
- (a) H must include the information which applied to G in the qualification year;
  - (b) J must not include that information.

## *SECTION 2*

### *Footprint years and annual reporting years*

### **Application and general changes during footprint years and annual reporting years**

- 6.—(1) This section(33) does not apply to a participant where—
- (a) any of the changes occurs to that participant in the post-qualification period which falls within a footprint year; and
  - (b) the participant has complied with section 1 of this Part in respect of those changes.
- (2) Where in respect of the year in which a change occurs, a participant has a general or a group CCA exemption, a requirement imposed on a participant under this section does not apply to such a participant.
- (3) Subject to sub-paragraph (4), where a participant is a group—
- (a) the members of the group are those members from time to time during the year;
  - (b) a footprint report and CRC supplies must be determined in relation to the supplies of electricity, gas or fuel to members of the group only for such time as they are members during the year.
- (4) Except in respect of paragraph 7(1) or (3), a change as described in this section where it does not occur on the first day of the year of a phase, is deemed to take place on that day.

### **Notifications and applications: time to comply and the administrator**

7.—(1) A notification or application for registration required under this section must be made using the Registry and within 3 months of the change occurring.

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(33) This section applies to an undertaking or a group of undertakings in respect of changes which occur in a footprint year (article 46) or in an annual reporting year (article 51).

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

(3) Where under this section a participant must compile or amend a residual measurement list, that compilation or amendment must be made within 3 months of the change occurring.

### **Determinations**

8. The administrator may make a determination<sup>(34)</sup>—

- (a) whether any change as described in this section has occurred;
- (b) whether a notification or application for registration is required as provided under this section.

### **Significant group undertakings becoming participants**

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

- (a) a participant (“A”) consists of a group;
- (b) a significant group undertaking (“B”) leaves that group; and
- (c) B does not become a member of another group.

(2) Subject to sub-paragraph (4), in respect of the change—

- (a) B must apply for registration as a participant in accordance with article 11;
- (b) A and B must notify the administrator of the change and when it occurred;
- (c) where the change occurs in a footprint year, B must comply with Part 4 of this Order as if B was a participant for the whole of the year in which the change occurs.

(3) Subject to sub-paragraph (4), where the change occurs in an annual reporting year—

- (a) 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; and
- (b) where A has a residual measurement list (“list A”) which includes the residual supplies of B—
  - (i) list A must be amended to exclude the residual supplies of B;
  - (ii) B must compile a residual measurement list from B’s residual supplies in list A.

(4) Where A has a member CCA exemption in respect of B—

- (a) sub-paragraph (2)(a) applies but otherwise sub-paragraphs (2) and (3) do not apply to B;
- (b) where B is—
  - (i) a group of undertakings, B has a group CCA exemption;
  - (ii) not such a group, B has a general CCA exemption;
 and
- (c) subject to article 38, B is exempt from Parts 4 to 7 of this Order for the phase where the applicable exemption applies to B.

### **Joining of a participant or significant group undertaking with a non-participant**

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

- (a) a participant or significant group undertaking (“C”) of a participant becomes a member of a group (“D”); and

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<sup>(34)</sup> Such a determination must be made in accordance with article 74(2).

- (b) D is not a participant.
- (2) Subject to sub-paragraph (6), in respect of the change—
  - (a) D must apply for registration as a participant in accordance with article 11;
  - (b) where C is a participant, C must notify the administrator of the change and when it occurred;
  - (c) where C is a significant group undertaking as a member of a participant, that participant must notify the administrator of the change and when it occurred;
  - (d) where the change occurs in a footprint year, D must comply with Part 4 of this Order but only in respect of those supplies of electricity, gas or fuel which relate to C and as if C was part of D for the whole of the year in which the change occurs;
  - (e) C is a significant group undertaking as a member of D for the phase and as if C was a member of D for the whole of the year in which the change occurs;
  - (f) subject to the registration of D, and where C is a participant, the administrator must cancel the registration of C for the remainder of the phase.
- (3) Subject to sub-paragraph (6), where the change occurs in an annual reporting year—
  - (a) 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 the year;
  - (b) where C is a participant and C had a residual measurement list before the change occurred, D must compile such a list from the residual supplies of C.
- (4) Subject to sub-paragraph (6), sub-paragraph (5) applies where—
  - (a) the change occurs in an annual reporting year; and
  - (b) C is a significant group undertaking of a participant and that participant has a residual measurement list (“list A”) which includes residual supplies of C.
- (5) Where this sub-paragraph applies—
  - (a) list A must be amended to exclude the residual supplies of C;
  - (b) D must compile a residual measurement list from the residual supplies of C in list A.
- (6) Where C is a significant group undertaking of a participant and that participant has a member CCA exemption in respect of C—
  - (a) sub-paragraph (2) applies except paragraphs (b) and (d);
  - (b) sub-paragraphs (3) to (5) do not apply to D;
  - (c) where D is—
    - (i) a group of undertakings, D has a group CCA exemption;
    - (ii) not such a group, D has a general CCA exemption;and
  - (d) subject to article 38, D is exempt from Parts 4 to 7 of this Order for the phase where the applicable exemption applies to D.

### **Joining of a participant as a member of another participant**

- 11.—(1) Sub-paragraphs (2) to (4) apply where the following change occurs—
  - (a) a participant (“E”) becomes a member of a group (“F”); and
  - (b) F is a participant.
- (2) In respect of the change—
  - (a) E and F must notify the administrator of the change and when it occurred; and

- (b) in the notification by F, F must inform the administrator whether or not F requests that E continues as a separate participant.
- (3) Where—
  - (a) F requests that E continues as a separate participant; and
  - (b) the administrator agrees and so notifies E and F,E and F continue as separate participants.
- (4) Where E and F do not continue as separate participants—
  - (a) E is a significant group undertaking as a member of F for the phase and as if E was a member of F for the whole of the year in which the change occurs;
  - (b) subject to the administrator being satisfied that E and F are complying with this Order, the administrator must cancel the registration of E for the remainder of the phase.
- (5) Subject to sub-paragraph (7), sub-paragraph (6) applies where the change occurs in an annual reporting year and E and F do not continue as separate participants.
- (6) Where this sub-paragraph applies and—
  - (a) where—
    - (i) F did not have a residual measurement list; and
    - (ii) E did have a residual measurement list,E's residual measurement list becomes F's list;
  - (b) where E and F each had a residual measurement list before the change occurred, F must amend its list to include the residual supplies from E's list.
- (7) Where E and F do not continue as separate participants and E had a general or group CCA exemption—
  - (a) F has a member CCA exemption in respect of E; and
  - (b) sub-paragraph (6) does not apply.

### **Significant group undertakings transferring to another participant**

- 12.**—(1) Sub-paragraphs (2) to (5) apply where the following change occurs—
- (a) a participant (“G”) consists of a group;
  - (b) a significant group undertaking (“H”) which was a member of G becomes a significant group undertaking as a member of another participant (“J”).
- (2) In respect of the change—
- (a) G and J must notify the administrator of the change and when it occurred;
  - (b) in the notification of J, J must inform the administrator whether or not J requests that H may apply for registration as a separate participant; and
  - (c) if such a request is made, H may make an application to be a participant and if it does, must do so in accordance with article 11.
- (3) Where H is registered as a participant separate from J, H must comply with Part 4 as if H had been a participant for the whole of the year in which the change occurs.
- (4) Where H is not registered as a separate participant, H is treated as if it was a significant group undertaking as a member of J for the whole of the year in which the change occurs.
- (5) Where the change occurs in an annual reporting year and—
- (a) G has a residual measurement list, G must amend its residual measurement list to exclude any residual supplies of H;



- (b) subject to sub-paragraph (6), where H is not registered as a separate participant and—
  - (i) where—
    - (aa) J does not have a residual measurement list; and
    - (bb) G has a residual measurement list including residual supplies of H, J must compile a residual measurement list from those residual supplies of H;
  - (ii) where J has a residual measurement list, J must amend its list to include the residual supplies of H.
- (6) Sub-paragraph (5)(b) does not apply where—
  - (a) H is not registered as a separate participant; and
  - (b) G has a group CCA exemption or had a member CCA exemption in respect of H.
- (7) Where G has a group CCA exemption or had a member CCA exemption in respect of H, J has a member CCA exemption in respect of H.

## SCHEDULE 7

Article 68

### The Registry

#### Setting up accounts

- 1.—(1) The administrator must ensure the Registry allows the following accounts to be held—
  - (a) a compliance account for a participant; and
  - (b) as agreed by it—
    - (i) additional accounts for a participant; and
    - (ii) accounts for third parties.
- (2) The administrator may—
  - (a) limit the number of accounts in respect of a participant or third party; and
  - (b) set up other accounts.
- (3) The administrator must set up one compliance account for a participant where—
  - (a) it has registered an applicant as a participant; and
  - (b) it has completed to its satisfaction the identity checks required under article 70(2).
- (4) The public body or undertaking in whose name an account is held is the account holder.

#### Account holders and information

2. The administrator must ensure that the Registry provides the following information—
  - (a) to an account holder—
    - (i) the number of allowances it holds; and
    - (ii) a summary of any transfer, surrender or cancellation of allowances relating to that account holder made during the previous five years;
  - (b) to a participant, its CRC emissions—
    - (i) where provided, from CRC supplies in its most recent annual report;
    - (ii) from CRC supplies determined under article 47(3); or

- (iii) applied under article 97(4)(a);
- (c) to a participant—
  - (i) the number of allowances in its compliance account which are available to comply with Part 6; and
  - (ii) matters notified to the participant by the administrator.

### **Recording of transfers between accounts**

3. The administrator must ensure that the Registry records the transfer of allowances between accounts made by account holders and to make that record—
- (a) for a transfer made on a working day, if possible that working day or otherwise the following working day;
  - (b) for a transfer made on a non-working day, if possible the following working day or otherwise the next following working day.

### **Updating of accounts**

4. The administrator must ensure that the cancellation and surrender of allowances is recorded in the relevant accounts and that record is made as soon as practicable.

### **Non-compliance accounts and third party accounts**

- 5.—(1) A participant may request the administrator to provide accounts for it in the Registry in addition to a compliance account, on terms agreed by the administrator.
- (2) A person who is not a participant (“a third party”) may request the administrator to provide accounts for it in the Registry on terms agreed by the administrator.
- (3) Such terms must require that the participant or third party complies with any administrative rules drawn up by the administrator under article 68(4).

## SCHEDULE 8

Article 75

### Achievement and performance tables

#### **Absolute change in CRC emissions**

1. The percentage change in the CRC emissions of a participant for an annual reporting year (“year A”) compared to—
- (a) where it exists, the historic average of CRC emissions of that participant; or
  - (b) otherwise, the relevant CRC emissions of that participant for the annual reporting year (“year B”) before year A,
- is the “absolute change” in CRC emissions for year A.

#### **Relative change in CRC emissions**

- 2.—(1) The percentage change in the CRC emissions of a participant per unit of turnover for year A compared to—

- (a) where it exists, the historic average of CRC emissions of that participant per unit of turnover; or
  - (b) otherwise, the relevant CRC emissions of that participant per unit of turnover in year B, is the “relative change” in CRC emissions for year A.
- (2) In sub-paragraph (1), “year A” and “year B” have the meaning given in paragraph 1.

### **Historic average of CRC emissions and reported or determined CRC emissions**

**3.—**(1) In paragraphs 1 and 2, an “historic average of CRC emissions” applies where during the previous five years before year A—

- (a) there are at least two annual reports where the participant reported CRC supplies (“the historic sequence”); and
- (b) those reports have not been found to be inaccurate by the administrator.

(2) The “historic average of CRC emissions” means the average of the CRC emissions in the historic sequence.

(3) In paragraphs 1, 2 and 4, “relevant CRC emissions” means the CRC emissions calculated from the CRC supplies in the annual report, as determined by the administrator under article 47(3) or applied under article 97(4)(a).

(4) In this paragraph—

- (a) “year A” has the meaning given in paragraph 1; and
- (b) an historic sequence exists even where one or more of the years in that sequence are in different phases.

### **Adjustments to CRC emissions**

**4.—**(1) Where any of the following applies to a participant in an annual reporting year—

- (a) a change in its eligibility criteria for a CCA; or
- (b) a change in the application of EU ETS to it,

the participant must notify the change to the administrator within three months of that change.

(2) Sub-paragraph (3) applies where a notification is made under—

- (a) sub-paragraph (1); or
- (b) Parts 1 or 2 or section 2 of Part 3 of Schedule 6.

(3) Where this sub-paragraph applies, the administrator must calculate, in respect of the participants which may be affected by the change, the appropriate adjustments to—

- (a) where it exists, the historic average of CRC emissions; or
- (b) otherwise, the relevant CRC emissions in the relevant annual reporting years.

(4) The adjustments made under sub-paragraph (3) must be applied by the administrator when it calculates absolute change and relative change.

(5) The administrator may make adjustments equivalent to those in sub-paragraph (4) where a participant enters into a new CCA or an existing CCA is modified such that a CCA applies to emissions which would be CRC emissions of the participant.

### **Early action**

**5.—**(1) Sub-paragraphs (2) to (6) apply only to the first phase.

(2) “Early action” is the average of these percentages—

- (a) the percentage which the amount during the first year of the phase of—
    - (i) electricity and gas supplied measured by automatic meters; and
    - (ii) electricity supplied which is a dynamic supply,bears to the amount of all electricity and gas supplied during that year, excluding the supply of electricity measured by a settled half hourly meter required to be installed and the supply of gas measured by a daily meter required to be installed;
  - (b) the percentage which certified CRC emissions during a year of the phase bears to all CRC emissions in that year.
- (3) Where under sub-paragraph (2)(a)—
- (a) all of the electricity is measured by a settled half hourly meter required to be installed; and
  - (b) all of the gas supplied is measured by a daily meter required to be installed,
- the percentage under sub-paragraph (2)(a) is 50%.
- (4) In sub-paragraph (2)(a) “automatic meter” means—
- (a) in respect of electricity—
    - (i) a settled half hourly meter not required to be installed; or
    - (ii) a non-settled half hourly meter;
  - (b) in respect of gas—
    - (i) a daily meter not required to be installed; or
    - (ii) an hourly meter.
- (5) In sub-paragraph (2)(b), “certified CRC emissions” means—
- (a) CRC emissions or emissions calculated in an equivalent way to the calculation of CRC emissions; and
  - (b) where a certification in respect of such emissions is valid on the last day of the relevant year of the phase.
- (6) In sub-paragraph (5), “certification” means certification under—
- (a) the Carbon Trust Standard Rules version 1.0 dated June 2008<sup>(35)</sup>; or
  - (b) such other rules concerning the certification of emissions which the administrator and the participant agree.

## SCHEDULE 9

Article 89

### Powers of entry and inspection

#### SECTION 1

#### **Powers of entry and inspection**

1. The powers of the administrator and an authorised person acting on its behalf are—
  - (a) to enter at any reasonable time any premises which that person has reason to believe it is necessary to enter;

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<sup>(35)</sup> These rules are made by the Carbon Trust Standard Company and are available at: <http://www.carbontruststandard.com/LinkClick.aspx?fileticket=k3Ji2d698p4%3d&tabid=159&mid=561&language=en-GB> . The Carbon Trust Standard Company Limited may be contacted at: 6th Floor, 5 New Street Square, London EC4A 3BF or at CTS@carbontrust.co.uk.

- (b) on entering any premises by virtue of sub-paragraph (a), to—
    - (i) be accompanied by any other person duly authorised by the administrator and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the authorised person’s duty, a constable;
    - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) to make such examination and investigation as may in any circumstances be necessary;
  - (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (f) to take samples, or cause samples to be taken, of any thing found in or on any premises which the authorised person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
  - (g) in the case of any thing found in or on any premises which the authorised person has power to enter and which appears to that person to be in contravention of a provision of this Order, to cause it to be dismantled or subjected to any process or test (but not so as to destroy or damage it, unless that is necessary);
  - (h) in the case of any thing mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
    - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which the authorised person has power to do under that sub-paragraph;
    - (ii) to ensure that it is not tampered with before examination of it is completed; and
    - (iii) to ensure that it is available for use in any proceedings for an offence under this Order;
  - (i) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of that person’s answers;
  - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect, and take copies of, or of any entry in, the records; and
  - (k) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within the other person’s control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by this section.
2. In any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of paragraph 1 must only be effected—

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

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

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

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

**4.** In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, the powers under paragraph 1 have effect subject to section 6(3) of the Atomic Energy Authority Act 1954<sup>(36)</sup> (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911<sup>(37)</sup>).

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

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

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

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

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

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

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

<sup>(36)</sup> 1954 c. 32. Section 6(3) was amended by section 2(3)(a) of the Nuclear Safeguards and Electricity (Finance) Act 1978 (c. 25); section 11(1) of the Nuclear Safeguards Act 2000 (c. 5) and article 4 of and paragraph 29 of Schedule 2 to S.I. 1999/1820.

<sup>(37)</sup> 1911 c. 28.

## SECTION 2

### *Warrants, evidence and compensation*

#### **Entry and inspection under warrant**

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

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

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

10. The conditions mentioned in paragraph 9 are—

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

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

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

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

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

#### **Compensation in respect of entry and inspection**

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

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

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

- (a) it is attributable to the default of the person who sustained it; or

- (b) it is loss or damage in respect of which compensation is payable by virtue of any other enactment.

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

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

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

## SCHEDULE 10

Article 111

### Appeals

1. Except where paragraph 4, 5 or 6 applies, the appeal body means the body provided under paragraph 2 in respect of an appeal referred to in article 111.

2. Under paragraph 1, where the determination, notice or penalty is made or given by—

- (a) the Environment Agency and the determination, notice or penalty relates—
  - (i) only to Wales, the appeal body is the Welsh Ministers;
  - (ii) other than only to Wales, the appeal body is the Secretary of State;
- (b) the Scottish Environment Protection Agency, the appeal body is the Scottish Ministers;
- (c) the Chief inspector, the appeal body is the relevant Northern Ireland department.

3. Paragraph 4 applies where an appeal is made by an applicant or participant which is or includes—

- (a) a government department;
- (b) the Scottish Ministers;
- (c) the Welsh Assembly Government.

4. Where this paragraph applies, the appeal body is an independent person which the following appoints in writing—

- (a) the Secretary of State, in respect of an appeal by a government department;
- (b) the Scottish Ministers, in respect of an appeal by those Ministers;
- (c) the Welsh Ministers, in respect of an appeal by the Welsh Assembly Government.

5. Where an appeal is made by an applicant or participant which is or includes a Northern Ireland department, the appeal body is an independent person which the Department of the Environment appoints in writing.

6. Where a determination, notice or penalty is made or given by—

- (a) the Secretary of State;



- (b) the Scottish Ministers; or
- (c) the Department of the Environment,

the appeal body is an independent person which that body appoints in writing.

7. An appellant must give written notice of the appeal together with a statement of the grounds of appeal to the appeal body and the appeal body must as soon as is reasonably practicable send to the administrator a copy of that notice together with the statement of the grounds of appeal.

8. An appeal must be received by the appeal body no later than 40 days after the date of—

- (a) the determination referred to in article 74(1);
- (b) service of an enforcement notice;
- (c) imposition of the civil penalty.

9. The appeal body may decide an appeal received late.

10. An appellant may withdraw an appeal by notifying the appeal body, and as soon as is reasonably practicable the appeal body must notify the administrator.

11. The bringing of an appeal—

- (a) except where the appeal body has given the appellant notice under paragraph 14, suspends an enforcement notice, financial penalty or publication taking effect;
- (b) does not suspend a determination referred to in article 74(1) or a civil penalty not described in sub-paragraph (a) taking effect.

12. The appeal body may—

- (a) in respect of a determination, enforcement notice or civil penalty—
  - (i) cancel or affirm it; and
  - (ii) if it affirms it, may do so either in its original form or with such modifications as the appeal body sees fit;
- (b) instruct the administrator to do or not to do any thing which is within the power of the administrator.

13. The appeal body may publicise the appeal where it considers it appropriate to do so.

14. The appeal body may—

- (a) adopt such procedures as it sees fit to determine an appeal, taking into account any requests of the parties to the appeal;
- (b) appoint a person to hear an appeal on behalf of that body;
- (c) request a person to make a recommendation in relation to any subject matter of the appeal.

15. On request by the administrator, the appeal body may award the administrator its reasonable costs of an appeal where the appeal body has given the appellant written notice that in its opinion—

- (a) the appeal is frivolous or vexatious or otherwise has no reasonable prospects of success; or
- (b) the appeal is conducted in an unreasonable or vexatious manner.

16. The costs under paragraph 15—

- (a) are those agreed by the parties to the appeal or in default of agreement, as found by the appeal body;
- (b) if unpaid, are recoverable as a civil debt by the administrator.

17. In this Schedule, “independent person” means a person who has no individual interest in the matter subject to the appeal and is independent of the parties to the appeal.

## SCHEDULE 11

Article 112

### Service of documents

1. The provisions of this Schedule apply to the service of a document except where a contrary provision applies under Schedule 9.
2. A document must be in writing.
3. Subject to paragraph 5, a document may be served on or given to a person (which includes a member of an unincorporated association) by—
  - (a) delivering it to that person in person;
  - (b) leaving it at that person's proper address; or
  - (c) sending it by post or electronic means to that person's proper address.
4. For the purposes of paragraph 3, a document is served on or given to a person under paragraph 3 in the case of—
  - (a) a body corporate, where it is served on or given to the director, secretary or clerk of that body;
  - (b) a partnership, where it is served on or given to a partner or a person having control or management of the partnership business;
  - (c) an unincorporated association, where it is served on or given to a person having management responsibilities in respect of the association.
5. A document may be served on an applicant or participant by sending it to the email address provided under paragraph 2, 3(a)(ii), 3(b) or 4 of section 1 of Schedule 5, as applicable to the applicant or participant.
6. Except where paragraph 5 applies, if a person to be served with or given a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept documents of that description, that address must instead be treated as that person's proper address.
7. In paragraphs 3 and 6, "proper address" means in the case of—
  - (a) a body corporate or their director, secretary or clerk—
    - (i) the registered or principal office of that body; or
    - (ii) the email address of the director, secretary or clerk;
  - (b) a partnership or a partner or person having control or management of the partnership business—
    - (i) the principal office of the partnership; or
    - (ii) the email address of a partner or a person having that control or management;
  - (c) any other person, that person's last known address, which includes an email address.
8. For the purposes of paragraph 7, the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.
9. Where—
  - (a) a participant is a group; and
  - (b) the administrator gives any communication to the public body or undertaking in whose name the compliance account is set up under article 73,that communication is made to each member of the group.

*Document Generated: 2023-07-07*

**Draft Legislation:** *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The CRC Energy Efficiency Scheme Order 2010 No. 768*