
STATUTORY INSTRUMENTS

2010 No. 768

CLIMATE CHANGE

The CRC Energy Efficiency Scheme Order 2010

Made - - - - 17th March 2010

Coming into force in accordance with article 1

Whereas:

- (a) the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of the Environment of Northern Ireland have in accordance with section 48 of and paragraph 10 of Schedule 3 to the Climate Change Act 2008(1)—
 - (i) obtained, and taken into account, the advice of the Committee on Climate Change in respect of this Order; and
 - (ii) consulted such persons likely to be affected by this Order as they considered appropriate;
- and
- (b) in accordance with paragraph 11 of Schedule 3 to the Climate Change Act 2008, a draft of the statutory instrument containing this Order has been approved by resolution of each House of Parliament, the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly,

Her Majesty, in exercise of the powers conferred by sections 44 and 46(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008, is pleased, by and with the advice of Her Privy Council, to order as follows:

PART 1

Introduction

CHAPTER 1

General

Citation and commencement

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

The trading scheme: phases and application

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

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

Third to seventh phases: commencement dates

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

(2) This Order does not apply to an organisation which enjoys an exemption or relief from taxes under Schedule 1 to the International Organisations Act 1968(2).

Interpretation

3. In this Order—

“the 2000 Act” means the Freedom of Information Act 2000(3);

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

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

“the Act” means the Climate Change Act 2008;

“the administrator” has the meaning given by article 9;

“allowance” means a tradeable allowance issued under regulations made by the Treasury under section 21 of the Finance Act 2008(4);

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

“annual reporting year” means—

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

“applicant” means—

- (a) a public body or group of public bodies; or
- (b) an undertaking or group of undertakings,

required to submit an application for registration as a participant under Part 2 or Schedule 6;

“authorised supplier” means—

(2) 1968 c. 48. Schedule 1 to the Act was amended by section 55(5) and (7) of the Finance Act 1972 (c. 41) and section 177(1) and paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c. 2).

(3) 2000 c. 36.

(4) 2008 c. 9.

- (a) in respect of electricity, a person who is licensed to supply electricity (or is exempt from requiring a licence to do so) as defined by—
 - (i) section 64(1) of the Electricity Act 1989⁽⁵⁾; or
 - (ii) Article 8(1)(c) of the Electricity (Northern Ireland) Order 1992⁽⁶⁾;
- (b) in respect of gas, a person who is licensed to supply gas (or is exempt from requiring a licence to do so) as defined by—
 - (i) section 48(1) of the Gas Act 1986⁽⁷⁾; or
 - (ii) Article 6(1)(c) of the Gas (Northern Ireland) Order 1996⁽⁸⁾;

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

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

“CCA” means a climate change agreement within the meaning given in paragraph 46 of Schedule 6 to the Finance Act 2000⁽⁹⁾;

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

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

“CCA target” means a target in respect of energy use or carbon emissions under a CCA;

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

“charitable purpose” has the meaning given by—

- (a) section 2 of the Charities Act 2006⁽¹⁰⁾ in relation to England and Wales;
- (b) section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005⁽¹¹⁾ in relation to Scotland;
- (c) section 2 of the Charities Act (Northern Ireland) 2008⁽¹²⁾ in relation to Northern Ireland;

“charge” and “charging” have the meanings given in Part 11;

“Chief inspector” means the Chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003⁽¹³⁾;

“civil penalty” means a penalty which may be imposed under Part 14;

“Community tradeable emissions allowances” has the meaning given by Article 3a of the EUETS Directive;

“compliance account” means the account of a participant from which allowances must be surrendered to the cancellation account in compliance with article 53;

“core emissions” has the meaning given by article 42(3);

“core supply” means a supply of electricity or gas described in Schedule 2;

“CRC” means carbon reduction commitment;

“CRC emissions” has the meaning given by article 50(1);

“CRC supplies” has the meaning given by article 50(2);

(5) 1989 c. 29.

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

(7) 1986 c. 44. Section 48(1) is subject to various amendments.

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

(9) 2000 c. 17.

(10) 2006 c. 50.

(11) 2005 asp 10.

(12) 2008 c. 12.

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

- “day” means a working day unless provided to the contrary;
- “daily meter” applies in relation to a supply of gas and has the meaning given by paragraph 7 of Schedule 2;
- “domestic accommodation” has the meaning given by paragraph 16(3) of Schedule 1;
- “dynamic supply” means a supply of electricity described in paragraph 5 of Schedule 2;
- “early action” has the meaning given by paragraph 5(2) of Schedule 8;
- “electricity generating credit” has the meaning given by article 31(2) but where it applies other than in Part 3, reference to “applicant” in that expression is to be read as a reference to “participant”;
- “enforcement notice” has the meaning given by article 91;
- “EU ETS Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive [96/61/EC](#)(**14**), as amended from time to time;
- “EU ETS emissions” has the meanings given by paragraph 12(2) of Schedule 5;
- “EU ETS installation” means—
- (a) an activity or installation within scope of the EU ETS Directive; and
 - (b) any additional activity not included within Annex I of that Directive but approved in the United Kingdom under Article 24,
- but not an installation approved as excluded in the United Kingdom under Article 27;
- “exemption CCA target period” has the meaning given by article 29;
- “footprint emissions” has the meaning given by article 41;
- “footprint report” has the meaning given by article 39(1)(a);
- “footprint year” means the first year of each phase;
- “franchise” and the related expressions, “franchise agreement”, “franchise premises”, “franchisee” and “franchisor” have the meanings given in section 3 of Schedule 1;
- “fuel” has the meaning given by paragraph 3(3) of Schedule 1;
- “general CCA exemption” has the meaning given by article 33;
- “generated and supplied electricity” has the meaning given by article 31(1)(d);
- “government decision” has the meaning given by paragraph 14 of Schedule 3;
- “group” has the meaning given by—
- (a) paragraph 6 of Schedule 3, in respect of public bodies;
 - (b) paragraph 1 of Schedule 4, in respect of undertakings;
- “group CCA exemption” has the meaning given by article 34;
- “group undertaking” has the meaning given by paragraph 1 of Schedule 4;
- “highest parent undertaking” has the meaning given by paragraph 1 of Schedule 4;
- “hourly meter” applies in relation to a supply of gas and has the meaning given by paragraph 8(1) of Schedule 2;
- “independent college group” has the meaning given by article 21(1)(b)(ii);
- “kWh” means kilowatt hour or hours;

(14) OJ No L 275, 25.10.03, p. 32. The Directive was amended by: Directive [2004/101/EC](#) (OJ No L 338, 13.11.2004, p. 18); Directive [2008/101/EC](#) (OJ No L 8, 13.1.2009, p. 3); Regulation (EC) [No 219/2009](#) (OJ No L 87, 31.3.2009, p. 109); Directive [2009/29/EC](#) (OJ No L 140, 5.6.2009, p. 63).

- “local authority decision” has the meaning given by paragraph 16 of Schedule 3;
- “member CCA exemption” has the meaning given by article 32;
- “MWh” means megawatt hour or hours;
- “non-settled half hourly meter” applies in relation to a supply of electricity and has the meaning given by paragraph 3(1) of Schedule 2;
- “participant” means the following registered by the administrator as a participant—
- (a) a public body or group of public bodies; or
 - (b) an undertaking or group of undertakings,
- which carries out a scheme activity; and where a participant is a group, subject to Schedule 6, the participant constitutes the members from time to time of that group;
- “performance table” has the meaning given by article 77(1);
- “phase” means one of the seven phases of the scheme described in article 2(1);
- “post-qualification period” has the meaning given by article 27;
- “premises” means any—
- (a) land, vehicle or vessel; or
 - (b) plant which is designed to move or be moved whether on roads or otherwise;
- “principal place of activity” means the principal place in the United Kingdom—
- (a) where the applicant or participant carries on the scheme activity applicable to it; or
 - (b) if an applicant or participant carries on more than one scheme activity, where it carries on the main scheme activity;
- “publication” has the meaning given by article 105(3);
- “public function” means any activity carried out by a public body;
- “public body” has the meaning given in section 1 of Schedule 3;
- “qualification day” means the last day of a qualification year;
- “qualification criteria” means that—
- (a) an applicant is supplied with electricity by a settled half hourly meter;
 - (b) qualifying electricity is supplied to it for the purposes of a scheme activity; and
 - (c) the amount of that qualifying electricity satisfies the qualifying amount;
- “qualification year” means—
- (a) in respect of the first phase, the 2008 calendar year;
 - (b) in respect of the second and subsequent phases, the year immediately before the beginning of the phase;
- “qualifying amount” means 6000 MWh or more;
- “qualifying electricity” means electricity supplied to a public body or undertaking in accordance with sections 1 to 5 of Schedule 1—
- (a) measured by a meter described in paragraph 1 of Schedule 2 except a non-domestic meter; or
 - (b) which is a dynamic supply;
- “the Registry” has the meaning given by article 68;
- “relative change” has the meaning given by paragraph 2 of Schedule 8;
- “renewables generation” has the meaning given by paragraph 28 of Schedule 1;

- “residual measurement list” has the meaning given by article 44(4);
- “residual supplies” has the meaning given by article 44(5);
- “ROC” means a renewables obligation certificate issued further to an order made under—
- (a) sections 32 to 32M of the Electricity Act 1989(15); or
 - (b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003(16);
- “scheme” means the trading scheme established by this Order;
- “scheme activity” means to carry on a business or a public function or an activity which has a charitable purpose;
- “settled half hourly meter” applies in relation to a supply of electricity and has the meaning given by paragraph 2(1) of Schedule 2;
- “significant group undertaking” has the meaning given by paragraphs 2 and 4 of Schedule 4;
- “tCO₂” means tonne or tonnes of carbon dioxide;
- “third party” means a person, other than a participant, for whom the administrator has opened an account in the Registry;
- “total emissions” has the meaning given by article 30;
- “transport consumption” has the meaning given by paragraph 19 of Schedule 1;
- “turnover” means—
- (a) where a participant is an undertaking or group of undertakings, its turnover as defined in section 474(1) of the Companies Act 2006(17) as if that section—
 - (i) applied to undertakings as defined in this Order; but
 - (ii) did not apply to turnover arising outside the United Kingdom;
 or
 - (b) where a participant is a public body or group of public bodies, the revenue expenditure of the participant;
- “undertaking” has the meaning given in paragraph 1 of Schedule 4;
- “unit of turnover” means turnover expressed in pounds sterling rounded up to the nearest pound;
- “vessel” means, except under paragraph 22 of Schedule 1, any boat or ship;
- “working day” means 9 am to 5 pm on Mondays to Fridays excluding—
- (a) bank holidays within the meaning of section 1 of the Banking and Financial Dealings Act 1971(18), including those bank holidays in part only of the United Kingdom;
 - (b) Good Friday; and
 - (c) when it falls on a day that would otherwise be a working day, Christmas Day;
- “year” means (except for the qualification year in respect of the first phase) 1st April to the following 31st March, inclusive of those dates.

Supplies and emissions

4. As provided under this Order, Schedule 1 (supplies and emissions) has effect concerning—

(15) 1989 c. 29. Section 32 was substituted by, and sections 32A to 32M added by, section 37 of the Energy Act 2008 (c. 32).

(16) S.I. 2003/419 (N.I. 6); Articles 52 to 55F were substituted by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. (NI) 2009 No 35).

(17) 2006 c. 46.

(18) 1971 c. 80.

- (a) whether a supply is made of electricity, gas or fuel;
- (b) the amount of such a supply; and
- (c) the emissions from such a supply.

Registration and requirements of participants and others

- 5.—(1) Part 2 provides for registration as a participant for a phase of the scheme.
- (2) Part 3 provides for exemptions from certain requirements of this Order.
- (3) Subject to any exemption, in respect of a phase a participant must comply with—
- (a) Part 4 to provide a footprint report and to compile a residual measurement list;
 - (b) Part 5 to provide annual reports on CRC supplies;
 - (c) Part 6 to surrender allowances equal to the participant's CRC emissions;
 - (d) Part 7 to keep and audit records relating to the requirements of Parts 2 to 6.
- (4) The following have effect in respect of Parts 2 to 7—
- (a) Schedule 2 (core supplies);
 - (b) Schedule 3 (public bodies);
 - (c) Schedule 4 (undertakings and significant group undertakings);
 - (d) Schedule 5 (information);
 - (e) Schedule 6 (changes to participants).
- (5) Part 8 provides for persons to provide information and assistance to participants and the administrator.

Powers and duties of the administrator

6. The administrator has the powers and duties set out under the following Parts of this Order—
- (a) Part 9 to administer the scheme;
 - (b) Part 10 to compile and publish achievement and performance tables;
 - (c) Part 11 to impose charges;
 - (d) Part 12 to monitor compliance;
 - (e) Part 13 to enforce failures to comply with this Order.

Penalties, offences and appeals

- 7.—(1) A participant which fails to comply with this Order may be liable under—
- (a) Part 14 to a civil penalty;
 - (b) Part 15 to a criminal penalty.
- (2) Part 16 provides for appeals.

Groups: liability to comply with this Order

- 8.—(1) Paragraph (2) applies where an applicant or a participant is—
- (a) a group of undertakings; or
 - (b) an independent college group.
- (2) Each member of a group described in paragraph (1)—

- (a) is jointly and severally liable to comply with requirements placed on the group under Parts 2 to 14;
 - (b) may be liable to a criminal penalty under Part 15.
- (3) For a group of public bodies (except an independent college group)—
- (a) the body listed in article 73(4) which is a member of that group is liable to comply with Part 2 and not any other member of the group;
 - (b) the body in whose name the compliance account is set up is liable to comply with requirements placed on the group under Parts 4 to 14 and not any other member of the group;
 - (c) subject to article 110, any member of that group may be liable to a criminal penalty under Part 15.

CHAPTER 2

The administrator and co-operation

The administrator

- 9.—(1) Reference to “the administrator” in the provisions which appear in—
- (a) column 1 of the following table, means the Environment Agency;
 - (b) column 2 of the following table, subject to paragraphs (2) and (3), means—
 - (i) the Environment Agency, in respect of England and Wales;
 - (ii) the Scottish Environment Protection Agency, in respect of Scotland;
 - (iii) the Chief inspector, in respect of Northern Ireland.

Table of provisions

<i>Column 1</i>	<i>Column 2</i>
Part 2 except articles 18(1) and 28(1).	Articles 18(1), 28(1), 39(3), 47(3), 64, 70(3), 72 and 74.
Parts 4 to 6 except articles 39(3) and 47(3).	Parts 11 to 16.
Articles 68, 69, 71 and 84.	
Part 10	

- (2) Where the administrator is a participant, reference to “the administrator” in Parts 12 to 14 means, where the participant is—
- (a) the Environment Agency, the Secretary of State;
 - (b) the Scottish Environment Protection Agency, the Scottish Ministers;
 - (c) the Chief inspector, the Department of the Environment.
- (3) The administrator may exercise the powers in Parts 12 to 14 anywhere in the United Kingdom.

Co-operation and provision of information

- 10.—(1) The bodies constituting the administrator must—
- (a) co-operate with each other; and

- (b) provide each other with such of the information provided to or obtained by them under any of Parts 2 to 6, 8 to 10, 12 or 13 of this Order as they may require to enable them to carry out their duties as an administrator under this Order.
- (2) The administrator must provide to a national authority such of the information described in paragraph (1)(b) as that authority may lawfully require in relation to compliance with and enforcement of this Order.

PART 2

Registration as a participant

CHAPTER 1

General

Applications, information and charges

11.—(1) A requirement to apply for registration as a participant means that an application for registration must—

- (a) be made to the administrator and, unless otherwise agreed by the administrator, be made using the Registry; and
- (b) include—
 - (i) the information in section 1 of Schedule 5; and
 - (ii) the charge for registration as a participant under article 81.

(2) When requested by the administrator, the applicant must provide such suitable and up to date evidence of identity as the administrator may require in respect of—

- (a) the intended account holder of the compliance account; and
- (b) the individuals who will access the compliance account.

(3) The administrator may require other information from applicants or any particular applicant in order to effect a registration.

(4) The requirements to apply for registration as a participant under this Part apply in respect of each phase.

Time for applications

12. An application for registration as a participant under this Part must be made in respect of—

- (a) the first phase, on or before 30th September 2010;
- (b) the second and subsequent phases, within 6 months of the beginning of the phase.

Registration and certificates

13.—(1) Where the administrator is satisfied that an application has been duly made, it must—

- (a) register the applicant as a participant;
- (b) issue a certificate of registration to the participant, the certificate to be in such form as the administrator thinks fit.

(2) An applicant registered under paragraph (1) is a participant for the relevant phase, unless the administrator cancels that registration.

(3) The administrator must maintain an up to date list of participants.

CHAPTER 2

Public bodies

Government departments and the devolved administrations

14.—(1) The following public bodies must apply for registration as a participant—

- (a) a government department;
- (b) the Scottish Ministers;
- (c) the Welsh Assembly Government;
- (d) a Northern Ireland Department;
- (e) a public body in respect of which a local authority decision is made.

(2) Where a public body listed in paragraph (1) is a member of a group, paragraph (1) applies to that group.

(3) Paragraph (1) is not satisfied in respect of a body described in sub-paragraphs (a) to (d) where part only of that body is registered as a participant.

Other public bodies

15.—(1) Paragraph (2) applies to a public body except a public body to which article 14 or chapter 3 applies.

(2) Except where a government decision provides to the contrary, for the purposes of articles 16 and 17, whether—

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

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

Public bodies: applications by groups

16.—(1) Paragraph (2) applies to a group of public bodies except a group to which article 14(2) or chapter 3 applies.

(2) Where this paragraph applies, the group must apply for registration as a participant where during the qualification year for the phase or any part of that year, it meets the qualification criteria.

Public bodies: applications other than by groups

17.—(1) Paragraph (2) applies to a public body which is not a member of a group and is not a body to which article 14(1) or chapter 3 applies.

(2) Where this paragraph applies, the public body must apply for registration as a participant in respect of a phase where during the qualification year for that phase or any part of that year, it meets the qualification criteria.

Determinations by the administrator

18.—(1) Subject to paragraph (3), the administrator may determine⁽¹⁹⁾ whether or not a public body is a member of a group.

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

- (2) Paragraph (1) does not apply to a public body or group to which any of the following apply—
- (a) chapter 3;
 - (b) paragraph 7, 8 or 9 of section 2 of Schedule 3;
 - (c) a government decision or local authority decision.

CHAPTER 3

Universities and colleges: England

Universities and colleges: England

- 19.**—(1) This chapter applies to governing bodies of a college of a university and a university—
- (a) described in Part IV of Schedule 1 to the 2000 Act; and
 - (b) where the university is wholly or mainly situated in England.

(2) For the purposes of this chapter, whether a college is a college of a university is determined on the qualification day of the qualification year, whatever applied earlier in that year.

Qualifying electricity

20.—(1) The governing bodies of colleges of a university and the university (“the university and colleges”) are a group for the purposes of paragraph (2) whether or not those bodies have a legal identity separate from each other.

(2) Articles 21 and 22 apply where the university and colleges meet the qualification criteria.

(3) Where the university and colleges do not meet the qualification criteria, none of them are required to apply for registration as a participant in respect of a phase.

Universities and colleges: groups

21.—(1) Where this article applies—

- (a) the governing body of a college of the university which has a legal identity separate from the governing body of the university is “an independent college”;
- (b) for the purposes of article 22—
 - (i) the university and colleges are a group but that group does not include an independent college unless the university and colleges and the independent college otherwise agree;
 - (ii) an independent college which is not part of the group under paragraph (i) may agree with another such independent college to form a group (“an independent college group”).

(2) Any agreement under sub-paragraph (1) must be made before the group makes an application for registration.

Applications

22.—(1) Where this article applies, the following which exist must apply for registration as separate participants in respect of a phase—

- (a) the university and colleges;
 - (b) an independent college group;
 - (c) an independent college which is not a member of (a) or (b).
- (2) The administrator must be notified with the application—

- (a) by the university and colleges—
 - (i) whether or not an independent college is a member of the group; and
 - (ii) if not, the identity of the college;
- (b) by an independent college or an independent college group, the identity of the university.

CHAPTER 4

Undertakings

Groups of undertakings

23.—(1) This article applies to undertakings.

(2) For the purposes of articles 24 to 26—

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

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

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

Undertakings: applications by groups

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

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

Undertakings: applications by significant group undertakings

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

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

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

(3) Where such a request is made—

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

(4) Where—

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

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

Undertakings: applications other than by groups

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

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

Changes to undertakings and groups

27.—(1) Paragraph (2) applies where—

- (a) a requirement to register applies to a group or undertaking under article 24 or 26; and
 - (b) a change described in section 1 of Part 3 of Schedule 6 applies to that group or undertaking after the qualification day but before the group or undertaking makes an application for registration within the time provided under article 12 (“the post-qualification period”).
- (2) Where this paragraph applies—
- (a) a group or undertaking to which article 24 or 26 would otherwise apply must instead register as a participant as provided by section 1 of Part 3 of Schedule 6; and
 - (b) other undertakings affected by such change must comply with that section.

Determinations by the administrator

28. The administrator may determine~~(20)~~ whether or not—

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

PART 3

Exemptions

CCA emissions and target periods

29.—(1) In this Part—

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

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

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

Total emissions

30.—(1) “Total emissions” means—

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

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

with sections 1 to 5 of Schedule 1 but excluding any supplies in respect of which emissions are included under paragraph (i);

and

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

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

Electricity generating credit

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

- (a) an applicant generates electricity;
- (b) the applicant is not issued with a ROC and is not in receipt of a financial incentive made by virtue of section 41 of the Energy Act 2008⁽²¹⁾ in respect of that generation;
- (c) the generation does not occur at a place described in paragraph (3); and
- (d) the electricity generated is supplied to a public body or undertaking and that supply is a supply of electricity under paragraph 1 or 6 of Schedule 1, such electricity being “the generated and supplied electricity”.

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

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

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

(4) In paragraph (3), “hydro-generating station” has the meaning given by article 2(1) of the Renewables Obligation Order 2009⁽²²⁾ and as if that article applied to Scotland and Northern Ireland.

Member CCA exemptions

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

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

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

General CCA exemptions

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

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

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

⁽²¹⁾ 2008 c. 32.

⁽²²⁾ S.I. 2009/785.

Group CCA exemptions

34.—(1) Paragraph (3) applies where—

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

(2) In paragraph (1)—

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

“Y” means—

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

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

Requirements for exemptions to apply: general

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

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

Requirements for exemption to apply: exception

36.—(1) Paragraph (2) applies where—

- (a) a participant does not comply with article 35; and
- (b) an exemption applies to the participant under articles 32 to 34 if the exemption CCA target period means the CCA target period which ends in the footprint year.

(2) Where this paragraph applies and a participant intends that an exemption applies to it, the participant must provide the information in article 35(a) and (b) when it complies with article 39.

Effect of exemptions and records

37.—(1) Subject to article 38—

- (a) except where sub-paragraph (b) applies, as a participant, an applicant is exempt from Parts 4 to 7 of this Order for the phase where a general CCA exemption or a group CCA exemption applies to it;
- (b) where a participant complies with article 36, the participant is exempt from Parts 5 to 7 of this Order for that phase where a general CCA exemption or a group CCA exemption applies to it.

(2) In respect of each year of the phase where the participant is exempt under paragraph (1), it must keep records of the information in paragraph 7 of Schedule 5.

Loss of exemptions and further exemptions

38.—(1) Where—

- (a) a participant has a member CCA exemption; and
- (b) the member to which the exemption applies ceases to be a member of the participant,

the member CCA exemption does not apply for the subsequent years of the phase after the year in which sub-paragraph (b) applies.

(2) Where in a year of a phase, the member of a participant to which a member CCA exemption applies does not have energy use or carbon emissions subject to a CCA target, the member CCA exemption does not apply—

- (a) in the next year of the phase; and
- (b) any subsequent year where the member does not have energy use or carbon emissions subject to a CCA target.

(3) Where in a year of a phase, a participant which has a general CCA exemption does not have energy use or carbon emissions subject to a CCA target, the general CCA exemption does not apply—

- (a) in the next year of the phase; and
- (b) any subsequent year where the participant does not have energy use or carbon emissions subject to a CCA target.

(4) Where in a year of a phase, a participant has a group CCA exemption and—

- (a) paragraph (1) or (2) applies;
- (b) the calculation in article 34(1) is made excluding the members to which a member CCA exemption is not to apply by reason of those paragraphs; and
- (c) by that calculation, a group CCA exemption would not apply,

the group CCA exemption does not apply in the next year of the phase and any subsequent year where by such a calculation, a group CCA exemption would not apply.

(5) Where an exemption does not apply as provided under this article, the participant must notify the administrator of that fact when it provides, as applicable, the footprint report or the annual report.

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

PART 4

Footprint reports and residual measurement lists

Provision of footprint reports

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

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

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

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

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

Member CCA exemptions

40. Where a participant has a member CCA exemption—

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

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

Footprint emissions

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

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

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

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

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

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

- (a) the amount of electricity, gas and fuel supplied to the participant calculated in accordance with sections 1 to 6 of Schedule 1; but
- (b) excluding—
 - (i) supplies of gas and fuel made to an EU ETS installation; or
 - (ii) supplies of electricity, gas and fuel made to a CCA facility to which a member CCA exemption does not apply.

Requirement for residual measurement lists

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

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

- (a) core emissions;
- (b) EU ETS emissions; and
- (c) CCA emissions.

(3) In paragraph (2), “core emissions” means—

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

Residual percentage

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

Content of residual measurement lists

- 44.**—(1) Paragraph (2) applies where a participant is required to compile a residual measurement list under article 42.
- (2) Where this paragraph applies, a participant must compile a list of residual supplies such that the percentage which—
- (a) the emissions from those supplies; and
 - (b) the emissions described in article 42(2),
- bear to footprint emissions is at least equal to the residual percentage referred to in article 43.
- (3) A participant may—
- (a) include in its list of residual supplies more residual supplies than required under paragraph (2);
 - (b) compile a list of residual supplies although it is not required to do so under article 42.
- (4) The list of residual supplies compiled under—
- (a) paragraph (2) including any additional residual supplies under paragraph (3)(a); or
 - (b) paragraph (3)(b),
- is the participant’s residual measurement list.
- (5) “Residual supplies” means supplies which the participant expects to be made to it during the annual reporting years of a phase which if made in the footprint year would be the participant’s footprint supplies other than core supplies.

Compilation of residual measurement lists

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

Changes affecting participants

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

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

PART 5

Annual reports

Provision of annual reports

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

(2) A participant must provide the annual report—

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

(3) Where by 40 days after the due date a participant has failed to provide the annual report, the administrator may determine⁽²⁴⁾ the report.

Member CCA exemptions

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

Annual report

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

- (a) the amount of the supplies under article 50(3);
- (b) whether or not the following apply to the participant—
 - (i) an estimation adjustment; or
 - (ii) renewables generation,

and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation;

- (c) whether or not electricity generating credit applies to the participant and, if so, the amount of the generated and supplied electricity; and
- (d) where the participant wishes to be included in the early action or relative change tables, the information required to determine early action or relative change in relation to the participant.

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

CRC emissions

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

⁽²⁴⁾ Such a determination must be made in accordance with article 74(2).

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

Changes affecting participants

51. Subject to article 37, where changes affecting a participant take place in an annual reporting year as described in Part 1 or 2 or section 2 of Part 3 of Schedule 6—

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

PART 6

Allowances and CRC emissions

Validity of allowances

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

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

but an allowance issued in the first phase is not valid in respect of CRC emissions made in a subsequent phase.

(2) Where—

- (a) a participant is required to acquire and surrender additional allowances under article 97(4) (b) or 100(2)(a) in respect of an annual reporting year; and
- (b) the participant holds an allowance which is valid for the following year (“year 2”),

the participant may surrender the allowance which is valid for year 2 in order to comply with those articles.

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

Allowances and CRC emissions

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

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

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

(2) Paragraph (1) does not apply in respect of a year where the participant's CRC emissions for that year are less than one tCO₂.

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

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

Cancellation of allowances and surplus surrendered allowances

54.—(1) The administrator must in respect of a participant cancel such quantity of allowances in the cancellation account which is equal to the participant's CRC emissions for the relevant year of the phase—

- (a) except where sub-paragraph (b) or (c) applies, as stated in the annual report;
- (b) further to a determination under article 47(3); or
- (c) as provided under article 97(4)(a), 97(5), 100(2)(a), 100(3) or 101(2)(a).

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

- (a) must remain in the cancellation account;
- (b) subject to article 52,—
 - (i) are surrendered in respect of the subsequent year ("year 2") in which the participant is required to comply with article 53; and
 - (ii) must be cancelled before any other allowances which are surrendered.

(3) Where the surplus allowances exceed the quantity required to be surrendered in year 2, subject to article 52, paragraph (2)(b) applies to the years after year 2 until no surplus allowances remain.

Allowances and trading

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

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

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

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

Community tradeable emissions allowances

56.—(1) Subject to paragraph (2), the Environment Agency has the power to acquire Community tradeable emissions allowances as may be required to comply with requirements imposed on it under regulations made under section 21 of the Finance Act 2008⁽²⁵⁾.

(2) No acquisition must be made under paragraph (1) by taking part in an allocation conducted pursuant to section 16 of the Finance Act 2007⁽²⁶⁾.

PART 7

Records

General

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

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

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

- (a) the participant's position in the performance table drawn up for the first year of the scheme in which the participant takes part;
- (b) the participant's first footprint report and first annual report.

(4) Records must be—

- (a) adequate to show to the satisfaction of the administrator that the participant has complied with its obligations under this Order;
- (b) up to date and, so far as possible, kept together; and
- (c) available for inspection by the administrator at any time.

Records: general

58. A participant must maintain records in respect of the information—

- (a) in paragraph 7 and section 2 of Schedule 5, as applicable to the participant;
- (b) used to compile its footprint report and annual report;
- (c) relevant to any of the changes described in Schedule 6.

Records: residual measurements lists and public disclosure

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

(2) Where a participant has informed the administrator that—

- (a) it discloses publicly each year—
 - (i) its emissions reduction targets; and
 - (ii) its performance against them;
- (b) a person with management control has responsibility in respect of those matters; or

⁽²⁵⁾ 2008 c. 9.

⁽²⁶⁾ 2007 c. 11. Section 16 has been amended by section 164(1), (2) and (3) of the Finance Act 2008 (c. 9).

(c) it operates an employee engagement programme to reduce its emissions, the participant must maintain records of the disclosure, the person or the programme, as applicable.

(3) In paragraph (2)(c), “employee engagement programme” means a programme organised or supported by the participant which enables employees of that participant to make regular contributions to the ways in which the participant may reduce the emissions made or caused by the participant.

Audit of records

60.—(1) A participant must carry out regular audits of the records required to be maintained under this Part and do so to ensure its compliance with those requirements.

(2) The satisfactory completion of such an audit must be evidenced in writing (“an audit certificate”).

(3) The audit certificate may be in such form as the participant sees fit but must be—

- (a) signed by a person who exercises management control in respect of the activities of the participant; and
- (b) kept with its records.

PART 8

Information and assistance requirements

Supplies of electricity, gas and fuel under Part 8

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

Information on half hourly meters and amount of supplies

62.—(1) This article applies to a public body or undertaking (“A”) which—

- (a) during a qualifying year of a phase is supplied with electricity measured by a settled half hourly meter; and
- (b) is not required to register, or is not a member of a group required to register, as a participant.

(2) For the purposes of paragraph (1), A is supplied with electricity where that supply is made in accordance with sections 1 to 3 of Schedule 1.

(3) A must provide to the administrator in respect of the qualifying year of a phase the information described in paragraph (4) and do so in respect of—

- (a) the first phase, on or before 30th September 2010; and
- (b) the second and subsequent phases, within 6 months of the beginning of the phase.

(4) The information referred to in paragraph (3) is—

- (a) the information in paragraph 2 of Schedule 5, as applicable to A;
- (b) a list of the settled half hourly meters which measure the supply of electricity to A and the identification numbers of those meters; and
- (c) in respect of the supply of electricity to A measured by settled half hourly meters and non-settled half hourly meters—

- (i) whether or not the supply equalled or exceeded 3000 MWh and, if it did, the amount of the supply; and
- (ii) if the supply exceeded 6000 MWh, why A is not required to register as a participant and which deductions, if any, under section 4 or 5 of Schedule 1 apply.

(5) Unless otherwise agreed by the administrator, the information must be provided using the Registry.

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

63.—(1) A participant may request in writing the following information from those authorised suppliers of electricity or gas which hold a licence to make such a supply—

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

(2) Where such an authorised supplier receives such a request, the supplier must reply in writing within 6 weeks of the end of the year of the phase to which the information relates.

Information from electricity suppliers

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

- (a) it was a notice provided for in paragraph 2 of Schedule 4 to the Act; but
- (b) in respect of such a notice—
 - (i) section 50(2) of the Act did not apply; and
 - (ii) the modifications in paragraph (2) apply.

(2) The modifications referred to in paragraph (1) are that—

- (a) the purpose for which the power may be exercised is to identify public bodies or undertakings which should or should not be participants in the scheme;
- (b) reference to the environmental authority in paragraph 2 of Schedule 4 to the Act is a reference to the administrator;
- (c) in paragraph 4(2) of Schedule 4 to the Act, the date referred to must not be earlier than two months after the date of the notice; and
- (d) paragraphs 4(3) and 5 of that Schedule do not apply.

Assistance by occupiers

65.—(1) Where paragraph 14 of Schedule 1 applies, A may request B (where A and B are as described in that paragraph) to provide A with such reasonable assistance as A may require to comply with Part 2 or to comply with A's obligations as a participant.

(2) B must comply with the request within a reasonable time.

Information and assistance by franchisees

66.—(1) Where paragraph 10 of Schedule 1 applies, the franchisor may request the franchisee to provide it with such reasonable information and assistance as it may require to comply with Part 2 or to comply with the franchisor's obligations as a participant.

(2) The franchisee must comply with the request within a reasonable time.

Information and assistance: public bodies

67.—(1) This article applies where an applicant or a participant is a group of public bodies.

(2) In paragraph (3), “A” means the public body under article 73(4) or (5) in whose name the compliance account in the Registry is, or is to be, set up.

(3) A may request any other member (“B”) of the group to provide A with such reasonable information and assistance as A may require to comply with Part 2 or to comply with its obligations as a participant.

(4) B must comply with the request within a reasonable time.

PART 9

Administration of the scheme

The Registry

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

(2) Communications between—

- (a) the administrator;
- (b) a participant; and
- (c) a third party account holder,

must, so far as possible, take place using the Registry.

(3) The administrator—

- (a) must take reasonable steps to ensure the Registry is available to those entitled to use it during each working day; and
- (b) may make it available at such other times as the administrator believes reasonable.

(4) The administrator may establish administrative rules in relation to the operation of the Registry.

Security of the Registry

69. The administrator—

- (a) must take reasonable steps to ensure that the operation of the Registry is secure from misuse, including use by those not entitled to use it;
- (b) may suspend the operation of the Registry or any account where it believes security of the Registry may be at risk by not doing so;
- (c) must ensure that information which relates to an account holder or a participant (other than information to which article 78 or 80 applies) is not accessible by another account holder or participant whilst using the Registry.

Security and identities

70.—(1) A participant must not allow an individual to operate its compliance account on its behalf unless the administrator has notified it that it is satisfied as to the identity of that individual.

(2) The administrator must take reasonable steps to check the identity of—

- (a) any such individual; and

- (b) the intended account holder of the compliance account.
- (3) The administrator may determine⁽²⁷⁾—
 - (a) to prevent or suspend any individual from operating a compliance account where it has reason to believe that evidence of the individual's identity may be incorrect or incomplete;
 - (b) to refuse to open a compliance account where the administrator has not been able to satisfy itself of the identity of—
 - (i) an individual whom the participant intends will operate that account on its behalf; or
 - (ii) the intended account holder of that account,
 and the administrator has given the participant a reasonable opportunity to provide suitable and up to date evidence of such identity.

Preventing or suspending use of the Registry

71.—(1) The administrator may suspend or restrict a participant's use of the Registry if that participant or any individual acting on its behalf—

- (a) is in breach of this Order or any administrative rules concerning the operation of the Registry; or
- (b) in the belief of the administrator, is using or intends to use the Registry for or in connection with a criminal offence.

(2) The administrator must give notice to the participant of such suspension or restriction except in relation to the registration of an applicant or where paragraph (1)(b) applies.

Cancellation of registrations of participants

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

(2) The administrator must give a participant notice that it intends to cancel its registration and unless the participant agrees otherwise, the registration must not be cancelled earlier than 3 months after the date of the notice.

(3) Cancellation of the registration of a participant must be made by removing the participant from the list of participants held by the administrator and notice that the cancellation has been made must be given in writing to the former participant as soon as possible.

(4) Where the registration of a participant is cancelled, the compliance account must be closed and any allowances held in the account immediately prior to its closure must be cancelled by the administrator.

(5) The administrator is not required to cancel a registration until such time as the administrator is satisfied that the participant has complied with any outstanding requirement under this Order applicable to that participant.

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

Account holders

73.—(1) The account holder in respect of the compliance account for a group of undertakings is, as the applicant or participant chooses—

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

(a) the highest parent undertaking of the group; or
(b) a member of the group,
with its principal place of activity in the United Kingdom.

(2) Where no undertaking exists as provided under paragraph (1), the highest parent undertaking of the group must appoint a representative with a principal place of activity in the United Kingdom as the account holder.

(3) Where a participant is a group of undertakings and it intends to change the account holder—

- (a) the participant must notify the administrator of the intended new account holder;
- (b) that account holder must be an undertaking which complies with paragraph (1) or, as appropriate, paragraph (2); and
- (c) the administrator must approve the change.

(4) Where a group of public bodies includes the following—

- (a) a government department;
- (b) the Scottish Ministers;
- (c) the Welsh Assembly Government;
- (d) a Northern Ireland Department;
- (e) a local authority;
- (f) a university,

subject to paragraph (5), the account holder in respect of the compliance account is that body.

(5) Where—

- (a) a body listed in paragraph (4) is part of more than one group; or
- (b) a public body other than one listed in paragraph (4) is a participant,

the account holder in respect of the compliance account is such body as the administrator agrees.

Determinations

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

- (a) article 18(1), 28(1), 39(3), 47(3), 70(3) or 86(5); or
- (b) paragraph 8 of Part 3 of Schedule 6.

(2) A determination must be made in writing by the administrator and, within 10 days of making the determination, notified to such persons as the administrator decides may be affected by it.

PART 10

Achievement and performance tables, publication and verification

Achievement tables

75.—(1) The administrator must in accordance with this article compile the following tables—

- (a) early action for each of the annual reporting years of the first phase; and
- (b) absolute change and relative change for the annual reporting years in paragraph (2),

and Schedule 8 has effect to calculate early action, absolute change and relative change.

(2) The annual reporting years referred to in paragraph (1)(b) are—

- (a) the second and third annual reporting years of the first phase; and
- (b) the second and subsequent annual reporting years of subsequent phases.
- (3) The tables compiled under paragraph (1) are achievement tables.
- (4) An achievement table must rank participants such that—
 - (a) where a participant (“A”) has achieved x%; and
 - (b) another participant (“B”) has achieved less than x%,
B ranks lower than A.
- (5) Participants which achieve the same percentage have equal ranking.
- (6) A participant’s ranking in an achievement table must be given a score, with the lowest ranking having a score of one.

No information on relative change and early action

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

Performance tables

- 77.—(1) Subject to paragraph (2), the administrator must in accordance with this article compile a table (“a performance table”) in respect of—
- (a) each of the annual reporting years of the first phase; and
 - (b) the second and subsequent annual reporting years of subsequent phases.
- (2) For the first annual reporting year of the first phase, the early action table is also the performance table.
- (3) Except for the first annual reporting year of the first phase, the administrator must—
- (a) for the annual reporting year—
 - (i) calculate a participant’s scores in each applicable achievement table for that year; or
 - (ii) where a participant is not listed in the early action or relative change table for that year, apply to it a score of zero in respect of the table where it does not appear;
 - (b) apply to those scores the applicable weighting percentage; and
 - (c) add those scores as weighted to determine the total weighted score for a participant.
- (4) A performance table must rank participants such that—
- (a) where a participant (“A”) has achieved a total weighted score of x; and
 - (b) another participant (“B”) has achieved a total weighted score less than x,
B ranks lower than A.
- (5) Participants which achieve the same total weighted score have equal ranking.
- (6) In paragraph (3), “the weighting percentage” means the percentage stated in the following table—

Weighting percentages

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

Publication

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

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

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

- (a) the performance table;
- (b) in respect of each participant—
 - (i) its name or its trading or other name by which it is commonly known;
 - (ii) its CRC emissions and CRC emissions per unit of turnover;
 - (iii) absolute change;
 - (iv) relative change;
 - (v) if applicable, early action;
- (c) where a participant is a group of undertakings, the significant group undertakings (if any) which are members of that participant;
- (d) where a significant group undertaking is a participant separate from the group in which it would otherwise be a participant, that fact;
- (e) the achievement tables;
- (f) where applicable, that a participant has informed the administrator that—
 - (i) it discloses publicly each year—
 - (aa) its emissions reduction targets; and
 - (bb) its performance against them;
 - (ii) a person with management control has responsibility in respect of those matters; or
 - (iii) it operates an employee engagement programme to reduce its emissions.

(4) The administrator may publish—

- (a) the information provided in the annual report;
- (b) tables concerning the performance of participants in the scheme, other than the achievement and performance tables.

(5) Where a participant is required to provide for the same year—

- (a) an annual report in respect of the last year of one phase (“the first report”); and
- (b) the second year of the subsequent phase,

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

Verification

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

- (2) Such a request must be made in writing within 40 days of publication.
- (3) Where such a request is made—
 - (a) the verification must be carried out by an independent person;
 - (b) the participant and the administrator must each pay half that person's reasonable costs incurred in carrying out the verification; and
 - (c) the administrator must—
 - (i) seek the verification within 20 days of receiving the request; and
 - (ii) comply with the result of the verification.
- (4) The independent person is such person as the administrator and participant agree or, in default of agreement within a reasonable time, as appointed by the administrator.
- (5) In this article, "verification" means to check that the administrator has correctly calculated any of—
 - (a) the participant's CRC emissions under article 49(2) and any adjustments to those emissions under paragraph 4 of Schedule 8;
 - (b) the scores which are used to rank the participant in the performance table under article 77(3);
 - (c) absolute change and relative change under paragraphs 1 and 2 of Schedule 8;
 - (d) early action under paragraph 5 of Schedule 8,as the participant believes may have been incorrectly calculated.

Further publication

- 80.**—(1) Paragraph (2) applies where—
- (a) an appeal is made against—
 - (i) a determination under article 47(3); or
 - (ii) the penalty imposed under article 97(4)(a)(ii);
 - (b) a request for verification is made under article 79.
- (2) Where this paragraph applies—
- (a) the administrator may publish a list of those participants which have in respect of the annual reporting year made any such appeal or request;
 - (b) subject to paragraph (3), where any such appeal or request results in a participant's position in the performance table being changed, the administrator must as soon as possible publish an amended table.
- (3) Publication under paragraph (2)(b) must not take place until the completion of all such appeals or requests made by all participants.
- (4) The administrator may publish an amended performance table at any time where it discovers any error or omission in the table.

PART 11

Charging

Charges

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

(2) Payment of a charge is not received by the administrator until the administrator has cleared funds for the full amount due and a charge if unpaid may be recovered by the administrator as a civil debt.

(3) A charge must be calculated by reference to the costs of administering the scheme.

(4) The administrator may apply different charges for—

- (a) the same chargeable activity;
- (b) different classes of applicant or participant in respect of the same chargeable activity.

Chargeable activities

82.—(1) In article 81, “chargeable activity” means any of the following—

- (a) registration of a participant;
- (b) maintaining a participant for each year of a phase where it is a participant;
- (c) establishing an account, other than a compliance account;
- (d) maintaining such account for each year of a phase where it is required;
- (e) making a determination under article 39(3) or 47(3).

(2) The administrator—

- (a) must require the charge for registration as a participant to be paid before it makes the registration;
- (b) in respect of any other charge, may require it to be paid before it carries out the relevant chargeable activity;
- (c) is not required to reimburse a charge paid where—
 - (i) the chargeable activity is not completed; or
 - (ii) an applicant or participant liable to pay it does not remain within the scheme for all the period in respect of which the charge is payable or has been calculated.

Amount of charges

83.—(1) The amount of a charge payable under article 81(1) is that set out in—

- (a) version 1 of the document named “CRC Energy Efficiency Scheme Charges”**(28)** made available by the administrator on or before this Order is made; or
- (b) any replacement or revision of that document (“revised charging document”).

(2) Article 81(3) must be complied with in respect of the amount of a charge under paragraph (1).

(28) The document is available on behalf of all the administrators from the Environment Agency at, National Customer Contact Centre, PO Box 544, Rotherham S60 1BY or from www.environment-agency.gov.uk/business/regulation/31857.aspx.

Revised charges

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

Collection and remittance of charges

- 85.**—(1) An administrator (other than the Environment Agency) must pay to the Agency any charge received by it.
- (2) The Environment Agency—
- (a) may collect a charge on behalf of another administrator;
 - (b) must remit charges received to the Secretary of State or, where the Secretary of State directs, as directed to—
 - (i) the Scottish Ministers;
 - (ii) the Welsh Ministers; or
 - (iii) the Department of the Environment.

PART 12

Monitoring compliance

Compliance notices

- 86.**—(1) The administrator may request a person to provide it with such information as it believes it requires in relation to monitoring compliance with Parts 2 to 11 of this Order.
- (2) The administrator must request the information referred to in paragraph (1) by a written notice (“a compliance notice”) served on the person to whom it is addressed.
- (3) A compliance notice may be in such form as the administrator sees fit but must state the date by which compliance with the notice is required.

- (4) A compliance notice may be varied or revoked in writing by the administrator at any time.
- (5) Where a person—
 - (a) fails to comply with a compliance notice; or
 - (b) in the opinion of the administrator, supplies incomplete or inaccurate information,the administrator may instead determine⁽²⁹⁾ the information requested.

Inspections

- 87.**—(1) Subject to the following paragraphs, the administrator may inspect any premises and anything in or on those premises in order to monitor compliance with Parts 2 to 11 of this Order.
- (2) Reasonable prior notice must be given before exercising the power of inspection.
 - (3) A person in control of the premises to which the administrator requires access must allow the administrator to have access to those premises.
 - (4) A person acting on behalf of the administrator may, when inspecting premises,—
 - (a) require the production of any record;
 - (b) take measurements, photographs, recordings or copies of any thing;
 - (c) require any person at the premises to provide facilities and assistance to the extent that is within that person’s control.
 - (5) An administrator may delegate another body which is an administrator to exercise the power of inspection on its behalf.
 - (6) The power of inspection does not apply to—
 - (a) a prohibited place for the purposes of the Official Secrets Act 1911⁽³⁰⁾; or
 - (b) any other premises to which the Crown restricts access on the grounds of national security, except to the extent agreed by the person in control of such place or premises.

PART 13

Enforcement

Powers of the administrator in respect of enforcement

88. The powers of enforcement in this Part may be exercised where the administrator reasonably believes that there has been a failure (except in respect of this article) to comply with a provision of this Order.

Authorised persons

- 89.**—(1) The administrator may—
 - (a) exercise the powers of entry and inspection in Schedule 9 and authorise in writing such persons (“authorised persons”) who appear suitable to act on its behalf to do so;
 - (b) make such authorisation subject to any limitations or conditions as the administrator sees fit.
- (2) Paragraph (3) applies in respect of—

⁽²⁹⁾ Such a determination must be made in accordance with article 74(2).

⁽³⁰⁾ 1911 c. 28.

- (a) any of the bodies which comprise the administrator; and
- (b) a person authorised by such a body to exercise any of the functions of that body otherwise than under this Order.

(3) Where this paragraph applies, a person referred to in paragraph (2)(b) is an authorised person for the purposes of paragraph (1)(a) in respect of that body unless the administrator provides otherwise.

Notices to provide information: compliance with articles 58 and 59

90. The administrator may, by a written notice served on a participant, require that participant—

- (a) to furnish information in relation to a failure or suspected failure to comply with article 58 or 59; and
- (b) to do so in the form specified in the notice and within such period following service of the notice or at such time as is specified in the notice.

Enforcement notices

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

- (2) An enforcement notice must be in writing and specify—
 - (a) the provision of this Order in respect of which there has been a failure;
 - (b) the matters constituting the failure;
 - (c) the steps that must be taken to remedy the failure; and
 - (d) the period within which those steps must be taken.
- (3) An enforcement notice may be withdrawn at any time.
- (4) If a person fails to comply with an enforcement notice, the administrator—
 - (a) may do what that person was required to do; and
 - (b) may recover from an applicant or participant served with a notice the costs of doing so.

PART 14

Civil penalties

Civil penalties

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

Recovery of civil penalties

93.—(1) Except for a financial penalty, a civil penalty has effect once the notice of that penalty is given unless that notice provides otherwise.

(2) A financial penalty—

- (a) is due 60 days after notice of that penalty is given; and
- (b) if unpaid, is recoverable as a civil debt by the administrator.

Waiver and modification of civil penalties

94.—(1) Paragraph (2) applies in respect of a person (“A”) on whom a civil penalty may be or has been imposed and where the administrator is satisfied that A has provided evidence to the administrator within a reasonable time that—

(a) A took all reasonable steps—

- (i) to comply with the relevant provision of this Order; or
 - (ii) to rectify any failure in compliance as soon as it came to A’s notice;
- and

(b) in all the other circumstances it is reasonable to exercise the powers in paragraph (2) in relation to A.

(2) Where this paragraph applies, the administrator may—

- (a) waive a penalty;
- (b) allow additional time to pay;
- (c) impose a lower financial penalty or substitute a lower financial penalty where one has already been imposed; or
- (d) modify the application of a publication or blocking penalty.

Failures in respect of registration

95.—(1) The penalties in paragraph (2) apply where a public body or undertaking—

(a) fails to apply for registration as a participant contrary to—

- (i) article 11; or
- (ii) Schedule 6, where an application for registration is required under that Schedule;

or

(b) applies late for registration as a participant contrary to—

- (i) article 12; or
- (ii) paragraph 2(1) of Part 1, paragraph 2(1) of Part 2 or paragraph 1 or 7 of Part 3 of Schedule 6, where an application for registration is required under those Parts of that Schedule.

(2) The penalties are—

(a) the financial penalties of—

- (i) £5000; and
- (ii) £500 for each day until the application for registration is made, subject to a maximum of 80 days;

and

(b) publication.

(3) The penalties in paragraph (4) apply where a public body or undertaking fails to report details of each settled half hourly meter under—

- (a) paragraph 6 of Schedule 5 where an application for registration is required under Part 2 or Schedule 6; or
 - (b) paragraph 3(4) of Part 3 of Schedule 6.
- (4) The penalties are—
- (a) the financial penalty of £500 for each meter not reported; and
 - (b) publication.

Failures in respect of footprint reports

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

- (a) fails to provide a footprint report contrary to article 39(1); or
 - (b) provides late a footprint report contrary to article 39(2).
- (2) The penalties are—
- (a) a financial penalty of £5000 and publication; and
 - (b) where the report is provided—
 - (i) no more than 40 days after the due date, a financial penalty of £500 for each day the report is provided after the due date; or
 - (ii) more than 40 days after the due date or not at all, a financial penalty of £40,000.

Failures in respect of annual reports

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

- (a) fails to provide an annual report contrary to article 47(1); or
 - (b) provides late an annual report contrary to article 47(2)(b).
- (2) The penalties are—
- (a) a financial penalty of £5000 and publication; and
 - (b) where the report is provided—
 - (i) no more than 40 days after the due date, a financial penalty of £500 for each day the report is provided after the due date; or
 - (ii) more than 40 days after the due date or not at all, a financial penalty of £40,000..

(3) Paragraphs (4) and (5) apply where the annual report is provided more than 40 days after the due date or not at all.

- (4) Where this paragraph applies, the following additional penalties apply to the participant—
- (a) the CRC emissions of the participant for the year to which the annual report relates are—
 - (i) double the CRC emissions reported in the annual report of the previous year; or
 - (ii) where no such report exists, double the CRC emissions which the administrator calculates the participant made in the year for which the annual report is not provided;
 - (b) the participant must immediately acquire allowances and surrender them in accordance with Part 6 equal to the CRC emissions which apply under sub-paragraph (a) (or such additional allowances having regard to any allowances surrendered on time for the annual reporting year);

- (c) a financial penalty of £40 per tCO₂ of so much of the CRC emissions which apply under sub-paragraph (a) but—
 - (i) deducting the emissions represented by those allowances (if any) which are surrendered by the participant on time for the year to which the annual report relates; and
 - (ii) before the doubling is applied;
 - (d) for the annual reporting year, the participant achieves the lowest ranking in the achievement and performance tables; and
 - (e) blocking.
- (5) Where this paragraph applies and a participant—
- (a) fails to comply with paragraph (4)(b) by the 31st March after the annual report was due; and
 - (b) continues in the scheme,

the allowances required to be surrendered under paragraph (4)(b) are added to the quantity of allowances required to be surrendered in the next year that compliance with Part 6 is required.

Failures to provide information or notifications

- 98.**—(1) The penalties in paragraph (2) apply where a participant—
- (a) fails to provide the information in section 1 of Schedule 5 where required under Part 2 or Schedule 6;
 - (b) in purported compliance with the requirements in sub-paragraph (a), provides inaccurate information;
 - (c) fails to provide a notification to the administrator as required under—
 - (i) article 38(5); or
 - (ii) Part 1, 2 or 3 of Schedule 6.
- (2) The penalties are—
- (a) the financial penalty of £5000 and publication; and
 - (b) where the participant provides inaccurate information and—
 - (i) achieves a higher position in the performance table than it would have done had it provided the information accurately; and
 - (ii) in consequence the participant received a grant under section 53(1)(b) of the Act from the Secretary of State which is greater than it would otherwise have done, a penalty of double the amount of the grant which the participant should not have received.

Inaccurate footprint reports and annual reports

- 99.**—(1) The penalties in paragraph (3) apply where a participant provides an inaccurate—
- (a) footprint report contrary to article 39; or
 - (b) annual report contrary to article 47.
- (2) In paragraph (1), “inaccurate” means where any of the supplies or emissions reported differ by more than 5% from the supplies or emissions which should have been reported, ignoring any estimation adjustment under paragraph 26 or 27 of section 6 of Schedule 1.
- (3) The penalties are—

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

(4) Where the provision of an inaccurate footprint report causes a participant to provide an inaccurate annual report, a penalty must be imposed only in respect of the former.

Failures to surrender allowances contrary to Part 6

100.—(1) The penalties in paragraphs (2) and (3) apply where—

- (a) a participant fails to surrender sufficient allowances contrary to Part 6; and
- (b) that failure is apparent to the administrator at the time compliance is required,

but do not apply where a penalty is imposed under article 97(4) or (5).

(2) The penalties are—

- (a) the participant must—
 - (i) immediately acquire such additional allowances as are equal to the amount which should have been surrendered (“the shortfall allowances”); and
 - (ii) surrender the shortfall allowances in accordance with Part 6;
- (b) a financial penalty of £40 per tCO₂ of so much of the emissions represented by the shortfall allowances;
- (c) publication; and
- (d) blocking.

(3) Where a participant—

- (a) fails to comply with paragraph (2)(a) by the 31st March after the surrender should have been made; and
- (b) continues in the scheme,

the shortfall allowances are added to the quantity of allowances required to be surrendered in the next year that compliance with Part 6 is required.

Later discovered failures to surrender allowances contrary to Part 6

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

- (a) by reference to its annual report, a participant complied with Part 6;
- (b) the administrator finds, within five years of the date on which compliance with Part 6 is required in respect of that report, that the participant reported fewer CRC supplies in that report than it should have done; and
- (c) in consequence, the participant surrendered fewer allowances than it should have done to comply with Part 6 (“the shortfall allowances”).

(2) The penalties are—

- (a) where the participant is a participant at the time paragraph (1)(b) applies—
 - (i) the shortfall allowances are added to the quantity of allowances required to be surrendered in the next annual reporting year that the shortfall is found; and
 - (ii) publication;

or

- (b) where the participant is not a participant at the time paragraph (1)(b) applies, a financial penalty which represents the value of the shortfall allowances.

(3) The value under paragraph (2)(b) means the value of allowances in the auction or sale of allowances by the Environment Agency immediately before the shortfall was found.

Failures to maintain records

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

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

(2) The penalties are—

- (a) a financial penalty at the rate of £40 per tCO₂ of so much of the CRC emissions of the participant in the annual reporting year immediately preceding the year in which the non-compliance is discovered; and
- (b) publication.

(3) Where a participant fails to keep records as provided by article 59, the penalties are a financial penalty of £5000 and publication.

Failures to provide information on half hourly meters under article 62

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

Failures to provide information under article 64

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

- (a) the administrator has served a notice as provided under article 64 on an electricity supplier or distributor; and
- (b) at least one previous such notice has not been complied with by that supplier.

(2) The penalties are—

- (a) a financial penalty of £500,000 or, if lower, 0.5% of the supplier's turnover; and
- (b) publication.

Blocking and publication

105.—(1) The administrator may impose the penalty of blocking until—

- (a) the failure is remedied; and
- (b) any financial penalty imposed in respect of the same failure is paid.

(2) Publication—

- (a) must not take place until the time to appeal against the penalty under Part 16 has expired and—
 - (i) no appeal against the penalty has been made; or
 - (ii) where an appeal against the penalty has been made and the participant is unsuccessful in that appeal, until after the disposal of that appeal;
- (b) lasts for one year but the administrator may impose the penalty for a longer period, if it believes the seriousness of the failure justifies such longer period.

(3) In this Part—

- “blocking” means to prevent or restrict the operation of an account of a participant;
“publication” means to publish on a part of the Registry which is accessible to the public—
- (a) the name of the participant; and
 - (b) details of the failure in respect of which a civil penalty has been imposed.

PART 15

Criminal offences and penalties

Offences

- 106.**—(1) It is an offence for a person—
- (a) intentionally to obstruct an authorised person in the exercise of the powers or duties of the authorised person under Schedule 9; or
 - (b) to make a statement—
 - (i) which that person knows to be false or misleading in a material particular; or
 - (ii) recklessly and which is false or misleading in a material particular,where the statement is made in purported compliance with a provision of this Order.
- (2) It is an offence for a person—
- (a) to fail to comply with an enforcement notice;
 - (b) where an authorised person exercises the powers or duties under Schedule 9—
 - (i) to fail or refuse to provide facilities or assistance or to permit any inspection, when reasonably required by an authorised person; or
 - (ii) to prevent any other person from appearing before an authorised person or answering any question to which an authorised person may require an answer.
- (3) It is a defence for a person charged with an offence under paragraph (2) to prove that such person had a reasonable excuse for the matters charged.
- (4) It is an offence for a person to pretend to be an authorised person.
- (5) It is an offence for a person in control of any premises to refuse to allow the administrator access to those premises contrary to article 87(3) where such access is reasonably required.

Penalties

- 107.**—(1) A person guilty of an offence under article 106(1)(b) or (2)(a) is liable—
- (a) in England and Wales or Northern Ireland—
 - (i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 3 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;
- and
- (b) in Scotland—
 - (i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 12 months, or both;

- (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.
- (2) A person guilty of an offence under article 106(1)(a), (2)(b), (4) or (5) is liable—
 - (a) in England and Wales or Northern Ireland—
 - (i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 3 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;
 - and
 - (b) in Scotland—
 - (i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 12 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.

Bodies corporate

108.—(1) Where an offence under this Part is committed by a body corporate and—

- (a) it is committed with the consent or connivance of an officer; or
- (b) it is attributable to any neglect on the officer's part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) "Officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate.

Scottish partnerships

109.—(1) Where an offence under this Part is committed by a Scottish partnership and—

- (a) it is committed with the consent or connivance of a partner; or
- (b) it is attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) "partner" includes a person purporting to act as a partner.

The Crown

110.—(1) This Order applies to the Crown but no contravention of it by the Crown makes the Crown criminally liable.

(2) Notwithstanding paragraph (1), this Order applies to persons in the public service of the Crown as it applies to other persons.

PART 16

Appeals, service of notices and national security

Appeals

111. In accordance with Schedule 10—

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

Service of documents and periods to comply

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

National security

113. No provision of this Order requires the Crown to provide information to the administrator or to any other person where to do so would, in the opinion of the person who holds or controls the information, be contrary to the interests of national security.

Judith Simpson
Clerk of the Privy Council

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)—

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Statutory Instruments are not carried in their revised form on this site.

- (a) has the meaning given in section 75(2) of the Environmental Protection Act 1990(31); 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(32) 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

(31) 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.

(32) 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⁽³³⁾; 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⁽³⁴⁾; or

(33) 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).

(34) 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⁽³⁵⁾ 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⁽³⁶⁾ 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⁽³⁷⁾ 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⁽³⁸⁾; or

⁽³⁵⁾ 1960 c. 62.

⁽³⁶⁾ 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.

⁽³⁷⁾ 1963 c. 17.

⁽³⁸⁾ 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(39).

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(40);

(ii) in Scotland, Part II of the Housing (Scotland) Act 1987(41);

(iii) in Northern Ireland, Part II of the Housing (Northern Ireland) Order 1988(42);

(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;

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

(40) 1996 c. 52. Part VII is subject to various amendments under Schedule 1 to the Homelessness Act 2002 (c. 7).

(41) 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).

(42) 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⁽⁴³⁾ 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⁽⁴⁴⁾;
 (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⁽⁴⁵⁾;

“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.

⁽⁴³⁾ 1993 c. 43.

⁽⁴⁴⁾ 1994 c. 22.

⁽⁴⁵⁾ 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⁽⁴⁶⁾.

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.

SECTION 7

⁽⁴⁶⁾ Public lighting as described in this paragraph is the responsibility of Northern Ireland Roads Service, an executive agency of the Department for Regional Development.

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⁽⁴⁷⁾; 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 tCO₂ from an amount of electricity, gas or fuel supplied is found by applying to that amount the relevant conversion factor.

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

Conversion factors

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, 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.

(47) 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⁽⁴⁸⁾;
- (b) in Northern Ireland, a licence within the meaning of Article 10(1) or (2) of the Electricity (Northern Ireland) Order 1992⁽⁴⁹⁾.

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.

⁽⁴⁸⁾ 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).

⁽⁴⁹⁾ 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⁽⁵⁰⁾ or in Northern Ireland by a licence holder under Article 3(1) of the Gas (Northern Ireland) Order 1996⁽⁵¹⁾.

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.

⁽⁵⁰⁾ 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.

⁽⁵¹⁾ 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⁽⁵²⁾ (“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⁽⁵³⁾ (“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⁽⁵⁴⁾.

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;

⁽⁵²⁾ 2000 c. 36.

⁽⁵³⁾ 2002 asp 13.

⁽⁵⁴⁾ 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⁽⁵⁵⁾;
- (b) a city technology college or city college for the technology of the arts within the meaning of section 482 of that Act as originally enacted,

is a public body.

(2) Where—

- (a) a proprietor described in sub-paragraph (1) is the proprietor of more than one Academy or college; and
- (b) those Academies or colleges are situated in more than one local authority area,

the proprietor is a separate public body in respect of those Academies or colleges in different local authority areas.

(3) Where a proprietor would be required to register as a participant under Part 2—

- (a) if it were not a public body under sub-paragraph (1); and
- (b) excluding the scheme activities in respect of which it is such a public body,

the proprietor is, as applicable, a separate public body or undertaking in respect of its other scheme activities.

Public bodies: one public body part of another

5.—(1) Except where paragraph 4(2) or (3) applies, where a public body (“A”) is part of another public body (“B”)—

- (a) A is not a public body; and
- (b) B including A is a public body.

(2) A government department is not part of another government department.

SECTION 2

Public bodies: groups

Groups and members

6. In relation to public bodies—

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

(55) 1996 c. 56. Section 482 was amended by section 65(1) of the Education Act 2002 (c. 32).

- (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(56)”.

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(57) (“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(58) which funds that school.

(56) 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).

(57) 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)).

(58) 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⁽⁵⁹⁾, 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).

⁽⁵⁹⁾ 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⁽⁶⁰⁾ 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),

⁽⁶⁰⁾ 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⁽⁶¹⁾.

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.

⁽⁶¹⁾ 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(62), 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
 - (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

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

- (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(63) 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.
- (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(64)—
 - (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.

(63) 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).

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

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
 - (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⁽⁶⁵⁾; 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;
 - (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);

⁽⁶⁵⁾ 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.

- (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⁽⁶⁶⁾ (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911⁽⁶⁷⁾).

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.

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

⁽⁶⁶⁾ 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.

⁽⁶⁷⁾ 1911 c. 28.

- (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 15, 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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes in the United Kingdom an emissions trading scheme in respect of greenhouse gases under sections 44 and 46(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008 (c. 27). It applies to direct and indirect emissions from supplies of electricity, gas and fuel by public bodies and undertakings.

PART 1

By article 2, the trading scheme is established for seven phases, the first phase is of three years and commences 1st April 2010. Subsequent phases are of seven years, the second phase commences on 1st April 2011 and subsequent phases commence on each fifth anniversary of 1st April 2011.

Article 3 lists definitions used in the Order, including that participants required to comply with this Order means public bodies defined in Schedule 3 and undertakings defined in Schedule 4, where such bodies or undertakings carry on a business, a charitable activity or a public function (“a scheme activity”).

Articles 4 to 7 set out obligations on participants and powers and duties of the administrator under this Order and provide that supplies of electricity, gas and fuel are defined under Schedule 1. Article 8 provides for liability to comply with this Order for groups of public bodies and undertakings.

Article 9 sets out in respect of the provisions of this Order when the Environment Agency, the Scottish Environment Protection Agency and the Chief inspector are the administrator. Article 10 provides for co-operation between those bodies and national authorities.

PART 2

Article 11 provides how an application for registration as a participant must be made and article 12 by when that application must be made. Under article 13, a certificate of registration is provided to a participant whose application for registration is duly made and a list of participants must be maintained by the administrator.

Article 14 provides for applications for registration to be made by government departments, the devolved administrations and certain local authorities and groups including those bodies. Article 15 sets out when a group of other public bodies exists for the purposes of articles 16 and 17 and those articles provide for registration by public bodies and groups of those bodies not subject to article 14. Under article 18, the administrator may determine whether or not a public body is a member of a group.

Under articles 19 to 22, separate provision is made for the registration of colleges of a university and universities in England.

Article 23 sets out when a group of undertakings exists for the purposes of articles 24 to 26. Articles 24 and 26 provide for applications for registration by groups of undertakings and undertakings not part of a group. Article 25 provides for applications for registration by those undertakings which would have been required to register on their own were they not part of a group (“significant group undertakings”).

Article 27 provides for different provisions for applications for registration by undertakings where the organisational changes described in section 1 of Part 3 of Schedule 6 take place. Under article 28, the administrator may determine whether or not an undertaking is a member of a group and whether or not article 27 applies.

PART 3

Article 29 sets out definitions in relation to exemptions under Part 3, article 30 defines total emissions and article 31 electricity generating credit. Articles 32 to 34 provide for types of exemption related to emissions under climate change agreements. Articles 35 and 36 set out how to claim an exemption. Article 37 provides for the effect of exemptions in relation to the requirements of Parts 4 to 7 of the Order and article 38 provides how an exemption may be lost.

PART 4

Article 39 requires a participant to provide a footprint report concerning supplies during a footprint year and provides for the administrator to determine such a report if the participant fails to do so. Article 40 sets out the effect of a member CCA exemption in relation to calculating footprint emissions defined in article 41. Article 42 provides where a residual measurement list is required and article 43 for the definition of the residual percentage. Article 44 defines a residual measurement list. Article 45 provides by when such a list must be compiled. Under article 46, where organisational changes described in Part 1 or 2 or section 2 of Part 3 of Schedule 6 occur, the requirements in that Schedule must be complied with.

PART 5

Article 47 requires a participant to provide an annual report concerning supplies during an annual reporting year and provides for the administrator to determine such a report if the participant fails to do so. Article 48 sets out the effect of a member CCA exemption in relation to calculating CRC supplies defined in article 50. Article 49 provides for the content of an annual report. The administrator must calculate CRC emissions using the information on supplies in the annual report or as it determines. Under article 51, where organisational changes described in Part 1 or 2 or section 2 of Part 3 of Schedule 6 occur, the requirements in that Schedule must be complied with.

PART 6

Article 52 provides for the validity of allowances for the purposes of compliance with the provisions of article 53 which require allowances to be surrendered by a participant equal to its CRC emissions in an annual reporting year. Article 54 provides for the cancellation of allowances surrendered and for surplus surrendered allowances. Under article 55 the administrator must maintain records in relation to allowances. Article 56 defines Community tradeable emissions allowances.

PART 7

Articles 57 to 60 provide for the maintenance and audit of records.

PART 8

Article 61 defines supplies in relation to Part 8. Article 62 requires public bodies and undertakings which are not participants to provide details in relation to electricity supplies. Under article 63, a participant may request information on electricity and gas supplied to it. The administrator may require information from electricity suppliers under article 64. Occupiers of premises must give assistance to participants under article 65 and franchisees must give information and assistance to franchisors under article 66. Members of public bodies must give information and assistance to participants under article 67.

PART 9

Article 68 provides for the Registry to be established, article 69 provides for security of the Registry, article 70 contains provisions about access to the Registry and article 71 provides for preventing or suspending a person using the Registry.

Article 72 sets out how a registration as a participant may be cancelled where the participant ceases to carry on a scheme activity. Article 73 defines account holders. Article 74 provides how a determination by the administrator under the provisions listed in that article must be carried out.

PART 10

The administrator must compile achievement tables in accordance with articles 75 and 76 and compile performance tables under article 77. Publication of tables and verification of a participant's position in a table are provided under articles 78 to 80.

PART 11

Article 81 allows the administrator to charge for certain activities set out in article 82 and sets out when a charge must be paid and how it must be calculated. Articles 83 and 84 provide for the amounts of charges and revisions to those amounts. Article 85 provides for the collection and remittance of charges.

PART 12

The administrator may request information concerning compliance with this Order under article 86 and may do so by way of a compliance notice set out in that article. The administrator may inspect premises in relation to monitoring compliance under article 87.

PART 13

Articles 88 to 91 provide powers to the administrator to enforce this Order where a failure of compliance arises.

PART 14

By articles 92 to 105, the administrator may impose civil penalties for failures to comply with provisions of this Order. A penalty may be financial, require additional allowances to be acquired and surrendered or increase what must be regarded as the amount of a participant's emissions. Use of accounts in the Registry may be blocked and failure of compliance may be publicised. Under article 94, the administrator has a discretion to waive penalties.

PART 15

Criminal offences are imposed under article 106 and penalties for those offences are set out in article 107. Article 108 deals with offences by corporate bodies and article 109 with offences by Scottish partnerships. Article 110 provides for application of this Order to the Crown.

PART 16

Article 111 sets out where an appeal arises, article 112 provides for service of documents and article 113 for national security.

SCHEDULES

Schedule 1 defines supplies and emissions. Schedule 2 defines core supplies.

Schedule 3 defines public bodies and Schedule 4 undertakings and significant group undertakings.

Schedule 5 provides for information required on an application for registration as a participant and in the footprint report.

Schedule 6 sets out organisational changes before and after a phase of the scheme and requirements in relation to those changes.

Schedule 7 provides for requirements of the Registry in relation to Part 9 of this Order.

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Schedule 8 sets out requirements in relation to achievement and performance tables under Part 10 of this Order.

Schedule 9 sets out powers of the administrator and authorised persons acting on behalf of the administrator under Part 13 of this Order.

Schedule 10 sets out appeal bodies and procedures and Schedule 11 provides for the service of documents under Part 16 of this Order.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Climate Change Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2HH and is annexed to the Explanatory Memorandum which is available alongside this Order on the OPSI website.