

EXPLANATORY MEMORANDUM TO
THE CLIMATE CHANGE AGREEMENTS (ADMINISTRATION) REGULATIONS 2012
2012 No. 1976

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The purpose of this statutory instrument is to appoint the Environment Agency as the administrator of the climate change agreement (CCA) scheme in relation to CCA's which are entered into after the date on which the statutory instrument comes into force, and to set out the powers and duties of the administrator in carrying out its administrative functions.

3. **Matters of special interest to the House of Commons Select Committee on Statutory Instruments or the Select Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 Section 30 and Schedule 6, Finance Act 2000 make provision for a climate change levy to be charged on certain supplies of energy. Part IV, Schedule 6, Finance Act 2000 makes provision for a reduced rate of levy to be charged if a facility which receives supplies of energy is certified as being covered by a CCA for a certification period. A facility can only be certified as being covered by a CCA if in the previous certification period, it has made satisfactory progress towards meeting energy use or emissions targets set out in a CCA. This means that participants in the CCA scheme are only entitled to receive the reduction in the rate of the levy if they have made satisfactory progress towards meeting their targets.

4.2 Section 207 and Schedule 31, Finance Act 2012 amended Schedule 6, Finance Act 2000 to provide that the function of administering the CCA scheme in respect of any CCAs entered into after the date Finance Act 2012 came into force will be transferred from the Secretary of State to an administrator, to be appointed by the Secretary of State in regulations. Finance Act 2012 also conferred powers on the Secretary of State to make regulations as to the administration of the new scheme. These include powers to make regulations in respect of the powers and duties to be conferred upon the administrator regarding certain new aspects of the scheme, including:

- 4.2.1 terms to be included in a CCA that provide that absence of progress towards meeting targets may be made up for by the payment of a fee;
 - 4.2.2 the imposition of financial penalties; and
 - 4.2.3 circumstances in which a CCA can be terminated.
- 4.3. This statutory instrument appoints the Environment Agency as administrator of the scheme for CCAs entered into after the statutory instrument comes into force and sets out the powers and duties of the administrator in administering the scheme.
- 4.4 The CCAs will also contain provisions about the obligations of participants in the scheme, when a facility covered by an agreement may be certified, how the buy-out fee will be operated, how an agreement may be varied, and further rights of appeal in respect of decisions made under the CCAs.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The climate change levy is a tax on electricity, natural gas, liquefied petroleum gas and solid fuels when supplied for use by the business and public sectors. The levy is designed to encourage energy efficiency and the take up of electricity from renewable sources in order to reduce carbon emissions. It was introduced on 1 April 2001.
- 7.2 The CCA scheme was introduced at the same time as the levy. Specified energy intensive businesses were allowed to enter into agreements with the Department of Energy and Climate Change (DECC) to meet energy efficiency or emission reduction targets and, as a result, would be entitled to pay a reduced rate of climate change levy on all taxable commodities. Since 1 April 2011 the reduced rate has been 35 per cent of the full rates of levy for all taxable commodities but, as announced in the Autumn Statement on 29 November 2011, it is due to be amended to 10 per cent for electricity only from 1 April 2013.
- 7.3 The existing CCA scheme is due to come to an end on 31 March 2013. As announced in the Budget 2011, Government intends to extend the scheme to 2023 and make changes to simplify its administration to reduce burdens on business and allow a more flexible approach to the administration of the scheme.

- 7.4 CCAs are currently administered by DECC. It is the Government's intention with this instrument that the future scheme will be administered by the Environment Agency to align with the EU Emissions Trading System (ETS) and the CRC Energy Efficiency Scheme. The administrative costs to Government of delivering CCAs will be recovered via a charging regime, which will be set out in a charging scheme made with the approval of the Secretary of State, in line with the Government's general policy of seeking cost recovery.
- 7.5 The Administrator will establish and operate an electronic register for the administration of CCAs. A simple buy-out mechanism operated by the Administrator will be the means by which participants make up for any lack of satisfactory progress towards meeting their CCA targets. The instrument also outlines a financial penalty system for non-compliance by account holders, circumstances in which a CCA can be terminated and provisions for an appeal.
- 7.6 As this instrument relates to administration of a scheme which in its very nature is highly technical and specific to CCA participants the level of public interest is limited.

8. Consultation outcome

- 8.1 On 24 January 2012, DECC published an opportunity to comment on the Climate Change Agreements (Administration) Regulations 2012 and the proposal to make a CCA charging scheme. The consultation closed on 29 March 2012. This condensed consultation timeframe of 8 weeks allowed more time to analyse responses and deliver greater certainty to participants ahead of the start of the new CCA scheme in April 2013. In total **there were 37 respondents to the document**. The Government Response to the consultation can be viewed here: [Government Response to January and March 2012 Consultations](#)
- 8.2 A total of 17 of 37 respondents commented on the draft Regulations. The detailed comments on the drafting were analysed and have been published here: [Analysis of January and March 2012 consultation responses](#). There were no substantial comments on any of the individual draft regulations that required their removal, however, redrafting has been undertaken to provide participants with the necessary clarity around definitions and terminology for the new scheme. Furthermore, upon reviewing respondents' varying concerns around penalties, the current regulations reduce the minimum fine for minor offenses from £500 to £250. The regulations also address respondents' concerns around participant data confidentiality. Provisions have been added to the regulations to ensure that commercially sensitive data is not published and that the addresses of operators with security concerns are withheld.
- 8.3 In parallel to the January 2012 document DECC held a number of industry events to discuss the regulations in detail. These have helped further inform this instrument.

9. Guidance

- 9.1 Guidance notes, particularly relating to the obligations of the Administrator in assessing agreements and of participants in reporting, will be published on the Administrator's (EA) website prior to commencement of the new scheme in April 2013.

10. Impact

- 10.1 CCAs are voluntary and provide specified energy intensive businesses with the opportunity to receive a discount on the CCL they pay if they meet energy efficiency or emission reduction targets. For those businesses signed up to agreements there is a potential positive impact on their CCL tax bill. Additionally under scheme simplification proposals, of which this instrument is a part, it is calculated that administrative burden on all industry participants will be reduced by between £2.8m and £3.5m over the life of the new scheme starting in April 2013.
- 10.2 The impact on the public sector is nil. This policy does not cover the public sector.
- 10.3 An Impact Assessment has been prepared on the policies that this instrument will implement. The link to this IA is can be found [here](#).
- 10.4 The Impact Assessment, however, has not assessed the impact of the outsourced delivery administration cost because it is not included in its remit. HMT's Green Book5 provides general guidance on appraisal of net economic cost and benefits to society net of any transfers. The cost charging is not included in the IA as it represents a transfer of cost (in this case from the general taxpayer to those benefitting from the scheme). The methodology for assessing regulatory burdens on businesses is provided by Better Regulation Executive guidance on the One In One Out methodology. The underlying methodology builds on the Green Book and the Impact Assessment (IA) Toolkit. Fees and charges guidance exclusion is based on paragraph 16 point x page no 5 of this guidance which can be accessed through this link : <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/11-671-one-in-one-out-methodology.pdf>

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 It is not envisaged that this legislation will have a significant impact on small business, primarily because the proposed changes will actually reduce the administrative burden to businesses including those of small size. Furthermore, the CCA scheme is voluntary and small businesses do not have to participate in it. If

they do they then get the CCL discount which outweighs any of the voluntary participatory costs.

12. Monitoring & review

- 12.1 The new CCAs policy mechanism will not undergo a review until around 2020. However, there will be a review of sector commitments in 2016 to ensure that the sector commitments are challenging and to maximise any emissions savings. The participating sectors' performance against their sector commitments and the performance of the scheme participants against their individual targets will be measured biennially and a report will be written and published by the administrator of the scheme.

13. Contact

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