

EXPLANATORY MEMORANDUM TO
THE CLIMATE CHANGE AGREEMENTS (ELIGIBLE FACILITIES)
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 505

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 This Statutory Instrument amends the requirements under the Climate Change Agreements (Eligible Facilities) Regulations (SI 2012/2999) (“the 2012 Regulations”) as to the information that must be used in order to determine whether a facility is eligible to be included in a climate change agreement (“CCA”) to accommodate facilities for which a full year of data may not be available in some circumstances.

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

3.1 This instrument will come into force on 31 March 2013 rather than the Common Commencement Date of 6 April 2013. The reason for this is because the CCAs for the new CCA scheme will come into force on 1 April 2013. DECC has deviated from the Common Commencement Date with the agreement of the Better Regulation Executive and the Cabinet Office.

4. Legislative Context

4.1 Section 30 of and Schedule 6 to the Finance Act 2000 make provision for a Climate Change Levy to be charged on certain supplies of energy. Part IV of Schedule 6 to the Finance Act 2000 makes provision for a reduced rate of climate change levy (“CCL”) to be charged if a facility which receives supplies of energy is certified as being covered by a CCA for a certification period.

4.2 Paragraph 50 of Schedule 6 to the Finance Act 2000 provides that a facility is only eligible to be covered by an agreement if it is an energy intensive installation, or if it is a site which includes an energy intensive installation. It also provides that the Secretary of State may by regulations make provisions for a facility to be eligible only if the amounts of taxable commodities supplied to the installation are such that any conditions specified in the regulations are satisfied.

4.3 The 2012 Regulations provided that an installation or site is only eligible to be covered by an agreement if at least 70% of the energy supplied to the installation or site is intended to be used in an installation. It also provided that in order to demonstrate the proportion of energy which is intended to be used in an installation,

the supply or use of reckonable energy during the previous 12 month period should be used.

- 4.4 This instrument amends the 2012 Regulations to provide that until 31 May 2014, if an operator has insufficient data on the supply or use of reckonable energy in the previous 12 month period in order to determine the intended supply or use of reckonable energy, the administrator must instead estimate the intended supply or use of reckonable energy. It also provides that for a greenfield facility, the administrator must estimate the intended supply or use of reckonable energy during the first year that the facility is covered by a CCA.

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 CCL is a tax on electricity, natural gas, liquefied petroleum gas and solid fuels when supplied to 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 Secretary of State for Energy and Climate Change to meet energy efficiency or emission reduction targets and, as a result, would be entitled to pay a reduced rate of CCL on all taxable commodities. Currently the reduced rate is 35% of the full rates of levy for all taxable commodities but, as announced in the Autumn Statement 2011, it is due to be amended to 10% for electricity only from 1 April 2013.
- 7.3 From 2001, eligibility for CCAs was based on processes regulated under Part A of the Environmental Permitting (England & Wales) Regulations 2007 (“EPR”). Eligibility was extended to include processes that were not captured by the EPR yet met stringent energy intensity criteria from 2006 to 2009. These criteria were either 10% sector level energy intensity or 3% energy intensity and 50% or more import penetration.
- 7.4 The existing CCA scheme will end on 31 March 2013. As announced in the Budget 2011, Government is extending the scheme to 2023 by introducing new CCAs from 1 April 2013 and retaining the currently eligible CCA sectors. Following consultation, Government decided to replace the “90% rule” with a “70% rule” whereby if an

energy intensive installation uses at least 70% of the energy used by a facility, the CCA holder can claim relief on 100% of their energy use.

7.5 This instrument amends the requirements as to the information that must be used in order to determine whether a facility meets the requirements of the “70% rule” to accommodate facilities for which a full year of data may not be available.

7.6 As this instrument relates to a scheme which in its very nature is highly technical and specific to CCA participants the level of public interest is likely to be limited.

8. Consultation outcome

8.1 On 19 July 2012, DECC published an opportunity to comment on the 2012 Regulations. The period for responses closed on 14 September 2012.

8.2 A total of 4 respondents commented on the draft Regulations. The comments, all from Sectors which held CCAs, related to their eligible processes. Recent engagement at stakeholder events has revealed that some participants do not have data available on past use of energy in order for them to determine the intended future use of energy at a facility. This instrument amends the requirements as to how to determine future use of energy to allow an estimation to be made where data is not available, until 31 May 2014, or in the case of greenfield facilities, in the first year of a CCA.

9. Guidance

9.1 Guidance notes on energy reporting and eligibility for participants will be published on the Environment Agency’s (the CCA administrator) website prior to commencement of the new scheme in April 2013. Formal technical guidance has been published on DECC’s CCA webpage:
www.gov.uk/government/publications/climate-change-agreements-technical-guidance.

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. This instrument will impact positively on industry, allowing them to enter the scheme by estimating the energy use of a facility where data is not available, rather than being excluded for not having a full 12 months data on entry until 31 May 2014. It also includes provision for greenfield sites to enter into a CCA without immediately requiring 12 months data first, which is positive for business and growth.

10.2 The impact on the public sector is nil. CCAs do not relate to the public sector.

- 10.3 An Impact Assessment has not been prepared for this instrument as the amendments to the 2012 Regulations are minor and will not place additional costs or regulatory burdens on business. However, an Impact Assessment covering administrative costs savings resulting from the amendments to energy coverage and the removal of the energy intensity criteria from legislation can be found at:
www.decc.gov.uk/assets/decc/11/consultation/cca-simplification/4176-ia-proposals-future-cca.pdf

11. Regulating small business

- 11.1. The legislation applies to small business.
- 11.2 It is envisaged that this legislation will have a positive impact on small business, primarily because the proposed changes will give business greater scope to provide data in the new scheme and continue to receive the CCL discount. The minor amendment made will ease the burden on business by allowing new participants more time to gather and report data upon entering the scheme.

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. Also 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. The eligibility of participants within the scheme will be continually assessed by HMRC to ensure that CCL discount is correctly applied.

13. Contact

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