EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE AGREEMENTS (ADMINISTRATION) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 508

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

2. Purpose of the instrument

2.1 This Statutory Instrument amends the provisions of the Climate Change Agreements (Administration) Regulations 2012 (SI 2012/1976) ("the 2012 Regulations") to provide that emissions are measured in carbon dioxide equivalent, not carbon dioxide, in order to align the emissions factors used in the climate change agreements schemes with other energy efficiency schemes.

2.2 It also amends provisions of the 2012 Regulations in relation to the calculation of financial penalties imposed on target units which include a greenfield facility during the first year that the target unit is covered by a climate change agreement ("CCA"), in order to accommodate greenfield facilities which would not have any data during the first year of a CCA on the amount of climate change levy that has been payable in the past on supplies of energy to the facility. It therefore provides that the amount of a financial penalty imposed on target units which include a greenfield facility during the first year that the target unit is covered by an agreement is based on the Environment Agency's (as administrator of the CCA scheme) estimation of the amount of climate change levy that would be payable over that year.

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 new climate change agreements for the new climate change agreements 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 III 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. 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 of and Schedule 31 to the Finance Act 2012 amended Schedule 6 to the 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. The Finance Act 2012 also conferred powers on the Secretary of State to make regulations as to the administration of the new scheme.

4.3 The 2012 Regulations appointed the Environment Agency as administrator of the new CCA scheme. They also provide that an underlying agreement must include terms that if a target unit has failed to meet its targets, the obligation to make progress towards meeting targets may instead be satisfied by the payment of a buy-out fee, based broadly on the amount by which the emissions for a target period exceed the target.

4.4 The 2012 Regulations also provide that the administrator may impose financial penalties on an operator for a failure to provide information required under the terms of an agreement, or for providing inaccurate information. The amount of one category of such penalties is calculated by reference to the difference between the amount of climate change levy that would be payable on supplies of energy if the supplies were not reduced rate supplies and the amount of climate change levy that would be payable if the supplies were reduced rate supplies. The amount of the other category of such penalties is calculated by reference to the differences between the actual and the reported emissions for the target period.

4.5 This statutory instrument amends the 2012 Regulations to accommodate greenfield facilities which would not have any data during the first year of a CCA on the amount of climate change levy that has been payable in the past on supplies of energy to the facility. It also provides that emissions shall be determined on the basis of carbon dioxide equivalent, not carbon dioxide.

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 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 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 has extended the scheme to 2023 and has made changes to simplify its administration to reduce burdens on business and allow a more flexible approach to the administration of the scheme.

7.4 The 2012 Regulations provided for the Environment Agency to be the administrator of the new scheme. to align with the EU Emissions Trading Scheme and the CRC Energy Efficiency Scheme. It also provides for a buy-out mechanism as the means by which participants make up for any lack of satisfactory progress towards meeting their CCA targets and provides for a financial penalty system for non-compliance by account holders, circumstances in which a CCA can be terminated and provisions for an appeal.

7.5 This instrument seeks to accommodate greenfield facilities entering into the CCA scheme without needing to delay their entrance in order for them to gather and submit data on their energy use. Adjustments have also been made to financial penalty calculations to ensure that greenfield facilities are not unduly burdened if they do not initially have 12 months of data available.

7.6 This instrument also accords with Government’s simplification aim by amending emissions factors in line with Government’s Greenhouse Gas (GHG) Reporting Guidelines.

7.7 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 From September 2011, Government launched a series of consultations on simplification of CCAs for the new scheme. The responses to these consultations were taken into account in the drafting of the 2012 Regulations.

8.2 Recent stakeholder feedback at events and during the build up to the launch of the new scheme revealed the need to make some minor amendments to CCA legislation to give greater clarity to business on data reporting requirements, especially with regards the policy on greenfield facilities. As part of the overarching simplification aim of the new scheme, it also became apparent that it was necessary to alter some emissions factors to ensure that CCAs align to similar schemes which use Greenhouse Gas (GHG) Reporting Guidelines.

9. Guidance

9.1 Operational Guidance notes, particularly relating to the obligations of the Administrator in assessing agreements and of participants in reporting, will be published on the on the administrator's (EA) 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. 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 industry will be reduced by between £2.8m and £3.5m over the life of the new scheme starting in April 2013.

10.2 The specific impacts of this instrument are low. This instrument allows greenfield facilities to enter the scheme without needing to delay their entrance in order for them to gather and submit data. This is beneficial for business and for growth. Furthermore, the adjustments to the penalties calculations ensure that greenfield facilities are not unduly burdened further by not having 12 months of data and allow them to be eligible within the scheme whilst data is collected. This is a reduction in administrative burden for the affected facilities. The alignment of emissions factors to GHG Reporting Guidelines has a neglible impact on the overall emissions recorded for facilities and only applies to a small number of CCA participants.

10.3 The impact on the public sector is nil. This policy does not cover the public sector.

10.4 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. The Impact Assessment prepared on the policies for which the 2012 Regulations have implemented can be found at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/42824/4176-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 greenfield facilities by allowing them 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.

13. Contact

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