
DRAFT STATUTORY INSTRUMENTS

2010 No.

The CRC Energy Efficiency Scheme Order 2010

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(1).

Interpretation

3. In this Order—

“the 2000 Act” means the Freedom of Information Act 2000(2);

(1) 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).
(2) 2000 c. 36.

“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(3);

“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—

- (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(4); or
 - (ii) Article 8(1)(c) of the Electricity (Northern Ireland) Order 1992(5);
- (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(6); or
 - (ii) Article 6(1)(c) of the Gas (Northern Ireland) Order 1996(7);

“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(8);

“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(9) in relation to England and Wales;

(3) 2008 c. 9.

(4) 1989 c. 29.

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

(6) 1986 c. 44. Section 48(1) is subject to various amendments.

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

(8) 2000 c. 17.

(9) 2006 c. 50.

- (b) section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005(10) in relation to Scotland;
- (c) section 2 of the Charities Act (Northern Ireland) 2008(11) 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(12);
- “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 EU ETS 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);
- “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(13), 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);

(10) 2005 asp 10.

(11) 2008 c. 12.

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

(13) 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).

- “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;
- “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⁽¹⁴⁾; or
- (b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003⁽¹⁵⁾;

“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⁽¹⁶⁾ 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;

⁽¹⁴⁾ 1989 c. 29. Section 32 was substituted by, and sections 32A to 32M added by, section 37 of the Energy Act 2008 (c. 32).

⁽¹⁵⁾ 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).

⁽¹⁶⁾ 2006 c. 46.

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(17), 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—
- (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—

(17) 1971 c. 80.

- (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.