EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE AGREEMENTS (ELIGIBLE FACILITIES) REGULATIONS 2012

2012 No. 2999

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 instrument is to revoke and replace with a consolidation instrument the Climate Change Agreements (Eligible Facilities) Regulations 2001, the Climate Change Agreements (Eligible Facilities) Regulations 2006, the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2006 and the Climate Change (Eligible Facilities) (Amendment) Regulations 2009. The instrument also implements previously announced changes to Climate Change Agreements (CCAs) including, the change from a 90% rule to a 70% rule for establishing the extent of a facility subject to a CCA and the removal of the energy intensity criteria.

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 1 January 2013 rather than the Common Commencement Date of 6 April 2013. The reason for this is because the legislation covering eligibility for CCAs has to be in place before any CCA can be signed. The new scheme starts on 1 April 2013 and agreements will start being signed before then. 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 and Schedule 6 to 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 This instrument contains new requirements on energy reporting for parties to a CCA including establishing the extent of an eligible facility (the 70% rule); reckonable energy; operation of electricity generation plant and combined heat and power plant and the use of steam. The requirements replace those contained in the Climate

Change Agreements (Eligible Facilities) Regulations 2001 which is revoked by this statutory instrument.

4.3 Paragraphs 50 to 52 of Schedule 6 to the Finance Act 2000, the Climate Change Agreements (Eligible Facilities) Regulations 2001, the Climate Change Agreements (Eligible Facilities) Regulations 2006, the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2006, the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2009 provide for eligible processes which will qualify for CCAs. Under this instrument, those instruments are revoked. This instrument is intended to consolidate legislation in one document.

4.4 The descriptions of the processes set out in the Finance Act 2000 are processes that are regulated under the Environmental Permitting (England and Wales) Regulations 2010 (EPR). The EPR is being amended to transpose the requirements of the European Directive on industrial emissions. Twenty processes which will be omitted from the amended EPR which comes into force in January 2013 are listed in this statutory instrument and will therefore remain eligible for a CCA.

4.5 Regulation 3 of the Climate Change Agreements (Eligible Facilities) Regulations 2006 paragraph 4 described the eligibility criteria for 15 energy intensive processes not regulated under the EPR. The current definition of the energy intensive processes and activities remain unchanged but the basis for the eligibility criteria are to be disapplied for the new CCAs which will be implemented in 2013. Therefore to ensure continued eligibility for the 15 relevant processes, they have been included in the schedule to this instrument.

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 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 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. 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 EPR. Eligibility was extended to include processes 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 intends to extend the scheme to 2023 by introducing new CCAs from 1 April 2013 and retain the 54 CCA sectors. Eligibility is not changing, but in order to ensure that all processes included in those CCAs continue to be eligible under the new scheme, processes being omitted from the EPR in 2013 and processes whose eligibility criteria are set out in the Climate Change Agreements (Eligible Facilities) Regulations 2006 are listed in the schedule to this instrument.

7.3 Following consultation , Government has decided to replace the 90% rule with a 70% rule. Under the original CCA scheme, agreement holders could claim 100% relief on a site's energy if 90% or more of the site's energy use was consumed by the eligible activity. Under this instrument, this will be replaced by a 70% rule which will operate in the same fashion. If the eligible energy use at a site is 70% or over, the CCA holder can claim relief on 100% of their energy use. This instrument also clarifies reporting requirements on CCA holders and specifies how energy use should be calculated if an agreement holder operates a combined heat and power plant, an electricity generation plant or uses steam on their site.

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 Climate Change Agreements (Eligible Facilities) Regulations 2012. 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. Redrafting has been undertaken to provide respondents with the necessary clarity and certainty around energy reporting and eligibility for the new scheme. The schedule to the Regulations has been amended accordingly to reflect all the required changes.

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. They are currently available through the DECC's website and can be found at http://www.decc.gov.uk/en/content/cms/emissions/ccas/ccas_guidance/ccas_guidance.aspx

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.

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

10.3 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 http://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. Operating thresholds within EPR means that only larger businesses are regulated. However, under CCAs, these thresholds are disapplied to ensure both large and small businesses are eligible for CCAs thereby preventing competitive disadvantage with only larger businesses receiving CCL discount. Furthermore, the CCA scheme is voluntary and small businesses do not have to participate in it. If they elect to do so, they then receive the CCL discount.

12. Monitoring & review

12.1 The new CCAs policy mechanism will undergo a review in 2020. This instrument provides for a review on energy reporting and its efficacy within 5 years of the instrument coming into force. A view will be taken on whether less regulation can be applied whilst still achieving the objectives of the CCA scheme. Additionally, this instrument consolidates and streamlines several pieces of legislation on eligibility into one document.

13. Contact

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