

EXPLANATORY MEMORANDUM TO
THE CLIMATE CHANGE AGREEMENTS (AMENDMENT OF AGREEMENTS)
(EU EXIT) REGULATIONS 2018

2018 No. 1205

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) 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 make amendments to agreements within the Climate Change Agreement Scheme. A number of these amendments are to address legal inoperabilities that arise from the withdrawal of the United Kingdom from the European Union taken together with the operation of other provisions made under the European Union (Withdrawal) Act 2018. The purpose of those amendments is to correct deficiencies in cross-references to European Union Emissions Trading Scheme.
- 2.2 A further amendment is made to update references to guidelines of the European Commission relating to the state aid regime to the latest version of those guidelines.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 30 and Schedule 6 to the Finance Act 2000 make provision for the Climate Change Levy (CCL) 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 CCL to be charged if a facility, which receives supplies of energy, is certified as being covered by a Climate

Change Agreement (CCA) for a certification period. Part IV of Schedule 6 to the Finance Act 2000 also makes provision for a CCA to be a combination of an umbrella agreement and an agreement that, in relation to the umbrella agreement, is an underlying agreement.

- 6.2 Section 207 and Schedule 31 to the Finance Act 2012 amended Schedule 6 to the Finance Act 2000 to confer powers on the Secretary of State to make regulations for the administration of the CCA Scheme including provision about the CCAs. These amendments also made provision for the scheme to be administered by an Administrator. The Environment Agency was appointed as the Administrator in the Climate Change Agreements (Administration) Regulations 2012 (S.I. 2012/1976).
- 6.3 The CCAs provide that a facility can only be certified as being covered by a CCA if, in the previous certification period:
- i.) it has made satisfactory progress towards meeting energy use or emissions targets set out in a CCA (or paid a buy-out fee for any shortfall) and
 - ii.) it has complied with any obligations imposed by regulations made for the purpose of implementing Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC ('the EU ETS Directive').
- 6.4 The CCAs also provide that operators are obliged to notify the Administrator on becoming a firm in difficulty within the meaning of the European Commission's Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).
- 6.5 This Instrument makes amendments to the CCAs to provide that the provisions referred to in paragraph 6.3(ii) above, after exit day, relate to the obligations set out in the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) as amended from time to time, as well as correcting deficiencies in the cross-references to activities listed in Annex 1 to the EU ETS Directive.
- 6.6 This Instrument also makes amendments to the CCAs to update the reference to the European Commission's guidelines on the meaning of a firm in difficulty to the latest version of those guidelines.

7. Policy background

What is being done and why?

- 7.1 The Climate Change Levy (CCL) is a tax on the supply of a range of fuels including electricity, natural gas, liquefied petroleum gas and solid fuels when supplied for use by the business and public sectors. It was introduced on 1 April 2001.
- 7.2 The CCA Scheme is a voluntary scheme pursuant to which CCA Scheme participants have entered into agreements to reduce their energy use or emissions and, in exchange, are entitled to pay reduced rates of the CCL. The reduced main rates of CCL to which compliant CCA Scheme participants are entitled are currently 10% of the full main rates of the CCL for electricity and 35% of the full main rates of the CCL for gas and other taxable commodities. From 1 April 2019 until 31 March 2020

this will be 7% of the full main rates of the CCL for electricity and 22% of the full main rates of the CCL for gas and other taxable commodities.

- 7.3 The CCA Scheme supports the Government's objectives to deliver affordable and secure energy and decarbonisation while also helping productivity and the growth agenda.
- 7.4 Government has previously estimated that participants would save in total between £200 and £300 million on their CCL costs each year, with the CCA Scheme running until March 2023. The Government has estimated that if participants meet their agreed energy efficiency or carbon reduction targets for 2013-2020 this would reduce emissions of carbon dioxide by 22 mega-tonnes of carbon dioxide equivalent (22MtCO₂e).
- 7.5 In the CCA Scheme, the agreements between sector associations, which are industry sector representative bodies for the eligible industry sectors in the Scheme, and the administrator are called umbrella agreements. Agreements between operators and the administrator are called underlying agreements, while 'Target Unit' means the facility or group of facilities to which an underlying agreement applies.
- 7.6 The CCAs cross-refer to the EU ETS Directive because:
- i) certification of a facility under the scheme requires that the relevant target unit must have met obligations imposed under or by virtue of regulations made for the purpose of implementing the EU ETS Directive;
 - ii) 'target unit' is defined as excluding activities falling within Annex 1 to the EU ETS Directive.
- 7.7 This instrument makes amends to correct the deficiencies that arise after the United Kingdom's withdrawal from the European Union in relation to these cross-references to the EU ETS Directive. This instrument means that, after Exit, facilities' certification will depend on whether the target unit has met the obligations imposed under the domestic implementation of the EU ETS scheme (the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038)) as amended from time to time. This instrument also corrects deficiencies relating to the definition of Annex 1 activities.
- 7.8 The CCAs provide that operators must notify the Administrator on becoming a firm in difficulty, within the meaning of the European Commission Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02). Since the CCAs were entered into in March 2013, the European Commission issued another version of those guidelines. For clarity, this Instrument updates those references to expressly refer to that more recent version of those guidelines.
- 7.9 The amendments made by this instrument seek to preserve the status quo as far as possible. They do not change the underlying scheme.
- 7.10 Template umbrella and underlying agreements can be found at <https://www.gov.uk/government/publications/climate-change-agreements-scheme-revised-templates-for-umbrella-and-underlying-agreements>. The technical annex to the CCAs can be found at <https://www.gov.uk/government/publications/climate-change-agreements-technical-guidance>. A hard copy of the technical annex is available from the Business Energy Use team at the Department of Business, Energy and Industrial Strategy at 1 Victoria Street, London, DW1H 0ET.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union to the extent that it corrects a number of deficiencies arising from cross-references in the CCAs to the EU ETS Directive as detailed in section 7 above.

9. Consolidation

- 9.1 The instrument does not make amendments to any other instrument.

10. Consultation outcome

- 10.1 No consultation was required for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen.

11. Guidance

- 11.1 The Environment Agency will update the CCA Operations Manual to reflect these changes along with both the Umbrella and Underlying Agreements.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because as no significant impacts on business or the public or voluntary sectors are foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that no monitoring or review is required no significant impacts on business or the public or voluntary sectors are foreseen.
- 14.2 This regulation does not include a statutory review clause. This regulation does not fall within section 28 of the Small Business, Enterprise and Employment Act 2015. No further monitoring or review is planned. As the current CCA Scheme closes in March 2023, the provision is time-limited.

15. Contact

- 15.1 Andy Jackson at the Department for Business, Energy and Industrial Strategy
Telephone: 0300 068 5577 or email: Andy.Jackson@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Michael Rutter, Deputy Director for Business Energy Use, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Claire Perry MP, the Minister of State for Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.