

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
18 March 2013

Meeting time:
14:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA224 – The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013

Negative Procedure. Date made: 26 February 2013. Date laid: 28 February 2013. Coming into force date: 25 March 2013.

CLA226 – The National Curriculum (Educational Programmes for the Foundation Phase and programmes of Study for the Second and Third Key Stages) (Wales) Order 2013

Negative Procedure. Date made: 27 February 2013. Date laid: 28 February 2013. Coming into force date: 1 September 2013.

CLA227 – The Education (National Curriculum) (Assessment Arrangements for

Reading and Numeracy) (Wales) Order 2013

Negative Procedure. Date made: 26 February 2013. Date laid 28 February 2013. Coming into force date: 25 March 2013.

CLA228 – The National Curriculum (Amendments relating to Educational Programmes for the Foundation Phase and Programmes of Study for Second and Third Key Stages) (Wales) Regulations 2013

Negative Procedure. Date made: 27 February 2013. Date laid 28 February 2013. Coming into force in accordance with section 1(1).

CLA230 – The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2013

Negative Procedure. Date made: 27 February 2013. Date laid 5 March 2013. Coming into force date: 8 April 2013.

CLA231 – The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013

Negative Procedure. Date made: 4 March 2013. Date laid 6 March 2013. Coming into force date: 6 April 2013.

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Affirmative Resolution Instruments

CLA229 – The CRC Energy Efficiency Scheme Order 2013 (Pages 1 – 150)

Affirmative Procedure. Date made: Not stated. Date laid Not Stated. Coming into force in accordance with article 1.

CLA(4)-09-13(p1) – Report

CLA(4)-09-13(p2) – Order

CLA(4)-09-13(p3) – Explanatory Memorandum

Composite Negative Instruments

CLA225 – The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (Pages 151 – 200)

Composite Negative Procedure. Date made: 26 February 2013. Date laid: 28 February 2013. Coming into force date: 25 March 2013.

CLA(4)-09-13(p4) – Report

CLA(4)-09-13(p5) - Regulations
CLA(4)-09-13(p6) - Explanatory Memorandum

Negative Resolution Instruments

CLA239 - The Council Tax (Administration and Enforcement) (Amendments No.2) (Wales) Regulations 2013 (Pages 201 - 215)

Negative Procedure. Date made: 12 March 2013. Date laid 12 March 2013.
Coming into force in accordance regulation 1.

CLA(4)-09-13(p7) - Report
CLA(4)-09-13(p8) - Regulations
CLA(4)-09-13(p9) - Explanatory Memorandum
CLA(4)-09-13(p10) - Letter from Minister for Finance and Leader of the House

5. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed.

6. Final Draft Report on the Human Transplantation (Wales) Bill

(Pages 216 - 247)

CLA(4)-09-13(p11) -Draft Report

7. Consideration of Inquiry on Wales' role in the EU decision making process (Pages 248 - 254)

CLA(4)-09-13(p12) - Terms of reference

8. Evidence in relation to the Inquiry on Law Making and the Church in Wales (Pages 255 - 258)

3.00pm Public Session

Paper:

CLA(4)-09-13(p13) -The Most Reverend Barry Morgan, Archbishop of Wales and Bishop of Llandaff;

Charles Anderson, Solicitor for the Church on Wales;

Alex Granville, the Church's Head of Property Services

9. Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure

(COM(2013)0018) (Pages 259 – 264)
3.45pm

Paper:

CLA(4)-09-13(p14) – Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure (COM(2013)0018)

DRAFT SI REPORT

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-08-13

CLA229 – The CRC Energy Efficiency Scheme Order 2013

Procedure: Affirmative

This Order establishes in the United Kingdom an emissions trading scheme in respect of greenhouse gases under sections 44, 46 (3), 49 and 90 (3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008. It applies to direct and indirect emissions from supplies of electricity and gas by public bodies and undertakings.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

- 1. That it is not made or to be made in both English and Welsh (Standing Order 21.2 (ix))*
- 2. There is an incorrect cross-reference in Article 3 and Paragraph 2 of Schedule 9. “Local Authority” is defined in both these provisions as having the same meaning it has in paragraph 52 of Schedule 1 to the Freedom of Information Act 2000. The reference should be to Paragraph 7. (Standing Order 21.2 (vi) that its drafting appears to be defective).*

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument .

**Legal Advisers
Constitutional and Legislative Affairs Committee**

March 2013

Draft Order in Council laid under paragraph 11 of Schedule 3 to the Climate Change Act 2008 before Parliament, for approval by resolution of each House of Parliament, and before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly for their approval.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

CLIMATE CHANGE

The CRC Energy Efficiency Scheme Order 2013

Made - - - -

**** 2013*

Coming into force in accordance with article 1

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At the Court at Buckingham Palace, the [] day of [May] 2013

Present,

The Queen's Most Excellent Majesty in Council

Whereas:

- (a) the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of the Environment of Northern Ireland have in accordance with section 48 of and paragraph 10 of Schedule 3 to the Climate Change Act 2008^(a)—
 - (i) obtained, and taken into account, the advice of the Committee on Climate Change in respect of this Order; and
 - (ii) consulted such persons likely to be affected by this Order as they considered appropriate;and
- (b) in accordance with paragraph 11 of Schedule 3 to the Climate Change Act 2008, a draft of the statutory instrument containing this Order has been approved by resolution of each House of Parliament, the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly,

Her Majesty, in exercise of the powers conferred by sections 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008, is pleased, by and with the advice of Her Privy Council, to order as follows:

^(a) 2008 c. 27.

PART 1
Introduction
CHAPTER 1
General

Citation and commencement

1. This Order may be cited as the CRC Energy Efficiency Scheme Order 2013 and comes into force on the fifth day after the day on which 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 six phases which comprise—

- (a) five consecutive phases, each of five years, where the initial phase commences on 1st April 2014; and
- (b) a final phase of four years, commencing on 1st April 2039.

(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(a).

Interpretation

3. In this Order—

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

“the 2010 Order” means the CRC Energy Efficiency Scheme Order 2010(c);

“the 2011 Order” means the CRC Energy Efficiency Scheme (Amendment) Order 2011(d);

“the 2012 Regulations” means the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2012(e);

“Academy” has the same meaning it has in section 579 of the Education Act 1996(f);

“account holder” means the public body, undertaking or other person in whose name an account in the Registry is held;

“the Act” means the Climate Change Act 2008;

“the administrator” has the meaning given by article 9;

“allowance” means a tradeable allowance issued under regulation 10 of the 2012 Regulations;

“annual report” means the report described in article 32;

“annual reporting year” means each year of the phase;

“appeal body” has the meaning given by article 89;

“appellant” means a public body or undertaking that has made an appeal under article 87;

“applicant” means—

- (a) a public body or group of public bodies; or
- (b) an undertaking or group of undertakings,

(a) 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).

(b) 2000 c. 36.

(c) S.I. 2010/768, amended by S.I. 2011/234.

(d) S.I. 2011/234.

(e) S.I. 2012/1386.

(f) 1996 c. 56. Section 579 was amended by section 14 and paragraphs 1 and 6 of Schedule 2 to the Academies Act 2010 (c. 32).

required to submit an application for registration as a participant under Part 2 or Schedule 5;
“appointed practitioner” means a person appointed under the Insolvency Act 1986(a) to manage—

- (a) a group member’s affairs and business so far as carried on in the United Kingdom, and
- (b) that group member’s property in the United Kingdom;

“authorised person” has the meaning given by article 66(3);

“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(b); or
- (ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992(c);

- (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(d); or
- (ii) Article 6(1)(c) of the Gas (Northern Ireland) Order 1996(e);

“blocking” has the meaning given by article 81(3);

“cancellation account” means the account provided by the administrator into which allowances must be surrendered by a participant in compliance with article 36;

“CCA” means a climate change agreement within the meaning given in paragraph 46 of Schedule 6 to the Finance Act 2000(f);

“CCA facility” means a facility which is subject to a CCA target during a year of a phase;

“CCA target” means a target in respect of energy use or carbon emissions under a CCA;

“charitable purpose” has the meaning given by—

- (a) section 2 of the Charities Act 2011(g) in relation to England and Wales;
- (b) section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005(h) in relation to Scotland;
- (c) section 2 of the Charities Act (Northern Ireland) 2008(i) in relation to Northern Ireland;

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003(j);

“city college for the technology of the arts” has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;

“city technology college” has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;

“civil penalty” means a penalty which may be imposed under Part 12;

“combined heat and power generation” means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;

“compliance account” means the account of a participant from which allowances must be surrendered to the cancellation account in compliance with article 36;

(a) 1986 c. 45.

(b) 1989 c. 29. Section 64(1) is subject to various amendments.

(c) S.I. 1992/231 (N.I. 1), amended by S.R. (NI) 2007 No 321; there are other amending instruments which are not relevant.

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

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

(f) 2000 c. 17.

(g) 2011 c. 25.

(h) 2005 asp 10.

(i) 2008 c. 12.

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

“CRC” means carbon reduction commitment;

“CRC emissions” has the meaning given by article 33(1);

“CRC supplies” has the meaning given by article 33(2);

“day” means a working day except in article 1 and paragraph 3 of Schedule 6;

“domestic accommodation” has the meaning given by paragraph 18(3) of Schedule 1;

“enforcement notice” has the meaning given by article 69;

“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(a);

“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 1 of that Directive but approved in the United Kingdom under Article 24 of that Directive;

“first phase” means the first phase of the trading scheme established under article 2(1) of the 2010 Order;

“franchise” and the related expressions “franchise agreement”, “franchise premises”, “franchise supply”, “franchisee” and “franchisor” have the meanings given in section 3 of Schedule 1;

“government decision” has the meaning given by paragraph 14 of Schedule 2;

“group” has the meaning given by—

- (a) paragraph 6 of Schedule 2, in respect of public bodies;
- (b) paragraph 1 of Schedule 3, in respect of undertakings;

“group undertaking” except where article 21 applies, has the meaning given by paragraph 1(b) of Schedule 3;

“highest parent undertaking” has the meaning given by paragraph 1(c) of Schedule 3;

“independent college group” has the meaning given by article 21(1)(b)(ii);

“kWh” means kilowatt hour;

“local authority” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act;

“local authority decision” has the meaning given by paragraph 16 of Schedule 2;

“maintained nursery school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(b);

“maintained school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(c);

“metering device” means (except in Schedule 9)—

- (a) in relation to England, Wales and Scotland, a device where the electricity supplied is charged for as measured by the device but not including meters allocated to the following profile classes under the Balancing and Settlement Code Procedure BSCP516(d)—
 - (i) Domestic Unrestricted;
 - (ii) Domestic Economy 7;

(a) 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).

(b) The definition of “maintained nursery school” in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).

(c) The definition of “maintained school” in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).

(d) Balancing and Settlement Code. BSC Procedure. Allocation of profile classes & SSCs for non-half hourly SVA metering systems registered in SMRs. BSCP5/6. Version 7.0. 26 June 2008.

(b) in relation to Northern Ireland, a device where the electricity supplied is charged for as measured by the device but not including meters that measure supplies to domestic accommodation;

(c) a device which during a year of a phase measures more than 73,200 kWh of gas supplied, in relation to the supply of gas;

“MWh” means megawatt hour;

“operator” means a person with permission under Part 4 of the Financial Services and Markets Act 2000(a) to carry on a regulated activity;

“parent undertaking” has the meaning given by paragraph 1(e) of Schedule 3;

“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 5, the participant constitutes the members from time to time of that group;

“participant equivalent” has the meaning given by paragraph 2 of Schedule 3;

“phase” means one of the six phases of the scheme described in article 2(1);

“post-application period” means the period after an application has been made in accordance with article 12 but before the first day of the first annual reporting year of a phase;

“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—

(a) where the applicant, participant or representative 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;

“proper address” means in the case of—

(a) a body corporate or their director, secretary, clerk, person exercising management control, representative or an appointed practitioner—

(i) the registered or principal office of that body, representative or appointed practitioner; or

(ii) the email address of the director, secretary, clerk or person exercising management control;

(b) a partnership or a partner or person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of a partner or a person having that control or management;

(c) any other person, that person’s last known address, which includes an email address;

“publication” has the meaning given by article 81(3);

“public function” means any activity carried out by a public body;

“public body” has the meaning given in section 1 of Schedule 2;

“qualification day” means the last day of a qualification year;

“qualification criteria” means that—

(a) 2000 c. 17.

- (a) qualifying electricity is supplied to an applicant for the purposes of a scheme activity; and
 - (b) the amount of that qualifying electricity satisfies the qualifying amount;
- “qualification year” means, in respect of a phase, the years commencing as shown in the following table—

Phases: qualification years commencement dates

| | <i>Commencement date of qualification years</i> |
|---------------|---|
| Initial phase | 1st April 2012 |
| Second phase | 1st April 2017 |
| Third phase | 1st April 2022 |
| Fourth phase | 1st April 2027 |
| Fifth phase | 1st April 2032 |
| Final phase | 1st April 2037 |

“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, measured by a settled half hourly meter;

“the Registry” has the meaning given by article 50;

“regulated activity” means an activity specified in article 51(1)(a) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a);

“renewables generation” has the meaning given by paragraph 32 of Schedule 1;

“representative” means a person appointed under article 55(2);

“ROC” means a renewables obligation certificate issued further to an order made under—

(a) sections 32 to 32M of the Electricity Act 1989(b); or

(b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003(c);

“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 means a meter which—

(a) is able to measure electricity at least every half hour; and

(b) enables the supplier to comply with provisions of its licence—

(i) in relation to Great Britain, granted under section 6(1)(d) of the Electricity Act 1989(d);

(ii) in relation to Northern Ireland, granted under Article 10(1) of the Electricity (Northern Ireland) Order 1992,

to determine charges between that supplier and another licence holder in respect of the transmission and trading of wholesale electricity;

“specified facility certificate” means a certificate given by the Secretary of State or the Environment Agency to Her Majesty’s Revenue and Customs under paragraph 44(1)(a) of Schedule 6 to the Finance Act 2000(e);

(a) S.I. 2001/514.

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

(c) 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).

(d) 1989 c. 29. Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c. 27) and sections 136(1), 145(1) and (5) and 197(9) of and Part 1 of Schedule 3 to the Energy Act 2004 (c. 20).

(e) Paragraph 44(1)(a) was substituted by section 207(a) and paragraphs 1 and 2 of Schedule 31 to the Finance Act 2012 (c. 14).

“subsidiary undertaking” has the meaning given by paragraph 1(e) of Schedule 3;

“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;

“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(a) 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;

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 3;

“vessel” means, except under paragraph 24 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(b), 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 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 or gas;

(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) In respect of a phase a participant must comply with—

(a) Part 3 to provide annual reports on CRC supplies;

(b) Part 4 to surrender allowances equal to the participant’s CRC emissions; and

(c) Part 5 to keep and audit records relating to the requirements of Part 2 to 4.

(3) The following have effect in respect of Parts 2 to 5—

(a) Schedule 2 (public bodies);

(b) Schedule 3 (undertakings and participant equivalents);

(c) Schedule 4 (information on registration);

(d) Schedule 5 (changes to participants).

(4) Part 6 provides for persons to provide information and assistance to participants and the administrator.

(a) 2006 c. 46.

(b) 1971 c. 80.

Powers and duties of the administrator

6. The administrator has the powers and duties set out under the following Parts of this Order—
- (a) Part 7 to administer the scheme;
 - (b) Part 8 to publish information relating to a participant's performance;
 - (c) Part 9 to impose charges;
 - (d) Part 10 to monitor compliance;
 - (e) Part 11 to enforce failures to comply with this Order.

Penalties, offences, appeals, revocations, continuing effect and amendments

- 7.—(1) A participant which fails to comply with this Order may be liable under—
- (a) Part 12 to a civil penalty;
 - (b) Part 13 to a criminal penalty.
- (2) Part 14 provides for appeals.
- (3) Part 15 provides for revocations, continuing effect and amendments.

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 12;
 - (b) may be liable to a criminal penalty under Part 13.
- (3) For a group of public bodies (except an independent college group)—
- (a) the body listed in article 55(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 3 to 12 and not any other member of the group;
 - (c) subject to article 86, any member of that group may be liable to a criminal penalty under Part 13.

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;
 - (ii) the Natural Resources Body for Wales, in respect of Wales;
 - (iii) the Scottish Environment Protection Agency, in respect of Scotland;
 - (iv) 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 | Articles 18(1), 28, 31(3), 45, 52(3), 54, 57 |
| Parts 3 and 4 except article 31(3) | Parts 9 to 14 |
| Articles 50, 51, 53 and 63 | |
| Part 8 | |

(2) Where the administrator is a participant, reference to “the administrator” in Parts 10 to 12 means, where the participant is—

- (a) the Environment Agency, the Secretary of State;
- (b) the Natural Resources Body for Wales, the Welsh Ministers;
- (c) the Scottish Environment Protection Agency, the Scottish Ministers;
- (d) the chief inspector, the Department of the Environment.

(3) The administrator may exercise the powers in Parts 10 to 12 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 4, 6 to 8, 10 or 11 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.

PART 2

Registration as a participant

CHAPTER 1

General

Applications, information and charges

11.—(1) A requirement to apply for registration as a participant means that an application for registration must—

- (a) be made to the administrator and, unless otherwise agreed by the administrator, be made using the Registry; and
- (b) include—
 - (i) the information described in Schedule 4; and
 - (ii) the charge for registration as a participant under article 60.

(2) When requested by the administrator, the applicant must provide such suitable and up to date evidence of identity as the administrator may require in respect of—

- (a) the intended account holder of the compliance account; and
- (b) the individuals who will access the compliance account.

(3) The administrator may require other information from applicants or any particular applicant in order to effect a registration.

(4) The requirements to apply for registration as a participant under this Part apply in respect of each phase.

Time for applications

12. Subject to article 27(2), an application for registration as a participant under this Part must be made no later than 2 months before the beginning of the phase.

Registration and certificates

13.—(1) Where the administrator is satisfied that an application has been duly made, it must—

- (a) register the applicant as a participant;
- (b) issue a certificate of registration to the participant, the certificate to be in such form as the administrator thinks fit.

(2) An applicant registered under paragraph (1) is a participant for the relevant phase, unless the administrator cancels that registration.

(3) The administrator must maintain an up to date list of participants.

CHAPTER 2

Public bodies

Government departments and the devolved administrations

14.—(1) The following public bodies must apply for registration as a participant—

- (a) a government department;
- (b) the Scottish Ministers;
- (c) the Welsh Assembly Government;
- (d) a Northern Ireland Department;
- (e) a public body in respect of which a local authority decision is made.

(2) Where a public body listed in paragraph (1) is a member of a group, paragraph (1) applies to that group.

(3) Paragraph (1) is not satisfied in respect of a body described in sub-paragraphs (a) to (d) where part only of that body is registered as a participant.

Other public bodies

15.—(1) Paragraph (2) applies to a public body except a public body to which article 14 or chapter 3 applies.

(2) Except where a government decision provides to the contrary, for the purposes of articles 16 and 17, whether—

- (a) a group exists or not; and
- (b) whether a public body is or is not a member of a group,

are matters determined on the qualification day of the qualification year, whatever applied earlier in that year.

Public bodies: applications by groups

16.—(1) Paragraph (2) applies to a group of public bodies except a group to which article 14(2) or chapter 3 applies.

(2) Where this paragraph applies, the group must apply for registration as a participant where during the qualification year for the phase or any part of that year, it meets the qualification criteria.

Public bodies: applications other than by groups

17.—(1) Paragraph (2) applies to a public body which is not a member of a group and is not a body to which article 14(1) or chapter 3 applies.

(2) Where this paragraph applies, the public body must apply for registration as a participant in respect of a phase where, during the qualification year for that phase or any part of that year, it meets the qualification criteria.

Determinations by the administrator

18.—(1) Subject to paragraph (2), the administrator may determine^(a) whether or not a public body is a member of a group.

(2) Paragraph (1) does not apply to a public body or group to which any of the following apply—

- (a) chapter 3;
- (b) paragraph 7, 8 or 9 of section 2 of Schedule 2;
- (c) a government decision or local authority decision.

CHAPTER 3

Universities and colleges: England

Universities and colleges: England

19.—(1) This chapter applies to governing bodies of a college of a university and a university—

- (a) described in Part 4 of Schedule 1 to the 2000 Act; and
- (b) where the university is wholly or mainly situated in England.

(2) For the purposes of this chapter, whether a college is a college of a university is determined on the qualification day of the qualification year, whatever applied earlier in that year.

Qualifying electricity

20.—(1) The governing bodies of colleges of a university and the university (“the university and colleges”) are a group for the purposes of paragraph (2) whether or not those bodies have a legal identity separate from each other.

(2) Articles 21 and 22 apply where the university and colleges meet the qualification criteria.

(3) Where the university and colleges do not meet the qualification criteria, none of them are required to apply for registration as a participant in respect of a phase.

Universities and colleges: groups

21.—(1) Where this article applies—

- (a) the governing body of a college of the university which has a legal identity separate from the governing body of the university is “an independent college”;
- (b) for the purposes of article 22—
 - (i) the university and colleges are a group but that group does not include an independent college unless the university and colleges and the independent college otherwise agree;

(a) Such a determination must be made in accordance with article 57(2).

- (ii) an independent college which is not part of the group under paragraph (1)(b)(i) may agree with another such independent college to form a group (“an independent college group”).

(2) Any agreement under paragraph (1)(b) must be made before the group makes an application for registration.

Applications

22.—(1) Where this article applies, the following which exist must apply for registration as separate participants in respect of a phase—

- (a) the university and colleges;
- (b) an independent college group;
- (c) an independent college which is not a member of one of the groups listed in subparagraph (a) or (b).

(2) The administrator must be notified with the application—

- (a) by the university and colleges—
 - (i) whether or not an independent college is a member of the group; and
 - (ii) if not, the identity of the independent college;
- (b) by an independent college or an independent college group, the identity of the university.

CHAPTER 4

Undertakings

Groups of undertakings

23.—(1) This article applies to undertakings.

(2) For the purposes of articles 24 and 25—

- (a) whether a group exists or not; and
- (b) whether an undertaking is or is not a member of a group,

are matters determined on the qualification day of the qualification year, whatever applied earlier in that year.

(3) Subject to article 27, any change in the members of a group after the qualification day is to be ignored for the purposes of this Part.

Undertakings: applications by groups

24.—(1) This article applies to a group of undertakings but is subject to article 27.

(2) Subject to paragraph (4), a group must apply for registration as a participant in respect of a phase where during the qualification year for that phase, it meets the qualification criteria.

(3) Paragraph (2) applies notwithstanding the fact that an insolvency procedure is applied to a group member during the qualification year or post-qualification period.

(4) Paragraph (2) does not apply where the whole of that group has permanently ceased carrying on a scheme activity in the United Kingdom in accordance with article 12.

(5) An insolvency procedure is applied to an undertaking for the purposes of this article in the circumstances described by paragraph 120(7) or 120(9) of Schedule 6 to the Finance Act 2000(a).

(a) 2000 c. 17. Paragraphs 120(7) and 120(9) were amended by article 4 and paragraphs 31 and 33 of Part 1 of the Schedule to the Enterprise Act 2002 Insolvency Order 2003 (S.I. 2003/2096).

Undertakings: applications other than by groups

25.—(1) Subject to paragraph (2) and article 27, an undertaking must apply for registration as a participant in respect of a phase where—

- (a) it is not a member of a group; and
- (b) during the qualification year for that phase, it meets the qualification criteria.

(2) Paragraph (1) applies notwithstanding the fact that an insolvency procedure is applied to an undertaking during the qualification year or post-qualification period;

(3) Paragraph (1) does not apply where an undertaking has permanently ceased carrying on a scheme activity in the United Kingdom in accordance with article 12.

(4) An insolvency procedure is applied to an undertaking for the purposes of this article in the circumstances described by paragraph 120(7) or 120(9) of Schedule 6 to the Finance Act 2000.

Undertakings: disaggregation

26.—(1) This article applies where—

- (a) an undertaking or a group of undertakings (“B”) is a member of a group (“A”); and
- (b) at the time A applies for registration in accordance with article 12, B is not or does not include the highest parent undertaking registered in the United Kingdom that is a member of A.

(2) Paragraph (3) applies where—

- (a) A applies for registration in accordance with article 11; and
- (b) B applies for registration as a participant separate from A by the last working day of April in the following year.

(3) When this paragraph applies and the applications by A and B are duly made the administrator must register A and B as separate participants.

Changes to undertakings and groups

27.—(1) Paragraph (2) applies where—

- (a) a requirement to register applies to a group or undertaking under article 24 or 25;
- (b) a change described in section 1 of Part 3 of Schedule 5 applies to that group or undertaking after the qualification day but before the group or undertaking makes an application for registration in accordance with article 12 (“the post-qualification period”).

(2) Where this paragraph applies—

- (a) a group or undertaking to which article 24 or 25 would otherwise apply must instead register as a participant as provided by section 1 of Part 3 of Schedule 5; and
- (b) other undertakings affected by such change must comply with that section.

Determinations by the administrator

28. The administrator may determine(a) whether or not—

- (a) an undertaking is a member of a group;
- (b) article 27(2) applies to a group or undertaking.

(a) Such a determination must be made in accordance with article 57(2).

CHAPTER 5

Trustees

Trustees: separate participation

29.—(1) This article applies where—

- (a) a public body or undertaking (“T”) is a trustee of a relevant trust; and
- (b) T is required to register as a participant, whether on its own or as a member of a group.

(2) T may apply for registration as a separate participant in respect of any scheme activities of any relevant trust of which T is a trustee.

(3) Where—

- (a) T is registered as a participant in respect the scheme activities of a relevant trust; and
- (b) T would otherwise be part of a group which is a participant for the relevant phase,

T is not to be regarded as part of that group for the phase in respect of the scheme activities of the relevant trust.

(4) In this article, “relevant trust” means a trust where—

- (a) the assets of the trust include premises to which a supply of electricity or gas is made;
- (b) the trust is not managed by an operator;
- (c) no beneficiary of the trust is entitled to half or more of the assets of the trust; and
- (d) the trust carries on scheme activities.

CHAPTER 6

Operators

Operators: separate participation

30.—(1) This article applies where—

- (a) an undertaking (“O”) is an operator; and
- (b) O is required to register as a participant, whether on its own or as a member of a group.

(2) O may apply for registration as a separate participant in respect of any relevant trust in relation to which O carries on a regulated activity.

(3) Where—

- (a) O is registered as a participant in respect of a relevant trust as described in sub- paragraph (2); and
- (b) O would otherwise be part of a group which is a participant for the relevant phase,

O is not to be regarded as part of that group for the phase in respect of the scheme activities of the relevant trust.

(4) In this article, “relevant trust” means a trust where—

- (a) the assets of the trust include premises to which a supply of electricity or gas is made;
- (b) no beneficiary of the trust is entitled to half or more of the assets of the trust; and
- (c) the trust carries on scheme activities.

PART 3

Annual reports

Provision of annual reports

31.—(1) A participant must provide to the administrator a report which complies with article 32 on its CRC supplies during an annual reporting year (“an annual report”).

(2) A participant must provide the annual report—

- (a) unless otherwise agreed by the administrator, using the Registry; and
- (b) by no later than the last working day of July after the end of the annual reporting year.

(3) Where by 40 days after the due date a participant has failed to provide the annual report, the administrator may determine^(a) the report.

Annual report

32.—(1) A participant must provide in the annual report—

- (a) the amount of the CRC supplies under article 33(2);
- (b) the amount of the supplies to each participant equivalent member of the group;
- (c) whether or not the following apply to the participant—
 - (i) an estimation adjustment under paragraph 31 of section 6 of Schedule 1; or
 - (ii) renewables generation,and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation.

(2) Where the administrator receives the annual report in accordance with article 31, it must calculate the participant’s CRC emissions.

CRC emissions

33.—(1) “CRC emissions” means the emissions calculated in accordance with paragraph 33 of Schedule 1 from CRC supplies.

(2) “CRC supplies” means the supplies of electricity and gas supplied to a participant and participant equivalent in accordance with sections 1 to 4 of Schedule 1 and the additions in section 6 of that Schedule less the deductions under section 5 of that Schedule.

(3) The lowest value of CRC emissions is zero.

Changes affecting participants

34. Where changes affecting a participant take place in an annual reporting year as described in Part 1 or 2, or section 2 of Part 3, of Schedule 5—

- (a) the participant; and
- (b) in respect of section 2 of Part 3 of Schedule 5, undertakings which are not participants, must comply with such of those provisions as are applicable to them.

(a) Such a determination must be made in accordance with article 57(2).

PART 4

Allowances and trading of CRC emissions

Validity of allowances

35.—(1) Subject to paragraph (2), an allowance is valid for the purposes of compliance with article 36—

- (a) for the year in respect of which it was issued; and
- (b) for any subsequent year,

but an allowance issued in a phase is not valid in respect of CRC emissions made in a subsequent phase.

(2) Where—

- (a) a participant is required to acquire and surrender additional allowances under article 74(4)(b) or 77(2)(a) in respect of an annual reporting year; and
- (b) the participant holds an allowance which is valid for the following year (“year 2”),

the participant may not surrender the allowance which is valid for year 2 in order to comply with those articles.

(3) A participant must acquire the additional allowances from a special allocation or from a third party.

(4) An allowance is not valid for any purpose other than a purpose for which it is valid under paragraphs (1) and (2).

(5) In paragraph (3), “special allocation” means the issue of allowances conducted by the Environment Agency under regulation 10 of the 2012 Regulations.

Allowances and CRC emissions

36.—(1) Subject to paragraph (2), for each year of a phase, the participant must surrender a quantity of allowances from its compliance account to the cancellation account which is at least equal to the participant’s CRC emissions for that year.

(2) Paragraph (1) does not apply in respect of a year where the participant’s CRC emissions for that year are less than one tCO₂.

(3) A surrender of allowances must be made by the participant—

- (a) by the last working day of October after the end of the applicable year; and
- (b) using the Registry.

Cancellation of allowances and surplus surrendered allowances

37.—(1) The administrator must in respect of a participant cancel such quantity of allowances in the cancellation account which is equal to the participant’s CRC emissions for the relevant year of the phase—

- (a) except where sub-paragraph (b) or (c) applies, as stated in the annual report;
- (b) further to a determination under article 31(3); or
- (c) as provided under article 74(4)(a) or (5), 77(2)(a) or (3) or 78(2)(a).

(2) Where a participant surrenders to the cancellation account more allowances (“surplus allowances”) than required under article 36(1), the surplus allowances—

- (a) must remain in the cancellation account;
- (b) subject to article 35—

- (i) are to be treated as surrendered in respect of the subsequent year (“year 2”) in which the participant is required to comply with article 35 where that year is in the same phase; and
- (ii) must be cancelled by the administrator in accordance with paragraph (1) before any other allowances which are surrendered.

(3) Where the surplus allowances exceed the quantity required to be surrendered in year 2, subject to article 35, paragraph (2)(b) applies to the years after year 2 until no surplus allowances remain.

(4) Where—

- (a) a participant surrenders to the cancellation account surplus allowances; and
- (b) the account holder makes a request to the Secretary of State for the repayment of the balance,

the Secretary of State may repay the balance to the account holder.

(5) Any repayment made by the Secretary of State under paragraph (4) may be subject to a deduction of any banking charges incurred during that transaction.

Allowances and trading

38.—(1) The administrator must maintain a record in respect of an allowance which shows—

- (a) the year in which the allowance issued;
- (b) the allocation in which the allowance was issued;
- (c) the date of issue of the allowance;
- (d) to whom the allowance was issued;
- (e) the account in which the allowances are held from time to time;
- (f) transfers of the allowances;
- (g) when the allowance is cancelled.

(2) Trading in allowances is permitted by participants and third parties.

PART 5

Records and notification

General

39.—(1) A participant must maintain the records provided for by this Part.

(2) Those records must be kept for at least six years after the end of the scheme year to which they relate.

(3) Records must be—

- (a) adequate to show to the satisfaction of the administrator that the participant has complied with its obligations under this Order;
- (b) up to date and, so far as possible, kept together; and
- (c) available for inspection by the administrator at any time.

Records: general

40. A participant must maintain records in respect of the information—

- (a) used to compile its annual report;
- (b) relevant to any of the changes described in Schedule 5.

Records: public disclosure

41.—(1) Where a participant has informed the administrator that—

- (a) it discloses publicly each year—
 - (i) its emissions reduction targets; and
 - (ii) its performance against them;
- (b) a person with management control has responsibility in respect of those matters; or
- (c) it operates an employee engagement programme,

the participant must maintain records of the disclosure, the person or the programme, as applicable.

(2) In paragraph (1)(c), “employee engagement programme” means a programme organised or supported by the participant which enables employees of that participant to make regular contributions to the ways in which the participant may reduce the emissions made or caused by the participant.

Audit of records

42.—(1) A participant must, on at least an annual basis, carry out audits of the records required to be maintained under this Part and do so to ensure its compliance with those requirements.

(2) The satisfactory completion of such an audit must be evidenced in writing (“an audit certificate”).

(3) The audit certificate may be in such form as the participant sees fit but must be—

- (a) signed by a person who exercises management control in respect of the activities of the participant; and
- (b) kept with its records.

PART 6

Information and assistance requirements

Supplies of electricity and gas under Part 6

43. In this Part except article 44, information which may be requested or required in respect of a supply of electricity or gas includes information relating to all sections of Schedule 1.

Information on electricity and gas supplied from authorised suppliers

44.—(1) A participant may request in writing the information under paragraph (2) from those authorised suppliers of electricity or gas that hold a licence to make such a supply.

(2) The information under this paragraph is the amount of electricity or gas supplied to the participant by an authorised supplier in—

- (a) the annual reporting year in which the request is made;
- (b) the alternative period.

(3) The information under paragraph (2)—

- (a) may be calculated on the basis of the amount of electricity or gas supply billed to the participant during the annual reporting year or the alternative period;
- (b) may cover a different 12 month period from the annual reporting year, which commences no more than 31 calendar days before the beginning of the annual reporting year or no more than 31 calendar days after the beginning of the annual reporting year.

(4) Where a supplier described in paragraph (1) receives such a request, that supplier must reply in writing within 6 weeks of the end of the annual reporting year or the alternative period to which the information relates.

(5) In this article “alternative period” means a period of 12 months which—

- (a) commences no earlier than 31 calendar days before an annual reporting year begins; and
- (b) finishes no later than 31 calendar days after an annual reporting year ends.

Information from electricity suppliers

45.—(1) The administrator may by notice require an electricity supplier to provide it with information as if—

- (a) the notice was one provided for in paragraph 2 of Schedule 4 to the Act; but
 - (b) in respect of such a notice—
 - (i) section 50(2) of the Act did not apply; and
 - (ii) the modifications in paragraph (2) applied.
- (2) The modifications referred to in paragraph (1) are that—
- (a) the purpose for which the power may be exercised is to identify public bodies or undertakings which should or should not be participants in the scheme;
 - (b) reference to the environmental authority in paragraph 2 of Schedule 4 to the Act is a reference to the administrator;
 - (c) in paragraph 4(2) of Schedule 4 to the Act, the date referred to must not be earlier than two months after the date of the notice; and
 - (d) paragraphs 4(3) and 5 of that Schedule do not apply.

Information and assistance by occupiers

46.—(1) Where paragraph 16 of Schedule 1 applies, A may request B (where “A” and “B” are as described in that paragraph) to provide A with such reasonable assistance as A may require to comply with Part 2 or to comply with A’s obligations as a participant.

(2) B must comply with the request within a reasonable time.

Information and assistance by franchisees

47.—(1) Where paragraph 7 of Schedule 1 applies, the franchisor may request the franchisee to provide it with such reasonable information and assistance as it may require to comply with Part 2 or to comply with the franchisor’s obligations as a participant.

(2) The franchisee must comply with the request within a reasonable time.

Information and assistance: public bodies

48.—(1) This article applies where an applicant or a participant is a group of public bodies.

(2) In paragraph (3), “A” means the public body under article 55(4) or (5) in whose name the compliance account in the Registry is, or is to be, set up.

(3) A may request any other member (“B”) of the group to provide A with such reasonable information and assistance as A may require to comply with Part 2 or to comply with its obligations as a participant.

(4) B must comply with the request within a reasonable time.

Information and assistance by administrators, receivers and insolvency practitioners

49.—(1) Where article 24(3) applies, the group member to which an insolvency procedure is applied may request the appointed practitioner to provide it with such reasonable information and assistance as it may require to comply with its obligations as a participant.

(2) The appointed practitioner must comply with the request within a reasonable time.

PART 7

Administration of the scheme

The Registry

50.—(1) The administrator must establish and operate an electronic system (“the Registry”) and Schedule 6 has effect.

(2) Communications between—

- (a) the administrator;
- (b) a participant; and
- (c) a third party account holder,

must, so far as possible, take place using the Registry.

(3) The administrator—

- (a) must take reasonable steps to ensure the Registry is available to those entitled to use it during each working day; and
- (b) may make it available at such other times as the administrator believes reasonable.

(4) The administrator may establish administrative arrangements in relation to the operation of the Registry.

Security of the Registry

51. The administrator—

- (a) must take reasonable steps to ensure that the operation of the Registry is secure from misuse, including use by those not entitled to use it;
- (b) may suspend the operation of the Registry or any account where it believes security of the Registry may be at risk by not doing so;
- (c) must ensure that information which relates to an account holder or a participant (other than information to which article 58 or 59 applies) is not accessible by another account holder or participant.

Security and identities

52.—(1) A participant must not allow an individual to operate its compliance account on its behalf unless the administrator has notified it that it is satisfied as to the identity of that individual.

(2) The administrator must take reasonable steps to check the identity of—

- (a) any such individual; and
- (b) the intended account holder of the compliance account.

(3) The administrator may determine^(a)—

(a) Such a determination must be made in accordance with article 57(2).

- (a) to prevent or suspend any individual from operating a compliance account where it has reason to believe that evidence of the individual's identity may be incorrect or incomplete;
- (b) to refuse to open a compliance account where the administrator has not been able to satisfy itself of the identity of—
 - (i) an individual whom the participant intends will operate that account on its behalf; or
 - (ii) the intended account holder of that account,
 and the administrator has given the participant a reasonable opportunity to provide suitable and up to date evidence of such identity.

Preventing or suspending use of the Registry

53.—(1) The administrator may suspend or restrict a participant's use of the Registry if that participant or any individual acting on its behalf—

- (a) is in breach of this Order or any administrative rules concerning the operation of the Registry; or
- (b) in the belief of the administrator, is using or intends to use the Registry for or in connection with a criminal offence.

(2) The administrator must give notice to the participant of such suspension or restriction except in relation to the registration of an applicant or where paragraph (1)(b) applies.

Cancellation of registrations of participants

54.—(1) Subject to paragraphs (3) and (4), the administrator must cancel the registration of a participant where the administrator is satisfied that a participant has permanently ceased to carry on a scheme activity in the United Kingdom.

(2) Where a participant ("A") leaves a group ("B") and—

- (a) A does not register as a separate participant from B in a subsequent phase; or
- (b) B no longer requests that A is a separate participant in a subsequent phase,

the administrator must cancel the registration of A.

(3) The administrator must give a participant notice that it intends to cancel its registration and unless the participant agrees otherwise, the registration must not be cancelled earlier than 3 months after the date of the notice.

(4) Cancellation of the registration of a participant must be made by removing the participant from the list of participants held by the administrator and notice that the cancellation has been made must be given in writing to the former participant as soon as possible.

(5) Where the registration of a participant is cancelled, the compliance account must be closed and any allowances held in the account immediately prior to its closure must be cancelled by the administrator.

(6) The administrator is not required to cancel a registration until such time as the administrator is satisfied that the participant has complied with any outstanding requirement under this Order applicable to that participant.

(7) Where cancellation of a registration is required under section 2 of Part 3 of Schedule 5, the administrator must comply with paragraphs (4) and (5).

Account holders

55.—(1) The account holder in respect of the compliance account for a group of undertakings is, as the applicant or participant chooses—

- (a) the highest parent undertaking of the group; or
- (b) a member of the group,

with its principal place of activity in the United Kingdom.

(2) Where no undertaking exists as provided under paragraph (1), the highest parent undertaking of the group must appoint a representative with a principal place of activity in the United Kingdom as the account holder.

(3) Where a participant is a group of undertakings and it intends to change the account holder—

- (a) the participant must notify the administrator of the intended new account holder;
- (b) that account holder must be an undertaking which complies with paragraph (1) or, as appropriate, paragraph (2); and
- (c) the administrator must approve the change.

(4) Where a group of public bodies includes the following—

- (a) a government department;
- (b) the Scottish Ministers;
- (c) the Welsh Assembly Government;
- (d) a Northern Ireland Department;
- (e) a local authority;
- (f) a university,

subject to paragraph (5), the account holder in respect of the compliance account is that body.

(5) Where—

- (a) a body listed in paragraph (4) is part of more than one group; or
- (b) a public body other than one listed in paragraph (4) is a participant,

the account holder in respect of the compliance account is such body as the administrator agrees.

Notification

56. A participant must notify any change in its proper address to the administrator within 10 days of the change.

Determinations

57.—(1) This article applies in respect of a determination by the administrator under—

- (a) article 18(1), 28, 31(3), 52(3) or 65(5); or
- (b) paragraph 8 of Part 3 of Schedule 5.

(2) A determination must be made in writing by the administrator and, within 10 days of making the determination, notified to such persons as the administrator decides may be affected by it.

PART 8

Performance information and publication

Publication of performance information

58. The administrator may, for each annual reporting year, publish information on a participant's performance in relation to its energy efficiency achievements on the basis of the information—

- (a) in the participant's annual report;
- (b) submitted as part of the information described in Schedule 4.

Further publication

59.—(1) Paragraph (2) applies where an appeal is made against—

- (a) a determination under article 31(3);
 - (b) the imposition of a penalty described in article 74(4)(a)(ii).
- (2) Where this paragraph applies—
- (a) the administrator may publish a list of those participants which have in respect of the annual reporting year made any such appeal;
 - (b) subject to paragraph (3), where any such appeal results in the information published under article 58 being changed, the administrator must as soon as possible publish the amended information.
- (3) Publication under paragraph (2)(b) must not take place until the completion of all such appeals made by all participants.
- (4) The administrator may publish amended information at any time where it discovers any error or omission in the published information.

PART 9

Charging

Charges

60.—(1) The administrator may charge an applicant or participant for the chargeable activities in article 61.

(2) Payment of a charge is not received by the administrator until the administrator has cleared funds for the full amount due and a charge if unpaid may be recovered by the administrator as a civil debt.

(3) A charge must be calculated by reference to the costs of administering the scheme.

(4) The administrator may apply different charges for—

- (a) the same chargeable activity;
- (b) different classes of applicant or participant in respect of the same chargeable activity.

Chargeable activities

61.—(1) In article 60, “chargeable activity” means any of the following—

- (a) registration of a participant;
- (b) maintaining a participant for each year of a phase where it is a participant;
- (c) establishing an account, other than a compliance account;
- (d) maintaining such account for each year of a phase where it is required;
- (e) making a determination under article 31(3).

(2) The administrator—

- (a) must require the charge for registration as a participant to be paid before it makes the registration;
- (b) in respect of any other charge, may require it to be paid before it carries out the relevant chargeable activity;
- (c) is not required to reimburse a charge paid where—
 - (i) the chargeable activity is not completed; or
 - (ii) an applicant or participant liable to pay it does not remain within the scheme for all the period in respect of which the charge is payable or has been calculated.

Amount of charges

- 62.**—(1) The amount of a charge payable under article 60(1) is that set out in—
- (a) version 1 of the document named “CRC Energy Efficiency Scheme Charges”(a) made available by the administrator on or before this Order is made; or
 - (b) any replacement or revision of that document (“revised charging document”).
- (2) Article 60(3) must be complied with in respect of the amount of a charge under paragraph (1).

Revised charges

- 63.**—(1) The administrator may draw up a revised charging document.
- (2) Subject to paragraph (3), the administrator must not apply a revised charging document unless—
- (a) in such manner as it considers appropriate for bringing a proposed document to the attention of those likely to be affected by it, the administrator—
 - (i) sets out its proposals; and
 - (ii) specifies the period within which representations or objections must be made to it; and
 - (b) it receives approval to the revised charging document from the Secretary of State.
- (3) The Secretary of State must consider any representations or objections made by any person to the proposed revised charging document before the Secretary of State decides whether or not to approve it.
- (4) The administrator must not take the steps required under paragraph (2)(a) unless it first consults the following on its proposals—
- (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers; and
 - (d) the Northern Ireland departments.
- (5) A revised charging document must be published and made available before it is to take effect.

Collection and remittance of charges

- 64.**—(1) An administrator (other than the Environment Agency) must pay to the Secretary of State any charge received by it.
- (2) An administrator—
- (a) may collect a charge on behalf of another administrator;
 - (b) must remit charges received to the Secretary of State or, where the Secretary of State directs, as directed to—
 - (i) the Scottish Ministers;
 - (ii) the Welsh Ministers; or
 - (iii) the Department of the Environment.

(a) The document is available on behalf of all the administrators from the Environment Agency at, National Customer Contact Centre, PO Box 544, Rotherham S60 1BY or from www.environment-agency.gov.uk/business/regulation/31857.aspx.

PART 10

Monitoring compliance

Compliance notices

65.—(1) The administrator may request a person to provide it with such information as it believes it requires in relation to monitoring compliance with Parts 2 to 9 of this Order.

(2) The administrator must request the information referred to in paragraph (1) by a written notice (“a compliance notice”) served on the person to whom it is addressed.

(3) A compliance notice may be in such form as the administrator sees fit but must state the date by which compliance with the notice is required.

(4) A compliance notice may be varied or revoked in writing by the administrator at any time.

(5) Where a person—

(a) fails to comply with a compliance notice; or

(b) in the opinion of the administrator, supplies incomplete or inaccurate information,

the administrator may instead determine^(a) the information requested.

Inspections

66.—(1) Subject to the following paragraphs, the administrator may inspect any premises and any thing in or on those premises in order to monitor compliance with Parts 2 to 9 of this Order.

(2) Reasonable prior notice must be given before exercising the power of inspection.

(3) An administrator may authorise such persons (“authorised persons”) who appear suitable to exercise the administrator’s powers of inspection under this article.

(4) A person in control of the premises to which the administrator or authorised person reasonably requires access must allow the administrator or authorised person to have access to those premises.

(5) A person acting on behalf of the administrator may, when inspecting premises—

(a) require the production of any record;

(b) take measurements, photographs, recordings or copies of any thing;

(c) require any person at the premises to provide facilities and assistance to the extent that is within that person’s control.

(6) The power of inspection does not apply to—

(a) a prohibited place for the purposes of the Official Secrets Act 1911^(b); or

(b) any other premises to which the Crown restricts access on the grounds of national security,

except to the extent agreed by the person in control of such place or premises.

(a) Such a determination must be made in accordance with article 57(2).

(b) 1911 c. 28.

PART 11

Enforcement

Powers of the administrator in respect of enforcement

67. The powers of enforcement in this Part may be exercised where the administrator reasonably believes that there has been a failure (except in respect of this article) to comply with a provision of this Order.

Notices to provide information: compliance with articles 40 and 41

68.—(1) The administrator may, by a written notice served on a participant, require that participant—

- (a) to furnish information in relation to a failure or suspected failure to comply with article 40 or 41; and
 - (b) to do so in the form specified in the notice and within such period following service of the notice or at such time as is specified in the notice.
- (2) A notice to provide information under paragraph (1) may be withdrawn at any time.

Enforcement notices

69.—(1) The administrator may serve an enforcement notice on any person who fails to comply with a provision of this Order.

- (2) An enforcement notice must be in writing and specify—
- (a) the provision of this Order in respect of which there has been a failure;
 - (b) the matters constituting the failure;
 - (c) the steps that must be taken to remedy the failure; and
 - (d) the period within which those steps must be taken.
- (3) An enforcement notice may be varied or withdrawn at any time.
- (4) If a person fails to comply with an enforcement notice, the administrator—
- (a) may do what that person was required to do; and
 - (b) may recover from an applicant or participant served with a notice the costs of doing so.

PART 12

Civil penalties

Civil penalties

70.—(1) Where the administrator is satisfied that a person is liable to a civil penalty under this Part, the administrator may serve a notice on that person (“penalty notice”).

- (2) A penalty notice must specify—
- (a) the article of and, where applicable, the provision of the Schedule to this Order that is breached; and
 - (b) to whom the penalty must be paid.
- (3) A penalty notice in respect of a financial penalty must specify—
- (a) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of service of the notice—
 - (i) the total amount due;

- (ii) where applicable, how it has been calculated; and
- (iii) the date by which it must be paid;
- (b) where a daily penalty rate applies and the total amount of the daily penalty cannot be determined at the date of service of the notice—
 - (i) the amount of the initial penalty; and
 - (ii) details of the applicable daily rate.

(4) Where a notice has been served under paragraph (3)(b) and the total amount of the daily penalty can be determined after the date of service of the notice, the administrator must serve a further notice on the person liable to the penalty which complies with paragraph (3)(a).

(5) The administrator must remit a financial penalty received to the Secretary of State.

Effect and recovery of civil penalties

71.—(1) Except for a financial penalty, a civil penalty has effect once the notice of that penalty is given unless that notice provides otherwise.

(2) A financial penalty—

- (a) is due 60 days after notice of that penalty is given; and
- (b) if unpaid, is recoverable as a civil debt by the administrator.

Discretion in waiving, imposition and modification of civil penalties

72.—(1) Where the administrator considers appropriate, the administrator may—

- (a) waive a civil penalty;
- (b) allow additional time to pay;
- (c) impose a lower financial penalty or substitute a lower financial penalty where one has already been imposed; or
- (d) modify the application of a publication or blocking penalty.

(2) Where at any time before a financial penalty is due to be paid the administrator ceases to be satisfied that the person is liable for that penalty, the administrator may serve a further notice on that person to—

- (a) withdraw the penalty notice; or
- (b) modify the penalty notice by substituting a lower financial penalty.

Failures in respect of registration

73.—(1) The penalties in paragraph (2) apply where a public body or undertaking—

- (a) fails to apply for registration as a participant contrary to—
 - (i) article 11; or
 - (ii) Schedule 5, where an application for registration is required under that Schedule;
 or
- (b) applies late for registration as a participant contrary to—
 - (i) article 12; or
 - (ii) paragraph 2(1) of Part 1, paragraph 2(1) of Part 2, or paragraph 1 or 7 of Part 3, of Schedule 5, where an application for registration is required under those Parts of that Schedule.

(2) The penalties are—

- (a) the financial penalties of—
 - (i) £5000; and

- (ii) £500 for each day starting on the day after an application under article 11 must be made until the application for registration is made, subject to a maximum of 80 days; and
 - (b) publication.
- (3) The penalties in paragraph (4) apply where—
- (a) a public body or undertaking fails to report details of each settled half hourly meter under paragraph 6 of Schedule 4 where an application for registration is required under Part 2 or Schedule 5; or
 - (b) an undertaking fails to provide the information required under paragraph 4(2)(d) of Part 3 of Schedule 5.
- (4) The penalties are—
- (a) the financial penalty of £500 for each meter not reported; and
 - (b) publication.

Failures in respect of annual reports

- 74.**—(1) The penalties in the following paragraphs apply where a participant—
- (a) fails to provide an annual report contrary to article 31(1); or
 - (b) provides late an annual report contrary to article 31(2)(b).
- (2) The penalties are—
- (a) a financial penalty of £5000 and publication; and
 - (b) where the report is provided—
 - (i) no more than 40 days after the due date, a financial penalty of £500 for each day the report is late after the due date; or
 - (ii) more than 40 days after the due date or not at all, a financial penalty of £40,000.
- (3) Paragraphs (4) and (5) apply where the annual report is provided more than 40 days after the due date or not at all.
- (4) Where this paragraph applies, the following additional penalties apply to the participant—
- (a) the CRC emissions of the participant for the year to which the annual report relates are—
 - (i) double the CRC emissions reported in the annual report of the previous year; or
 - (ii) where no such report exists, double the CRC emissions which the administrator calculates the participant made in the year for which the annual report is not provided;
 - (b) the participant must immediately acquire allowances and surrender them in accordance with Part 4 equal to the CRC emissions which apply under sub-paragraph (a) (or such additional allowances having regard to any allowances surrendered on time for the annual reporting year);
 - (c) a financial penalty of £40 per tCO₂ of so much of the CRC emissions which apply under sub-paragraph (a) but—
 - (i) deducting the emissions represented by those allowances (if any) which are surrendered by the participant on time for the year to which the annual report relates; and
 - (ii) before the doubling is applied;
 - (d) blocking.
- (5) Where this paragraph applies and a participant—
- (a) fails to comply with paragraph (4)(b) by the 31st March after the annual report was due; and
 - (b) continues in the scheme,

the allowances required to be surrendered under paragraph (4)(b) are added to the quantity of allowances required to be surrendered in the next year that compliance with Part 4 is required.

Failures to provide information or notifications

- 75.—(1) The penalties in paragraph (2) apply where a participant—
- (a) fails to provide the information described in Schedule 4 where required under Part 2 or Schedule 5;
 - (b) in purported compliance with the requirements in sub-paragraph (a), provides inaccurate information;
 - (c) fails to provide a notification to the administrator as required under Part 1, 2 or 3 of Schedule 5.
- (2) The penalties are the financial penalty of £5000 and publication.

Inaccurate annual reports

76.—(1) The penalties in paragraph (3) apply where a participant provides an inaccurate annual report contrary to article 31.

(2) In paragraph (1), “inaccurate” means where any of the supplies or emissions reported differ by more than 5% from the supplies or emissions which should have been reported, ignoring any estimation adjustment under paragraph 31 of section 6 of Schedule 1.

- (3) The penalties are—
- (a) a financial penalty of £40 per tCO₂ of so much of those supplies or emissions which were inaccurately reported; and
 - (b) publication.

Failures to surrender allowances contrary to Part 4

77.—(1) The penalties in paragraphs (2) and (3) apply where—

- (a) a participant fails to surrender sufficient allowances contrary to Part 4; and
- (b) that failure is apparent to the administrator at the time compliance is required,

but do not apply where a penalty is imposed under article 74(4) or (5).

- (2) The penalties are—
- (a) the participant must—
 - (i) immediately acquire such additional allowances as are equal to the amount which should have been surrendered (“the shortfall allowances”); and
 - (ii) surrender the shortfall allowances in accordance with Part 4;
 - (b) a financial penalty of £40 per tCO₂ of so much of the emissions represented by the shortfall allowances;
 - (c) publication; and
 - (d) blocking.
- (3) Where a participant—
- (a) fails to comply with paragraph (2)(a) by the 31st March after the surrender should have been made; and
 - (b) continues in the scheme,

the shortfall allowances are added to the quantity of allowances required to be surrendered in the next year that compliance with Part 4 is required.

Later discovered failures to surrender allowances contrary to Part 4

78.—(1) The penalties in paragraph (2) apply where—

- (a) by reference to its annual report, a participant complied with Part 4;
- (b) the administrator finds, within five years of the date on which compliance with Part 4 is required in respect of that report, that the participant reported fewer CRC supplies in that report than it should have done; and
- (c) in consequence, the participant surrendered fewer allowances than it should have done to comply with Part 4 (“the shortfall allowances”).

(2) The penalties are—

- (a) where the participant is a participant at the time paragraph (1)(b) applies—
 - (i) the shortfall allowances are added to the quantity of allowances required to be surrendered in the next annual reporting year that the shortfall is found; and
 - (ii) publication;
- or
- (b) where the participant is not a participant at the time paragraph (1)(b) applies, a financial penalty which represents the value of the shortfall allowances.

(3) The value under paragraph (2)(b) means the value of allowances in the sale of allowances by the Environment Agency immediately before the shortfall was found.

Failures to maintain records

79.—(1) The penalties in paragraph (2) apply where—

- (a) the administrator has given notice under article 68 in respect of a failure to comply with article 40 or 41; and
- (b) the participant has failed to comply by the time stated in that notice.

(2) The penalties are—

- (a) a financial penalty at the rate of £40 per tCO₂ of so much of the CRC emissions of the participant in the annual reporting year immediately preceding the year in which the non-compliance is discovered; and
- (b) publication.

(3) Where a participant fails to keep records as provided by article 40 and 41, the penalties are a financial penalty of £5000 and publication.

Failures to provide information under article 44

80.—(1) The penalties in paragraph (2) apply where—

- (a) the administrator has served a notice as provided under article 46 on an electricity supplier or distributor; and
- (b) at least one previous such notice has not been complied with by that supplier.

(2) The penalties are—

- (a) a financial penalty of £500,000 or, if lower, 0.5% of the supplier’s turnover; and
- (b) publication.

Blocking and publication

81.—(1) The administrator may impose the penalty of blocking until—

- (a) the failure is remedied; and
- (b) any financial penalty imposed in respect of the same failure is paid.

(2) Publication—

- (a) must not take place until the time to appeal against the penalty under Part 14 has expired and—
 - (i) no appeal against the penalty has been made; or
 - (ii) where an appeal against the penalty has been made and the participant is unsuccessful in that appeal, until after the disposal of that appeal;
 - (b) lasts for one year but the administrator may impose the penalty for a longer period, if it believes the seriousness of the failure justifies such longer period.
- (3) In this Part—
- “blocking” means to prevent or restrict the operation of an account of a participant;
- “publication” means to publish on a part of the Registry which is accessible to the public—
- (a) the name of the participant;
 - (b) details of the failure in respect of which a civil penalty has been imposed; and
 - (c) the penalty amount.

PART 13

Criminal offences and penalties

Offences

- 82.**—(1) It is an offence for a person to make a statement—
- (a) which that person knows to be false or misleading in a material particular; or
 - (b) recklessly and which is false or misleading in a material particular,
- where the statement is made in purported compliance with a provision of this Order.
- (2) It is an offence for a person to fail to comply with an enforcement notice.
- (3) It is a defence for a person charged with an offence under paragraph (2) to prove that such person had a reasonable excuse for the matters charged.
- (4) It is an offence for a person to pretend to be an authorised person.
- (5) It is an offence for a person in control of any premises to refuse to allow the administrator or an authorised person access to those premises contrary to article 66(4) where such access is reasonably required.

Penalties

- 83.**—(1) A person guilty of an offence under article 82(1) or (2) is liable—
- (a) in England and Wales or Northern Ireland—
 - (i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 3 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;
 and
 - (b) in Scotland—
 - (i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 12 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.
- (2) A person guilty of an offence under article 82(4) or (5) is liable—
- (a) in England and Wales or Northern Ireland—

- (i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 3 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;
- and
- (b) in Scotland—
 - (i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 12 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.

Bodies corporate

84.—(1) Where an offence under this Part is committed by a body corporate and—

- (a) it is committed with the consent or connivance of an officer; or
- (b) it is attributable to any neglect on the officer’s part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) An “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

Scottish partnerships

85.—(1) Where an offence under this Part is committed by a Scottish partnership and—

- (a) it is committed with the consent or connivance of a partner; or
- (b) it is attributable to any neglect on the partner’s part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “partner” includes a person purporting to act as a partner.

The Crown

86.—(1) This Order applies to the Crown but no contravention of it by the Crown makes the Crown criminally liable.

(2) Notwithstanding paragraph (1), this Order applies to persons in the public service of the Crown as it applies to other persons.

PART 14

Appeals, service of notices and national security

Appeals: general

87. The following appeals may be made to the appeal body under this Order—

- (a) an appeal by a public body or undertaking notified of a determination referred to in article 57(1), against that determination;
- (b) an appeal by a person served with an enforcement notice, against that notice;

- (c) an appeal by a public body or undertaking given notice that they are liable to a civil penalty, against the imposition of that penalty.

Grounds of appeal

88. The grounds on which a determination, notice or penalty may be appealed are—

- (a) that it was based on an error of fact;
- (b) that it was wrong in law; or
- (c) that it was unreasonable.

Appeal body

89.—(1) In the case of an appeal against a determination, notice or penalty made or given by—

- (a) the Secretary of State, the appeal body is the First-tier Tribunal;
- (b) the Environment Agency, the appeal body is the First-tier Tribunal;
- (c) the Natural Resources Body for Wales, the appeal body is the First-tier Tribunal;
- (d) the Scottish Environment Protection Agency, the appeal body is the Scottish Ministers;
- (e) the chief inspector, the appeal body is the Planning Appeals Commission.

(2) Paragraph (3) applies where the appellant is or includes—

- (a) the Natural Resources Body for Wales;
- (b) the Scottish Environment Protection Agency.

(3) Where this paragraph applies, the appeal body is an independent person which the following appoint in writing—

- (a) the Welsh Ministers, where the appellant is or includes the Natural Resources Body for Wales;
- (b) the Scottish Ministers, where the appellant is or includes the Scottish Environment Protection Agency.

(4) Where the appellant is or includes the chief inspector, the appeal body is the Planning Appeals Commission.

(5) For the purposes of this article, “independent person” means a person who has no individual interest in the matter subject to the appeal and is independent of the parties to the appeal.

Effect of an appeal

90. The bringing of an appeal—

- (a) suspends an enforcement notice, financial penalty or publication taking effect;
- (b) does not suspend a determination referred to in article 57(1) or a civil penalty not described in sub-paragraph (a) taking effect.

Standard of proof

91.—(1) Paragraph (2) applies where an appeal is made to—

- (a) the Scottish Ministers;
- (b) the Planning Appeals Commission;
- (c) an independent person appointed under paragraph (3) of article 89.

(2) Where this paragraph applies, the standard of proof to be applied by the appeal body in respect of—

- (a) a breach of a provision of this Order; or
- (b) in respect of any determination by the administrator under this Order,

is proof on the balance on probabilities.

Determination of an appeal

- 92.** The appeal body may—
- (a) in respect of a determination, enforcement notice or penalty—
 - (i) cancel or affirm it; and
 - (ii) if it affirms it, do so in its original form or with such modification as it sees fit;
 - (b) instruct the administrator to do or not to do any thing which is within the power of the administrator.

Procedure for appeals

93. Schedule 7 (appeals procedure) has effect in relation to the making and determination of appeals under this Order by—

- (a) the Scottish Ministers;
- (b) the Planning Appeals Commission;
- (c) an independent person appointed under article 89(3).

Service of documents

94. Schedule 8 (service of documents) has effect.

National security

95. No provision of this Order requires the Crown to provide information to the administrator or to any other person where to do so would, in the opinion of the person who holds or controls the information, be contrary to the interests of national security.

PART 15

Revocations, continuing effect and amendments

Revocations, continuing effect and amendments

- 96.**—(1) Subject to paragraph (2), the 2010 Order and the 2011 Order are revoked.
- (2) The 2010 Order and the 2011 Order continue to have effect in relation to the first phase under the 2010 Order, subject to the amendments contained in Schedule 9.
- (3) Schedule 9 (amendments to the CRC Energy Efficiency Scheme Order 2010) has effect.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 4

Supplies and emissions

SECTION 1

Electricity and gas: general

Electricity

- 1.—(1) Subject to sub-paragraph (3), and sections 3 and 4—
- (a) a public body or undertaking (“A”) is supplied with electricity where—
 - (i) A agrees with a person (“B”) that B will supply electricity to A;
 - (ii) A receives a supply further to that agreement; and
 - (iii) that supply is measured by a metering device or is an unmetered supply;
 - (b) A is supplied with electricity received by another public body or undertaking (“C”) where—
 - (i) A agrees with B that B will supply electricity to C;
 - (ii) C receives a supply further to that agreement; and
 - (iii) that supply is measured by a metering device or is an unmetered supply.
- (2) A supply of electricity is made at the time it is received.
- (3) Sub-paragraph (1) does not apply to the extent that the electricity is used directly for—
- (a) the generation, transmission or distribution of electricity; or
 - (b) the transport, supply or shipping of gas.
- (4) In this paragraph,—
- “unmetered supply” is a supply of electricity to premises which is—
- (a) supplied otherwise than through a metering device; and
 - (b) is connected to a distribution system of an electricity distributor within the meaning of section 6 of the Electricity Act 1989(a).

Gas

- 2.—(1) Subject to sub-paragraph (3), and sections 3 and 4—
- (a) a public body or undertaking (“A”) is supplied with gas received by A where—
 - (i) A agrees with a person (“B”) that B will supply gas to A;
 - (ii) A receives a supply further to that agreement; and
 - (iii) that supply is measured by a metering device;
 - (b) A is supplied with gas received by another public body or undertaking (“C”) where—
 - (i) A agrees with B that B will supply gas to C;
 - (ii) C receives a supply further to that agreement; and
 - (iii) that supply is measured by a metering device.
- (2) A supply of gas is made at the time it is received.
- (3) Sub-paragraph (1) does not apply to the extent that the gas is used directly for—
- (a) the transport, supply or shipping of gas; or
 - (b) the generation, transmission or distribution of electricity.

(a) 1989 c. 29.

Measurement units

3. Where in this Order information must be provided concerning a supply of electricity or gas, the amount of that supply must be expressed in kWh.

SECTION 2

Electricity and gas: self-supply

Self-supply of electricity by generators, transmitters, distributors and authorised suppliers

4.—(1) Where a public body or undertaking—

- (a) is described in sub-paragraph (3); and
- (b) supplies electricity to itself,

subject to sub-paragraph (2), it is supplied with that electricity.

(2) Sub-paragraph (1) does not apply to the extent that the electricity—

- (a) is used directly for—
 - (i) the generation, transmission or distribution of electricity;
 - (ii) the transport, supply or shipping of gas; or
- (b) is supplied to the public body or undertaking in any year in the initial phase.

(3) The public bodies or undertakings referred to in sub-paragraph (1) are—

- (a) an authorised supplier of electricity;
- (b) in Great Britain, a public body or undertaking which—
 - (i) holds a generation, transmission or distribution licence within the meaning of section 6 of the Electricity Act 1989(a); or
 - (ii) generates, transmits or distributes electricity and which is exempt under that Act from the requirement to hold a licence to do so;
- (c) in Northern Ireland, a public body or undertaking which—
 - (i) holds a generation or a distribution and transmission licence made under Article 10 of the Electricity (Northern Ireland) Order 1992(b); or
 - (ii) generates, distributes or transmits electricity and which is exempt under that Order from the requirement to hold a licence to do so.

Self-supply by authorised gas suppliers

5.—(1) Where an authorised supplier of gas supplies natural gas to itself, it is supplied with that natural gas except to the extent which it uses that natural gas directly for—

- (a) the transport, supply or shipping of gas; or
- (b) the generation, transmission or distribution of electricity.

(2) In this paragraph, “natural gas” means any gas derived from natural strata.

(a) 1989 c. 29. Section 6 has been amended by: section 30 of the Utilities Act 2000 (c. 27); sections 89(3), 136, 143, 145, 146, and 197(9) of the Energy Act 2004 (c. 20) and Schedules 3 and 19 to that Act; section 79 of, and Schedule 8 to, the Climate Change Act 2008 (c. 27).

(b) S.I. 1992/231 (N.I. 1). Article 10 has been amended by: regulations 19(a) and 47 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), articles 1(2) and 28(4) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and articles 1(3) and 4(4)(a) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)).

SECTION 3

Franchise agreements

Supplies under franchise agreements

6.—(1) This section applies to supplies of electricity or gas in relation to franchise agreements and varies the provisions under section 1 concerning to whom a supply is made.

(2) The variation applies only where provided under this Order.

Franchise agreements

7.—(1) A “franchise agreement” exists where one undertaking (“the franchisee”) and another undertaking (“the franchisor”) agree that—

- (a) the franchisee carries on a business activity which is the sale or distribution of goods or the provision of services (“the franchise business”);
- (b) the franchise business is carried on under a name which the franchisor provides to the franchisee;
- (c) the premises where the franchise business is carried on are used exclusively for that business by the franchisee; and
- (d) those premises have an internal or external appearance agreed by the franchisor and that appearance is similar to that of other premises in respect of which the franchisor has entered into a franchise agreement.

(2) Where a franchise agreement exists, “franchise premises” means—

- (a) the premises described in sub-paragraph (1); and
- (b) other premises used by the franchisee in relation to carrying on the franchise business.

Franchise agreements not existing

8. A franchise agreement does not exist where—

- (a) the franchisee and the franchisor are group undertakings in relation to each other; or
- (b) in relation to franchise premises, the franchisee occupies those premises with the permission of the franchisor.

Supplies to franchisees regarded as supplies to franchisors

9.—(1) Sub-paragraphs (2) and (3) apply where—

- (a) there is a franchise agreement; and
- (b) the franchisee is supplied with electricity or gas under section 1 of this Schedule in relation to the franchise premises (“a franchise supply”).

(2) For the purposes of Part 2 of this Order, where—

- (a) the franchise agreement exists on the qualification day; and
- (b) during the qualification year there is a franchise supply of electricity which is qualifying electricity,

that franchise supply of electricity is a supply to the franchisor and not the franchisee.

(3) For the purposes of Part 3 of this Order, where—

- (a) the franchisor is a participant or is a member of a group which is a participant; and
- (b) the franchise agreement exists during a year of a phase,

the franchise supply during that year is a supply to the franchisor and not the franchisee.

SECTION 4
Trusts of land

Supplies to trustees in relation to trust premises

10. Subject to paragraphs 11 and 12, where—

- (a) a public body or undertaking (“T”) holds land on trust (“the trust premises”); and
- (b) T is supplied with electricity or gas under section 1 of this Schedule in relation to the trust premises,

that supply of electricity or gas in relation to the trust premises is a supply to T.

Supplies to beneficiaries

11. Where a public body or undertaking (“B”) is beneficially entitled to more than a half share of the assets of the trust under which the trust premises are held, the supply of electricity or gas in relation to the trust premises is a supply to B and not T.

Supplies to operators

12.—(1) Subject to sub-paragraph (2), where—

- (a) an operator (“O”) carries on a regulated activity in relation to the trust premises; and
- (b) O is a public body or undertaking,

the supply of electricity or gas in relation to the trust premises is a supply to O and not T.

(2) This paragraph does not apply where paragraph 11 applies.

SECTION 5
Deductions from supplies

Deductions from supplies

13.—(1) This section provides for deductions in calculating the amount of a supply of electricity or gas under section 1, 2, 3 or 4 of this Schedule.

(2) The deductions apply only where provided under this Order.

Unconsumed supply: electricity

14.—(1) Sub-paragraph (3) applies where A does not consume for its own use some or all of the supply to it of electricity.

(2) The amount not consumed by A is “unconsumed supply”.

(3) Subject to paragraph 16(3), A may deduct from its electricity supply the unconsumed supply measured by—

- (a) a metering device; or
- (b) a device which measures electricity supplied but the measurements are not used for the purpose of charging for that electricity.

Unconsumed supply: gas

15.—(1) Sub-paragraph (3) applies where A does not consume for its own use some or all of the supply to it of gas.

(2) The amount not consumed by A is “unconsumed supply”.

(3) Subject to paragraph 16(3), A may deduct from its gas supply the unconsumed supply measured by—

- (a) a metering device; or
- (b) a device which measures gas supplied but the measurements are not used for the purpose of charging for that gas.

Occupation of premises

16.—(1) Sub-paragraph (2) applies where—

- (a) A has an unconsumed supply; and
- (b) that unconsumed supply is consumed by a person (“B”) in respect of premises which B occupies with the permission of A.

(2) Subject to sub-paragraph (3), paragraphs 14(3) and 15(3) do not apply to an unconsumed supply to which sub-paragraph (1) applies.

(3) Sub-paragraph (2) does not apply where—

- (a) B is a Northern Ireland Department which occupies premises with the permission of A, and A is another Northern Ireland Department; or
- (b) B has entered into a construction lease with A in respect of the premises described in paragraph (1)(b).

(4) A “construction lease” is a lease entered into between A and B for a minimum period of 30 years where—

- (a) B covenants—
 - (i) to obtain all necessary consents and approvals and to erect fencing or erect a building on the premises within a period of not more than 2 years from the lease commencement date;
 - (ii) to install all necessary gas, electricity and water supplies to the premises to comply with statutory requirements within a period of not more than 2 years from the lease commencement date; and
 - (iii) if required by A, to remove any buildings or works constructed by B on the premises at termination of the lease; and
- (b) A covenants to compensate B for any improvements made to the premises by B during the period of the lease.

Consumption outside the United Kingdom

17. A is not supplied with electricity or gas to the extent that supply is consumed by A outside the United Kingdom.

Domestic accommodation

18.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas—

- (a) to the extent that supply is consumed by A for the purposes of domestic accommodation; and
- (b) where the conditions in sub-paragraph (4) are satisfied concerning that accommodation.

(2) A is supplied with electricity or gas in respect of common areas described in sub-paragraph (5)(b) where a decision has been made under sub-paragraph (6) that those common areas are not part of the domestic accommodation.

(3) “Domestic accommodation” means premises or that part of premises intended to be used as a person’s permanent home.

(4) The conditions referred to in sub-paragraph (1) are—

- (a) the accommodation is not provided in relation to a person’s education, employment or service; and

- (b) no services are provided for the care of a person in residence in that accommodation by the person to whom the supply of electricity or gas is made.

(5) Where common areas of premises are used in relation to domestic accommodation and the premises are used—

- (a) solely for domestic accommodation; or
- (b) partly for domestic accommodation,

the common areas are part of that accommodation.

(6) A may decide that the common areas where sub-paragraph (5)(b) applies are not part of the domestic accommodation.

(7) A decision made under sub-paragraph (6)—

- (a) may be made in respect of—
 - (i) the supply in the qualification year of a phase and where so made, applies to the phase;
 - (ii) a phase where it was not made in respect of the qualification year, where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.

Caravan sites: accommodation

19.—(1) A is not supplied with electricity or gas to the extent that supply is consumed by A directly for the purposes of accommodation at a caravan site.

(2) “Caravan site” means—

- (a) in England and Wales and Scotland, a caravan site within the meaning of section 1(4) of the Caravan Sites and Control of Development Act 1960(a) which is in accordance with Part 1 of that Act—
 - (i) licensed;
 - (ii) exempt from requiring a licence; or
 - (iii) provided by a local authority as defined by that Part;
- (b) in England and Wales, land licensed under section 269 of the Public Health Act 1936(b) for use as a site for a moveable dwelling within the meaning of that section;
- (c) in Northern Ireland, a caravan site within the meaning of section 1(4) of the Caravans Act (Northern Ireland) 1963(c) which is—
 - (i) licensed in accordance with section 1(1) of that Act;
 - (ii) exempt from requiring a licence under section 2 of that Act;
 - (iii) provided by a district council as defined by section 21 of that Act(d); or
 - (iv) provided by the Northern Ireland Housing Executive pursuant to Article 28A of the Housing (Northern Ireland) Order 1981(e).

Emergency and temporary accommodation

20.—(1) Where A is a housing body, A is not supplied with electricity or gas to the extent the supply is consumed by A for the purposes of emergency or temporary accommodation.

-
- (a) 1960 c. 62.
 - (b) 1936 c. 49. Section 269 was amended by sections 30(1) and 48(1) of and Schedule 4 to the Caravan Sites and Control of Development Act 1960 (c. 62). There are other amendments to section 269 which are not relevant.
 - (c) 1963 c. 17. Paragraph 9 of the Schedule was amended by article 133(1) of and Schedule 5 to the Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11)).
 - (d) Section 21 was amended by S.R. (NI) 1973 No 285.
 - (e) S.I. 1981/156 (N.I. 3). Article 28A was inserted by S.I. 2003/412 (N.I. 2).

(2) In sub-paragraph (1)—

- (a) “emergency or temporary accommodation” means accommodation provided in discharge of a duty on the housing body under—
 - (i) in England and Wales, Part VII of the Housing Act 1996(a);
 - (ii) in Scotland, Part II of the Housing (Scotland) Act 1987(b);
 - (iii) in Northern Ireland, Part II of the Housing (Northern Ireland) Order 1988(c);
- (b) “housing body” means—
 - (i) in England and Wales, a local housing authority within the meaning of Part VII of the Housing Act 1996;
 - (ii) in Scotland, a local authority within the meaning of Part II of the Housing (Scotland) Act 1987;
 - (iii) in Northern Ireland, the Northern Ireland Housing Executive.

Transport consumption

21.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas to the extent that supply is consumed by A for the purposes of transport.

(2) A is supplied with an un-metered electricity or gas transport supply where a decision has been made that such a supply is not consumed for the purposes of transport under paragraph 22 or 23.

Un-metered transport supply: electricity

22.—(1) Sub-paragraph (2) applies where—

- (a) A has consumed a supply of electricity for the purposes of transport; and
- (b) part of that supply so consumed was not measured by a meter of any sort (“un-metered electricity transport supply”).

(2) Where this sub-paragraph applies, A may decide that un-metered electricity transport supply is not consumed for the purposes of transport.

(3) A decision made under sub-paragraph (2)—

- (a) may be made in respect of—
 - (i) qualifying electricity in the qualification year of a phase and where so made, applies also to supplies of electricity during the phase;
 - (ii) a phase where it was not made in respect of the qualification year, where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.

Un-metered transport supply: gas

23.—(1) Sub-paragraph (2) applies where—

- (a) A has consumed gas for the purposes of transport; and
- (b) part of that supply so consumed was not measured by a meter of any sort (“un-metered gas transport supply”).

(a) 1996 c. 52. Part VII is subject to various amendments under Schedule 1 to the Homelessness Act 2002 (c. 7).

(b) 1987 c. 26. Part II is subject to various amendments under section 3 of and Schedule 10 to the Housing (Scotland) Act 2001 (asp. 10) and section 25 is amended by section 1 of the Homelessness etc (Scotland) Act 2003 (asp. 10).

(c) S.I. 1988/1990 (N.I. 23). Part II is subject to various amendments under chapter IV of the Housing (Northern Ireland) Order 2003 (S.I. 2003/412 (N.I. 2)).

(2) Where this sub-paragraph applies, A may decide that un-metered gas transport supply during a phase is not consumed for the purposes of transport.

(3) A decision made under sub-paragraph (2)—

- (a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.

Purposes of transport

24.—(1) In paragraph 21, electricity or gas is consumed for the purposes of transport where it is used—

- (a) by a road going vehicle, a vessel, an aircraft or a train;
- (b) in relation to railways, for network services except where electricity or gas is used to provide power, heat or light to a building; or
- (c) to provide power for the operation of a conveyor belt which is—
 - (i) at least 8 kilometres in length; and
 - (ii) used to transport materials to an off site facility from which facility the materials will be transported on a railway or a vessel using inland waters.

(2) The following definitions have effect for the purposes of sub-paragraph (1)—

“aircraft” means a self-propelled machine that can move through the air other than against the earth’s surface;

“inland waters” means—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lough, lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“network services” has the same meaning it has in section 82 of the Railways Act 1993(a) but as if section 82(3)(h) of that Act did not apply;

“railway” has the meaning given in section 67(1) of the Transport and Works Act 1992(b);

“road going vehicle” means any vehicle—

- (a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994(c);
- (b) which is an exempt vehicle under that Act; or
- (c) which is required to display a certificate of Crown exemption under regulation 31 of the Road Vehicles (Registration and Licensing) Regulations 2002(d);

“train” has the same meaning it has in section 83 of the Railways Act 1993;

“vessel” means any boat or ship which is self-propelled and operates in or under water.

Consumption of gas for purposes other than heating

25. A is not supplied with gas to the extent that supply is consumed by A for purposes other than for the purposes of heating.

(a) 1993 c. 43.
(b) 1992 c. 42.
(c) 1994 c. 22.
(d) S.I. 2002/2742.

Purposes of heating

26.—(1) In paragraph 25, gas is consumed for the purposes of heating where it is used as part of a process where the primary purpose of that process is the generation of heat.

(2) Gas used in the process of combined heat and power generation is not consumed for the purposes of heating.

Minimal gas heating supply levels

27.—(1) Sub-paragraph (2) applies where the amount of gas supplied to A for the purposes of heating is less than 2% of the amount of electricity supplied to A in the first annual reporting year of a phase (“minimal gas heating supply”).

(2) Where this sub-paragraph applies, A may decide that minimal gas heating supply is not consumed for the purposes of heating.

(3) A decision under sub-paragraph (2)—

- (a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.

EU ETS installations

28.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas to the extent that supply is consumed by A for the purposes of operating an EU ETS installation.

(2) A is supplied with electricity or gas where A decides that such a supply is not consumed for the purposes of operating an EU ETS installation.

(3) A decision made under sub-paragraph (2)—

- (a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.

CCA facility consumption

29.—(1) Subject to sub-paragraph (2), A is not supplied with electricity or gas to the extent that supply is consumed by A for the purposes of operating a CCA facility specified in a current specified facility certificate.

(2) A is supplied with electricity or gas where A decides that such a supply is not consumed for the purposes of operating a CCA facility specified in a specified facility certificate.

(3) A decision made under sub-paragraph (2)—

- (a) may be made in respect in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;
- (b) must not be altered during the phase.

(4) For the purposes of the initial phase, A is not supplied with electricity or gas to the extent that it is consumed by A for the purposes of operating a CCA facility that is subject to a CCA target that ends no earlier than 2 months before the beginning of that phase.

SECTION 6

Additions to supplies: estimation adjustments

Additions to supplies

30.—(1) This section provides for additions in calculating the amount of a supply of electricity or gas under section 1, 2, 3 or 4 of this Schedule.

(2) The additions apply only where provided under this Order.

Estimation adjustment: electricity and gas

31.—(1) Sub-paragraph (2) applies to a supply to A of electricity or gas measured by a specific metering device (“device 1”) during a year where,—

- (a) for at least half of the year in which the supply is made, the amount of that supply is estimated by the supplier; and
- (b) A cannot provide evidence to the satisfaction of the administrator that A has measured such estimated supply by a meter reading from device 1.

(2) Where this sub-paragraph applies, the “estimation adjustment” is 10% of the amount of the supply during the year which is measured by device 1.

SECTION 7

Renewables generation and amount of emissions from supplies

Renewables generation: electricity

32.—(1) Sub-paragraph (2) applies where—

- (a) A generates electricity;
- (b) in respect of that generation,—
 - (i) A is issued with a ROC; or
 - (ii) A is in receipt of a financial incentive made by virtue of a scheme under section 41 of the Energy Act 2008(a); and
- (c) A supplies some or all of that generated electricity to itself under paragraph 4 of this Schedule at the premises where it is generated.

(2) Where this sub-paragraph applies, “renewables generation” is the amount of the electricity generated which A supplies to itself.

Amount of emissions

33. The emissions in tCO₂ from an amount of electricity or gas supplied is found by applying to that amount the relevant conversion factor.

Conversion factors

34. In paragraph 33, “relevant conversion factor” means a factor listed—

- (a) in version 2 of the document named “CRC Energy Efficiency Scheme Order: Table of Conversion Factors” published by the Secretary of State and made available on the website address at www.gov.uk/decc, on or before the date on which this Order is made; or
- (b) in any replacement or revision of the document described in sub-paragraph (a) which is published and made available in the same way as that document.

(a) 2008 c. 32.

Public bodies

SECTION 1

*Interpretation***Public bodies**

1. In this Order, “public body” means a public body described in this section.

Public authorities and the National Assembly for Wales Commission

2.—(1) A public authority is a public body.

(2) In sub-paragraph (1), a “public authority” means—

- (a) a public authority within the meaning of section 3(1)(a) of the 2000 Act; and
- (b) a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002^(a) (“the 2002 Act”),

but not any such authority listed in sub-paragraph (4) or paragraph 4.

(3) Where a public authority is included within the 2000 Act or the 2002 Act subject to a limitation, that limitation does not apply in respect of this Order.

(4) The public authorities referred to in sub-paragraph (2) are—

- (a) the House of Commons;
- (b) the House of Lords;
- (c) the force or any unit described in sub-paragraph (a) or (b) of paragraph 6 (the armed forces of the Crown) of Schedule 1 to the 2000 Act;
- (d) a person described in paragraph 64 (persons nominating special constables) of Schedule 1 to the 2000 Act;
- (e) the National Assembly for Wales.

(5) The National Assembly for Wales Commission is a public body^(b).

Public bodies: bodies corporate

3.—(1) A body corporate is a public body where it is a body in which a public body under paragraph 2 is a majority member.

(2) A public body is a majority member of a body (“body A”) under sub-paragraph (1) where—

- (a) the member;
- (b) a person acting on behalf of the member; or
- (c) a body corporate in which the member or person acting on its behalf is a majority member,

(any of whom is “person B”) satisfies the provisions in sub-paragraph (3).

(3) The provisions referred to in sub-paragraph (2) are—

- (a) person B holds a majority of the voting rights in body A;
- (b) person B is a member of body A and has the right to appoint or remove a majority of its board of directors; or
- (c) person B is a member of body A and controls alone, pursuant to an agreement with other members, a majority of the voting rights in body A.

(a) 2002 asp 13.

(b) The Commission was established under section 27 of the Government of Wales Act 2006 (c. 32).

Public bodies: proprietors of Academies and colleges

- 4.—(1) The proprietor of—
- (a) an Academy;
 - (b) a city technology college or city college for the technology of the arts,
- is a public body.
- (2) Where—
- (a) a proprietor described in sub-paragraph (1) is the proprietor of more than one Academy or college; and
 - (b) those Academies or colleges are situated in more than one local authority area,
- the proprietor is a separate public body in respect of those Academies or colleges in different local authority areas.
- (3) Where a proprietor would be required to register as a participant under Part 2—
- (a) if it were not a public body under sub-paragraph (1); and
 - (b) excluding the scheme activities in respect of which it is such a public body,
- the proprietor is, as applicable, a separate public body or undertaking in respect of its other scheme activities.

Public bodies: one public body part of another

- 5.—(1) Except where paragraph 4(2) or (3) applies, where a public body (“A”) is part of another public body (“B”)—
- (a) A is not a public body; and
 - (b) B including A is a public body.
- (2) A government department is not part of another government department.

SECTION 2

Public bodies: groups

Groups and members

6. In relation to public bodies—
- “group” means those public bodies which are members of a group—
- (a) as provided by paragraphs 7 to 9;
 - (b) further to—
 - (i) a government decision under paragraph 14;
 - (ii) a local authority decision under paragraph 16;
- or
- (c) as provided under article 20 for the purposes of that article or under article 21;
- “member” means a public body which is part of a group together with one or more other public bodies.

Bodies corporate

7. Subject to a government decision under paragraph 14, where a body corporate is a public body and where the majority member is—
- (a) a government department, that body is a member of a group with that department;
 - (b) the Scottish Ministers, that body is a member of a group with the Ministers;

- (c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, that body is a member of a group with the Welsh Assembly Government;
- (d) a relevant Northern Ireland department, that body is a member of a group with the relevant department.

Educational bodies: Wales

8. In Wales, where a public body is the governing body of a maintained school or a maintained nursery school, that public body is a member of a group with the local authority which maintains the school.

Grant-aided schools: Northern Ireland

9.—(1) This paragraph applies in Northern Ireland and to a public body which is a grant-aided school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(a) (“a grant-aided school”).

(2) Subject to sub-paragraph (3), a grant-aided school is a member of a group with the Education and Library Board(b) which funds that school.

(3) Where the Education and Skills Authority has been established(c), subject to sub-paragraph (4), a grant-aided school is a member of a group with that Authority.

(4) Sub-paragraph (3) does not apply in respect of a phase where that phase has commenced before the Authority is established.

SECTION 3

Public bodies: government and local authority decisions

Government and local authority decisions

10.—(1) Except in relation to the Treasury and Her Majesty’s Revenue and Customs, the Secretary of State may make a government decision in relation to a government department.

(2) The Treasury may make a government decision in relation to the Treasury.

(3) Her Majesty’s Revenue and Customs may make a government decision in relation to Her Majesty’s Revenue and Customs.

(4) Where—

(a) the Secretary of State, the Treasury or Her Majesty’s Revenue and Customs intend to make a government decision described in paragraph 14(2)(a) in relation to a public authority described in Part VI of Schedule 1 to the 2000 Act; and

(b) that authority exercises functions partly other than in England,

the Secretary of State, the Treasury or Her Majesty’s Revenue and Customs must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(5) The Secretary of State, the Treasury or Her Majesty’s Revenue and Customs must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(6) A local authority decision may be made by—

(a) S.I. 1986/594 (N.I. 3). The definition of “grant-aided” under Article 2(2) was amended by the Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20)).

(b) Boards are established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986.

(c) The Northern Ireland Assembly Education Bill 3/08 makes provision for the establishment of the Education and Skills Authority.

- (a) the Secretary of State in relation to a local government public body or a local government group in England;
 - (b) the Welsh Ministers in relation to a local government public body or a local government group in Wales.
- (7) A government decision—
- (a) must not be made such that a public body, on its own or part of a group—
 - (i) which is a participant, is no longer a participant;
 - (ii) which is required to be a participant, is no longer required to be a participant;
 - (b) may be made for the better administration of the scheme.

The Scottish Ministers

11.—(1) The Scottish Ministers may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to the Scottish Ministers.

(2) The Scottish Ministers may make a government decision described in paragraph 14(2)(a) only in respect of the public bodies described in the following paragraphs of this Schedule—

- (a) paragraph 2(2)(b);
- (b) paragraph 3 where the majority member is a body described in paragraph 2(2)(b).

The Welsh Assembly Government and Welsh Ministers

12.—(1) The Welsh Ministers may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to the Welsh Assembly Government.

(2) The Welsh Ministers must not make a government decision under paragraph 14(2)(a) unless the public body exercises functions in or as regards Wales and—

- (a) those functions are exercised in relation to matters within the legislative competence of the National Assembly for Wales; or
- (b) functions are exercisable in relation to that body by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

Northern Ireland departments

13.—(1) The relevant Northern Ireland department may make a government decision as if reference in paragraph 14(2) to “a government department” were a reference to a relevant department.

(2) The relevant Northern Ireland department must not make a government decision under paragraph 14(2)(a) unless the Northern Ireland Assembly has legislative competence in respect of the functions of the public body.

Government decisions

14.—(1) “A government decision” means any decision described in sub-paragraph (2) in relation to—

- (a) qualification for a phase; or
- (b) participation during a phase or any part of a phase.

(2) The decisions referred to in sub-paragraph (1) are—

- (a) that a public body (which is not a government department) is or is not a member of a group together with the department;
- (b) that any part of a government department as described in the decision must register as a participant separately from the remainder of the department;

- (c) subject to paragraph 15(2), that a government department is a member of a group with another government department;
- (d) under paragraph 13 only and where the Education and Skills Authority referred to in paragraph 9(3) has been established, that—
 - (i) paragraph 9(2) does not apply to a grant-aided school referred to in sub-paragraph (1) of that paragraph; and
 - (ii) such a school is a member of a group with the Authority.

Government decisions: supplies and departments

15.—(1) A government decision under paragraph 14(2)(b) must state—

- (a) which supplies of electricity or gas are supplied to which part of the department for the phase;
- (b) where a public body is a member of a group with the department, with which part of the department it is a group member.

(2) A government decision under paragraph 14(2)(c) must only be made in respect of a department which, had it been subject to article 17 on qualification for the phase, would not have been required to register as a participant.

Local authority decisions

16.—(1) In paragraph 10(6), a “local authority decision” means a decision described in sub-paragraph (2) in relation to qualification for a phase in respect of—

- (a) a public body (“a local government public body”) which is—
 - (i) in England, a public authority described in any of paragraphs 7(a) and 8 to 11 of Part II (local government) of Schedule 1 to the 2000 Act; or
 - (ii) in Wales, a public authority described in paragraph 7(b) of that Part;
 or
- (b) where the local government public body is a member of a group under section 2 of this Schedule (“the local government group”), such a group.

(2) A decision referred to in sub-paragraph (1) means that a local government public body or group is a public body to which article 14(1)(e) applies.

(3) Where such a decision is made, the decision may also provide—

- (a) that the body or group is a member of a group with another public body required to register as a participant;
- (b) where applicable, that the decision only applies to the local government public body and not any other member of the local government group.

(4) Where a decision is made under sub-paragraph (3)(b)—

- (a) the local government group ceases to exist; and
- (b) other members of the group are separate public bodies.

Notification of government and local authority decisions

17.—(1) The administrator must be notified in writing of the application for registration as a participant in respect of—

- (a) a government decision in relation to qualification for a phase;
- (b) a local authority decision.

(2) A government decision in relation to participation during a phase or any part of a phase must be notified in writing as soon as possible to the administrator.

(3) A notification required under sub-paragraph (1) or (2) must—

- (a) state the period for which the decision has effect, which may commence before the date of the notification but must not commence in a phase which has completed; and
 - (b) identify the public bodies affected.
- (4) A government decision or local authority decision may be varied or revoked in writing.

SCHEDULE 3

Article 5

Undertakings and participant equivalents

Undertakings and participant equivalents

Undertakings

1. In this Order, subject to paragraph 4—
- (a) in relation to an undertaking, “group” means those undertakings which are group undertakings in respect of each other;
 - (b) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006(a) but where “undertaking” has the meaning given in this Order;
 - (c) “highest parent undertaking” is the undertaking in the group which is not a subsidiary of any other undertaking in the group;
 - (d) “member” in relation to group undertakings means an undertaking which is part of a group;
 - (e) “parent undertaking”, “subsidiary undertaking” and related expressions have the same meanings as in Part 38 of the Companies Act 2006 but where “undertaking” has the meaning given in this Order;
 - (f) “undertaking” means—
 - (i) an undertaking as defined in section 1161(1) of the Companies Act 2006; and
 - (ii) as if that definition included an unincorporated association that has a charitable purpose,but an undertaking does not include a public body.

Participant equivalents

- 2.—(1) An undertaking is a “participant equivalent” when so provided under this paragraph—
- (a) for the purposes of Part 2; and
 - (b) for the whole phase.
- (2) Subject to sub-paragraph (3), for the purposes of Part 2 where an undertaking (“B”)—
- (a) is a member of a group that is a participant (“G”); and
 - (b) would, if B was not a member of G, have been required to register as a participant under Part 2,
- B is a participant equivalent as a member of G.
- (3) Where—
- (a) B would be a participant equivalent as a member of G under sub-paragraph (2); but
 - (b) G is subject to article 27(2),

(a) 2006 c. 46.

the provisions of section 1 of Part 3 of Schedule 5 vary sub-paragraph (2).

Participant equivalents: movement between groups during a phase

3.—(1) Subject to paragraph 4, where—

- (a) B was a participant equivalent as a member of a group under paragraph 2; and
- (b) during a phase B becomes a member of another participant group of undertakings (“G2”),

B is a participant equivalent as a member of G2 for the remainder of that phase.

(2) Paragraph 12 of section 2 of Part 3 of Schedule 5 makes provision in relation to the change described in sub-paragraph (1).

(3) Subject to paragraph 4, where—

- (a) B is a participant equivalent as a member of a group under paragraph 2; and
- (b) during a phase B becomes a member of a group of undertakings which is not a participant (“G3”),

paragraph 10 of section 2 of Part 3 of Schedule 5 makes provision in relation to that change.

(4) Subject to paragraph 4, where—

- (a) B is a participant equivalent as a member of G under paragraph 2; and
- (b) during a phase B together with B’s subsidiary undertakings cease to be a member of G,

paragraph 9 of Part 3 of Schedule 5 makes provision in relation to that change.

Undertakings or groups of undertakings as participants

4. Where during a phase an undertaking or group of undertakings—

- (a) is a member of a group; but
- (b) is a participant separate from the group,

for such time as it is a participant separate from the group, it must be treated as if it was not a member of the group for the phase.

SCHEDULE 4

Article 5

Information on registration

General

1. Information in this section is required under Part 2 and Schedule 5.

Contact information

2. Subject to paragraph 4, as applicable to the applicant—

- (a) name, postal address, email address and telephone number;
- (b) the principal place of activity;
- (c) any company registration number and registered office;
- (d) any trading or other name by which the applicant is commonly known.

3. Where the applicant is a group of undertakings—

- (a) the information in paragraph 2 in respect of—
 - (i) the registering member of the group;

- (ii) each participant equivalent;
- (iii) the highest parent undertaking located in the United Kingdom; and
- (iv) where applicable, the highest parent undertaking located outside the United Kingdom;

and

- (b) where an undertaking other than the highest parent undertaking is to be the account holder of the compliance account, the information in paragraph 2 in respect of that undertaking.

4. Where the applicant is a group of public bodies, the information in paragraph 2 is required only in respect of the following in that group—

- (a) a government department;
- (b) the Scottish Ministers;
- (c) the Welsh Assembly Government;
- (d) a Northern Ireland Department;
- (e) a local authority;
- (f) a university;
- (g) for a group which does not include a public body described in sub-paragraphs (a) to (f), the body in the group intended to be the account holder in respect of the compliance account.

5. The name, postal address, email address and telephone number of at least three individuals who will act as contacts for the applicant, one of whom must exercise management control in respect of the public body or undertaking which is to be the account holder of the compliance account.

Total supplies of qualifying electricity

6.—(1) A list of all settled half hourly meters which measured the supply of qualifying electricity to the applicant in the qualification year.

(2) The total amount of qualifying electricity in the qualification year and the amount of qualifying electricity for each individual participant equivalent that is a member of the group.

SCHEDULE 5

Article 5

Changes to participants

PART 1

Public bodies: government

SECTION 1

Government departments, Northern Ireland departments, the Scottish Ministers and the Welsh Assembly Government

Application of Part 1

1.—(1) Where the changes described in sections 2 to 5 of this Part occur in a year of a phase (“year 1”) in relation to a participant which is or includes—

- (a) a government department or part of it;
- (b) a relevant Northern Ireland department or part of it,

such a participant must comply with the requirements in those sections.

(2) Under sub-paragraph (1)(b), in relation to a relevant Northern Ireland department, reference in paragraphs 7 and 10 to the Secretary of State includes reference to the relevant department.

(3) Where the changes described in sections 3 to 5 occur in year 1 in relation to a participant which is or includes the Scottish Ministers or part of that body, such a participant must comply with the requirements in those sections.

(4) Under sub-paragraph (3), in relation to the Scottish Ministers, reference to—

- (a) the Secretary of State in paragraph 10 includes the Scottish Ministers;
- (b) a department in paragraph 11 includes those Ministers or part of that body.

(5) Where the changes described in section 4 or 5 occur in year 1 in relation to a participant which is or includes the Welsh Assembly Government or part of that body, such a participant must comply with the requirements in those sections.

(6) Under sub-paragraph (5), in relation to the Welsh Assembly Government, reference to a department in paragraph 11 includes the Welsh Assembly Government or part of that body.

Notifications and applications: time to comply and the administrator

2.—(1) A notification or application for registration required under this Part must be made using the Registry and within 3 months of the change occurring.

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

SECTION 2

Creation of new departments

Creation of a new department

3. This section applies where—

- (a) from part of a participant (“A”) and part of another participant (“B”), a department (“C”) is created in year 1; and
- (b) A and B continue as participants.

Creation of a new department: year 1

4. In year 1—

- (a) C must—
 - (i) apply for registration as a participant in accordance with article 11; and
 - (ii) comply with Part 5 as if C existed for the whole of year 1;
- (b) A and B must comply with this Order as if C had not been created.

Creation of a new department: year 2

5. In the year after year 1 (“year 2”)—

- (a) C must comply with Parts 4 and 5 of this Order; and
- (b) A and B must comply with this Order as if C had not been created.

Creation of a new department: after year 2

6. In the years after year 2—

- (a) C must comply with this Order as applicable to the years after year 2; and
- (b) A and B must comply with this Order as applicable to the years after year 2 but where A and B do not include C.

Deemed supplies of the new department

7.—(1) For the purposes of this section, the Secretary of State may declare in writing that a supply of electricity or gas—

- (a) to A or B is deemed to be a supply to C;
- (b) to C is deemed to be a supply to A or B.

(2) A declaration made under sub-paragraph (1) must be provided by the Secretary of State to the administrator as soon as possible.

SECTION 3

Transfers of parts of government departments, Northern Ireland departments, the Scottish Ministers and the Welsh Assembly Government

Transfer of part of a department to another department

8. This section applies where from a participant (“D”), a part (“E”) transfers to another participant (“F”) in year 1 (“the transfer”).

Transfers: year 1

9. In year 1, D and F must—

- (a) notify the administrator of—
 - (i) the transfer; and
 - (ii) as soon as possible, the percentage of the emissions of D which are attributable to E;
- (b) comply with this Order as if the transfer had not occurred.

Deemed supplies

10.—(1) For the purposes of this section, the Secretary of State may declare in writing that a supply of electricity or gas—

- (a) to D which is attributable to E is deemed to be a supply to F;
- (b) to F which is attributable to E is deemed to be a supply to D.

(2) A declaration made under sub-paragraph (1) must be provided by the Secretary of State to the administrator as soon as possible.

SECTION 4

Mergers in respect of government departments, Northern Ireland departments, the Scottish Ministers or the Welsh Assembly Government

Mergers of departments

11.—(1) Sub-paragraphs (2) to (4) apply where a participant (“G”) merges with another participant (“H”) in year 1 (“the merger”) to form a new department (“J”).

(2) J must notify the administrator of the merger.

(3) J must—

- (a) apply for registration as a participant in accordance with article 11; and
- (b) comply with this Order as if J existed for the whole of year 1.

(4) On the registration of J, the administrator must cancel the registration of G and H for the remainder of the phase.

SECTION 5

Government decisions and separate participation

Government decisions

12. This section applies where a government decision is made in respect of a participant (“K”) that a part of K is a separate participant (“L”).

Separate participants: year 1

13. In year 1,—

(a) L must—

(i) apply for registration as a participant in accordance with article 11; and

(ii) comply with Parts 4, 5 and 7 as if L existed for the whole of year 1;

(b) K must comply with this Order as if the government decision had not been made.

PART 2

Other public bodies

Application of Part 2

1. This Part applies where the change described occurs in a year of a phase (“year 1”) and to a participant which is or includes a public body other than a public body to which Part 1 applies.

Notifications and applications: time to comply and the administrator

2.—(1) The notification and application for registration required under this Part must be made using the Registry in accordance with article 11 and within 3 months of the change occurring.

(2) Subject to receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

Mergers of public bodies

3.—(1) Sub-paragraphs (2) to (4) apply where a participant (“A”) merges with another participant (“B”) in year 1 (“the merger”) to form a new public body (“C”).

(2) C must notify the administrator of the merger.

(3) C must—

(a) apply for registration as a participant in accordance with article 11; and

(b) comply with this Order as if C existed for the whole of year 1.

(4) On the registration of C, the administrator must cancel the registration of A and B for the remainder of the phase.

PART 3
Undertakings
SECTION 1
Post-qualification period

Time for applications

1. Where an application for registration is required under this section(a), that application must be made in accordance with article 12.

Participant equivalents leaving a group but not joining another group

2.—(1) Sub-paragraph (2) applies to a group (“A”) where the following change occurs in the post-qualification period—

- (a) a participant equivalent (“B”) leaves A; and
- (b) B does not become a member of another group.

(2) In respect of the change—

- (a) B must—
 - (i) apply to be registered as a participant in accordance with article 11; and
 - (ii) when doing so notify the administrator that it was a member of A and when it ceased to be so;
- (b) A must—
 - (i) apply to be registered as a participant in accordance with article 11; and
 - (ii) when doing so notify the administrator that B was a member of A and when it ceased to be so.

Joining of a participant or participant equivalent with a non-participant

3.—(1) Sub-paragraph (2) applies to a participant or participant equivalent (“C”) where the following change occurs in the post-qualification period—

- (a) C becomes a member of another group or undertaking (“D”); and
- (b) D is not required to register under article 24.

(2) In respect of the change—

- (a) C or D must—
 - (i) apply for registration as a participant in accordance with article 11; and
 - (ii) when doing so notify the administrator that C is a member of D and when that occurred;
- (b) D is only a participant in respect of C when D registers on behalf of C.

Joining of a participant with another participant

4.—(1) Sub-paragraphs (2) applies to a participant (“E”) where the following change occurs in the post-qualification period—

- (a) E becomes a member of another group or undertaking (“F”); and
- (b) F is required to register under article 24 but has not applied for registration.

(2) In respect of the change, F must—

(a) This section applies to an undertaking or a group of undertakings further to article 27(2).

- (a) apply for registration as a participant in accordance with article 11;
- (b) when doing so notify the administrator that E is a member of F and when that occurred;
- (c) in that notification by F under paragraph (b) F must inform the administrator whether or not F requests that E may apply for registration as a separate participant; and
- (d) in respect of the information required under paragraph 6 of Schedule 4, include the information which applied to E in the qualification year.

(3) Where a request is made under sub-paragraph (2)(c), that must be treated as an application for registration under article 26(2).

Participant equivalents leaving a group and joining another group

5.—(1) Sub-paragraphs (2) to (4) apply to a participant equivalent (“B”) of a group (“H”) where—

- (a) B joins another group (“J”) in the post-qualification period; and
- (b) H and J are groups to which article 27(2) applies.

(2) In respect of the change H and J must—

- (a) apply for registration as participants in accordance with article 11; and
- (b) when doing so notify the administrator of the change and when it occurred; and
- (c) in the notification by J under paragraph (b), it must inform the administrator whether or not J requests that B may apply for registration as a separate participant.

(3) Where a request is made under sub-paragraph (2)(c), that must be treated as an application for registration under article 26(2).

(4) In respect of the information required under paragraph 6 of Schedule 4, J must include the information which applied to B in the qualification year.

SECTION 2

Annual reporting years and post-application periods

Application during annual reporting years and post-application periods

6.—(1) This section applies where any of the changes described in this section occur to that participant in the annual reporting year or in the post-application period.

(2) Except as otherwise provided in this section, where a participant is a group—

- (a) the members of the group are those members from time to time during the annual reporting year or the post-application period;
- (b) CRC supplies must be determined in relation to the supplies of electricity or gas to members of the group only for such time as they are members during the year.

Notifications and applications: time to comply and the administrator

7.—(1) A notification required under this section must be made using the Registry and no later than the earliest of the following dates—

- (a) the last working day of April in the year immediately following the year of the change occurring;
- (b) within 3 months of the change occurring.

(2) An application for registration required under this section must be made no later than the last working day of April in the year immediately following the year of the change occurring.

(3) On the receipt of such notification or application for registration, the administrator must amend the information it holds in respect of the relevant participants.

Determinations

- 8.** The administrator may make a determination^(a)—
- (a) whether any change as described in this section has occurred;
 - (b) whether a notification or application for registration is required as provided under this section.

Participant equivalents becoming participants

- 9.**—(1) Sub-paragraphs (2) and (3) apply where the following change occurs—
- (a) a participant (“A”) consists of a group;
 - (b) a participant equivalent (“B”) leaves that group; and
 - (c) B does not become a member of another group.
- (2) In respect of the change—
- (a) B must apply for registration as participants in accordance with article 11;
 - (b) A and B must notify the administrator of the change and when it occurred.
- (3) Where the change occurs in an annual reporting year, B must provide an annual report in respect of the annual reporting year as if B were a participant for the whole of that year.

Joining of a participant or participant equivalent with a non-participant

- 10.**—(1) Sub-paragraphs (2) to (8) apply where the following change occurs—
- (a) a participant or participant equivalent (“C”) becomes a member of a group (“D”); and
 - (b) D is not a participant.
- (2) In respect of the change, where C is a participant—
- (a) C must notify the administrator of the change and when it occurred; or
 - (b) D must apply for registration as a participant in accordance with article 11 and notify the administrator of the change and when it occurred.
- (3) In respect of the change, where C is a participant equivalent—
- (a) C must—
 - (i) apply for registration as a participant in accordance with article 11; and
 - (ii) notify the administrator of the change and when it occurred; or
 - (b) D must—
 - (i) apply for registration as a participant in accordance with article 11; and
 - (ii) notify the administrator of the change and when it occurred.
- (4) Where—
- (a) D applies for registration under sub-paragraph (2)(b) or (3)(b); and
 - (b) C is a participant,
- C’s registration is cancelled.
- (5) Where—
- (a) D does not apply for registration under sub-paragraph (2)(b) or (3)(b); and
 - (b) C is a participant,
- C’s registration is not cancelled.
- (6) Where—

^(a) Such a determination must be made in accordance with article 57(2).

- (a) the change occurs in an annual reporting year; and
- (b) D has registered on behalf of C,

D must provide an annual report in respect of those emissions that relate to C and as if C were a member of D for the whole of that year.

(7) Where—

- (a) the change occurs in an annual reporting year; and
- (b) D has not registered on behalf of C,

C must provide an annual report in respect of those emissions that relate to C for the whole of that year.

(8) Where a non participant equivalent member of C is a participant, that member—

- (a) continues as a participant; or
- (b) must—
 - (i) notify the administrator of the change and when it occurred; and
 - (ii) in the notification, inform the administrator whether or not its registration is to be cancelled.

(9) Sub-paragraphs (10) to (12) apply where the following change occurs—

- (a) a participant equivalent (“C”) is a member of a participant (“A”);
- (b) C becomes a member of a group (“D”); and
- (c) D is not a participant.

(10) In respect of the change—

- (a) A and D must notify the administrator of the change and when it occurred and D must apply for registration as a participant in accordance with article 11; or
- (b) C must apply for registration as a participant in accordance with article 11 and notify the administrator of the change and when it occurred.

(11) Where—

- (a) the change occurs in an annual reporting year; and
- (b) D has registered on behalf of C,

D must provide an annual report in respect of those emissions that relate to C and any of C’s subsidiary undertakings that become a member of D and as if C were a member of D, for the whole of that year.

(12) Where—

- (a) the change occurs in an annual reporting year; and
- (b) D has not registered on behalf of C,

C must provide an annual report in respect of those emissions that relate to C and any of C’s subsidiaries that become a member of D, for the whole of that year.

Joining of a participant as a member of another participant

11.—(1) Sub-paragraphs (2) to (4) apply where the following change occurs—

- (a) a participant (“E”) becomes a member of a group (“F”); and
- (b) F is a participant.

(2) In respect of the change—

- (a) E and F must notify the administrator of the change and when it occurred; and
- (b) in the notification by F, F must inform the administrator whether or not F requests that E continues as a separate participant.

(3) Where F requests that E continues as a separate participant under sub-paragraph (2)(b), E and F continue as separate participants.

- (4) Where E and F do not continue as separate participants—
- (a) E is a member of F for the whole of the year of the phase in which the change occurs;
 - (b) subject to the administrator being satisfied that E and F are complying with this Order, the administrator must cancel the registration of E for the remainder of that phase.

Participant equivalents transferring to another participant

- 12.**—(1) Sub-paragraphs (2) and (3) apply where the following change occurs—
- (a) a participant (“G”) consists of a group; and
 - (b) a participant equivalent (“H”) which was a member of G becomes a participant equivalent as a member of another participant (“J”).
- (2) In respect of the change—
- (a) G and J must notify the administrator of the change and when it occurred;
 - (b) in the notification of J, J must inform the administrator whether or not J requests that H may apply for registration as a separate participant; and
 - (c) if such a request is made, H must apply for registration as a participant in accordance with article 11.
- (3) Where H is not registered as a separate participant, H is treated as if it were a participant equivalent as a member of J for the whole of the year in which the change occurs.

Trustees: separate participation

- 13.**—(1) Sub-paragraphs (2) and (3) apply where—
- (a) a public body or undertaking (“T”) is a trustee of a relevant trust; and
 - (b) T is required to register as a participant, whether on its own or as a member of a group.
- (2) Sub-paragraph (3) applies where—
- (a) during or after the first year of a phase, T applies for registration as a separate participant in respect of any scheme activities of any relevant trust of which T is a trustee; and
 - (b) the administrator is satisfied that the application has been duly made.
- (3) Where this sub-paragraph applies, the administrator must register T as a separate participant in respect of—
- (a) any scheme activities of any relevant trust of which T is the trustee; and
 - (b) any other scheme activities of T.
- (4) In this paragraph, “relevant trust” means a trust where—
- (a) the assets of the trust include premises to which a supply of electricity or gas is made;
 - (b) the trust is not managed by an operator;
 - (c) no beneficiary of the trust is entitled to half or more of the assets of the trust; and
 - (d) the trust carries on a scheme activity.

SCHEDULE 6

Article 50

The Registry

Setting up accounts

- 1.**—(1) The administrator must ensure the Registry allows the following accounts to be held—

- (a) a compliance account for a participant; and
- (b) as agreed by the administrator—
 - (i) additional accounts for a participant; and
 - (ii) accounts for third parties.
- (2) The administrator may—
 - (a) limit the number of accounts in respect of a participant or third party; and
 - (b) set up other accounts.
- (3) The administrator must set up one compliance account for a participant where—
 - (a) it has registered an applicant as a participant; and
 - (b) it has completed to its satisfaction the identity checks required under article 52(2).
- (4) The public body or undertaking in whose name an account is held is the account holder.

Account holders and information

- 2. The administrator must ensure that the Registry provides the following information—
 - (a) to an account holder—
 - (i) the number of allowances it holds; and
 - (ii) a summary of any transfer, surrender or cancellation of allowances relating to that account holder made during the previous five years;
 - (b) to a participant, its CRC emissions—
 - (i) from CRC supplies in its most recent annual report, where so provided;
 - (ii) from CRC supplies determined under article 33(2); or
 - (iii) applied under article 74(4)(a);
 - (c) to a participant—
 - (i) the number of allowances in its compliance account which are available to comply with Part 4; and
 - (ii) matters notified to the participant by the administrator.

Recording of transfers between accounts

- 3. The administrator must ensure that the Registry records the transfer of allowances between accounts made by account holders and to make that record—
 - (a) for a transfer made on a working day, if possible, that working day or otherwise the following working day;
 - (b) for a transfer made on a non-working day, if possible the following working day or otherwise the next following working day.

Updating of accounts

- 4. The administrator must ensure that the cancellation and surrender of allowances is recorded in the relevant accounts and that record is made as soon as practicable.

Non-compliance accounts and third party accounts

- 5.—(1) A participant may request the administrator to provide accounts for it in the Registry in addition to a compliance account, on terms agreed by the administrator.
- (2) A person who is not a participant (“a third party”) may request the administrator to provide accounts for it in the Registry on terms agreed by the administrator.

(3) Such terms must require that the participant or third party complies with any administrative rules drawn up by the administrator under article 50(4).

SCHEDULE 7

Article 93

Appeals procedure

SECTION 1

Procedure for appeals against determinations, notices or penalties made or given by the Scottish Environment Protection Agency

1. The section applies to appeals against determinations, notices or penalties made or given by the Scottish Environment Protection Agency.

2. A person who wishes to appeal to the Scottish Ministers (“the appeal body”) under article 87 must give to the appeal body written notice of the appeal together with a statement of the grounds of appeal.

3. The appeal body must as soon as is reasonably practicable send to the administrator a copy of that notice and statement.

4. An appellant may withdraw an appeal by notifying the appeal body and the appeal body must as soon as is reasonably practicable notify the administrator.

5. Notice of appeal in accordance with paragraph 2 is to be given before the expiry of the period of 40 calendar days after the date of—

- (a) the determination referred to in article 57(1);
- (b) service of an enforcement notice;
- (c) imposition of a civil penalty.

SECTION 2

Procedure for appeals against determinations, notices or penalties made or given by the chief inspector or the Department of the Environment

6. This section applies to appeals against determinations, notices or penalties made or given by—

- (a) the chief inspector;
- (b) the Department of the Environment.

7. A person who wishes to appeal to the Planning Appeals Commission (“the appeal body”) under article 87 must give to the appeal body written notice of the appeal together with a statement of the grounds of appeal.

8. The appeal body must as soon as is reasonably practicable send to the administrator a copy of that notice and that statement.

9. An appellant may withdraw an appeal by notifying the appeal body and the appeal body must as soon as is reasonably practicable notify the administrator.

10. Notice of appeal in accordance with paragraph 7 is to be given before the expiry of the period of 47 calendar days beginning with the date of—

- (a) the determination referred to in article 57(1);
- (b) service of an enforcement notice;

(c) imposition of the civil penalty.

11. The appeal body must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991^(a) apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

12. The Planning Appeals Commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

13. An appeal under this section must be accompanied by a fee and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order included a reference to an appeal under this Order.

SECTION 3

Procedure for appeals against determinations, notices or penalties made or given by the Welsh Ministers or the Scottish Ministers

14. This section applies where the appellant is or includes—

- (a) the Natural Resources Body for Wales;
- (b) the Scottish Environment Protection Agency.

15. Where the appellant wishes to appeal to an independent person appointed by the Welsh Ministers or the Scottish Ministers under article 89(3) (“the appeal body”) the appellant must give written notice of the appeal together with a statement of the grounds of appeal.

16.—(1) Where the appellant is or includes the Natural Resources Body for Wales, the notice of appeal in accordance with paragraph 15 is to be given before the dates described in sub-paragraph (2).

(2) The dates referred to in sub-paragraph (1) are 28 calendar days after the date of—

- (a) the determination referred to in article 57(1);
- (b) service of an enforcement notice;
- (c) imposition of the civil penalty.

17.—(1) Where the appellant is or includes the Scottish Environment Protection Agency, the notice of appeal in accordance with paragraph 15 is to be given before the dates described in sub-paragraph (2).

(2) The dates referred to in sub-paragraph (1) are 40 calendar days after the date of—

- (a) the determination referred to in article 57(1);
- (b) service of an enforcement notice;
- (c) imposition of the civil penalty.

18. The appeal body may decide an appeal received late.

19. An appellant may withdraw an appeal by notifying the appeal body, and as soon as is reasonably practicable the appeal body must notify the administrator.

20. The appeal body may publicise the appeal where it considers it appropriate to do so.

21. The Welsh Ministers or the Scottish Ministers as appropriate must appoint an independent person to hear an appeal on behalf of that body.

22. The appeal body may—

- (a) adopt such procedures as it sees fit to determine an appeal, taking into account any requests of the parties to the appeal;

(a) S.I. 1991/1220 (N.I. 11).

- (b) request an independent person to make a determination in relation to any subject matter of the appeal.

23. On request by the administrator, the appeal body may award the administrator its reasonable costs of an appeal where the appeal body has given the appellant written notice that in its opinion—

- (a) the appeal is frivolous or vexatious or otherwise has no reasonable prospects of success; or
- (b) the appeal is conducted in an unreasonable or vexatious manner.

24. The costs under paragraph 23—

- (a) are those agreed by the parties to the appeal or in default of agreement, as found by the appeal body;
- (b) if unpaid, are recoverable as a civil debt by the administrator.

SCHEDULE 8

Article 94

Service of documents

1. The provisions of this Schedule apply to the service of a document.

2. A document must be in writing.

3. Subject to paragraph 5, a document may be served on or given to a person (which includes a member of an unincorporated association) by—

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address; or
- (c) sending it by post or electronic means to that person's proper address.

4. For the purposes of paragraph 3, a document is served on or given to a person under paragraph 3 in the case of—

- (a) a body corporate, where it is served on or given to the director, secretary or clerk of that body;
- (b) a partnership, where it is served on or given to a partner or a person having control or management of the partnership business;
- (c) an unincorporated association, where it is served on or given to a person having management responsibilities in respect of the association.

5. A document may be served on an applicant or participant by sending it to the email address provided under paragraph 2, 3(a)(ii) or (b) or 4 of Schedule 4, as applicable to the applicant or participant.

6. Except where paragraph 5 applies, if a person to be served with or given a document has specified an address in the United Kingdom (other than that person's proper address) as one at which that person or someone on that person's behalf will accept documents of that description, that address must instead be treated as that person's proper address.

7. For the purposes of paragraph 3, the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

8. Where—

- (a) a participant is a group; and

- (b) the administrator gives any communication to the public body or undertaking in whose name the compliance account is set up under article 55, that communication is made to each member of the group.

SCHEDULE 9

Article 96

Amendments to the CRC Energy Efficiency Scheme Order 2010

1. The 2010 Order is amended as follows.

2. In article 3 (interpretation)—

- (a) for the definition of “allowance”, substitute—
““allowance” means a tradeable allowance issued under regulation 10 of the 2012 Regulations;”;
- (b) for the definition of “CCA emissions”, substitute—
““CCA emissions” has the meanings given by paragraph 12(3) of Schedule 5, as that paragraph had effect before its amendment by the 2013 Order;”;
- (c) for the definition of “core supply”, substitute—
““core supply” means a supply of electricity or gas described in Schedule 2, as that Schedule had effect before its amendment by the 2013 Order;”;
- (d) for the definition of “EU ETS emissions”, substitute—
““EU ETS emissions” has the meanings given by paragraph 12(2) of Schedule 5, as that paragraph had effect before its amendment by the 2013 Order;”;
- (e) for the definition of “EU ETS installation”, substitute—
““EU ETS installation” means—
(a) an activity or installation within the scope of the EU ETS Directive; and
(b) any additional activity not included within Annex 1 of that Directive but approved in the United Kingdom under Article 24 of that Directive;”;
- (f) for the definition of “footprint report”, substitute—
““footprint report” has the meaning given by article 39(1)(a), as that article had effect before its amendment by the 2013 Order;”;
- (g) for the definition of “footprint supplies”, substitute—
““footprint supplies” has the meaning given by article 41(5), as that article had effect before its amendment by the 2013 Order;”;
- (h) in the definition of “franchise”, after “franchise premises,”, insert ““franchise supply”,”;
- (i) for the definition of “performance table”, substitute—
““performance table” has the meaning given by article 77(1), as that article had effect before its amendment by the 2013 Order;”;
- (j) for the definition of “qualifying electricity”, substitute—
““qualifying electricity” means electricity supplied to a public body or undertaking in accordance with sections 1 to 5 of Schedule 1, measured by a settled half hourly meter;”;
- (k) for the definition of “residual measurement list”, substitute—
““residual measurement list” has the meaning given by article 44(4), as that article had effect before its amendment by the 2013 Order;”;

- (l) for the definition of “residual supplies”, substitute—
 ““residual supplies” has the meaning given by article 44(5), as that article had effect before its amendment by the 2013 Order;”;
- (m) for the definition of “settled half hourly meter”, substitute—
 ““settled half hourly meter” applies in relation to a supply of electricity and has the meaning given by paragraph 2(1) of Schedule 2, as that paragraph had effect before its amendment by the 2013 Order;”;
- (n) omit the definitions of “community tradeable emissions”, “core emissions”, “daily meter”, “dynamic supply”, “early action”, “footprint emissions”, “fuel”, “hourly meter”, “non-settled half hourly meter” and “relative change”;
- (o) at the appropriate place, insert the following definitions—
 ““the 2012 Regulations” means the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2012(a);”
 ““the 2013 Order” means the CRC Energy Efficiency Scheme Order 2013(b);”
 ““Academy” has the same meaning it has in section 579 of the Education Act 1996(c);”
 ““CCA certification period” means the period beginning on 1st April 2011 and ending on 31st March 2013;”
 ““city college for the technology of the arts” has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;”
 ““city technology college” has the same meaning it has in section 482 of the Education Act 1996, as originally enacted;”
 ““local authority” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act;”
 ““maintained nursery school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(d);”
 ““maintained school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act(e);”
 ““specified facility certificate” means a certificate given by the Secretary of State to Her Majesty’s Revenue and Customs under paragraph 44(1)(a) of Schedule 6 to the Finance Act 2000 for the CCA certification period(f);”.
- 3.** For paragraph (a) of article 4 (supplies and emissions), substitute—
 “(a) whether a supply is made of electricity or gas;”.
- 4.** In article 5 (registration and requirements of participants and others)—
 (a) omit paragraph 3(a);
 (b) omit paragraph 4(a);
 (c) for paragraph 4(d), substitute—
 “(d) Schedule 5 (information on registration);”.
- 5.** In article 6(b) (powers and duties of the administrator), substitute—
 “(b) Part 10 to publish information relating to a participant’s performance;”.

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- (a) S.I. 2012/1386.
 (b) S.I. 2013/[].
 (c) 1996 c.56. Section 597 was amended by section 14 and paragraphs 1 and 6 of Schedule 2 to the Academies Act 2010 (c. 32).
 (d) The definition of “maintained nursery school” in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).
 (e) The definition of “maintained school” in the Freedom of Information Act 2000 (c. 36) derives from the School Standards and Framework Act 1998 (c. 31).
 (f) 2000 c. 17. Paragraph 441(1)(a) was substituted by section 207(a) and paragraphs 1 and 2 of Schedule 31 to the Finance Act 2012 (c. 14).

6.—(1) Article 9 (the administrator) is amended as follows.

(2) In the table of provisions—

(a) in column 1—

(i) for “Parts 4 to 6 except articles 39(3) and 47(3)”, substitute “Parts 5 and 6 except article 47(3)”;

(ii) for “Articles 59(2), 68 to 73”, substitute “Articles 59(1), 68 to 73”;

(b) in column 2, omit “39(3)”.

7. For article 12 (time for applications), substitute—

“Time for application

12. Subject to article 27(2), an application for registration as a participant under this Part must be made no later than 2 months before the beginning of the phase.”.

8.—(1) Part 3 (exemptions) is amended as follows.

(2) In article 29(1)(b) (CCA emissions and target periods), omit “subject to article 36,”.

(3) In paragraph (1)(a)(ii) of article 30 (total emissions), for “, gas and fuel” substitute “and gas”.

(4) For article 31 (electricity generating credits), substitute—

“Electricity generating credit

31.—(1) In article 30, “electricity generating credit” applies where—

(a) an applicant generates electricity without using an excluded fuel;

(b) the applicant is not issued with a ROC and is not in receipt of a financial incentive made by virtue of the Energy Act 2008(a) in respect of that generation;

(c) the generation does not occur at a place described in paragraph (3); and

(d) the electricity generated is supplied to a public body or undertaking and that supply is a supply of electricity under paragraph 1 or 6 of Schedule 1, such electricity being “the generated and supplied electricity”.

(2) Electricity generating credit is the amount of emissions calculated in accordance with paragraph 29 of Schedule 1 in respect of the generated and supplied electricity.

(3) The places referred to in paragraph (1) are—

(a) an EU ETS installation where electricity is generated;

(b) a nuclear power station;

(c) a hydro-generating station which was ineligible for a ROC.

(4) In this article—

“excluded fuel” means any fuel that has been or should be reported by the applicant in its annual report and any fuel included in the applicant’s residual measurement list;

“hydro-generating station” has the meaning given by article 2(1) of the Renewables Obligation Order 2009(b) and as if that article applied to Scotland and Northern Ireland. ”.

(5) After article 34 (group CCA exemptions), insert—

(a) 2008 c. 32.

(b) S. I. 2009/785.

“First phase participant exemptions

34A.—(1) Where in a year of the first phase the member of a participant to which a member CCA exemption applies does not have energy use or carbon emissions subject to a CCA target, the member CCA exemption applies in any subsequent year of the phase where the member operates a facility that is specified in a specified facility certificate.

(2) Where in a year of the first phase, a participant which has a general CCA exemption does not have energy use or carbon emissions subject to a CCA target, the general CCA exemption applies in any subsequent year of the phase where the participant operates a facility that is specified in a specified facility certificate.”.

(6) Omit article 36 (requirements for exemption to apply: exception).

(7) For article 37(1) (effect of exemptions and records), substitute—

“(1) Subject to article 38, as a participant, an applicant is exempt from Parts 5 to 7 of this Order for the phase where a general CCA exemption applies to it.”.

(8) In article 38 (loss of exemptions and further exemptions)—

(a) for paragraphs (2) and (3), substitute—

“(2) Where in a year of a phase, the member of a participant to which a member CCA exemption applies does not operate a facility that is specified in a specified facility certificate, the member CCA exemption does not apply—

(a) in the next year of the phase; and

(b) any subsequent year where the member does not operate a CCA facility that is specified in a specified facility certificate.

(3) Where in a year of a phase, a participant which has a general CCA exemption does not operate a CCA facility that is specified in a specified facility certificate, the general CCA exemption does not apply—

(a) in the next year of the phase; and

(b) any subsequent year where the participant does not operate a facility that is specified in a specified facility certificate.”;

(b) in paragraph (5), omit “, as applicable, the footprint report or”.

9. Omit Part 4 (footprint reports and residual measurement lists).

10.—(1) Part 5 is amended as follows.

(2) For article 48 (member CCA exemptions), substitute—

“Member CCA exemptions

48. Where a participant has a member CCA exemption, supplies of electricity and gas under article 50 excludes any supplies or emissions of a member of the group to which a member CCA exemption applies.”.

(3) For article 49 (annual report), substitute—

“Annual report

49.—(1) A participant must provide in the annual report—

(a) the amount of supplies under article 50(2);

(b) whether or not the following apply to the participant—

(i) an estimation adjustment; or

(ii) renewables generation,

and, if so, the amount of each supply to which the adjustment applies and the amount of the renewables generation; and

- (c) whether or not electricity generating credit applies to the participant and, if so, the amount of the generated and supplied electricity.
- (2) In addition to the information in paragraph (1), local authority participants in England must provide the following information by 30th November 2013 as a supplement to the annual report for the third annual reporting year in the first phase—
 - (a) the amount of the supplies in article 50(2) that are measured by a settled half hourly meter;
 - (b) the amount of the supplies in article 50(2) that are supplied to—
 - (i) Academies;
 - (ii) city technology colleges;
 - (iii) city technology colleges for the technology of the arts;
 - (iv) maintained schools;
 - (v) maintained nursery schools;
 - (c) the amount of the supplies in sub-paragraph (b) that are measured by settled half hourly meters.”.
- (4) For article 50 (CRC emissions), substitute—

“CRC emissions

50.—(1) “CRC emissions” means the emissions calculated in accordance with paragraph 29 of Schedule 1 from CRC supplies.

(2) “CRC supplies” means the supplies of electricity and gas supplied to a participant in accordance with sections 1 to 3 of Schedule 1 and the additions in section 6 of that Schedule less the deductions of any electricity generating credits and the deductions under sections 4 and 5 of that Schedule but excluding—

- (a) supplies of gas made to an EU ETS installation; and
- (b) supplies of electricity and gas made to a facility specified in a specified facility certificate.

(3) The lowest value of CRC emissions is zero.”.

11.—(1) Part 6 (allowances and CRC emissions) is amended as follows.

(2) After paragraph (3) of article 52 (validity of allowances), insert—

“(4) A participant must acquire the additional allowances from a special allocation or from a third party.

(5) In paragraph (4), “special allocation” means the issue of allowances conducted by the Environment Agency under regulation 10 of the 2012 Regulations.”.

(3) In sub-paragraph (a) of article 53(3) (allowances and CRC emissions), for “July” substitute “October”.

(4) In article 54 (cancellation of allowances and surplus surrendered allowances)—

(a) for paragraph (2)(b), substitute—

“(b) subject to article 52—

- (i) are to be treated as surrendered in respect of the subsequent year (“year 2”) in which the participant is required to comply with article 53 where that year is in the same phase; and
- (ii) must be cancelled by the administrator in accordance with sub-paragraph (1) before any other allowances which are surrendered.”;

(b) after paragraph (3), insert—

“(4) Where—

- (a) a participant surrenders to the cancellation account surplus allowances; and

- (b) the account holder makes a request to the Secretary of State for the repayment of the balance,
the Secretary of State may repay the balance to the account holder.
- (5) Any repayment made by the Secretary of State under paragraph (4) may be subject to a deduction of any banking charges incurred during that transaction.”.
- (5) In article 55 (allowances and trading)—
 - (a) in paragraph (1), for “paragraphs (2) and (3)”, substitute “paragraph (2)”;
 - (b) omit paragraph (3).
- (6) Omit article 56 (community tradeable allowances).
- 12. In paragraph (a) of article 58 (records), omit “and section 2 of Schedule 5”.
- 13. In article 59 (records: residual measurements lists and public disclosure)—
 - (a) in the heading, for “Records: residual measurements lists and public disclosure”, substitute “Records: public disclosure”;
 - (b) omit paragraph (1).
- 14. For article 61 (supplies of electricity, gas and fuel under Part 8), substitute—

“Supplies of electricity and gas under Part 8

61. In this Part except articles 62 and 63, information which may be requested or required in respect of a supply of electricity or gas includes information relating to all sections of Schedule 1.”.

- 15. For Part 10 (achievement and performance tables, publication and verification), substitute—

“PART 10

Performance information and publication

Publication of performance information

75. The administrator may, for each annual reporting year, publish information on a participant’s performance in relation to its energy efficiency achievements on the basis of the information—

- (a) contained in the participant’s annual report; or
- (b) submitted as part of the information described in Schedule 5.

Further publication

76.—(1) Paragraph (2) applies where an appeal is made against—

- (a) a determination under article 47(3);
- (b) the imposition of a penalty described in article 97(4)(a)(ii).

(2) Where this paragraph applies—

- (a) the administrator may publish a list of those participants which have in respect of the annual reporting year made any such appeal;
- (b) subject to paragraph (3), where any such appeal results in the information published under article 75 being changed, the administrator must as soon as possible publish the amended information.

(3) Publication under paragraph (2)(b) must not take place until the completion of all such appeals made by all participants.

(4) The administrator may publish amended information at any time where it discovers any error or omission in the published information.”.

16.—(1) Part 14 (civil penalties) is amended as follows.

(2) Omit article 96 (failures in respect of footprint reports).

(3) In sub-paragraph (a) of article 98(1) (failures to provide information or notifications), omit “section 1 of”.

(4) In article 99 (inaccurate footprint reports and annual reports)—

(a) in the heading, “Inaccurate footprint reports and annual reports”, substitute “inaccurate annual reports”;

(b) for paragraph (1), substitute—

“(1) the penalties in paragraph (3) apply where a participant provides an inaccurate annual report contrary to article 47.”;

(c) omit paragraph (4).

17.—(1) Schedule 1 (supplies and emissions) is amended as follows.

(2) In section 1 (electricity, gas and fuels: general)—

(a) in the heading “Electricity, gas and fuels: general”, substitute “Electricity and gas: general”;

(b) in paragraph 1 (electricity)—

(i) in sub-paragraph (1)(c), omit “or is a dynamic supply”;

(ii) for sub-paragraph (3) (electricity), substitute—

“(3) In sub-paragraph (1)(c), “metering device” means—

(a) in relation to England, Wales and Scotland, a device where the electricity supplied is charged for as measured by the device but not including meters allocated to the following profile classes under the Balancing and Settlement Code Procedure BSCP516(a)—

(i) Domestic Unrestricted;

(ii) Domestic Economy 7;

(b) in relation to Northern Ireland, a device where the electricity supplied is charged for as measured by the device but not including meters that measure supplies to domestic accommodation.”;

(c) for paragraph 2(3) (gas), substitute—

“(3) In sub-paragraph (1)(c), a “metering device” is a device which during a year of a phase measures more than 73,200 kWh of gas supplied, in relation to the supply of gas.”;

(d) omit paragraphs 3 (fuels) and 4 (fuels table);

(e) for paragraph 5 (measurement units), substitute—

“Measurement units

5. Where in this Order information must be provided concerning a supply of electricity or gas, the amount of that supply must be expressed in kWh.”.

(3) In section 3 (franchise agreements), wherever “, gas or fuel” appears substitute in each case “or gas”.

(4) In section 4 (deductions from supplies)—

(a) wherever “, gas or fuel” appears substitute in each case “or gas”;

(a) Balancing and Settlement Code. BSC Procedure. Allocation of profile classes & SSCs for non-half hourly SVA metering systems registered in SMRs. BSCP5/6. Version 7.0. 26 June 2008.

(b) for paragraph 22 (purposes of transport), substitute—

“Purposes of transport

22.—(1) In paragraph 19, electricity or gas is consumed for the purposes of transport where it is used—

- (a) by a road going vehicle, a vessel, an aircraft or a train;
- (b) in relation to railways, for network services except where electricity or gas is used to provide power, heat or light to a building; or
- (c) to provide power for the operation of a conveyor belt which is—
 - (i) at least 8 kilometres in length; and
 - (ii) used to transport materials to an off site facility from which facility the materials will be transported on a railway or a vessel using inland waters.

(2) The following definitions have effect for the purposes of sub-paragraph (1)—

“aircraft” means a self-propelled machine that can move through the air other than against the earth’s surface;

“inland waters” means—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lough, lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“network services” has the same meaning it has in section 82 of the Railways Act 1993(a) but as if section 82(3)(h) of that Act did not apply;

“railway” has the meaning given in section 67(1) of the Transport and Works Act 1992(b);

“road going vehicle” means any vehicle—

- (a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994(c);
- (b) which is an exempt vehicle under that Act; or
- (c) which is required to display a certificate of Crown exemption under regulation 31 of the Road Vehicles (Registration and Licensing) Regulations 2002(d);

“train” has the same meaning it has in section 83 of the Railways Act 1993;

“vessel” means any boat or ship which is self-propelled and operates in or under water.

Consumption of gas for purposes other than heating

22A. A is not supplied with gas to the extent that supply is consumed by A for purposes other than for the purposes of heating.

Purposes of heating

22B.—(1) In paragraph 22A, gas is consumed for the purposes of heating where it is used as part of a process where the primary purpose of that process is the generation of heat.

(a) 1993 c. 43.
(b) 1992 c. 42.
(c) 1994 c. 22.
(d) S. I. 2002/2742.

(2) Gas used in the process of combined heat and power generation is not consumed for the purposes of heating.

Minimal gas heating supply levels

22C.—(1) Sub-paragraph (2) applies where the amount of gas supplied to A for the purposes of heating is less than 2% of the amount of electricity supplied to A in the first annual reporting year of a phase (“minimal gas heating supply”).

(2) Where this sub-paragraph applies, A may decide that minimal gas heating supply is not consumed for the purposes of heating.

(3) A decision under sub-paragraph (2)—

(a) may be made in respect of a phase where such a decision is made on or before the participant submits its first annual report for that phase;

(b) must not be altered during the phase.”.

(5) In section 5 (deductions from supplies during the first phase in Northern Ireland), wherever “, gas or fuel” appears substitute in each case “or gas”.

(6) In section 6 (additions to supplies: estimation adjustments)—

(a) in paragraph 25(1) (additions to supplies), for “, gas or fuel” substitute “or gas”;

(b) omit paragraph 27 (estimation adjustment: fuels).

(7) In section 7 (renewables generation and amount of emissions from supplies)—

(a) for paragraph 28(1)(b)(ii) (renewables generation: electricity), substitute—

“(ii) A is in receipt of a financial incentive made by virtue of a scheme under section 41 of the Energy Act 2008(a); and”;

(b) for paragraph 29 (amount of emissions), substitute—

“Amount of emissions

29. The emissions in tCO₂ from an amount of electricity or gas supplied is found by applying to that amount the relevant conversion factor.”;

(c) in paragraph 30(a) (conversion factors), for “www.decc.gov.uk”, substitute “www.gov.uk/decc”.

18. Omit Schedule 2 (core supplies).

19.—(1) Schedule 3 is amended as follows.

(2) In paragraph 4(1) (public bodies: proprietors of Academies and colleges), substitute—

“(1) The proprietor of—

(a) an Academy;

(b) a city college for the technology of the arts or city technology college,

is a public body.”.

(3) In paragraph 8 (educational bodies: England and Wales), omit sub-paragraph (2).

(4) For paragraph 10 (government and local authority decisions), substitute—

“Government and local authority decisions

10.—(1) Except in relation to the Treasury and Her Majesty’s Revenue and Customs, the Secretary of State may make a government decision in relation to a government department.

(2) The Treasury may make a government decision in relation to the Treasury.

(a) 2008 c. 32.

(3) Her Majesty's Revenue and Customs may make a government decision in relation to Her Majesty's Revenue and Customs.

(4) Where—

(a) the Secretary of State, the Treasury or Her Majesty's Revenue and Customs intend to make a government decision described in paragraph 14(2)(a) in relation to a public authority described in Part VI of Schedule 1 to the 2000 Act; and

(b) that authority exercises functions partly other than in England,

the Secretary of State, the Treasury or Her Majesty's Revenue and Customs must consult, as applicable, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department before making the decision.

(5) The Secretary of State, the Treasury or Her Majesty's Revenue and Customs must not make a government decision in relation to a public body which exercises functions wholly in Scotland, Wales or Northern Ireland.

(6) A local authority decision may be made by—

(a) the Secretary of State in relation to a local government public body or a local government group in England;

(b) the Welsh Ministers in relation to a local government public body or a local government group in Wales.

(7) A government decision—

(a) must not be made such that a public body, on its own or part of a group—

(i) which is a participant, is no longer a participant;

(ii) which is required to be a participant, is no longer to be a participant;

(b) may be made for the better administration of the scheme.”.

(5) In paragraph 15(1)(a) (government decisions: supplies and departments), for “, gas or fuel” substitute “or gas”.

(6) In paragraph 16(1) (local authority decisions), for “In paragraph 10(5)” substitute “In paragraph 10(6)”.

20.—(1) Schedule 5 (information) is amended as follows.

(2) For the heading “Information”, substitute “Information on registration”.

(3) Omit the headings “Section 1” and “Information on registration”.

(4) Omit section 2.

21.—(1) Schedule 6 (changes to participants) is amended as follows.

(2) Wherever “, gas or fuel” appears, substitute “ or gas”.

(3) In Part 1—

(a) in paragraph 6 (creation of a new department: after year 2), omit sub-paragraph (2);

(b) omit paragraph 10 (transfers: year 2);

(c) in paragraph 12 (mergers of departments), omit sub-paragraph (3).

(4) In Part 2, paragraph 3 (mergers of public bodies), omit sub-paragraph (3).

(5) In Part 3—

(a) in sub-paragraph 3(b) (joining of undertakings with a group which is not required to register as a participant), omit “and non-settled half hourly meters”;

(b) omit sub-paragraph (3) of paragraph 7 (notification and applications: time to comply and the administrator);

(c) for sub-paragraph (3) of paragraph 9 (significant group undertakings becoming participants), substitute—

- “(3) Subject to sub-paragraph (4), where the change occurs in an annual reporting year, B must provide an annual report in respect of the annual reporting year as if B was a participant for the whole of that year.”;
- (d) in paragraph 10 (joining of a participant or significant group undertaking with a non-participant)—
- (i) for sub-paragraph (3), substitute—
- “(3) Subject to sub-paragraph (6), where the change occurs in an annual reporting year, D must provide an annual report in respect of the year but only in respect of those emissions which relate to C and as if C was a member of D for the whole of that year.”;
- (ii) omit sub-paragraphs (4) and (5);
- (iii) for sub-paragraph (6)(b), substitute “sub-paragraph (3) does not apply to D;”;
- (e) in paragraph 11 (joining of a participant as a member of another participant)—
- (i) omit sub-paragraphs (5) and (6);
- (ii) for sub-paragraph (7), substitute—
- “(7) “Where E and F do not continue as separate participants and E had a general or group CCA exemption, F has a member CCA exemption in respect of E.”;
- (f) in paragraph 12 (significant group undertakings transferring to another participant)—
- (i) in sub-paragraph (1), for “sub-paragraphs (2) to (5) apply”, substitute “sub-paragraph (2) applies”;
- (ii) omit sub-paragraphs (5) and (6).
- 22. Omit Schedule 8 (achievement and performance tables).**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes in the United Kingdom an emissions trading scheme in respect of greenhouse gases under sections 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008 (c. 27). It applies to direct and indirect emissions from supplies of electricity and gas by public bodies and undertakings.

PART 1

By article 2, the trading scheme is established for six phases, comprising five consecutive phases, each of five years, where the initial phase commences on 1st April 2014, and a final phase of four years, commencing on 1st April 2039.

Article 3 lists definitions used in the Order, including that participants required to comply with this Order means public bodies defined in Schedule 2 and undertakings defined in Schedule 3, where such bodies or undertakings carry on a business, a charitable activity or a public function (“a scheme activity”).

Articles 4 to 7 set out obligations on participants and powers and duties of the administrator under this Order and provide that supplies of electricity and gas are defined under Schedule 1. Article 8 provides for liability to comply with this Order for groups of public bodies and undertakings.

Article 9 sets out in respect of the provisions of this Order when the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency and the chief inspector are the administrator. Article 10 provides for co-operation between those bodies and national authorities.

PART 2

Article 11 provides how an application for registration as a participant must be made and article 12 by when that application must be made. Under article 13, a certificate of registration is provided to a participant whose application for registration is duly made and a list of participants must be maintained by the administrator.

Article 14 provides for applications for registration to be made by government departments, the devolved administrations and certain local authorities and groups including those bodies. Article 15 sets out when a group of other public bodies exists for the purposes of articles 16 and 17 and those articles provide for registration by public bodies and groups of those bodies not subject to article 14. Under article 18, the administrator may determine whether or not a public body is a member of a group.

Under articles 19 to 22, separate provision is made for the registration of colleges of a university and universities in England.

Article 23 sets out when a group of undertakings exists for the purposes of articles 24 to 25. Articles 24 and 25 provide for applications for registration by groups of undertakings and undertakings not part of a group.

Article 26 provides for applications for registration by undertakings or groups of undertakings that are part of a group where that group disaggregates.

Article 27 provides for different provisions for applications for registration by undertakings where the organisational changes described in section 1 of Part 3 of Schedule 5 take place. Under article 28, the administrator may determine whether or not an undertaking is a member of a group and whether or not article 27 applies.

Article 29 provides for applications for registration by public bodies or undertakings that are trustees of a relevant trust.

Article 30 provides for applications for registration by undertakings that are operators who have permission carry on a regulated activity.

PART 3

Article 31 requires a participant to provide an annual report concerning supplies during an annual reporting year and provides for the administrator to determine such a report if the participant fails to do so. Article 32 provides for the content of an annual report. The administrator must calculate CRC emissions using the information on supplies in the annual report or as it determines. Article 33 defines CRC supplies. Under article 34, where organisational changes described in Part 1 or 2 or section 2 of Part 3 of Schedule 5 occur, the requirements in that Schedule must be complied with.

PART 4

Article 35 provides for the validity of allowances for the purposes of compliance with the provisions of article 36 which require allowances to be surrendered by a participant equal to its CRC emissions in an annual reporting year. Article 37 provides for the cancellation of allowances surrendered and for surplus surrendered allowances. Under article 38 the administrator must maintain records in relation to allowances.

PART 5

Articles 39 to 42 provide for the maintenance and audit of records.

PART 6

Article 43 defines supplies in relation to Part 6. Under article 44, a participant may request information on electricity supplied to it. The administrator may require information from electricity suppliers under article 45. Occupiers of premises must give assistance to participants under article 46 and franchisees must give information and assistance to franchisors under article 47. Members of public bodies must give information and assistance to participants under article 48. Article 49 provides that where a group member is subject to an insolvency procedure, appointed practitioners must give information and assistance to that group member.

PART 7

Article 50 provides for the Registry to be established, article 51 provides for security of the Registry, article 52 contains provisions about access to the Registry and article 53 provides for preventing or suspending a person using the Registry.

Article 54 sets out how a registration as a participant may be cancelled where the participant ceases to carry on a scheme activity. Article 55 defines account holders. Article 56 requires participants to notify the administrator of any change in its proper address. Article 57 provides how a determination by the administrator under the provisions listed in that article must be carried out.

PART 8

Article 58 provides for the administrator to publish information on a participant's performance in relation to its energy efficiency achievements. Article 59 provides for the administrator to publish a list of participants that have appealed against a determination of a penalty, or where an appeal results in information published under article 58 being changed, publication of the amended information.

PART 9

Article 60 allows the administrator to charge for certain activities set out in article 61 and sets out when a charge must be paid and how it must be calculated. Articles 62 and 63 provide for the amounts of charges and revisions to those amounts. Article 64 provides for the collection and remittance of charges.

PART 10

The administrator may request information concerning compliance with this Order under article 65 and may do so by way of a compliance notice set out in that article. The administrator may inspect premises in relation to monitoring compliance under article 66.

PART 11

Articles 67 to 69 provide powers to the administrator to enforce this Order where a failure of compliance arises.

PART 12

By articles 70 to 81, the administrator may impose civil penalties for failures to comply with provisions of this Order. A penalty may be financial, require additional allowances to be acquired and surrendered or increase what must be regarded as the amount of a participant's emissions. Use of accounts in the Registry may be blocked and failure of compliance may be publicised. Under article 72, the administrator has discretion to waive penalties.

PART 13

Criminal offences are imposed under article 82 and penalties for those offences are set out in article 83. Article 84 deals with offences by corporate bodies and article 85 with offences by Scottish partnerships. Article 86 provides for application of this Order to the Crown.

PART 14

Article 87 sets out where an appeal arises. Article 88 sets out the grounds on which an appeal under article 87 may be made.

Under article 89 sets out the appeal body where appeals are made against determinations, notices or penalties made or given by the Secretary of State, the Environment Agency or the Natural Resources Body for Wales. Such appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chamber) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to these appeals.

Article 90 sets out the effect of an appeal.

Article 91 sets out the standard of proof to be applied when an appeal is made to the Scottish Ministers, the Planning Appeals Commission or an independent person appointed under article 89. Article 92 sets out what the appeal body may decide in respect an appeal.

Article 93 sets out the appeal procedure to be followed in relation to the making and determination of appeals by the Scottish Ministers, the Planning Appeals Commission and an independent person appointed under article 89.

Article 94 provides for service of documents and article 95 for national security.

PART 15

Article 96 provides for revocations, continuing effect and amendments to the CRC Energy Efficiency Scheme Order 2010 and the CRC Energy Efficiency Scheme (Amendment) Order 2011.

SCHEDULES

Schedule 1 defines supplies and emissions.

Schedule 2 defines public bodies and Schedule 3 undertakings and significant group undertakings.

Schedule 4 provides for information required on an application for registration as a participant.

Schedule 5 sets out organisational changes before and after a phase of the scheme and requirements in relation to those changes.

Schedule 6 provides for requirements of the Registry in relation to Part 7 of this Order.

Schedule 7 sets out appeal bodies and procedures and Schedule 8 provides for the service of documents under Part 16 of this Order.

Schedule 9 provides for amendments to the CRC Energy Efficiency Scheme Order 2010.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Climate Change Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2HH and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

| | | | |
|--|---|----------------------------|--|
| Title: Simplification options for the CRC Energy Efficiency scheme to help business : CRC (Amendment) Order 2013 IA No: DECC0066 Lead department or agency: Department of Energy and Climate Change (DECC) Other departments or agencies: Environment/climate change departments from Scottish Government, Welsh Government and Northern Ireland Executive. | Impact Assessment (IA) | | |
| | Date: 26/2/2013 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Secondary legislation | | |
| Contact for enquiries: Kiko Moraiz Kiko.moraiz@decc.gsi.gov.uk | | | |
| Summary: Intervention and Options | | RPC: Not Applicable | |

| Cost of Preferred (or more likely) Option | | | | |
|---|----------------------------|-------------------------------|------------------------------|----------------------|
| Total Net Present Value | Business Net Present Value | Net cost to business per year | In scope of One-In, One-Out? | Measure qualifies as |
| £61m | £87m | £-6m | No | N/A |

What is the problem under consideration? Why is government intervention necessary?

The CRC Energy Efficiency Scheme (CRC) is a mandatory UK-wide scheme that came into force in April 2010 and is designed to incentivise the uptake of cost-effective energy efficiency measures. Government has committed to simplify the scheme based on stakeholder feedback that it is complex, administratively burdensome, overlaps with other regulatory mechanisms and forces organisations to participate in ways which do not readily align with their natural business structures and processes. Government has therefore proposed a series of simplification measures to reduce the administrative burden on participants whilst broadly maintaining the scheme's emissions coverage and energy efficiency benefits.

What are the policy objectives and the intended effects?

The proposals assessed in this document are designed to simplify the scheme's administrative rules and compliance obligations, resulting in a commensurate reduction in participants' administrative burdens. In addition the proposals are intended to align compliance obligations with organisations' operational structures and procedures, thereby enabling further administrative savings whilst preserving the CRC administrators' ability to enforce effectively the scheme's requirements. These proposals are also designed to broadly maintain emissions coverage and the associated energy efficiency savings.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The proposal detailed in this IA is the result of significant stakeholder engagement to identify practical simplification measures and a consultation exercise. The 46 measures DECC proposes to implement have been grouped and assessed as three thematic packages depending on whether they influence qualification (A), fuel supply rules (B) or administrative costs only (C). The elements of each package, and the interaction between these, have been stress tested to avoid unintended consequences of the packages as a whole. This grouped approach facilitates the assessment of the measures, which would have involved a significant number of permutations if considered individually. It also mitigates the risk of incompatible measures being selected on the basis of their impacts in isolation. Two options have been considered for this IA: Option 0 - counterfactual business as usual; Option 1 (the preferred option) – packages A, B and C.

| | | | | | |
|--|-----------------|-------------------|--------------------|------------------|------------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2016 | | | | | |
| Does implementation go beyond minimum EU requirements? | | | N/A | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro No | < 20 No | Small No | Medium No | Large Yes |
| What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent) | | | Traded: 0.3 | | Non-traded: 0.8 |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Implementation of the three simplification packages; A - measures which change qualification status and emissions coverage, B – measures which change fuel supply rules and emissions coverage, and C – other measures which do not change qualification and fuel supply rules.

FULL ECONOMIC ASSESSMENT

| | | | | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|----------------|-------------------|
| Price Base Year 2012 | PV Base Year 2011 | Time Period Years 20 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Optional | High: Optional | Best Estimate: 61 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | -289 |

Description and scale of key monetised costs by 'main affected groups'

This option combines packages A) affecting qualification for the CRC; B) reducing the number of fuels that are included in the CRC and the regulations for reporting them and C) a simplification of reporting, organisational and trading rules. This option reduces costs for those current CRC participants that no longer qualify under the simplified scheme. For those participants remaining in the scheme, simplified regulations and reporting will deliver reduced costs. As a consequence this IA reports a reduction in administrative costs of £275m. Capital costs fall by £14m. This results in a net reduction in costs of £289m.

Other key non-monetised costs by 'main affected groups'

Some transaction costs such as IT costs for participants derived from having to update data systems to reflect changes imposed by new measures have not been included in the PV. An initial quantification indicates that they are relatively small.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | -227 |

Description and scale of key monetised benefits by 'main affected groups'

There is a reduction in benefits of £183m through a loss of energy savings brought about by removing CCA and EU ETS overlaps with the CRC and by reducing the number of fuels which participants are required to report on. Air quality benefits fall by £3m and changes to emissions savings result in a fall in benefits of £41m.

Other key non-monetised benefits by 'main affected groups'

Many of the measures in each of the simplification packages have been designed to make the scheme fairer or to reduce the risk of misreporting, misaligned incentives or clarify the scope of the new rules. These measures are necessary for the main simplification measures to work but do not have an impact on their own.

| | | |
|-------------------------------------|-------------------|-----|
| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5 |
|-------------------------------------|-------------------|-----|

The calculations of energy efficiency savings have been updated since the 2010 IA and take account of the increase in emissions coverage that has been identified in the first Annual Report of the CRC. Estimates of CRC admin savings are based on commissioned research from KPMG. Although this research focused on minimising reporting bias, the results are based on participants views and have not been fully audited.

Update to the Final Impact Assessment published in December 2012.

Page 3-4 of this Impact Assessment update the headline impacts of the package of CRC simplification measures to reflect decisions on the participation of schools since the Final Stage Impact Assessment was published on December 2012 alongside the Government response to the Consultation on Simplification options.

Table 1a. Comparison of cost and benefits with “All schools Out” and “Only English Schools Out”

| Option | Lifetime Change in TRADED INDIRECT emissions (MtCO2e) | Lifetime Change in NON-TRADED emissions (MtCO2e) | Net Present Value (£m, in 2012 prices, discounted to 2011) | Present Value of Costs (£2012m) | | Present Value of Benefits (£2012m) | | | |
|--|---|--|--|---------------------------------|-------------|------------------------------------|----------------|---------------------------|-----------------------|
| | | | | Capital Cost | Admin Cost | Air Quality | Energy Savings | Non-traded sector savings | Traded sector savings |
| Revised baseline excluding English Schools | 5.2 | 21.6 | 4035 | 331 | 503 | 66 | 3726 | 984 | 92 |
| <i>Baseline excluding all UK Schools</i> | <i>5.1</i> | <i>21.3</i> | <i>3956</i> | <i>326</i> | <i>496</i> | <i>65</i> | <i>3654</i> | <i>970</i> | <i>90</i> |
| Net change | 0.1 | 0.3 | 79 | 5 | 7 | 1 | 72 | 14 | 2 |
| Revised Simplification package based on exclusion of English Schools | 4.9 | 20.8 | 4096 | 318 | 228 | 63 | 3543 | 949 | 86 |
| <i>Simplification based on exclusion of all UK Schools</i> | <i>4.7</i> | <i>20.6</i> | <i>4033</i> | <i>313</i> | <i>224</i> | <i>62</i> | <i>3487</i> | <i>938</i> | <i>84</i> |
| Net change | 0.2 | 0.2 | 63 | 5 | 4 | 1 | 56 | 11 | 2 |
| Revised impact of Simplification package (excluding English Schools) | -0.3 | -0.8 | 61 | -14 | -275 | -3 | -183 | -35 | -6 |
| <i>Impact of Simplification package (excluding all UK Schools)</i> | <i>-0.3</i> | <i>-0.7</i> | <i>77</i> | <i>-13</i> | <i>-272</i> | <i>-3</i> | <i>-167</i> | <i>-32</i> | <i>-6</i> |
| Net change | 0 | -0.1 | -16 | -1 | -3 | 0 | -16 | -3 | 0 |

At the time of publishing the response to the consultation, there were outstanding issues regarding the participation of state funded schools in the CRC and the Final Stage IA was based on the assumption that all state funded schools in the UK would leave the Scheme.

Following the publication of the Final IA, all Devolved Authorities (DAs) have confirmed their continued participation in the Scheme. State funded schools from England will withdraw from the Scheme.

Table 1a above compares the impact of the withdrawal of state funded English schools with the assumption made in the IA published in December 2012 (and reproduced from page 5 onwards). The main effect of this revision is on the baseline of the CRC. Changes to the estimates of the package of simplification measures are primarily driven by this revision to the baseline of the policy. The impacts of the change are reflected in the costs and benefits presented in the cover sheets (pages 1-2).

The participation of schools from DAs in the Scheme increases the CRC baseline. This increases energy and carbon savings but also increases administrative costs. There is an increase in Net Present Value from £3,956 to £4,035.

The Net Present Value (NPV) under the preferred simplification option is also higher compared to the old figures, from 4,033 to 4,096. All benefits and cost increase as a result of bringing more participants into the Scheme.

Increasing the number of participants in the CRC increases the scope for achieving administrative savings from simplification measures but it also reduces the scope for energy and carbon savings. Administrative savings increase by £3m from 272 to 275 but energy savings decrease producing a change in the NPV of simplification from £77m to £61m.

All these changes are mainly driven by the increase in the number of participants in the Scheme and there is no significant change in the impact of simplification measures. The simplification of the CRC will deliver significant savings compared to the baseline situation of the existing scheme. These savings are estimated at around 55% of current administrative burdens in both scenarios.

| | | | |
|--|---|--|--|
| Title: Simplification options for the CRC Energy Efficiency Scheme to help business : CRC (Amendment) Order 2013 IA No: DECC0066 Lead department or agency: Department of Energy and Climate Change (DECC) Other departments or agencies: Environment/climate change departments from Scottish Government, Welsh Government and Northern Ireland Executive. | Impact Assessment (IA) | | |
| | Date: 06/12/2012 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Secondary legislation | | |
| Contact for enquiries: Kiko Moraiz Kiko.moraiz@decc.gsi.gov.uk | | | |

| | |
|--|----------------------------|
| Summary: Intervention and Options | RPC: Not Applicable |
|--|----------------------------|

| Cost of Preferred (or more likely) Option | | | | |
|---|----------------------------|-------------------------------|------------------------------|----------------------|
| Total Net Present Value | Business Net Present Value | Net cost to business per year | In scope of One-In, One-Out? | Measure qualifies as |
| £77m | £87m | £-6m | No | N/A |

What is the problem under consideration? Why is government intervention necessary?

The CRC Energy Efficiency Scheme (CRC) is a mandatory UK-wide scheme that came into force in April 2010 and is designed to incentivise the uptake of cost-effective energy efficiency measures. Government has committed to simplify the scheme based on stakeholder feedback that it is complex, administratively burdensome, overlaps with other regulatory mechanisms and forces organisations to participate in ways which do not readily align with their natural business structures and processes. Government has therefore proposed a series of simplification measures to reduce the administrative burden on participants whilst broadly maintaining the Scheme's emissions coverage and energy efficiency benefits.

What are the policy objectives and the intended effects?

The proposals assessed in this document are designed to simplify the Scheme's administrative rules and compliance obligations, resulting in a commensurate reduction in participants' administrative burdens. In addition the proposals are intended to align compliance obligations with organisations' operational structures and procedures, thereby enabling further administrative savings whilst preserving the CRC administrators' ability to enforce effectively the Scheme's requirements. These proposals are also designed to broadly maintain emissions coverage and the associated energy efficiency savings.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The proposal detailed in this IA is the result of significant stakeholder engagement to identify practical simplification measures and a consultation exercise. The 46 measures DECC proposes to implement have been grouped and assessed as three thematic packages depending on whether they influence qualification (A), fuel supply rules (B) or administrative costs only (C). The elements of each package, and the interaction between these, have been stress tested to avoid unintended consequences of the packages as a whole. This grouped approach facilitates the assessment of the measures, which would have involved a significant number of permutations if considered individually. It also mitigates the risk of incompatible measures being selected on the basis of their impacts in isolation. Two options have been considered for this IA: Option 0 - counterfactual business as usual; Option 1 (the preferred option) – packages A, B and C.

| | | | | | |
|--|-----------------|-------------------|---------------------|------------------|-------------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2016 | | | | | |
| Does implementation go beyond minimum EU requirements? | | | N/A | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro No | < 20 No | Small No | Medium No | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: -0.3 | | Non-traded: -0.7 |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible _____ Date: _____

Description: Implementation of the three simplification packages; A - measures which change qualification status and emissions coverage, B – measures which change fuel supply rules and emissions coverage, and C – other measures which do not change qualification and fuel supply rules.

FULL ECONOMIC ASSESSMENT

| | | | | | |
|----------------------|-------------------|----------------------|---------------------------------------|----------------|-------------------|
| Price Base Year 2012 | PV Base Year 2011 | Time Period Years 20 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Optional | High: Optional | Best Estimate: 77 |

| COSTS (£m) | Total Transition (Constant Price) Year | Average Annual (excl. Transition) (Constant) | Total Cost (Present Value) |
|---------------|--|--|----------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | -285 |

Description and scale of key monetised costs by ‘main affected groups’

This option combines packages A) affecting qualification for the CRC; B) reducing the number of fuels that are included in the CRC and the regulations for reporting them and C) a simplification of reporting, organisational and trading rules. This option reduces costs for those current CRC participants that no longer qualify under the simplified scheme. For those participants remaining in the Scheme, simplified regulations and reporting will deliver reduced costs. As a consequence this IA reports a reduction in administrative costs of £272m. Capital costs fall by £13m. This results in a net reduction in costs of £285m.

Other key non-monetised costs by ‘main affected groups’

Some transaction costs such as IT costs for participants derived from having to update data systems to reflect changes imposed by new measures have not been included in the PV. An initial quantification indicates that they are relatively small.

| BENEFITS (£m) | Total Transition (Constant Price) Year | Average Annual (excl. Transition) (Constant) | Total Benefit (Present Value) |
|---------------|--|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | -208 |

Description and scale of key monetised benefits by ‘main affected groups’

There is a reduction in benefits of £167m through a loss of energy savings brought about by removing CCA and EU ETS overlaps with the CRC and by reducing the number of fuels which participants are required to report on. Air quality benefits fall by £3m and changes to emissions savings result in a fall in benefits of £38m.

Other key non-monetised benefits by ‘main affected groups’

Many of the measures in each of the simplification packages have been designed to make the Scheme fairer or to reduce the risk of misreporting, misaligned incentives or clarify the scope of the new rules. These measures are necessary for the main simplification measures to work but do not have an impact on their own.

| | | |
|---|-------------------|-----|
| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5 |
| The calculations of energy efficiency savings have been updated since the 2010 IA and take account of the increase in emissions coverage that has been identified in the first Annual Report of the CRC. Estimates of CRC admin savings are based on commissioned research from KPMG. Although this research focused on minimising reporting bias, the results are based on participants views and have not been fully audited. | | |

Evidence Base (for summary sheets)

1. This Final Impact Assessment (IA) follows the completion of a consultation published in March 2012 on proposals to simplify the current CRC Energy Efficiency Scheme (CRC). It updates the evidence presented in the Consultation IA by incorporating the following:
 - Comments from the RPC on the Consultation stage IA;
 - Responses received from consultees;
 - New data on Climate Change Agreements (CCA) exemptions obtained from the Environment Agency (EA);
 - Comments from the National Audit Office (NAO) as a result of their assessment of the CRC Scheme for the Select Committee;
 - All figures have been updated to 2012 real values using the new sets of energy prices, carbon values and conversion factors outlined in the latest energy projections (DECC Updated Emissions Projections October 2012)¹.

Summary of changes from the previous IA

2. The overall methodology for assessing the impacts of the simplification proposals in this IA remains the same as in the Consultation IA. It evaluates the proposals by comparing them to the 'Business as Usual' (BAU) scheme, which is characterised as a continuation of the CRC Scheme in its current form up to 2030. However, there are some significant changes since the Consultation stage IA which affect the baseline and the assessment of the preferred option's impact.
3. This Final stage IA uses the updated dataset from the Environment Agency (31 May 2012) drawn from July 2011 Annual Report data submitted by Scheme participants. It includes more detailed information on CCA coverage, reflecting the increase in the number of CCA fuels reported which are exempt from CRC. This has the overall effect of reducing the emissions coverage of the CRC baseline relative to that reported in the Consultation IA. There is also a new energy demand trend from the DECC Updated Emissions Projections (October 2012).
4. The RPC opinion on the Consultation stage IA indicated a concern about the level of understanding of the Scheme among stakeholders; this would have affected their ability to respond to the consultation proposals. In response, the full consultation document published alongside the Consultation stage IA set out the full details of the current Scheme design. In addition, DECC hosted two workshops during the consultation period offering stakeholders the opportunity to clarify any issues regarding the current design of the Scheme or the simplification proposals.
5. The CRC is NOT in the scope of One-in, One-out (OIOO) calculations, as it has been classified as an environmental tax by HM Treasury (HMT). Nevertheless, this IA provides further evidence to support the Equivalent Annual Net Cost to

¹ http://www.decc.gov.uk/en/content/cms/about/ec_social_res/analytic_projs/en_emis_projs/en_emis_projs.aspx

Business (EANCB) calculation consistent with the current One-in, One-out Methodology.

6. Some changes have also been incorporated following comments from the National Audit Office (NAO) on the Consultation IA. These include updating estimates for capital expenditure and air quality benefits of the CRC Scheme for the whole period up to 2030 and providing some sensitivity analysis on the impact of the Scheme².
7. During the period of consultation, there has been an agreement between DECC, DfE, and HMT to remove schools from the CRC and implement alternative robust measures that will incentivise and support schools to obtain both energy cost and emissions savings. Consequently, in this Final IA, the CRC baseline has been modified to remove all schools from the scheme³.
8. In parallel to the consultation process on the simplification proposals, the devolved administration of Northern Ireland (NI) is in the process of deciding their views on CRC simplification for Northern Ireland. Their decision and could affect the valuation of the counterfactual (i.e. baseline) against which the impact of simplification in this has been assessed.

Problem under consideration

9. The CRC came into force at the beginning of April 2010. It is designed to incentivise energy efficiency improvements in large non-energy intensive organisations in the public and private sectors. Large businesses and public sector organisations represent around 12% of the UK's total carbon emissions.
10. Despite there being cost effective energy efficiency savings available to these public and private sector organisations, a 2005 independent report by the Carbon Trust demonstrated that these organisations' emissions had remained more or less constant for the last twenty years owing to a range of barriers. These were identified as:
 - The lack of board and senior level awareness of energy consumption issues;
 - The lack of significant financial incentives to encourage energy efficiency savings;
 - The lack of reputational benefits associated with leading in energy efficiency.
11. The CRC employs a range of mechanisms to address each of these barriers:
 - The mandatory monitoring and reporting of energy consumption which is intended to increase awareness of energy use;

² Sensitivity analysis did not result in any major significant impacts in any of the options and did not produced any significant recommendation.. For simplicity, this analysis has not been reported in this IA.

³ For purposes of estimating impacts in this IA, all UK schools have been removed, however, DAs are still to determine their position with regard to the participation of their Schools in the Scheme.

- A requirement on participants to purchase CRC allowances commensurate with their energy usage, thus providing a financial incentive to improve energy efficiency and raise senior level awareness of energy use;
 - The annual publication of a performance league table (PLT), ranking participants on the basis of their energy efficiency achievements in comparison to the previous year, which is intended to create a reputational driver and raise board/senior level awareness of energy use⁴.
12. Given that total energy costs are generally just 1-2% of the total operating costs in the target sector, providing the right combination of drivers is critical to sustaining senior management focus on energy efficiency.
13. Organisations that qualify for participation i.e. consume more than 6000MWh of electricity per year, are required to undertake a series of compliance activities, such as the annual reporting of their organisation's emissions and the surrendering of a commensurate number of CRC allowances; designed to raise both the internal and external profile of an organisation's energy usage. Further details of the rationale for the Scheme and its original design can be found in the October 2009 Impact Assessment and accompanying policy development documents.⁵

Rationale for intervention

14. Since the introduction of the CRC in April 2010, some stakeholders have argued that the Scheme is overly complex and administratively burdensome, especially in relation to emissions regulated under the EU Emissions Trading System (EU ETS) or a Climate Change Agreement (CCA). Further, some have also stated that the organisational focus of the Scheme is misaligned with their operational management structures and business processes.
15. Consequently, Government announced its intention to simplify the Scheme in the Annual Energy Statement published in August 2010. This directly led to a consultation exercise, updated Impact Assessment and an initial Amendment Order in April 2011⁶. The purpose of this 2011 amendment was primarily to create the legislative window in which to undertake a thorough simplification review of the Scheme.
16. Significant stakeholder engagement was undertaken to identify, develop and stress-test a range of simplification measures. A suite of high level measures was initially published in January 2011⁷ focusing on the five headline areas of i) energy supplies; ii) organisational structure; iii) allowances and banking; iv) qualification and v) reducing the overlap between regulatory mechanisms. Subsequent discussions and engagement facilitated the further development of the proposals, with a number of the measures being discarded on the grounds of practicality, enforceability, stakeholder feedback, or incompatibility with other

⁴ Following the simplification consultation, 2012 will be the last year in which the Performance League Table will be published. The Environment Agency will, instead, publish participants' aggregated energy use and emissions data, in line with Government's transparency agenda.

⁵ <http://www.decc.gov.uk/en/content/cms/consultations/CRC/CRC.aspx>.

⁶ <http://www.legislation.gov.uk/ukxi/2011/234/contents/made>

⁷ http://www.decc.gov.uk/en/content/cms/emissions/CRC_efficiency/simplification/simplification.aspx

measures. The headlines of the measures being taken forward were announced in a Ministerial statement in June 2011⁸ and set out in a formal consultation published in March 2012.

Description of options considered

17. The consultation sought views on a suite of 46 different simplification measures that were grouped into three packages according to whether they influence qualification for the Scheme (Package A), fuel supply rules (Package B) or administrative costs only (Package C). See Annex B for a full description of all the measures.
18. The consultation stage presented three options. As a result of the analysis in the Consultation stage IA, Option 2 has been discarded and the Final IA considers the preferred option (Option 1) against the baseline (Option 0):
 - **Option 0:** The business as usual counterfactual – continuing the CRC Scheme in its current form.
 - **Option 1:** Simplified CRC Scheme that implements all three simplification packages (A, B and C)
19. These two options incorporated improved evidence compared to previous impact assessments of the CRC, namely:
 - Detailed coverage data, submitted by participants via Registration and the first Footprint and Annual reports submitted in July 2011.
 - Bespoke DECC commissioned research on administrative costs of the CRC from one of the leading consultants in CRC compliance, KPMG. This research was based on a survey of administrative costs, desk-based research and qualitative interviews with a large number of CRC participants.
20. The intention was for a simplified CRC Scheme that would retain the necessary combination of reputational, financial and standardised energy measurement and monitoring drivers; needed to tackle the barriers to the uptake of energy efficiency. The proposals therefore retained the key elements of energy reporting, and the purchasing of allowances and, as a consequence, maintain CRC emissions savings, with the exception of the necessary adjustments to emissions coverage due to the revised simplification measures.

Summary of Consultation responses

21. The consultation exercise received 255 responses from a wide range of stakeholders, including the private and public sectors, as well as trade associations. In addition, two large stakeholder events were held in London and Manchester (attended by approximately 300 delegates), DECC officials attended CRC events in the Devolved Administrations as well as a number of events organised by stakeholders themselves.

⁸ http://www.decc.gov.uk/en/content/cms/news/wms_300611/wms_300611.aspx

22. Each of the proposals considered in the consultation document were addressed by specific questions. The responses primarily focused on commenting on individual proposals and whether they met the objectives of CRC simplification, namely to optimise the projected energy and carbon savings delivered by the CRC Scheme and to reduce its overall complexity; allowing energy efficiency and carbon savings to be delivered, but at a minimum administrative cost.
23. The majority of consultation respondents agreed with the measures proposed and welcomed the complete package of simplification proposals as a step in the right direction. In particular,
- The proposals on simplifying the qualification criteria and threshold; simplifying the supply rules in defining energy supply in the Scheme;
 - A more coherent policy framework reducing policy overlaps with other climate change/energy efficiency policies (e.g. EU ETS installations, CCA facilities);
 - Flexible organisational rules to accommodate the natural business/energy management structures; and
 - Processes of organisations and the allowance sale process in the introductory phase and from phase II onwards
24. However, a number of concerns did emerge around the following issues:-
- The rules of the CRC could remain too complex and difficult to understand for some organisations, even after the simplification proposals are implemented;
 - The proposals could be more ambitious. Some respondents argued that the number of fuels in the CRC should be reduced to just two (i.e. electricity and gas) as opposed to the four proposed (i.e. electricity, gas, gas oil and kerosene);
 - Whether de-minimis thresholds should be adopted to keep administrative costs down;
 - Some argued that the estimated administrative cost reductions were too optimistic; and
 - Some suggested the CRC should be replaced with a more conventional environmental tax.
25. Taking all the responses to the simplification proposals into consideration, the Government is satisfied that overall, the simplifications will deliver significant improvements to the Scheme and they reflect changes that the majority of stakeholders wish to see.
26. After analysing the evidence provided by respondents on this issue, the Government has decided that the number of fuels in the Scheme should be reduced from 29 to 2. The Scheme will now only cover emissions generated from the consumption of electricity and gas. On gas, the Government has decided to require participants to report on, and purchase allowances for, gas consumption if it is equal to or exceeds a de minimis threshold equal to 2% of their electricity consumption. Furthermore, since the overwhelming majority of

gas use⁹ is for heating purposes, Government has decided to require participants to purchase allowances for gas use on the assumption that all gas use is for heating purposes. It is considered that this assumption reduces the administrative costs to participants of distinguishing between gas use for different purposes. However, if a participant wishes to demonstrate that a proportion of their gas use is not for heating purposes, they may do so. The Government maintains that these additional measures combined, contribute towards reducing the Scheme's overall complexity and the administrative burden on participants.

27. Government is aware of a difference of opinion among respondents concerning the potential levels of administrative cost savings that can be achieved through the proposed simplification measures. A large part of the administration cost is driven by the monitoring and reporting of energy and emissions, therefore there are concerns that simplification will result in an increase in the overall cost of compliance, including one-off costs in understanding the new requirements to meet CRC liabilities. The Government acknowledges these concerns and (as explained above) has updated the evidence base on the current CRC Scheme in a number of areas where robust evidence has been provided.
28. As a result, Option 1 remains the Government's preferred option, although there have been some modifications to the measures proposed under this option to take account of the evidence gathered from the consultation exercise. These modifications are explained below in the section describing Option 1.

Option 0 – The current CRC Scheme (Business as Usual)

29. The CRC was designed as a mandatory scheme aimed at improving energy efficiency and cutting emissions in large public and private sector organisations. The Scheme features a combination of drivers, which together aspire to encourage organisations to develop energy management strategies that promote a better understanding of their energy usage and increase the potential for energy reductions.
30. Qualification for the Scheme is based on electricity consumption across organisations and groups of undertakings, rather than on an individual site basis. Organisations qualify as participants if, during the 2008 calendar year, they had at least one half-hourly electricity meter (HHM), settled on the half hourly market and if they consumed at least 6,000 MWh (megawatt hours) through all qualifying meters.
31. Each qualifying organisation needs to understand which energy supplies it needs to report on, and which supplies require allowances to be purchased. This involves several key issues:
 - Understanding its organisational structure;
 - Identifying what energy is supplied to the organisation;

⁹This is estimated at around 85% of gas use but can vary between sectors.

- Identifying how much of that energy the organisation is responsible for under the CRC;
- Understanding which supplies count towards qualification and which count towards compliance.

Cost and benefits of Option 0

BAU emissions

32. The Consultation IA included new evidence on CRC coverage, collated from actual data from the registration process and the first Footprint and Annual reports submitted at the end of July 2011 – all of which were required to provide a complete picture from which to update the baseline estimates of the Scheme.
33. This IA revises the emissions coverage of the CRC using an updated dataset (version dated 31 May 2012) of CRC participants' actual returns from their Annual Reports provided by the Environment Agency¹⁰. It includes more detailed information on CCA coverage, reflecting an increase in CCA fuels reported which are exempt from the CRC Scheme¹¹. This has the overall effect of reducing the emissions coverage of the CRC baseline relative to that reported in the Consultation IA.
34. Table 1 below provides some summary statistics on CRC participants and the emissions coverage of the Scheme. Under the current design, participants are required to report on their total emissions that fall within the scope of the Scheme once per phase in their Footprint Reports. These footprint emissions (200MtCO₂) include emissions already regulated under CCA or the EU ETS, as well as participants' electricity, gas and residual fuel use¹² – with the exception of any subsidiaries eligible for one of the three CCA exemptions¹³. The purpose of reporting footprint emissions is to establish participants' total emissions, and their subsequent compliance, with the requirement to have at least 90% of their emissions regulated by the CRC, CCA or EU ETS mechanisms.

¹⁰The Consultation IA used an earlier version of data provided by the Environment Agency (version dated 01 September 2011).

¹¹ The latest data set includes an additional 646 CCA units compared to the provisional version of the data used in the Consultation stage IA which included 1535 CCA units.

¹² Residual fuels are all fuels in the CRC apart from core gas and electricity, in the EU ETS and Climate Change Agreements (CCAs). CRC participants currently need to ensure that at least 90% of their energy use is covered by CRC, EU ETS and CCAs. If electricity and gas, in addition to ETS and CCA supplies do not amount to 90%, then a participant must identify other, "residual" fuels to ensure that over 90% of their energy use is covered. See <http://publications.environment-agency.gov.uk/PDF/GEHO0510BSNB-E-E.pdf> for further information.

¹³ These include: a) General exemption where a participant who is a single entity with a CCA installation covering more than 25% of emissions, can claim an exemption from the CRC on 100% of all emissions; b) Group participants: if after removing all CCA exemptions, the remaining parts of the organisation are supplied with less than 1000MWh of electricity, the whole group is exempt; and c) Member exemption: if any member of a group participant that does not qualify for group exemption, has a CCA installation covering 25% of emissions, all emissions from that member are exempt from the CRC.

Table 1 CRC summary data for current scheme

| Current Scheme | Participant | UK & Local government (Mandated) Participant | Total |
|--|-------------|--|---------------------|
| Number of participants | 2,630 | 78 | 2,708 (2,779) |
| Footprint Emissions (MtCO ₂) | 196.7 | 3.8 | 200.5 (199.7) |
| CRC Emissions (MtCO₂) | 54.2 | 3.5 | 57.7 (61) |

Note: Figs in brackets reflect those reported in Table 7 of the Consultation IA

35. The distribution of CRC emissions by fuel (as shown in Table 2) indicates that 97% of CRC emissions are related to electricity and gas use. This confirms consultation stage estimates of fuel savings which assumed that emissions from fuels other than electricity and gas are negligible.

Table 2 CRC Emissions in the Annual Report 2011 (current scheme) by fuel, in MtCO₂

| Fuel | MtCO ₂ | Percent |
|----------------------------|-------------------|-------------|
| Electricity | 46.13 | 79.9 |
| Gas | 9.59 | 16.6 |
| Kerosene | 0.07 | 0.1 |
| Gas Oil | 1.46 | 2.5 |
| Other | 0.52 | 0.9 |
| Total CRC Emissions | 57.7 | 100% |

36. In conclusion, the removal of CCA and EU ETS emissions, CCA exempt subsidiaries and up to 10% of their residual emissions, and the removal of schools provides an updated estimate of the coverage of the CRC. In total, this update indicates that the **CRC covers emissions corresponding to about 57.7 million tonnes of carbon dioxide (MtCO₂) per year**. This is also the figure of relevance for annual reporting, league table performance and surrender of CRC allowances.

BAU administrative costs

37. The 2010 IA identified a number of general administrative burdens which were grouped into categories based on the preferred monitoring and reporting rules of the CRC. These categories are:
- Understanding the rules
 - Initial collection and analysis of energy data
 - Developing a compliance strategy
 - Understanding and participating in an auction
 - Trading activities
 - Submitting data to co-ordinator
 - Verifying data
 - Energy audit activities
 - Other hidden activities
38. Based on the coverage of the CRC and the monitoring and reporting costs, the initial CRC IA estimated the amount of effort required for organisations of different sizes to participate in the proposed scheme to be £278m¹⁴ up to 2025.
39. Since NERA's analysis of the initial CRC Scheme was published¹⁵, there have been changes to the structure and form of the CRC. These changes have been accounted for and baseline costs modified accordingly.
40. In order to assess the extent of administrative costs raised by the current scheme, DECC commissioned consultants KPMG to assist in gathering data, through a survey of participants, to help determine a more accurate estimate of these costs. The analysis was structured in such a way that it allows the impacts of the simplification measures to be estimated using the Standard Cost Model¹⁶. Annex C contains further details of the KPMG survey.
41. The average cost of CRC participation, including all attributable costs, is represented in Table 3 below. These include the costs of all activities undertaken by participants in order to comply with registration, annual and footprint reports and one-off costs, such as identifying half hourly meters or training staff. Additionally, where organisations have used external consultants and experts to undertake CRC specific tasks (referred to as external costs), then these have also been included. In general, larger organisations have incurred relatively larger external costs as they tend to outsource CRC compliance services.
42. The different categories of costs in Table 4 represent different weighting approaches to extrapolate the sample results to the entire CRC population. These weightings are based on several stratification approaches to the distribution of participants and responses across Standard Industrial Classification (SIC) codes, Geography, Half Hourly Meters, etc. Average cost for

¹⁴ This is equivalent to the estimate set out in the 2010 IA, inflated to 2012 prices.

¹⁵ Energy Efficiency and Trading Part II: Options for the Implementation of a New Mandatory UK Emissions Trading Scheme. Department for the Environment, Food and Rural Affairs. 28 April 2006.

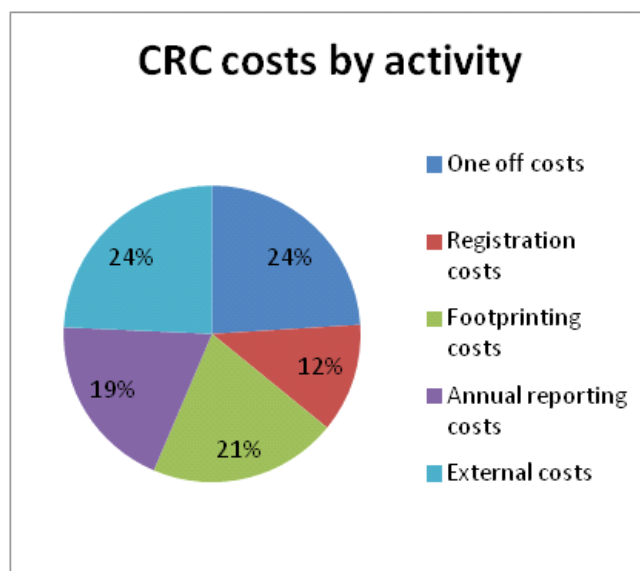
¹⁶ See Better Regulation Executive guidance at <http://www.bis.gov.uk/files/file44503.pdf>

year 1 range from about £31K to £38K¹⁷ and for the whole of Phase I¹⁸ range from £55K to £68K, which indicates that many of the CRC costs are front loaded. The survey confirmed some of the feedback from participants which indicated that CRC set up costs were higher than expected.

Table 3 Average CRC cost per respondent by stratification method, KPMG survey 2011

| Population segments | Average cost per respondent | |
|---------------------|-----------------------------|-----------------------|
| | Year 1 £(000) | First phase £(000) |
| Half Hourly Meters | 33 | 59 |
| SIC Codes | 36 | 64 |
| SGUs | 36 | 65 |
| Emissions | 31 | 55 |
| Public / Private | 38 | 68 |
| CCA Exemptions | 34 | 61 |
| Geography | 37 | 65 |

Chart 1 Distribution of CRC costs by activity



43. Chart 1 above shows the distribution of all compliance costs by activity related to the CRC, besides trading. These costs relate to One Off Costs, Registration, Footprint, Annual Reporting and the external costs of outsourcing services for compliance. The majority of CRC compliance costs take place in Year 1 of each phase whereas other costs, such as reporting costs, occur annually. **Evidence from the KPMG survey provided an estimate of administrative costs at £100m in year 1 and a total of £499m for the period up to 2025.** This is almost twice as much as the £278m figure published in the 2010 IA.

BAU Purchase of allowances and Trading costs

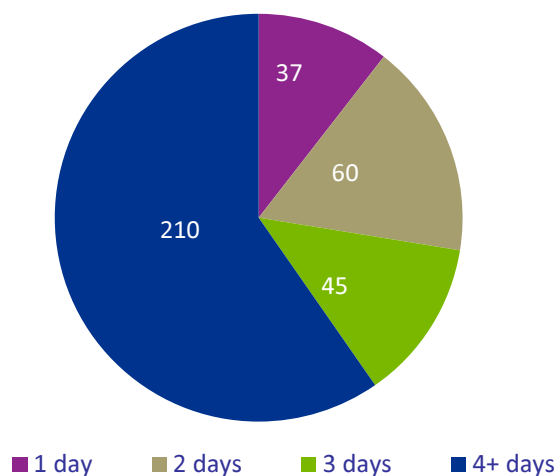
44. The original CRC Scheme is based on a cap and trade mechanism. This has been one of the areas where participants have raised concerns in terms of the complexity and cost implications of this. In particular, the initial allocation of allowances would have taken place through an auction that set the price at which government would have sold the allowances within the cap each year.

¹⁷ Year 1 means: all of the costs of complying with the CRC up to the submission of the Year 1 footprint and annual report. This includes one-off costs (costs that are unlikely to occur again), such as understanding the scheme, registering, setting up governance systems and reporting systems.

¹⁸ The CRC has been structured into a number of overlapping phases. Each phase covers a qualification stage, a footprint period and a number of annual report periods in which participants need to buy carbon allowances.

45. Given that trading is expected to be limited in Phase I and the annual sale will mostly take place in Phase II (i.e. 2014/2015) of the Scheme, participants have not yet incurred any such costs. Consequently, the KPMG survey only gathered information from respondents on their estimation of the time they devote to trading. Of the 740 responses to this survey, 352 (47%) provided an estimate of the time that they spend on carbon trading, with the majority of these (210 or 60%) indicating that they anticipated spending four days or more on carbon trading (See Chart 2). There is additional evidence within the 2010 IA¹⁹ which estimated the cost of trading to be 5 days per year for each organisation.

Chart 2 Respondents' estimates of anticipated time spent on carbon trading. Source KPMG survey 2011



46. Using the Standard Cost Model (SCM)²⁰ approach, this IA estimates an average cost of £188 per day, per participant. This is based on middle managers undertaking this role at £26.86 per hour for a seven hour day. Respondents to the 2011 survey who provided an estimate of the time spent on this activity indicated costs of between £188 (if they anticipated spending one day) and £752 based on spending four days on carbon trading (i.e. 4 days @ £26.86/hr for 7 hours). It is not known how many more days per year they could spend on trading when they reported spending 4 days or more. The estimate in the 2010 IA was 5 days per year for the same type of organisations, but given that 40% of respondents in the 2011 survey reported 3 days or less, this IA has set the number of days on average spent on trading at 4 days per year. Respondents to the March 2012 consultation did not raise any concerns or provide any further evidence that would result in alternative estimates.

47. In terms of buying allowances, it is estimated that it would take 6 full days of middle management time per year. This is based on the costs for larger participants as reported by the NERA/Enviros study and the evidence from

¹⁹ See reference to NERA/Enviros report in Footnote 12.

²⁰ The Standard Cost Model approach includes all wage and non-wage costs. For further details see attached link: Standard Cost Model UK Manual - Department for Business <http://www.bis.gov.uk/files/file44503.pdf>

Annual Reports, which suggested that all firms are in the larger category. Consequently, this IA has estimated the amount of time spent on the purchase of allowances to be 6 days per year, producing a cost of £1128 per participant; using the same amount of hours per day and staff grades as for trading (i.e. 6 days @ £26.86/hr and 7 hours per day). As a result, the overall cost of the cap and trade mechanism has been estimated at £1880 per year per participant and about £3.9m per year for all 2092 participants. Over the period 2013 to 2030, this amounts to £51m, just £1m less than the £52m estimated in the Consultation IA²¹.

48. The Consultation IA estimated baseline administrative costs of the CRC to be £499m. This estimate was based largely on the KPMG study commissioned specifically to support the simplification review. Evidence from the KPMG survey indicated administrative costs in year 1, when the majority of compliance costs take place, to be £100m, with a total of £499m for the period up to 2025. This, combined with an estimated cost of £52m in respect of allowance purchasing and trading costs over the period 2013 to 2030, produced a CRC total administrative cost of £551m. These estimates did not attract any significant comments from respondents to the March 2012 consultation so are considered to be acceptable.

Table 4 Administrative costs (discounted) of the CRC Scheme

| | Consultation IA £m (2012) | Final IA £m (2012) |
|---|------------------------------------|--------------------------|
| Baseline cost for CRC simplification assessment | | |
| <i>Baseline cost in 2010 IA (with trading)</i> | 278 | 278 |
| Baseline cost from KPMG survey 2011 (excl trading) | 499 | 446 |
| Updated total trading & purchasing cost estimate | 52 | 50 |
| Baseline Cost (KPMG) with trading & purchasing | 551 | 496 |

49. Consequently, in this Final IA baseline admin costs have been revised to reflect the change in coverage of the CRC, based on the latest dataset of participants, the decision to remove schools, and updated prices using supplementary Green Book guidance²². In effect, this reduces the estimated baseline administrative costs (excluding trading and allowance purchasing) to £446m from £499m in the March 2012 Consultation stage IA. This together with the revised trading and purchasing costs of £50m, provide an updated estimate of £496m for total baseline administrative costs. Table 4 above summarises these changes to the baseline administrative costs of the CRC.

²¹ These figures have been updated to 2012 prices resulting in a small increase of about £1m.

²² Valuation of energy use and greenhouse gas emissions for appraisal (October 2012.)

http://www.decc.gov.uk/en/content/cms/about/ec_social_res/iag_guidance/iag_guidance.aspx

BAU Benefits

50. There is a large body of evidence indicating the strong potential for reducing carbon emissions cost-effectively through increased energy efficiency in large, non-energy intensive organisations²³. Energy efficiency savings were identified in the 2009 IA and, in this IA, it is assumed the same savings will continue under the current scheme (adjusted for changes in the baseline). The benefits of each policy option to be implemented include:
- Environmental benefits in terms of a reduction in CO₂ emissions;
 - Monetary benefits to the participant organisations (savings on energy bills from investment in energy efficiency); and
 - Ancillary benefits in terms of improvements in local air quality.
51. Analysis of the CRC's impact on carbon savings and energy bills is based on the NERA/Enviros study which draws on two databases of technological and behavioural measures: 1) NDEEM's²⁴ abatement cost curves for the non-domestic sector and 2) the ENUSIM model for industrial sectors as modified by Enviros for the Energy Efficiency Innovation Review (2005).
52. It assumes that over time, and in response to the introduction of the Scheme, the existing cost effective potential for emission reductions will be taken up by participant organisations. NERA assumed various take-up rates for the CRC target group. Therefore, take-up of energy efficiency measures depends upon those who participate and on their behaviour once they are in the Scheme. This IA has used the central uptake rate assumptions from the NERA model.
53. Given that Footprint and Annual reports have produced detailed statistics from CRC participation, this IA has also modified the abatement potential initially identified by the NERA/Enviros study, by proportionally changing the take up rate of abatement potential in line with this latest evidence on CRC coverage.
54. These savings are additional to the savings of other policies that overlap in this sector, such as Smart Meters, Products Policy, Energy Performance of Buildings Directive (EPBD) and the Green Deal. Consequently, the net present value of the current CRC Scheme has been re-estimated in light of these changes.
55. Table 5 below shows the updated baseline Net Present Value (NPV) for the current scheme. This reflects that the CRC Scheme has a positive NPV of £3,956m. This is 20% lower than the NPV estimate from the Consultation IA. This change in NPV incorporates the change in the baseline as a result of

²³ The Carbon Trust, as part of the Energy Efficiency Innovation Review, carried out an analysis of the barriers and drivers for the uptake of energy efficiency measures, [The UK Climate Change Programme: potential evolution for business and the public sector](#) (December 2005).

²⁴ The basic modelling of CO₂ emission abatement potential in this study relies on two existing models (ENUSIM for industrial sectors and N-DEEM for non-domestic buildings) that have been used previously for a range of UK Government climate change policy assessments. These two model focus on the modelling of the rate of uptake of abatement technologies from industrial processes and buildings respectively. The MACCs from ENUSIM and N-DEEM show the carbon abatement potential available in a given year.

removing schools from the Scheme and a downward revision in administrative costs based on updated information on participants.

56. There has also been an upward revision of the capital cost estimate to £326m to ensure this includes (discounted) costs up to 2030. The initial assessment in the 2010 IA covered capital costs and savings from 2010 to 2015. From 2025 onwards there was a declining trend of legacy savings. These legacy savings have not been estimated in the Final IA. The CRC has been scheduled to continue up to 2047 but projections on energy demand trends and savings only go as far as 2030. Although there should be a number of savings identifiable after the conclusion of the Scheme these would be heavily discounted and would represent a negligible impact between the baseline and the preferred option. This IA maintains that these savings are not material to the simplification proposals.
57. Finally, the most significant change has been the revision to the air quality estimate. The consultation stage IA did not estimate air quality benefits. They just were adjusted from the 2010 IA estimation accounting for the updated coverage of the Scheme. This Final IA has fully modelled the air quality benefits consistently with published IAG guidance and has resulted in a new estimation of air quality benefits in the baseline of £65m (See table 4 for comparisons to baseline values).

Table 5 Net Present Value of CRC BAU adjusted to reflect latest evidence

| Option | Lifetime Change in TRADED INDIRECT emissions (MtCO ₂ e) | Lifetime Change in NON-TRADED emissions (MtCO ₂ e) | Net Present Value (£m, in 2012 prices, discounted to 2011) | Present Value of Costs (£2012m) | | Present Value of Benefits (£2012m) | | | |
|---------------------|--|---|--|---------------------------------|------------|------------------------------------|----------------|---------------------------|-----------------------|
| | | | | Capital Cost | Admin Cost | Air Quality | Energy Savings | Non-traded sector savings | Traded sector savings |
| New Baseline | 5.1 | 21.3 | 3956 | 326 | 496 | 65 | 3654 | 970 | 90 |
| BAU Consultation IA | 10 | 22 | 4940 | 267 | 534 | 419 | 4064 | 974 | 284 |
| Net Change | -5 | -1 | -984 | 59 | -38 | -354 | -410 | -4 | -194 |

Option 1 – A simplified CRC (with the implementation of all three packages)

58. In June 2011, Government published a 'Next steps' document based on stakeholders' feedback on a set of discussion papers, which suggested a number of changes and simplifications to the Scheme for Phase II. Subsequently, the March 2012 Consultation document proposed 46 different measures that were grouped into 3 major simplification packages. These were:

- **Package A.** Measures that change qualification status and therefore change the Scheme's emissions coverage. An organisation that would cease to qualify as a result of these proposals won't be included in the subsequent analysis of administrative savings.
- **Package B.** Measures that change fuel supply rules and therefore also change the Scheme's emissions coverage. Energy supplies removed from the CRC as a result of these measures are subsequently excluded from the cost-benefit analysis.
- **Package C.** Other measures that do not change qualification or fuel supply rules, achieving a straightforward administrative cost reduction without affecting the Scheme's emissions coverage. These cover most of the measures simplifying organisational structure, the allowance sale process and banking.

59. The majority of respondents agreed with the proposals and welcomed the complete package of simplification proposals as a step in the right direction. While some did raise concerns about certain issues (see Para 24 above), limited analytical evidence on administrative costs was submitted by respondents. Consequently, Government maintains that the overall estimated administrative costs savings are not materially affected by consultation responses.
60. In light of the updated evidence gathered, Government believes that the simplified proposals will deliver significant administrative cost savings and has therefore decided to proceed with the CRC simplification package, with a number of modifications that relate to Package B (measures that affect the fuel supply rules).

Reduction in the number of fuels

61. A number of participants have argued that instead of reducing the number of fuels to four, the number should instead be reduced to two (electricity and gas). The arguments are that gas oil and kerosene make up a small (less than 1%) proportion of most participants' overall supply, and thus do not add significant benefit to be included but would reduce administrative costs if excluded. Information from Annual Reports indicate that in the first year of the Scheme, gas oil and kerosene consumption amounted to 1.7MtCO₂ (around £20m revenue) or around 2.8% of overall scheme coverage. Despite the loss of coverage resulting in some loss in terms of the overall benefit of the Scheme, a significant amount of this coverage would regardless have been lost in Phase II on account of the proposal to restrict gas oil and kerosene only to that which is used for heating purposes. Consequently, the additional impact of removing all gas oil and kerosene from the Scheme should be minimal. The Government has decided therefore, that the loss of emissions coverage as a result of reducing to two fuels is less of a priority than pursuing a greater reduction in administrative complexity.

Gas only to be reported on within the CRC when used "for heating purposes".

62. In response to stakeholder suggestions, the Government has decided to restrict the requirement for gas reporting to gas that is used for heat generation only.

This modification will not significantly reduce CRC's emissions coverage, as over 90% of gas consumed is for heating purposes which is still included.

63. To avoid increasing administrative costs, it is proposed to introduce an assumption that, unless a participant states otherwise, all gas is used for heating purposes. In addition, (as explained below) the introduction of a de minimis threshold for gas will further simplify the administrative requirements of the Scheme.

De minimis thresholds

64. There was strong support among respondents for the introduction of de minimis thresholds for fuels covered by the CRC. A de minimis threshold should ensure that participants who have very small sources of gas do not have to report these. As a result, the Government has decided to modify the original proposal and introduce an organisation-wide de minimis threshold for gas supply.

Gas – an organisation-based threshold

65. The Government believes it would be beneficial to introduce an organisation-wide threshold so that organisations with very low gas consumption overall do not need to report on their gas consumption at all.
66. The Government has decided to proceed with a 2%²⁵ de minimis threshold for gas²⁶. In order to minimise administrative costs, this de minimis will only be assessed once per phase. This means that for Phase II, if a participant exceeds the de minimis in the reporting year 2014/15, then that participant will have to report their gas for the entirety of the second phase. If the participant does not exceed the de minimis then they will not have to report any gas for the duration of the second phase. This is expected to minimise administrative burdens.

Costs and benefits of Option 1 – full implementation of the simplification package

Package A

67. Measures that affect CRC qualification need to be analysed before any other measure because they impact on the emissions coverage of the Scheme. The remaining measures apply only to those participants who still qualify for the CRC. There are five measures that could have an impact on both administrative costs and emissions coverage (Annex B provides a fuller description of these measures):

²⁵ Sensitivity analysis was carried out for a 5% de minimis threshold which did not produce any significant results. A 2% threshold would capture 99.9% of gas consumption which is currently caught by the scheme and produced the best results in terms of trade-offs between energy coverage and admin savings.

²⁶ So organisations with a gas consumption of less than 2% of their electricity consumption will not need to report on, or buy allowances in respect of their gas consumption.

- **Qualification criteria:** The CRC's qualification criteria will be based on settled half hourly electricity meters instead of a) one half hourly meter and b) 6000MWh through all half hourly electricity meters.
 - **EU ETS installations and CCA facilities:** Organisations will no longer need to consider electricity supplies to EU ETS and CCA facilities/installations when assessing CRC qualification. This will eliminate the need for CCA exemptions.
 - **Treatment of trusts:** This measure, as proposed in the consultation document, would impact qualification for the Scheme by assigning the responsibility for trusts in a different way to those outlined in the current arrangements. The magnitude of this impact is currently unknown as data from the first compliance year does not allow for identification of different types of trust that would be affected by the simplification measures. Consultation respondents also did not provide any evidence of the impact.
 - **Landlord definition:** The general approach is to place responsibility for emissions on the landlord. However, in very limited circumstances where the tenant is allowed to erect and occupy their own buildings, CRC responsibility will shift to tenants.
 - **Licensed activities:** By excluding electricity and gas supplies used for the generation, transmission or distribution of electricity, or the transport, supply or shipping of gas from the CRC, some firms close to the qualification threshold may no longer qualify.
68. Qualification criteria and the removal of EU ETS and CCA facilities have the greatest impact on coverage and simplification measures. Both have been fully quantified below. The other three measures have been assessed on a qualitative basis.

Quantified impacts of qualification measures

Impact on coverage

69. The impact of removing EU ETS and CCA installations from qualification has been estimated using data from Registration, Footprint and Annual reports. Removing electricity supplies from CCA and EU ETS installations at the qualification stage not only simplifies reporting, but increases the overall coverage of the CRC. This occurs because if any firm still qualifies after removing CCA and EU ETS supplies, then it will have to bring to the Scheme non-CCA emissions that were previously exempt under the 25% rule.
70. For example, a firm responsible for 10,000MWh of electricity supply and 3000MWh of Gas owns a CCA installation that consumes 3000MWh of electricity and 2000MWh of gas. Under the current scheme, the firm qualifies for general exemption and all 13,000 MWh are exempt. However, under the new scheme, it does not have to report CCA supplies but still qualifies with 7000MWh of

electricity and will have to report CRC emissions associated with its non-CCA part. That is, 7000MWh of electricity and 1000MWh of gas.

71. This IA recalculates CRC coverage under the new proposals based on the percentage of emissions covered by CCA from different types of exemption reported at registration combined with Footprint and Annual reports. This indicates that the proposed qualification criteria and the removal of EU ETS and CCA facilities have the effect of reducing the number of CRC participants by approximately 1000.

Table 6 Impact on qualifying emissions from package A measures

| | Current Scheme | Simplified Scheme – Package A |
|--|------------------|-------------------------------|
| Registrations | 2,764 (2,779) | 1,722 (1,735) |
| Footprint Emissions (MtCO ₂) | 200.5 (199.7) | 180 (184.7) |
| Total Emissions for Annual Report (CRC Emissions) (MtCO ₂) | 60.7 (61.0) | 56.2 (61.0) |

Note: Consultation IA figures in brackets

72. The change in the results of this IA in comparison to those outlined in the March 2012 Consultation IA, is driven by two main elements:

- First, an updated dataset from the Environment Agency. As a consequence some firms that the Consultation IA suggested would not qualify for the CRC, will in reality, still qualify for the Scheme. However, the number of emissions is lower overall due to the more accurate reporting of CCA target unit data. The reason for this is that the non-CCA emissions in some organisations are much lower than previously estimated, particularly as new analysis concerning qualification includes information from an additional 646 CCA target units.
- Second, the removal of schools from the baseline has a direct impact on the CRC Scheme by removing all of the emissions associated with them. It will also have an indirect impact, reducing the number of Local Authorities that qualify for the Scheme. The combined impact represents a reduction of emissions in Package A of 4.1MtCO₂.

Impact on administrative savings

73. Administrative savings from qualification have been classified into three categories:

- A firm not qualifying will not incur any costs from Phase II onwards.
- Qualifying firms with CCAs will save on their CCA reporting.
- Qualifying firms with CCA exemptions will have to do annual reports.

74. Administrative costs remain unchanged in Phase I because new qualification will not take place until the start of Phase II. However, from Phase II onwards, there will be considerable savings from firms that cease to qualify for the Scheme. The number of firms in the CRC will decrease from 2,764 to 1,722. However, costs do not decrease proportionally as smaller organisations which will no longer qualify, also have a lower average cost. The average cost from organisations with less than 10,000 MWh is 47% of the average cost of the remainder of organisations, based on emissions data from Registry and Footprint reports and administrative savings data from the KPMG survey. Estimates of 2010-2011 costs have been excluded because these are one-off costs and cannot be recovered.
75. Some firms will have incurred extra costs by producing annual reports. Based on the estimation of qualifying thresholds in Part I, 93 firms who currently do not need to produce annual reports owing to their holding a CCA exemption will, as a result of the changes, now be obliged to submit an annual report. The unit cost of annual reporting has been estimated at £3093 per firm. Therefore, the aggregate cost for these 93 firms of producing an annual report each year is estimated to be £288k.
76. There are some one-off costs for the Environment Agency (EA) as a result of these proposals. These costs are related to updating the information management and IT systems. An initial view is that they would be minimal (around £567,000 based on CRC budget planning by DECC).

Table 7 Summary of costs and benefits from Package A qualification measures

| | | | Net Present Value (£m, in 2012 prices, discounted to 2011) | Present Value of Costs (£2012m) | | Present Value of Benefits (£2012m) | | | |
|-------------------|--|---|--|---------------------------------|-------------|------------------------------------|----------------|---------------------------|-----------------------|
| Option | Lifetime Change in TRADED INDIRECT emissions (MtCO ₂ e) | Lifetime Change in NON-TRADED emissions (MtCO ₂ e) | | Capital Cost | Admin Cost | Air Quality | Energy Savings | Non-traded sector savings | Traded sector savings |
| Baseline | 5.1 | 21.3 | 3956 | 326 | 496 | 65 | 3654 | 970 | 90 |
| A | 4.9 | 20.9 | 3960 | 319 | 377 | 63 | 3555 | 952 | 86 |
| Net Change | -0.2 | -0.4 | 3 | -7 | -119 | -2 | -99 | -19 | -4 |

77. About 38% of participants will no longer qualify for the Scheme from Phase II onwards. On aggregate, simplifying qualification and removing the overlaps with CCAs and EU ETS policies is estimated to reduce administrative costs from £496m in the baseline to £377m²⁷. However, there will be an estimated loss of 0.6 MtCO₂e emissions savings associated with simplification which will impact on the benefits of the Scheme by:

- Reducing the value of energy savings by £99m;

²⁷ This is equivalent to a 21% reduction of baseline cost plus the discounted cost of £288k for the annual reports to be submitted by the 93 firms with CCA exemption, from Phase II to the end of the assessment period.

- Reducing traded and non-traded carbon savings by £23m.

78. This reduction in benefits is offset by the reduction in administrative costs of £119m and capital costs of £7m. Overall there is only a 0.1% difference in NPV between both options. Although this is a small reduction in NPV, it is not entirely appropriate to assess the impact of simplification packages individually, particularly as they are designed to work in combination. For example, removing the overlaps in package A is strongly linked to reducing some of the footprint reporting costs in package C. Table 7 above sets out the impacts of implementing Package A.

Non-quantified impacts of qualification measures

79. Three of the qualification measures (i.e. treatment of trusts, landlord definition and licensed activities²⁸) have not been quantified for the following reasons:

- They will have no significant impact on aggregate emissions or administrative burdens but would redistribute responsibility for CRC emissions more fairly.
- These measures would affect only a very limited number of participants and the costs of gathering reliable data, at the required level of disaggregation, would be disproportionate compared to a relatively low impact.

80. Although these measures are not quantified, stakeholder feedback has indicated that they will contribute to simplifying the CRC. There was strong support amongst consultation respondents for the landlord definition licensed activities measures as these provide clarity and remove ambiguity which in turn, reduces administrative costs. Although DECC has not been able to estimate the administrative impacts associated with these measures, they could slightly reduce CRC participation from some firms at the margin of the qualifying threshold. However, their impact on emissions is considered to be negligible overall.

Package B

81. Measures that affect fuel supply rules in the CRC would also have an impact on emissions covered by the Scheme although to a lesser extent than qualification measures. The two main measures have been fully quantified. However, the impact of some other measures in this section is difficult to quantify for a number of reasons. For instance, they apply to very limited or special cases, cover only certain types of supply relationships and are intended to prevent perverse incentives or are proposed on the grounds of fairness, with no impact on cost or emissions.

²⁸ See Annex A for an explanation of proposals around these measures.

Quantified impacts of fuel supply related measures

82. There are three measures in this package that could have a significant impact on CRC participants. These are:
- **Reduce the number of fuels.** Government will reduce the number of fuels covered by the Scheme from 29 to 2 (electricity, gas).
 - **Remove the 90% applicable percentage.** Participants are currently required to ensure that at least 90% of their emissions are regulated by the EU ETS, CCA or CRC, as appropriate. As CCA and EU ETS will not count for qualification, participants will now be required to report 100% of their electricity and gas consumption if they exceed the de minimis threshold.
83. Analysis for this IA, based on the Annual report, indicates that electricity and gas represent c. 96% of the Scheme's total emissions, with the remaining 27 fuels accounting for the remaining 4% (see Table 2 above). Consequently, the proposal to reduce the number of fuels covered by the Scheme will reduce the reporting requirements on participants whilst broadly maintaining emission levels.
84. Reducing the number of fuels covered by the CRC is expected to reduce the total emissions covered by the CRC. However, in the new proposals, the overall impact is a small loss in emissions coverage of 1 MtCO₂²⁹ given that removing the 90% applicable percentage rule means that participants would now have to report 100% of electricity and gas use.
85. The administrative costs associated with reporting residuals were identified in the KPMG survey from savings on time usually spent compiling and reporting residual supplies in the footprint and annual reports. In the baseline, participants spend £1.09m annually gathering data for non-core sources. Removing these costs for qualifying participants results in a total of £31m of discounted savings over the period to 2030.
86. For the purposes of this IA each package is assessed sequentially and on the basis of the full implementation of the preceding package. The figures presented in Table 8 below show the estimated impact of combining package B with the preceding package A. **Packages A and B combined reduce administrative costs by £150m from the baseline and decrease traded and non-traded savings in emissions by 1 MtCO₂.**

²⁹ Estimated using data from Footprint and Annual Reports.

Table 8 Summary of costs and benefits from Package A and B combined

| Option | Lifetime Change in TRADED INDIRECT emissions (MtCO ₂ e) | Lifetime Change in NON-TRADED emissions (MtCO ₂ e) | Net Present Value (£m, in 2012 prices, discounted to 2011) | Present Value of Costs (£2012m) | | Present Value of Benefits (£2011m) | | | |
|------------|--|---|--|---------------------------------|------------|------------------------------------|----------------|---------------------------|-----------------------|
| | | | | Capital Cost | Admin Cost | Air Quality | Energy Savings | Non-traded sector savings | Traded sector savings |
| Baseline | 5.1 | 21.3 | 3956 | 326 | 496 | 65 | 3654 | 970 | 90 |
| A+B | 4.7 | 20.6 | 3911 | 313 | 346 | 62 | 3487 | 938 | 84 |
| Net Change | -0.3 | -0.7 | -46 | -13 | -150 | -3 | -167 | -32 | -6 |

Non-quantified impacts of fuel supply related measures

87. In addition to the main measures quantified above, package B contains four additional measures that have not been quantified as they would only affect a very limited number of participants and the costs of gathering reliable data at the required level of disaggregation would be disproportionate given their relatively low impact. These measures are:

- **Unmetered supplies:** Government proposes to extend the scope of the Scheme to include passive pseudo half hourly and pseudo non half hourly unmetered supplies.
- **Profile classes:** Government proposes to remove domestic electricity meters of profile class 01 ('domestic unrestricted') and 02 ('domestic Economy 7') from the scope of the Scheme, along with non daily metered gas supplies below 73,200kWh per annum.
- **Unconsumed supply:** Government proposes to limit the circumstances in which unconsumed supply can be claimed to scenarios where the downstream supply relationship meets the CRC's supply criteria.
- **Natural Gas:** Government proposes to restrict the scope of self-supplied gas to natural gas only.

88. All four measures were strongly supported by consultation respondents because they would provide additional clarification on the simplified scheme. On unmetered supplies, it was acknowledged that it would add to overall liability, however, this would be compensated by improved energy data on actual costs which will help manage energy efficiency in future. On unconsumed supply, respondents were not convinced the proposal would result in any major cost savings but, on balance, concluded that it was right that "party A" should be responsible for the supplies it receives, or supplies made at its direction. No further evidence on the impacts of these measures was provided by consultation respondents.

Package C

89. A number of the proposed measures will not impact on the coverage of emissions or energy savings. These measures cover a wide range of areas such as organisational rules, the requirements to keep records, registration changes and the allowance sale process (see Annex B for details of these measures). They simplify many of the areas that create unnecessary administrative burdens and were identified in the wider consultation with participants in April 2011. In addition, the KPMG survey has quantified the administrative costs from these activities. For example, organisational rules have been identified as one of the largest areas of complexity. Several other areas of the CRC have proven to be more complex to implement than originally intended, particularly around organisational boundaries.

Quantified impacts of Package C measures

90. There are a number of other measures in this package which aim to simplify the areas that create unnecessary administrative burdens for firms. These include: making the organisational rules more flexible; allowing for automatic re-registration; clarifying the supply rules; creating a more consistent approach to emissions factors; requiring fewer annual reports; and clarifying the obligations on energy suppliers.
91. The impacts of these measures are heavily interdependent and many affect several sources of administrative cost. For example, proposals about designated changes are also going to affect footprint reporting costs, maintaining organisational structure records in the Annual report, training costs and one-off costs. At the same time, some of the main sources of cost in the CRC (see Table 9) are simplified by several of these measures. For example, the cost of compiling the Annual Report evidence pack is affected by measures such as organisation structure, designated changes and, extension of annual energy statement obligation.
92. It is not possible to fully identify the impact of each measure individually so DECC has generated an estimate based on the stakeholder engagement exercise published in January 2011³⁰ which identified the proportional reduction in costs that these measures would deliver relative to the updated baseline. Responses to the March 2012 consultation have also been considered.
93. **Table 9 gives the current breakdown of average administrative costs, by activity as a proportion of total Business as Usual administrative costs and how these proportions change as a consequence of the proposed measures.**
94. Some of these cost reductions are certain, such as the need to gather data on residual sources which is going to be eliminated. However, it is more difficult to

30 http://www.decc.gov.uk/en/content/cms/emissions/CRC_efficiency/simplification/simplification.aspx

assess the savings from other areas, such as the reduction in compliance training costs for participants. .

Table 9 Breakdown of CRC administrative costs

| CRC activities as a proportion of total BAU cost in a Footprint and Registration Year | BAU | | New Scheme | |
|---|---------------------------------|--------------------|---------------------------------|--------------------|
| | Footprint and Registration Year | Annual Report Year | Footprint and Registration Year | Annual Report Year |
| One off Costs | | | | |
| Understanding the rules of the CRC (including attending training courses etc) | 14% | - | 7% | - |
| Educating the organisation on the CRC (not on energy management in general) | 7% | - | 4% | - |
| Other | 4% | - | 0% | - |
| External Costs | | | | |
| CRC Training | 2% | - | 1% | - |
| Determining Organisational Boundaries | 3% | - | 1% | - |
| CRC Evidence | 1% | - | 1% | - |
| Outsource CRC Compliance | 6% | - | 3% | - |
| Data /invoice collation/compilation specifically for CRC | 2% | - | 1% | - |
| External/ outsourced internal audit or reviews | 3% | - | 1% | - |
| Others | 4% | - | 2% | - |
| Registration costs | | | | |
| Determining your organisational boundaries and structure at 31/12/08 | 4% | - | 2% | - |
| Identifying your 2008 HHMs and AMR usage | 4% | - | 0% | - |
| Understanding and disaggregating your SGUs | 1% | - | 0% | - |
| Claiming CCA exemption (if relevant) | 1% | - | 0% | - |
| Registration for CRC Scheme | 2% | - | 1% | - |
| Others | 0% | - | 0% | - |

| | | | | |
|---|-------------|------------|------------|------------|
| Footprint Reports | | | | |
| Determining structure as at 1.4.2010 | 2% | - | 1% | - |
| Developing CRC compliance methodology | 4% | - | 2% | - |
| Gathering data on core sources (non CCA / EU ETS) | 5% | - | 5% | - |
| Assessing CCA / EU ETS emissions coverage | 1% | - | 0% | - |
| Gathering data on residual sources | 4% | - | 0% | - |
| Submitting your footprint report evidence pack | 5% | - | 2% | - |
| Others | 0% | - | 0% | - |
| Annual Reports | | | | |
| Maintaining org structure records | 2% | 2% | 1% | 1% |
| Maintaining source list | 2% | 2% | 0% | 0% |
| Gathering data on core supplies | 4% | 4% | 4% | 4% |
| Gathering data from non-core sources | 2% | 2% | 0% | 0% |
| Collating information on renewables | 0% | 0% | 0% | 0% |
| Gathering early action metrics data | 2% | 2% | 0% | 0% |
| Reviewing and testing data | 3% | 3% | 1% | 1% |
| Internal audit/sign off by management | 2% | 2% | 1% | 1% |
| Compiling annual report evidence pack | 3% | 3% | 1% | 1% |
| Liaising with the EA with questions etc. | 1% | 1% | 1% | 1% |
| Others | 0% | 0% | 0% | 0% |
| Total | 100% | 21% | 45% | 10% |
| Savings from BAU | - | - | 55% | 11% |

95. There is also some uncertainty over these costs in the future. Theoretically, in the absence of any further changes to the Scheme, no re-training should be required unless there is a loss of knowledge in the organisation as a result of staff movements. Given that the average time in post could be less than five years, some of these costs could be incurred again. On the other hand participants should, in theory, have embedded their knowledge within the governance systems of the organisation (e.g. via electronic systems, spreadsheets, policies and procedures, CRC methodology documents, ISO14001 procedures etc) which means that the level of any re-training required should be significantly reduced. However, any estimate of the level of this re-

training would be extremely variable and subject to multiple factors. The administrative savings from this package have been estimated by multiplying the percentage reduction in each of these activities as a result of simplification measures by the administrative costs that take place in each year up to 2030. Since administrative costs are much higher in a Footprint Report year which occurs in the first year of every phase, Footprint and Annual report years have been estimated separately.

96. CRC administrative costs have been estimated by the KPMG survey to be £100m in the first footprint year and £446m³¹ for the whole period up to 2030. These proposals save £55m in a footprint year and £2m in an annual report year. Taking into account the impact of previous packages (A and B) which remove a large number of fuels and firms, the final impact of the Scheme is a 55% reduction of administrative costs from £496m to £224m.
97. The figures presented in Table 10 summarise the combined impact of all of the simplification measures. The final NPV of simplification proposals is £77m larger in the simplification option when compared to the baseline. This is mainly driven by a large reduction in administrative costs of £272m which is partially offset by a loss of energy savings of £167m. There are other small changes in capital costs, air quality benefits and carbon savings.

Table 10 Summary of costs and benefits from all three simplification packages A, B and C

| Option | Lifetime Change in TRADED INDIRECT emissions (MtCO ₂ e) | Lifetime Change in NON-TRADED emissions (MtCO ₂ e) | Net Present Value (£m, in 2012 prices, discounted to 2011) | Present Value of Costs (£2012m) | | Present Value of Benefits (£2012m) | | | |
|-------------------|--|---|--|---------------------------------|-------------|------------------------------------|----------------|---------------------------|-----------------------|
| | | | | Capital Cost | Admin Cost | Air Quality | Energy Savings | Non-traded sector savings | Traded sector savings |
| Baseline | 5.1 | 21.3 | 3956 | 326 | 496 | 65 | 3654 | 970 | 90 |
| A+B+C | 4.7 | 20.6 | 4033 | 313 | 224 | 62 | 3487 | 938 | 84 |
| Net Change | -0.3 | -0.7 | 77 | -13 | -272 | -3 | -167 | -32 | -6 |

Non-quantified impacts of Package C measures

98. The CRC was originally intended to be a cap and trade scheme, but Government has decided to significantly simplify the process for selling allowances, in line with the proposals in the consultation document. The sale of allowances will continue on a retrospective, fixed price basis in the first phase.
99. In Phase II of the Scheme, trading will take place on a voluntary basis and participants are going to have the option of following a buy-to-comply approach. DECC's view is that these changes to the allowance sale process will not impose

³¹ Note that there are some extra £50m from trading costs in the baseline. See table 4

additional administrative burdens but will instead reduce them as the decision is a simplification for participants.

100. This IA estimates that the cost of buying allowances represents 1 day per year of middle management time at £27/hr. Consultation respondents who commented on the allowance sale process were positive about the impact of the proposed measures and did not provide any further evidence on costs.
101. In respect of the Performance League Table which will no longer be published after 2012, administrative savings may accrue to the Environment Agency as a result of time saved in compiling the league table. Given that the Environment Agency will instead publish participants' aggregated energy use and emissions data, the impact of removing the Performance League Table is considered to be small and has not been quantified in this IA.

Summary of changes since Consultation Stage IA

102. The Consultation stage IA claimed £347m in administrative savings (Table 11). Following revised analysis, these savings have been reduced by £76m to £272m. This is the result of a decrease in baseline administrative costs (£55m) and an increase in final administrative costs of the simplified scheme (£ 21m). These changes can be explained as follows:
103. Baseline Change: The administrative cost of the CRC in the Final IA is £55m lower than in the consultation stage. To a large extent this is a result of changes in the baseline coverage of the Scheme. For instance, with the removal of schools, baseline administrative costs have decreased by £33m.
104. The main explanation for a further decrease of £20.5m is that the Consultation stage IA overestimated baseline administrative costs related to the early action metrics by applying them to Phase II of the Scheme when they should only apply to Phase I. Estimates in this IA have been revised accordingly.

Table 11 Difference in administrative costs between Consultation and Final IA

| £m (2012) | Consultation IA | Final IA | Difference |
|---|-----------------|----------|------------|
| Baseline | 551 | 496 | -55 |
| Package A | 405 | 377 | -28 |
| Package A + B | 387 | 346 | -41 |
| Package A +B +C | 203 | 224 | 21 |
| Change in Admin costs of preferred package (relative to baseline) | 347 | 272 | -76 |

105. The final £1.5m difference can be explained by a reduction in trading costs in the Final IA. This is because the updated dataset from the EA includes new data on CCA participation from participants. The final data set contains a higher number of general and group exemptions than in the consultation stage

baseline. Firms with general and group exemptions do not need to trade or surrender allowances and the cost associated with these activities decreases with the number of exemptions.

106. Package A: Administrative costs decreased in Package A by £28m. The removal of schools from the Scheme has reduced the baseline from which administrative savings can be made. This results in a reduction of £31m which is offset by an increase in £3m owing to modelling revisions, resulting in a net impact of £28m.
107. Package A + B: The administrative costs of package A+B are also lower compared to the consultation stage due to the reduction of £29m from the baseline. The other £12m is explained by a revision in the number of full participants as a result of the proposed changes. A lower proportion of qualifying firms does not change the unit cost but decreases the number of firms experiencing administrative costs, and also benefitting from the reduction in the number of fuels. Some of these differences are also driven by new data obtained for the Final IA and by the reduction in the number of fuels.
108. Package A + B + C: Administrative costs in this package are £21m higher than in the consultation IA. However the underlying change is much larger because the Final IA has a lower baseline due to the removal of schools and updated datasets. Due to revisions to the estimates there has been a decrease of £61m in administrative savings, which combined with a £40m lower baseline in package A + B, results in a £21m difference.
109. The combined effect of all 3 packages in Option 1 (the preferred option) is an increase in administrative costs of £75m in the Final IA compared to the Consultation stage IA. In summary, the differences in administrative between Consultation stage and Final IA can be explained by changes in the baseline and revisions to the previous estimates, including:
- Removal of schools from CRC participation
 - Revisions to ensure that footprint costs and annual report cost apply to relevant years in Phase I, which reduces administrative costs of this package.
 - The use of an updated dataset
 - Revisions in light of responses to the consultation i.e. changes in participation and the number of fuels covered by the Scheme.
- The administrative costs of calculating core supplies were previously assigned to non-core supplies, and vice versa. The Final IA eliminates this problem.

Direct costs and benefits to business – for Option 1

110. Since the decision to remove revenue recycling in October 2010 as part of the Comprehensive Spending Review, the CRC combines regulatory elements (such as standardised mandatory monitoring and reporting of energy use) with taxation aspects associated with the cost of allowances.

111. The net present value calculations treat the cost of allowances as a cost to business and a benefit to government with a neutral impact on the Net Present Value since it represents a net transfer between participants and government³². In order to estimate the financial impact on CRC businesses, this IA has excluded the proportion of energy savings in public sector from the calculation. It also excludes emissions, allowances and other costs from this sector.
112. Energy savings related to business only have been calculated by multiplying the amount of energy saved by the CRC with the market price of the respective energy source in the IAG guidance³³. These savings are all additional savings and do not include other savings that will take place in these sectors from Products Policy, Smart Meters and Building regulations, all of which overlap with the CRC.
113. The impact of allowances has been calculated projecting CRC coverage in tonnes of CO₂ after removing efficiency savings from baseline energy projections. The future price of allowances is set by HMT in the budget process. Allowance prices for the CRC have been set at £12 (in nominal terms) for the first three years of the Scheme. From 2014-2015 the price of allowances has been set at £16 and will increase in line with the RPI from 2015-2016. Administrative and capital costs are also adjusted to remove public bodies from these estimations. The results are presented in the Table 12 below.

Table 12 CRC Impact on Business

| CRC Impact on Business £2011m | Baseline | Option 1 (preferred) |
|--|-----------------|---------------------------------|
| Cost of allowances | 10,508 | 9,282 |
| Energy Savings | 2,041 | 1,927 |
| Admin Costs | 400 | 181 |
| Capital Cost | 263 | 254 |
| Net cost of Business | 9,130 | 7,791 |

114. The net cost to business is driven mainly by the cost of allowances. The aggregate cost of allowances in the baseline has been calculated by multiplying 52MtCO₂ of emissions each year³⁴ with the price of allowances. In total, the net cost to business in the baseline is estimated at £9,130m of discounted costs up to 2030. The equivalent cost in Option 1 is estimated at £7,791m. This is slightly lower than the baseline cost because this option reduces the Scheme's emissions coverage by 2MtCO₂, representing a reduction in financial impacts to

³² This in accordance with appraisal guidance from: the Green Book published by HMT; IAG guidance on carbon appraisal by DECC; and the One in One Out evaluation guidance published by BIS.

³³ See DECC IAG guidance for policy appraisal www.decc.gov.uk/en/content/.../iag_guidance/iag_guidance.aspx

³⁴ This is only for the first year as for subsequent years the analysis takes into account the impact of savings and energy demand projections for business and commercial sector in DECC's Energy Model as published in October 2011:

http://www.decc.gov.uk/en/content/cms/about/ec_social_res/analytic_projs/en_emis_projs/en_emis_projs.aspx

businesses of £1,340m over the whole period to 2030 with respect to the baseline. This corresponds to an annualised value of £92m.

115. In terms of financial impact the cost of allowances is higher than energy savings with a net impact on CRC businesses of £7.8bn over the whole period of appraisal. Compared to the £1,286bn of turnover reported by these organisations in their 2010 Footprint reports, the CRC represents 0.03% of the turnover of currently registered businesses for just one year.
116. The simplification of the CRC will deliver significant savings compared to the baseline situation of the existing scheme. These savings are estimated at around 55% of current administrative burdens. The reasons behind the difference from the March 2012 Consultation IA, which estimated 63% savings, are explained in paragraph 110.
117. In the CRC baseline, around 80% of participants and 70% of emissions originate from the non-public sector. Under the new scheme, there will be significant changes in the number of firms qualifying. Based on the analysis of Registration and Footprint reports, the non-public sector will represent 72% of organisations and 80% of total emissions.
118. Since the net cost to business calculation applies to the non-public sector only, the savings accruing to public sector organisations have been removed. This calculation covers a reduction in administrative cost of £272m and £13m in Capital cost and a decrease in energy savings of £167m resulting in £118m decrease in direct costs. This analysis covers only direct costs to 1300 organisations that will remain after the application of the simplifying proposals. After removing the public sector, it results in a £91m reduction of direct costs to businesses. On this basis, using a 20 year appraisal and a 3.5% discount rate, the equivalent annual net benefit to business is estimated to be £6m.

Table 13 ALL tables are: central prices & central uptake; Preferred Option A+B+C

| | |
|--|-----------|
| These are with respect to the baseline | |
| Net Savings | -167 |
| Capital Cost | -13 |
| Admin Cost | -272 |
| Net change in direct costs | -118 |
| Net only business | -91 |
| Deflated value (2009) | -87 |
| EANCB (£m) | -6 |

119. The simplification proposals covered in this IA are estimated to bring an annual reduction in administrative costs of £18m and net cost to businesses of £6m. When including the cost of allowances (which does not affect the NPV results) it would reduce the cost to businesses by £92m per year.

Risks and Assumptions

120. There are three areas of this IA where there remains some degree of uncertainty:

- There is limited information of CRC savings which have not been updated since the 2010 IA.
- Data issues around CRC reporting. The Environment Agency has not yet carried out audits on the reports submitted and there is no requirement to report from firms with exemptions or those outside of the Scheme.
- Respondents to the administrative burdens survey have an incentive to overstate costs. The methodology has been designed to limit bias but there are some limitations to the methodology which is discussed further below in paragraph 131.

Each of these is discussed in more detail below.

CRC Savings

121. CRC savings are based on abatement potential identified in the Non-Domestic Energy Efficiency Model (NDEEM). There are a number of limitations to this model:

- The underlying data is outdated and thus does not reflect any new technologies, policy changes or the actual costs of abatement.
- NDEEM does not match the CRC policy needs. For example, industrial process emissions are not covered by this model.
- NDEEM works at an aggregate sector level and therefore ignores the effects of commercial and industrial structure which applies within sectors (e.g. different size and type of production process and whether their fuel use is traded or non-traded and, in the case of companies, across sectors). Note the CRC is based on companies rather than sites or processes).

122. Finally, the NERA/Enviros model has not accounted for the impact on emissions savings of the proposed move to replace the cap and trade mechanism with a fixed price sale of allowances. However, in the absence of any evidence of what this impact would be, this IA has no basis for estimating such an impact.

Data Issues from the Registration and Footprint report

123. CRC participants need to submit the following reports:

- A registration report, including participant's characteristic, emissions and qualifying supplies. Some firms claim a general or group exemption at registration and as a result they do not need to submit any further reports

- A footprint report once per phase. This gives an account of all emissions covered by the organisation. Some firms can claim general or group exemptions at this stage and submit no further reports
- An annual report. Firms with no exemption or member exemption need to submit an annual report covering all of their CRC emissions.

124. Although actual data from the annual report³⁵ represents a considerable improvement on the existing evidence, there are still some issues around the quality of data obtained from registration and footprint reports. For example, some firms have reported kWh figures in MWh which increase emissions by 1000 times. Other firms have made mistakes on the type of exemption, for example, claiming a group exemption when they should claim a member exemption.

125. The Environment Agency maintains the CRC database and is planning to take a number of audits over the coming years, however, the results will not be available in time for this IA. However, it is expected that the accuracy of reporting will increase with subsequent annual reports and this would be taken into account in DECC's plan for the evaluation of the CRC.

126. Registration and footprint reports are important in the analysis of qualification measures. This data is crucial in order to identify the reduction on qualifying emissions because:

- New qualification rules will only cover electricity supplies through settled half hourly meters
- CCA and EU-ETS supplies will not count towards qualification

127. Unfortunately, these emissions are not covered in annual reports. So this IA relies on registration and footprint report data. DECC has tried to overcome the lack of robustness by producing a matching exercise at meter level for participants with CCA exemptions. DECC statisticians advised against this approach because the match rate was very low and would introduce considerable bias.

128. Therefore, this IA has used footprint and registration data. This has been based on identifying the difference between company emissions and CCA emissions in these reports in order to:

- Eliminate outliers, (for example, firms reporting an impossible amount)
- Correct entries when errors have been identified by the EA (the EA can notify participants but cannot change them)
- Estimate total emissions for each individual firm.

³⁵ Annual report results have been QA by statisticians using DUKES and have concluded that the results are from both sets of data and are compatible (except for public sector energy consumption because there are a large number of lease properties in the public sector that would not show in DUKES).

129. This approach has some risks
- It has identified a number of large outliers, but less serious mistakes would have escaped from basic checks
 - There have been a large number of manual modifications, which can involve some human error. This risk can be reduced by quality assuring the results.

Administrative Survey Results

130. Although the research has been designed to minimise bias³⁶ KPMG cannot verify the reliability or accuracy of any of the information obtained. Some of the key limitations of the methodology are:

- Almost all data is provided by participants and based on their own estimates of the time incurred. Few captured actual data on time sheets, particularly in relation to the split of administration time by CRC activity.
- There is significant variability in the average costs per participant throughout this report. This is driven by the heterogeneity of participants. There are substantial variations in the size, complexity and the approach of CRC participants, even within similar strata. The result of this is that one cannot control the robustness of the results with standard deviation estimates).

Conclusions

131. The issues mentioned above are within the acceptable limits of evidence and it would not be possible to improve the evidence used for these calculations in a way that would be proportionate. For example, it would take an extremely onerous survey to determine the administrative costs associated with each aspect of the CRC and it would have been seen as a further increase in red tape.

132. Despite the limitations highlighted above, the evidence set out in this IA does represent a significant improvement in the existing evidence base for the following reasons:

- It is based on actual data on CRC participants drawn from Registration, Footprint and Annual reports submitted to the Environment Agency in July 2011, the first time these have been submitted.
- Consultants KPMG have conducted a comprehensive survey of participants designed to identify administrative costs of the current scheme and evaluate the impact that the proposed simplification measures will have on these costs.

³⁶ This involved qualify checks, error correction and follow up interviews with survey participants.

Wider impacts

133. This IA quantifies the direct impact on businesses of the proposed simplification measures. The following impacts have been considered as having none or negligible effects:

- Costs in employment
- Barriers to start up and other impacts in small and medium size business
- Competitive distortions
- Regional distortions
- Social impacts such as well being, human rights and inequality

Annex A Profile of savings from simplification measures

Energy and Carbon Emissions Savings

Part A of this annex shows annual energy and emissions (split between traded and non-traded) savings in the BAU, and (preferred) Option 1 up to 2030.

Table 14 BAU

| Year | | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
|-------------------------------------|-------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Energy TWh | | | | | | | | | | | | | | | | | | | | | |
| Public | Electricity | 0.08 | 0.17 | 0.17 | 0.16 | 0.51 | 0.68 | 0.85 | 1.02 | 1.21 | 1.39 | 1.66 | 1.94 | 2.17 | 2.39 | 2.63 | 2.27 | 1.90 | 1.48 | 1.21 | 0.93 |
| | Gas | 0.18 | 0.33 | 0.48 | 0.64 | 0.84 | 1.06 | 1.30 | 1.52 | 1.76 | 2.01 | 2.31 | 2.62 | 2.87 | 3.11 | 3.38 | 2.97 | 2.55 | 2.07 | 1.76 | 1.46 |
| Commerce | Electricity | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.40 | 0.93 | 0.23 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Gas | 0.36 | 0.65 | 0.96 | 1.28 | 1.70 | 2.14 | 2.60 | 3.05 | 3.53 | 4.04 | 4.64 | 5.25 | 5.76 | 6.24 | 6.78 | 5.96 | 5.11 | 4.16 | 3.54 | 2.92 |
| Industry | Electricity | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.01 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Gas | 0.05 | 0.09 | 0.13 | 0.17 | 0.22 | 0.28 | 0.34 | 0.40 | 0.46 | 0.53 | 0.61 | 0.69 | 0.76 | 0.82 | 0.89 | 0.78 | 0.67 | 0.55 | 0.47 | 0.38 |
| Emissions savings MtCO ₂ | Traded indirect | 0.04 | 0.09 | 0.09 | 0.07 | 0.22 | 0.23 | 0.27 | 0.28 | 0.30 | 0.27 | 0.28 | 0.35 | 0.37 | 0.50 | 0.61 | 0.38 | 0.28 | 0.19 | 0.14 | 0.10 |
| | Non-Traded Direct | 0.11 | 0.20 | 0.29 | 0.39 | 0.51 | 0.64 | 0.78 | 0.92 | 1.06 | 1.22 | 1.40 | 1.58 | 1.74 | 1.88 | 2.04 | 1.80 | 1.54 | 1.25 | 1.07 | 0.88 |

Table 15 Option 1

| Year | | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
|-------------------------------------|-------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Energy TWh | | | | | | | | | | | | | | | | | | | | | |
| Public | Electricity | 0.08 | 0.16 | 0.16 | 0.14 | 0.48 | 0.64 | 0.81 | 0.98 | 1.15 | 1.33 | 1.59 | 1.86 | 2.08 | 2.30 | 2.53 | 2.18 | 1.82 | 1.42 | 1.16 | 0.89 |
| | Gas | 0.18 | 0.31 | 0.46 | 0.62 | 0.81 | 1.03 | 1.25 | 1.46 | 1.70 | 1.94 | 2.23 | 2.53 | 2.78 | 3.01 | 3.27 | 2.87 | 2.46 | 2.01 | 1.71 | 1.41 |
| Commerce | Electricity | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.21 | 0.73 | 0.06 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Gas | 0.36 | 0.63 | 0.93 | 1.24 | 1.64 | 2.06 | 2.51 | 2.94 | 3.40 | 3.90 | 4.49 | 5.08 | 5.57 | 6.04 | 6.56 | 5.77 | 4.95 | 4.03 | 3.43 | 2.83 |
| Industry | Electricity | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Gas | 0.05 | 0.08 | 0.12 | 0.16 | 0.21 | 0.27 | 0.33 | 0.39 | 0.45 | 0.51 | 0.59 | 0.67 | 0.73 | 0.79 | 0.86 | 0.76 | 0.65 | 0.53 | 0.45 | 0.37 |
| Emissions savings MtCO ₂ | Traded indirect | 0.04 | 0.08 | 0.08 | 0.06 | 0.21 | 0.22 | 0.25 | 0.26 | 0.28 | 0.25 | 0.27 | 0.34 | 0.36 | 0.45 | 0.56 | 0.34 | 0.27 | 0.18 | 0.14 | 0.09 |
| | Non-Traded Direct | 0.11 | 0.19 | 0.28 | 0.37 | 0.49 | 0.62 | 0.76 | 0.89 | 1.03 | 1.17 | 1.35 | 1.53 | 1.68 | 1.82 | 1.98 | 1.74 | 1.49 | 1.21 | 1.03 | 0.85 |

Part B Monetised results

Part B shows monetised results for admin costs, capital costs, energy savings (amount of energy multiplied by the variable price of energy in the IAG guidance) and carbon savings (the amount of carbon multiplied by the corresponding traded or non-traded value).

| Final IA. Discounted value of Energy and Administrative savings | | | | | | | | | | | | | | | | | | | | | | |
|---|----------|-------------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------|------|------|
| Year | | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | |
| Admin costs | Baseline | 19.7 | 19.1 | 76.3 | 20.0 | 19.3 | 18.6 | 18.0 | 64.3 | 16.8 | 16.2 | 15.7 | 15.2 | 54.1 | 14.2 | 13.7 | 13.2 | 12.8 | 45.6 | 11.9 | 11.5 | |
| | Option 1 | 16.2 | 14.3 | 35.5 | 7.6 | 7.4 | 7.1 | 6.9 | 29.4 | 6.4 | 6.2 | 6.0 | 5.8 | 24.8 | 5.4 | 5.2 | 5.1 | 4.9 | 20.8 | 4.6 | 4.4 | |
| Discounted capital costs | Baseline | 12.6 | 12.2 | 13.3 | 17.2 | 16.6 | 17.4 | 16.2 | 15.6 | 29.2 | 23.5 | 22.7 | 16.9 | 19.6 | 18.9 | 13.3 | 12.1 | 10.7 | 8.9 | 7.8 | 6.5 | |
| | Option 1 | 12.6 | 12.2 | 12.7 | 16.5 | 15.9 | 16.7 | 15.5 | 15.0 | 28.0 | 22.5 | 21.7 | 16.2 | 18.7 | 18.1 | 12.8 | 11.6 | 10.2 | 8.5 | 7.5 | 6.2 | |
| Energy Savings | Baseline | Electricity | 4.3 | 9.3 | 9.4 | 9.4 | 33.2 | 44.2 | 57.7 | 69.1 | 80.0 | 90.6 | 107.9 | 124.7 | 140.1 | 175.0 | 220.6 | 153.2 | 112.5 | 84.0 | 68.3 | 51.1 |
| | | Gas | 9.6 | 21.5 | 32.2 | 46.3 | 65.4 | 80.3 | 95.4 | 104.3 | 112.6 | 124.6 | 138.6 | 151.7 | 161.0 | 168.7 | 177.2 | 150.7 | 124.9 | 98.4 | 81.0 | 64.7 |
| | Option 1 | Electricity | 4.3 | 8.7 | 8.5 | 8.1 | 31.5 | 42.0 | 55.0 | 65.9 | 76.4 | 86.6 | 103.4 | 119.7 | 134.7 | 157.8 | 201.8 | 137.4 | 108.1 | 80.6 | 65.4 | 48.9 |
| | | Gas | 9.6 | 20.7 | 31.0 | 44.6 | 63.1 | 77.5 | 92.0 | 100.7 | 108.7 | 120.3 | 133.9 | 146.7 | 155.7 | 163.1 | 171.5 | 145.8 | 120.9 | 95.3 | 78.4 | 62.6 |
| Carbon savings | Baseline | Traded | 0.5 | 0.5 | 0.5 | 0.4 | 1.2 | 1.3 | 1.5 | 1.6 | 1.8 | 1.7 | 3.1 | 5.3 | 7.0 | 11.4 | 15.8 | 11.0 | 9.0 | 6.6 | 5.3 | 3.8 |
| | | Non Traded | 6.2 | 11.0 | 15.9 | 20.8 | 27.0 | 33.3 | 39.7 | 45.7 | 51.8 | 58.1 | 65.7 | 73.0 | 78.6 | 83.6 | 89.1 | 76.9 | 64.6 | 51.6 | 43.1 | 34.7 |
| | Option 1 | Traded | 0.5 | 0.5 | 0.4 | 0.4 | 1.2 | 1.3 | 1.5 | 1.6 | 1.7 | 1.6 | 2.9 | 5.1 | 6.8 | 10.3 | 14.5 | 9.9 | 8.7 | 6.4 | 5.1 | 3.6 |
| | | Non Traded | 6.2 | 10.6 | 15.3 | 20.0 | 26.0 | 32.1 | 38.3 | 44.1 | 50.0 | 56.2 | 63.5 | 70.6 | 76.0 | 80.9 | 86.2 | 74.4 | 62.5 | 50.0 | 41.7 | 33.5 |

Annex B– details of proposed simplification measures

Measures under Package A

Proposal 1 – Qualification criteria - Organisations must currently assess their status against two criteria to determine whether they qualify for CRC participation - i) presence of at least one settled half hourly electricity meter; and ii) a total qualifying electricity supply of at least 6,000MWh in the qualification year. Organisations meeting both criteria are required to participate in the CRC.

The first criterion is restricted to settled³⁷ half hourly electricity meters and is a subset of the second criterion, which is focused on all half hourly metered electricity supplies.

Government proposes to base CRC qualification on supplies through settled half hourly meters only from Phase II onwards. This approach would address the complexity associated with the current arrangements, as well as removing the short-term disincentive to install/activate advanced meters. It would also facilitate the administrator's checking of registration data.

Proposal 2 - Qualification threshold - In the informal discussion document Government suggested that the move to settled half-hourly meter based qualification may require a reduction in the threshold in order to maintain emissions coverage. However subsequent modelling has suggested that retention of the current 6,000MWh threshold would broadly maintain emissions coverage at the current levels, although the number of qualifying organisations will be reduced. Government proposes this is a desirable situation, facilitating the removal of administrative requirements on a sizeable number of participants whilst maintaining the emissions coverage and the energy efficiency benefits of the Scheme.

Proposal 9: Landlord definition – under the current definition where one party ('tenant' or licensee) occupies premises with the permission of another ('landlord') and receives an energy supply from their landlord, the supplies of energy are treated as the CRC responsibility of the landlord. Landlords are not able to claim unconsumed supply in respect of energy supplies they provide to their tenants or licensees ('landlord/tenant rule'). Premises are defined as land, vehicle, vessel or movable plant. Stakeholder feedback has suggested there should be a distinction between providing land on which the tenant builds its own building, under a ground lease arrangement, and providing a building for the tenant to occupy. This is because there is a significant difference between these cases in the ability to influence energy consumption.

³⁷ There are currently about 111k settled half hourly electricity meters (HHMs) in the UK. Such meters are defined in the CRC as performing two functions: measuring electricity supplied to a customer on a half hourly basis for billing purposes and measuring electricity for the purposes of balancing the loads on the grid in respect of the wholesale electricity market. These meters are mandatory in Great Britain where the average peak electricity demand over the three months of highest consumption within a year exceeds 100kW over the previous 12 months. However, these meters have also been installed on a voluntary basis where the owners wish to collect data on their electricity consumption for energy management purposes before the existence of Automatic Meter Reading (AMR) meters. In Northern Ireland the meters have been mandatory since November 2007 where a site's Maximum Import Capacity exceeds 70kVA. Before this date no meters in NI were fitted on a mandatory basis.

It is therefore proposed to enable parties which provide a tenancy of land to other parties, to build their own buildings to claim unconsumed supply in respect of energy supplies to such properties constructed on the tenanted land i.e. a building lease. This would have the effect of transferring CRC responsibility from the 'landlord' to the 'tenant' in such scenarios.

As per proposal 8, the 'landlord' in this scenario would only be able to claim unconsumed supply where their relationship with the 'tenant' met the simplified supply criteria. Under this proposal there may be a small risk of emissions loss as CRC responsibility is passed to organisations which may not have qualified for CRC participation.

Proposal 10: Licensed activities – under the current Order electricity or gas supplied within an undertaking or public body and used for the direct purposes of specific 'licensed activities' (electricity used for generation, transmission or distribution of electricity, gas used for the transport, supply or shipping of gas) is excluded from the Scheme under paragraphs 6 and 7 of Schedule 1. This exclusion was originally provided to recognise the circumstances of electricity and gas suppliers. However stakeholder representations have identified an inequity between internally ('self') supplied electricity and gas, which is excluded where used for such purposes, and supplies from third parties which is within scope of the CRC, irrespective of whether subsequently used for such licensed activities. It is therefore proposed to align the licensed activity exclusion so that supplies from third parties are excluded from the Scheme where directly used for such 'licensed activities'.

In addition it is also proposed to extend the current exclusion to electricity used for the purposes of transporting, supplying or shipping of gas, and for gas used for the purposes of generating, transmission or distribution of electricity (i.e. cross licensed activities). Under the current drafting of the Order, electrically powered gas compressors will also be within the scope of the Scheme; however under this proposal such uses will be excluded.

This will effectively mean that gas supplies will only be considered within the CRC's scope when used for non-electricity generating/non gas distribution purposes. In addition, this will facilitate the removal of the Electricity Generating Credit (EGC) provisions.

Proposal 17: EU ETS Installations and CCA Facilities - the CRC has been designed to target emissions which are not regulated under a Climate Change Agreement (CCA) or in the EU Emissions Trading System (EU ETS). Stakeholder feedback has indicated that the processes designed to avoid double regulation have introduced significant complexity on organisations with CCA or EU ETS emissions. Under the current CRC rules, organisations must report their CCA and EU ETS emissions in their footprint report. Furthermore, they must annually report and surrender CRC allowances for electricity supplies to EU ETS installations and any supplies outside of their CCA facility/EU ETS installation boundary.

Organisations with a CCA may currently apply for any of the three exemptions (member, group or general), subject to their circumstances. The process for understanding, applying for, and verifying eligibility for the exemptions has been the

subject of stakeholder criticism as to its complexity. In addition, electricity supplies to EU ETS installations are within scope of the CRC, which has led to further stakeholder complaints – given the generation emissions are already regulated under the EU ETS.

Government therefore proposes to simplify the CRC's treatment of CCA and EU ETS emissions by amending the Scheme's supply rules to remove all energy supplies to CCA facilities and EU ETS installations from the Scheme, irrespective of whether self-supplied (e.g. electricity generated on site) or supplied via a third party. There will no longer be any CRC obligations in respect of the energy supplies to such facilities/installations. This means that participants will no longer need to surrender CRC allowances in respect of electricity supplied to EU ETS installations.

Under this proposal electricity supplies to CCA facilities/EU ETS installations will no longer need to be considered when assessing CRC qualification. This amendment will facilitate the removal of the three CCA exemptions, thereby requiring those organisations which qualify on the basis of electricity supplied to their non CCA facilities and EU ETS installations to participate in the Scheme and comply with its compliance obligations.

Proposal 33- Treatment of trusts – much of the commercial property in the UK is tenanted. For a number of commercial, legal and tax related reasons. Investment in UK commercial property takes place through a variety of holding structures and involves complex arrangements including assets through a trust structure.

The only trust assets which are relevant for the purposes of CRC Scheme are those which are capable of receiving a supply of electricity, gas or other fuels. Such assets fall in two categories:

- Real property;
- Shareholdings in companies (or analogous interests in other types of undertaking) which own real property.

Assets held on trust are held by the trustee, in a fiduciary capacity³⁸, for the benefit of one or more beneficiaries. The Companies Act 2006 states that shareholdings in companies held by a person in a fiduciary capacity shall be treated as not held by him (i.e. it belongs to the beneficial owner for which the trustee holds the legal title). Therefore CRC responsibility is with the beneficiaries of the trust for shareholdings. Government does not plan to change these rules.

Stakeholders have raised concerns about the current CRC rules in relation to property assets held on trust. The current CRC rules places responsibility for CRC on the party (the trustee) that has no economic interest in the property and no control over the energy efficiency performance of the assets held in trust (unlike a parent undertaking).

³⁸ "fiduciary capacity" means where a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries

Due to the range of ways that investors can hold property and the different categories of property trust, there is not a one size fits all policy solution for where CRC responsibility should lie. Therefore in order to simplify the treatment of trusts and place CRC responsibility with the party who has greatest influence over the energy efficiency opportunities, Government intends to put in place a set of rules to determine where CRC responsibility should lie.

For trusts where there is one controlling beneficial owner, these will be grouped with the beneficial owner for qualification purposes and participation.

For trusts that have engaged an operator to carry out regulated activity, responsibility would rest with the operator for the trust. For qualification purposes all trusts that the operator is responsible for would be aggregated together, but allowed to disaggregate for participation in CRC under the simplified disaggregation rules. For all other trusts that do not meet either of the above criteria, CRC responsibility would rest with the trustee. For qualification purposes, all trusts that the trustee is responsible for would be aggregated together but allowed to disaggregate for participation in CRC under the simplified disaggregation rules.

Where the real property assets are held on trust by more than one trustee, the qualifying electricity supply to the property in a particular trust should be the responsibility of the trustee which assumes responsibility for the electricity supply to those property assets held in trust. Where no single trustee assumes individual responsibility for such supplies, the trustees must decide amongst themselves which of them is to assume such responsibility for the purposes of the Scheme. In the event that the trustees cannot decide who is to assume such responsibility, they should notify the relevant administrator, to enable the administrator to liaise with the trustees with a view to broker an agreement regarding which trustee assumes responsibility for the supplies. This is in line with the current rules.

Measures in Package B

Proposal 12: Reduce the number of fuels – currently CRC participants are required to report on 29 energy and fuel types where their arrangements meet the CRC's supply definition. During the consultation a number of participants argued that instead of reducing the number of fuels to 4, the number should instead be reduced to 2 (electricity and gas). The arguments are that gas oil and kerosene make up a tiny (less than 1%) proportion of most participants' overall supply and it will reduce the administrative costs. In the first year of the Scheme, gas oil and kerosene consumption, from annual reports, amounted to 1.7MtCO₂ (around £20m revenue) or around 2.8% of overall scheme coverage. A loss of coverage will result in some loss of the Scheme's benefits, but a significant amount of this coverage will already be lost in Phase two on account of the proposal to restrict gas oil and kerosene to that which is used for heating purposes so the actual impact of removing all gas oil and kerosene from the Scheme should be less. However, the Government has decided that the loss of coverage as a result of reducing to two fuels is less of a priority than pursuing a greater reduction in administrative complexity.

In response stakeholder suggestions, the Government has decided to restrict the requirement for gas reporting to gas that is used for heat generation only. This

modification will not significantly reduce CRC's emissions coverage, as over 90% of the gas consumed is for heating purposes.

Gas – under this proposal relevant supplies of metered gas from the gas network will remain within scope of the Scheme, although bottled/unmetered sources will be out of scope, as will gas directly used for electricity generation. As per the current Order, the natural gas conversion factor will apply to all such grid supplies, irrespective of any future biomethane component, as the carbon benefits of such biomethane generation will be recognised under the Renewable Heat Incentive (RHI) – where the benefit resides with the producer. This position continues to be aligned with the CRC's treatment of grid-supplied 'green' electricity.

The retention of this generic definition of 'gas' for self-supply purposes will run contrary to our simplification announcement about moving to four fuels. It is therefore proposed to restrict the self-supply of gas provision to natural gas only. Organisations producing and using other forms of gas, such as biomethane, will not be required to report such use under the self-supply provisions.

Proposal 14: 90% applicable percentage – participants are currently required to produce a footprint report in the first year of each phase, the purpose of which is to confirm the participant's compliance with the 90% applicable percentage rule (where participants have to ensure that at least 90% of their emissions are covered by the EU ETS, CCA and CRC Schemes). The 90% applicable percentage was originally introduced to reduce the reporting burden on participants by enabling them to discount up to 10% of their smaller emission sources from the Scheme. Additional complexity was introduced through the core/residual source distinction, where supplies meeting the CRC's 'core supplies' definition have to be included in participants' footprint and annual reports. Residual sources are only required to be reported where they have been included on the residual measurement list to make up any shortfall below the 90% figure.

It is proposed to require participants to report on 100% of their relevant electricity and gas supplies, as defined in the Order. Such a proposal would maintain emissions coverage levels in light of reducing the number of fuels covered by the Scheme. It would also enable the removal of the requirement to submit a footprint report, as evidence of compliance with the 90% rule would no longer be required, as well as aid the maintenance of a residual measurement list. It will also remove the distinction between core and residual meters.

There was strong support for the introduction of de minimis thresholds for fuels covered by the CRC. Therefore, going beyond what was proposed in the consultation, Government has decided to introduce an organisation-wide de minimis threshold of 2% for gas supply. In order to minimise administrative costs, this de minimis will only be assessed once per phase. So for Phase two, if a participant exceeds the de minimis in the reporting year 2014/15 then that participant will have to report their gas for the entirety of the second phase. If the participant does not exceed the de minimis then they will not have to report any gas for the duration of the second phase. This is expected to minimise administrative burdens.

Proposal 7: Profile classes – Government has considered, in the past, removing the requirement for a meter to establish a CRC supply relationship. Stakeholder feedback has indicated this approach would cause difficulties for participants when they are attempting to accurately compile annual report data as well as establish supply responsibility. Government therefore proposes to retain the meter requirement but restrict those meter profiles within scope to facilitate the exclusion of domestic supplies. This will be done through excluding supplies via electricity meters of profile classes 01 ('domestic unrestricted') and 02 ('domestic Economy 7') which are predominantly used by domestic customers. Electricity supplied via meters of profile class 03 through to 08 and 00 will remain in scope of the Scheme.

In addition, Government proposes introducing a similar meter-based exclusion for domestic gas supplies. Gas meters are not profiled in a similar way to electricity meters, although gas supply points with an annual quantity of 73,200 kWh or less are widely recognised as domestic, small supply points. Government therefore proposes to exclude non daily metered supply points receiving annual gas supplies of 73,200 kWh or less.

Proposal 8: Unconsumed supply – there is potential under the current supply rules for emissions loss from the Scheme, particularly in cases where a participant claims unconsumed supply, and where the downstream organisation does not qualify for the Scheme, or the downstream relationship does not meet the supply criteria.

Government therefore proposes limiting the circumstances in which unconsumed supply can be claimed to those where the immediate downstream relationship meets all aspects of the supply definition – including the metering provision. The downstream organisation does not need to have actually qualified for CRC participation in order for unconsumed supply to have been claimed; only for their relationship to meet the supply criteria.

Measures in Package C

Proposal 3: Automatic re-registration – Government acknowledges stakeholder feedback about the scope for streamlining the CRC's registration process. It therefore intends to introduce an automatic population mechanism for those participants whose details remain unchanged from those provided in the registration phases of previous phases. New entrants, participants with amended corporate structures, or those wishing to disaggregate undertakings, will be required to undertake the full version of registration. However, in both scenarios, participants will be required to satisfy relevant audit and identity checks by the administrator.

Proposal 4: Supply at the direction of another party – recent engagement has identified stakeholder confusion in the application of the CRC's supply rules for complex purchasing arrangements, especially where involving the direction of a third party. Government therefore proposes to amend the supply definition in order to provide additional clarity in third party scenarios. The criteria would be amended so that party 'A' would be responsible for the supplies it receives, or supplies made at its direction. Such an approach would tighten the supply rules and reduce complexity. 'A' may still be able to claim unconsumed supply, subject to its circumstances.

Proposal 5: Payment requirement – The current criteria require the transfer of payment in order to establish a supply relationship. Government understands this position may lead to unintended emissions loss under some contractual scenarios. It is therefore proposed to remove the payment criterion from the supply definition in order to capture complex supply arrangements. Government proposes the removal of this criterion will not fundamentally increase the scope of the Scheme, as the inclusion of those supply relationships failing the supply criteria (e.g. waste as an input fuel into Energy from Waste plants) is mitigated by the revision of total fuels covered by the Scheme (see proposal 12).

Proposal 6: Unmetered supplies – the current supply criteria require the presence of a meter upon which payment is based to establish a supply relationship or for the supply to be a dynamic pseudo half hourly unmetered supply. This has resulted in a discrepancy between the treatment of unmetered supplies used for street lighting, with supplies provided on a dynamic³⁹ pseudo half hourly basis being within scope and currently contributing to CRC qualification. Unmetered supplies provided on a passive pseudo half hourly basis or pseudo non half hourly basis are currently excluded in their entirety from the Scheme. This has resulted in the unintended consequence of a disincentive to upgrade unmetered supplies to a dynamic basis. Upgrading to a dynamic basis is desirable on account of the additional reporting functionality that dynamic supplies provide – analogous to Automated Meter Readings. It has also acted as an incentive for many local authorities to downgrade their dynamic supplies to passive status in order to reduce their CRC exposure.

The proposal extends the categories of unmetered supplies within scope of the CRC to include passive pseudo half hourly and pseudo non half hourly unmetered supplies. Organisations would be required to annually report and surrender allowances in respect of such supplies, although they would not contribute towards CRC qualification. Dynamic pseudo half hourly unmetered supplies would remain within scope of the Scheme but would no longer contribute towards qualification (see proposal 1 – qualification).

Proposal 11 – Revision of emission factor for self-supplied electricity -

Currently all relevant electricity supplies are reported in the CRC at the grid average emissions factor – termed the ‘electricity consumed figure’ in Defra’s Greenhouse Gas Reporting Guidelines. This figure is comprised of two elements – a generational element, and a transmission loss element. Government intends to recognise the

³⁹ Dynamic pseudo Half Hourly meters allocate the unmetered consumption across the half hourly periods by reference to the operation of a number of actual photocells (PECUs) as recorded by one or more PECU Arrays, or by making use of actual switching times reported by a Central Management System (CMS). In either case the pseudo meter defaults to a passive mode using calculated times of switch operation in the event of the actual switching times not being available. Passive pseudo Half Hourly meters allocate the unmetered consumption across the half hourly periods by reference to the calculated sunrise/sunset times. They cannot use data as recorded by a PECU Array or CMS.

Pseudo Non Half Hourly meters involve the calculation of an Estimated Annual Consumption (EAC) by the Distribution Business. The EAC is then allocated across the half hourly periods using Settlement profiles. Instead of using a PECU Array, CMS or calculated sunrise/sunset times, an annual hours figure is used. This figure is published by ELEXON for each Distribution area.

efficiency benefits of on-site electricity generation relative to a grid solution by removing the transmission loss aspect of the emissions factor for self-supplied electricity. As such organisations which self-supply electricity i.e. generate and supply within their undertaking/public body level, will be able to apply an emissions factor of the grid rolling average for electricity generated, irrespective of how the electricity is generated.

For example the latest grid rolling average factor for electricity generated (2010 figure) is 0.47916kg CO₂ per kWh. These emission factors will be updated annually as per proposal 13 in this consultation document, and are therefore included here for indicative purposes only.

Government wishes to keep the energy efficiency focus of the CRC Scheme but recognises the importance of incentivising the growth of renewable generation, particularly distributed generation. Government will consider how the CRC can incentivise the uptake of onsite renewable self-supplied electricity

Proposal 13 – Aligning the emission factors - under the current rules the emission factors for CRC are fixed for the duration of each phase. The rationale behind fixing the CRC emission factors for a phase was to incentivise participants to adopt energy management strategies to reduce emissions, and incentivise performance. Fixed emission factors would also be helpful in giving additional certainty when setting an emission cap, and ensuring consistency within the

Taking into account our proposal above on the reduction of fuels, emission factors will be published each year on the DECC website for the following fuels: rolling grid average electricity and natural gas. These emission factors will be based on those in Defra's Greenhouse Gas Reporting Guidelines which are updated annually and published on the Defra website⁴⁰. As indicated in proposal 11, emission factors for electricity will vary dependent on whether it is self supplied or supplied electricity from a third party.

Proposal 15: Extension of annual energy statement obligation - under the current Order there is an obligation on the licensed suppliers of electricity and gas to provide an annual energy statement where so requested in a timely manner by CRC participants (Article 63). This requirement is enabled via a modification to the suppliers' OFGEM licences (GB only) which has an appropriate enforcement regime for non compliance. Proposal 12, designed to reduce the number of fuels to electricity and gas that CRC participants are required to report, means that this proposal to extend the existing obligation to provide an annual energy statement to the suppliers of gas oil and kerosene can be removed.

Proposal 16 - Energy supplier's statements – the current obligation on licensed energy suppliers to provide CRC participants with an annual statement was introduced in order to assist participants in determining their organisation's energy supply. It therefore reduces the administrative burden of gathering data on energy supplies. The first annual energy statements were sent out to participants following the first compliance year in 2010-11.

⁴⁰ <http://www.defra.gov.uk/environment/economy/business-efficiency/reporting/>

Government has worked with energy suppliers to improve the annual energy statements for the remainder of Phase 1. OfGem will be publishing updated guidance in early 2013 on providing an annual energy statement, associated with the licence conditions. This provides clearer guidelines on the level of information required, and encourage suppliers to provide a document which is more user friendly alongside a locked down version. Secondly, the CRC Regulators will update their guidance to participants to provide further detail on using their own data from meter reads and understanding their annual energy statement following the updated guidance from OfGem.

Some of the difficulties from the annual energy statement have been created by the requirement to align the billing data with the CRC compliance year. This has meant in some cases that energy suppliers have been required to pro rata billing data at the start and end of the year, creating estimates for those periods. To mitigate this problem, Government proposes to amend the relevant provision in the CRC Order to allow energy suppliers to provide an annual statement using 12 months of billed supply that may not match the CRC compliance year exactly but is within 31 calendar days of the compliance year. This annual statement would be acceptable for CRC purposes. This proposal would help mitigate the potential mismatch between billing periods and the CRC year and therefore reduce the amount of supplies that are estimated.

Proposal 18: Electricity Generating Credits (EGCs) – EGCs are currently available in a limited range of circumstances to recognise smaller scale electricity generation outside of the EU ETS which is not subsidised by either Renewable Obligation Certificates (ROCs) or Feed in Tariff (FIT) payments. EGCs can be claimed to reduce a participant's footprint emissions and CRC emissions, with a commensurate reduction in the number of CRC allowances required to be surrendered.

It is proposed to remove the EGC provision (currently Article 31) from the CRC Order. Currently participants are required to report the input fuel into the generation process, report any commensurate self-supplied electricity and report the volume of EGCs claimed, where eligible. Under proposal 10, no fuel would be considered as a CRC supply, and therefore reportable, where used as an input fuel into an electricity generating process. The proposed removal of EGCs would effectively mean that participants would be required to report and surrender CRC allowances for all electricity meeting the supply and self-supply definitions, without being able to use EGCs as a means of reducing their CRC liability. The net impact on the Scheme's emissions coverage should be minimal as the removal of the liability on the input fuel will be mitigated by the associated removal of EGCs –there will be administrative savings associated with not having to report the input fuel.

Government wishes to keep the energy efficiency focus of the CRC Scheme but recognises the importance of incentivising the growth of renewable generation, particularly distributed generation. Government will consider how the CRC can incentivise the uptake of onsite renewable self-supplied electricity

Proposal 19: Increasing the flexibility for disaggregation – In response to stakeholder feedback, Government proposes to change the organisational rules of

the Scheme to provide greater flexibility to undertakings concerning how they participate in the Scheme. This means retaining current rules for qualification so that, at the beginning of each phase, participants register on behalf of the whole group. However, DECC propose to extend the disaggregation provision to allow any undertaking within the group to disaggregate, providing that mutual agreement is indicated by all parties as explained in proposal 20.

There will be no minimum threshold for subsidiaries to disaggregate, and no requirement that the remainder of the group must exceed the qualification threshold. Therefore Government proposes to remove the Significant Group Undertaking (SGU) concept (schedule 4 (2)) for the purposes of determining what size of organisation can participate in the CRC. The information requirements on SGUs at registration and in annual reports will also be removed.

Proposal 20: Mutual consent to disaggregation - Similarly to current rules, DECC would require that disaggregation can only occur where there is mutual consent between the applicant due for disaggregation and the parent group. In addition, Government proposes to require consent from its subsidiaries (if any) when they are not included in the disaggregation.

Proposal 21: Disaggregation during the first year of a phase – If a participant wishes to disaggregate at registration, Government proposes to simplify the process for requesting this. So all that needs to occur is that the parent group must, when registering; request disaggregation as part of the registration process. Then, any disaggregated undertakings must register before the last working day of April of the subsequent reporting year, in line with the consent process set out above. If these steps occur, the administrator will approve the disaggregation in time for the first reporting year of the phase.

Proposal 22: Introducing annual disaggregation - To allow for maximum flexibility, Government proposes that groups have the opportunity to disaggregate undertakings on an annual basis. The application for registering as a disaggregated CRC participant can be submitted via the Registry at any point, in any compliance year.

Proposal 23 – Disaggregation of Academies (England only) - Currently maintained ('state-funded') schools in England are grouped with their funding local authority for the purposes of CRC participation. Similarly, Academies are grouped with the local authority in whose area they reside. In both situations the liability for compliance with the CRC's obligations resides with the local authority, although there is a duty on each school to provide relevant data to facilitate local authorities' compliance. Local Authorities can recharge the costs of CRC allowances from both their maintained schools and Academies' emissions to the central part of the Dedicated Schools Grant (DSG).

Stakeholder representation has indicated that local authorities have limited influence over Academies' energy use due to the arms length nature of their relationship and their inability to directly recharge Academies' budgets. Feedback has indicated this is

becoming a more significant issue due to the increasing number of maintained schools converting to Academy status.

With the continued growth of Academies and their independence from local government, the CRC is not the best mechanism to achieve energy efficiency across the schools estate. Government will therefore withdraw all state funded schools from CRC participation and implement alternative robust measures that will incentivise and support schools to obtain both energy cost and emission savings⁴¹.

Proposal 24: Re-define and re-name Significant Group Undertakings (SGUs) - Feedback suggests that the SGU concept has caused participants difficulty. Government therefore proposes to scrap the SGU concept for accounting for changes involving large organisations and to replace it with a simpler definition that covers single undertakings only. This will remove the complexity around nested SGUs (i.e. SGUs within SGUs in a CRC participant) and related complexity in accounting for these. Going forward, designated changes will only cover CRC participants and single undertaking members of a participant that were large enough to qualify for the CRC in their own right at qualification (a “Participant Equivalent”). Qualification will thus be based on the qualification year.

Proposal 25: Requirement to report on Participant Equivalents’ emissions at registration and in annual reports - Currently, CRC participants are required to report all of their SGUs emissions both at registration and in annual reports. This enables the Administrator to update the historical averages corresponding to an SGU when a change occurs. Government proposes to remove reporting requirements related to SGUs at registration and in annual reports and to replace it with a requirement to report on Participant Equivalents instead. Therefore, when a designated change occurs that involves a Participant Equivalent, the EA will update historical averages to reflect the change in the PLT.

The new requirement to report annually on large single undertakings rather than SGUs should bring a net simplification, as participants already collect emissions data at an undertaking level in order to maintain evidence packs.

Proposal 26: When a Participant Equivalent leaves a CRC participant and joins another CRC participant, this is a designated change - When a Participant Equivalent (‘C’) leaves a CRC participant (‘A’) but joins another CRC participant (‘I’), DECC proposes to maintain the rules currently used for SGUs but to apply them to the Participant Equivalent instead. As per current rules, ‘I’ reports on ‘C’s emissions for the whole year, buys allowances for ‘C’ for the whole year in which the change occurs. ‘I’ can request that ‘C’ continues as a separate participant.

Proposal 27: When a Participant Equivalent joins a non-CRC participant or becomes a standalone entity, this is a designated change - To maintain emissions coverage of the Scheme, DECC will still capture changes that involve a Participant Equivalent (‘C’) when they leave a CRC participant (‘A’) and join a non-CRC participant (‘N’), or they leave a group and do not become a member of another

⁴¹ For purposes of estimating impacts in this IA, all UK schools have been removed, however, DAs are still to determine their position with regard to the participation of their Schools in the Scheme.

group (i.e. become a standalone entity). In these cases, DECC will require the Participant Equivalent to register with the Scheme and carry on as a CRC participant for the remaining of the phase. Government proposes to make it optional, not mandatory, for non CRC participants that acquire a Participant Equivalent to register on their behalf, thus reducing burdens on the former.

Proposal 28: When a CRC participant joins a non-CRC participant, this is a designated change - In order to maintain emissions coverage of the Scheme, when a CRC participant ('A') joins a non- CRC participant (N), DECC will require that the CRC participant either carries on as a separate participant or is absorbed by the new owner. Government proposes to make it optional, not mandatory, for non CRC participants that acquire a participant to register on their behalf, thus reducing burdens on the former.

Proposal 29: Review of liabilities for designated changes - As per current rules, the members of the group will be jointly and severally liable with the group, from time to time. To reduce burdens on non CRC participants, they will not be jointly and severally liable with the CRC participant or Participant Equivalent that joins their group, if they do not register on their behalf during a phase.

Proposal 30: Maintain rules that deal with responsibility for emissions following a designated change - In order to ensure a simpler administration of these changes, especially where there have been a number of changes for the organisation during the year, Government proposes to maintain current rules whereby, when a designated change occurs, the new owner will be responsible for emissions for the whole year in which the change occurs. Therefore only the position at the end of the year is relevant for the purposes of annual reporting and purchase and surrender of allowances, as the responsibility for supplies goes back to the start of the year.

Proposal 31: Reduce reporting burdens related to organisational changes occurring post-qualification - Government intends to reduce reporting burdens on participants to account for changes occurring in the post-qualification period (the period between qualification and registration) so that the information requested on organisations in the qualification year is not duplicated (i.e. provided by the old owner and the new one). The following simplifications are proposed:

When a CRC participant ('A') joins another CRC participant ('B') in the post-qualification period, only 'B' needs to register and provide information in respect of 'A'. Similarly, when a Participant Equivalent leaves 'A' and joins 'B', only 'B' will provide information on the Participant Equivalent, both 'A' and 'B' must register.

The Government proposes that when a Participant Equivalent leaves a CRC participant and does not become a member of another group, they both need to register as participants. To reduce reporting burdens, Government proposes that the old parent group will not be required to provide information which applied to the Participant Equivalent in the qualification year at registration, as this information will be submitted by the Participant Equivalent as part of its registration.

The Government proposes to make it optional, not mandatory, for non- CRC participants that acquire a qualifying group or Participant Equivalent to register on the Participant Equivalent's behalf, thus reducing burdens on the former.

Proposal 32: Notification and registration timing – We propose to extend the registration window for designated changes. Currently a registration must be completed within 3 months of the change occurring. Under the proposed revised rules, a registration must be completed by the last working day of April of the compliance year following the transaction. The Administrator must be informed of a designated change within 3 months of the change, or if the designated change occurs at the end of the compliance year, by the last working day in April.

Proposal 34: Simplifying the allowance sale in the introductory phase - In the CRC Amendment Order, which came into force in April 2011, Government extended the introductory phase so that there would be three years of allowance sales in the introductory phase – in respect of emissions in 2011/12, 2012/13, and 2013/14. At the same time, the first sale of allowances in the second phase of the CRC was delayed, until the year 2014/15. The logic behind this decision was to provide participants with an extra year of reporting, complying and surrendering allowances during the introductory phase.

Within the phases set in the CRC Order, the timing of sales is a matter to be determined in regulations to be made by the Treasury under section 21 of the Finance Act 2008. For the 2011/12 reporting year, the allowance sale was held after the end of the reporting year, at a price of £12/tCO₂.

For the remainder of the introductory phase Government plans to continue with retrospective allowance sales, so that participants have more time to adjust to reporting and measuring their emissions; imperative prior to the beginning of the second phase of the Scheme.

Proposal 35: Phase two and beyond: moving away from cap and trade - Under the provisions of the Climate Change Act, the CRC must be a trading scheme. However, in order to simplify this trading element, DECC plans to move away from the original intention to impose a cap on allowances that can be issued. Not imposing a cap on allowances will mean that there will not be a need for auctions, which should lower the administrative costs for participants as the need to develop auctioning strategies has been removed. While DECC recognises that not having a cap will reduce the level of certainty concerning the emissions savings CRC will deliver, it has the benefit of increasing the level of certainty over the price; consequently simplifying the business case for energy efficiency investments.

Proposal 36: Fixed price sales – As a consequence of proposal 35, Government proposes that in the second phase of the CRC there should be two fixed-price sales of allowances. One forecast sale, at the beginning of the year, and one buy-to-comply sale, after the end of the reporting year. The price at the forecast sale will be lower than the price at the buy-to-comply sale, this ensures participants have an incentive to forecast their emissions before the start of the year and buy allowances in advance. However, participants would have the choice to purchase allowances at either sale.

Proposal 37: Removing the safety valve - The buy-to-comply sale at the end of the year would effectively put in place a maximum price that participants would have to pay to cover their CRC liabilities for that year. As a result, there will be no further need to retain the previous safety valve mechanism, whereby participants could buy additional CRC allowances via the safety valve mechanism. Government therefore proposes to remove the option of buying additional CRC allowances via the safety valve mechanism as it is deemed unnecessary.

In addition to the possibility of buying allowances at the forecast sale at the beginning of the year, and the option to buy allowances at the buy-to-comply price at the end of the year, participants will also be able to buy allowances on the secondary market. This ability to trade will mean that participants who have surplus allowances after the forecast sale will benefit by selling these allowances to other CRC participants, who otherwise would have needed to buy at the buy-to-comply sale.

Proposal 38: Banking - Currently, allowances are valid within the introductory phase of the CRC, but not beyond the end of the first phase. Essentially they can be banked from year to year, but not from phase to phase.

In the second phase and beyond, Government proposes to continue to allow banking within a phase of the Scheme. This avoids the risk of a year to year price crash, which could occur if no banking was allowed and the market became over-supplied with allowances. In sum, if a participant purchases more allowances than they need at the forecast sale, they will have two options for how to treat the excess allowances – they can either sell them on the secondary market or bank them.

One consequence of allowing unlimited banking within a phase is that it would limit the trajectory at which the allowance price could increase. If the price was increased too steeply then participants would try to buy all their allowances for the phase in the first forecast sale and simply bank them until needed. This would reward cash-rich participants at the expense of others. As a consequence, this limits the ability of Government to increase the allowance price in order to ensure that the Scheme's objectives are being delivered.

In order to give Government the flexibility to increase the price from one phase to the next, DECC proposes to prevent the banking of allowances between phases.

Proposal 39: Surrender deadline - Given that the reporting deadline for the Scheme is the last working day of July, we propose to extend the surrender deadline to the end of September so that participants have extra time (after the end of the reporting deadline) to purchase and surrender allowances.

Proposal 40: Removing the requirement for a Phase II annual report in 2013-14
As it currently stands, in the last year of the introductory phase (2013-14) participants would be required to submit two annual reports. One annual report would be for the final year of the introductory phase, according to which they would need to surrender allowances. The second annual report would be to cover the first year of the second phase, and would be for the purposes of compiling the Performance League Table. As a result of the aforementioned changes, the annual

report for the second phase would have slightly different information to the annual report for the first phase. This would result in a double burden on participants that Government is keen to avoid.

Government therefore proposes to remove the requirement to submit an annual report in respect of 2013-14 emissions for the second phase. As a result, the only annual report that will need to be submitted in respect of 2013-14 emissions will be for the last compliance year of the introductory phase. This would reduce the overlap between the introductory phase and second phase.

This proposal would have an implication on the Performance League Table. It means that it will not be possible to publish a PLT, in the current format, in autumn 2015. However, as proposal 43 on the PLT demonstrates, Government are removing the reputational element of the Scheme from the legislation and putting the detail in guidance. This will give the additional flexibility needed to review the reputational element in future years.

Proposal 41: Reducing burdens associated with data retention - Under the current rules participants are required to maintain records of their first footprint report, first annual report and their first position in the performance table for as long as they are subject to the CRC. For all other annual reports, there is a requirement to keep these for at least 7 years after the end of the phase in which the scheme year in question relates. This means that the records for annual reports would need to be held by participants for up to 12 years. Stakeholder feedback has indicated that this is an excessive period of time to retain records associated with the CRC and has a significant cost impact in data storage terms. Government therefore proposes to reduce the length of time participants need to retain records:

- The first annual report, which would have to be kept for the length of the time which the participant was part of the Scheme, to now be held for at least six years after the end of the first annual report scheme year.
- The length of time that individual annual reports are required to be kept to be reduced to at least six years after the end of the scheme year in question. This would mean that for the 2011/12 annual report it would now have to be held for six years, until April 2018 - under the current scheme requirements this would have been until April 2024.
- Evidence packs which support each annual report should be kept for at least six years after the end of the scheme year to which it relates.
- The length of time that the first footprint report is required to be kept should be reduced to six years after the end of the scheme year in question. This would mean the first footprint report now be held for at least 6 years. Under the current scheme requirements this would have been for as long as the organisation was a participant in the scheme.
- The first position in the performance table to be kept for at least six years, after the end of the scheme year in which the first performance league table

was published. This can be contrasted with the current rule which is for however long the participant still remains part of the scheme.

Proposal 42: Voluntary reporting of geographical emissions data- Government has identified that there would be an added benefit if reported emissions data could be split according to whether the emissions derived from England, Scotland, Wales or Northern Ireland. This would allow Devolved Administrations to track their progress better against their respective emission reduction targets. Under current reporting rules, it is not possible to split an organisation's reported emissions data on this basis. One potential solution to this problem would be to give participants the option to report the geographical split of their emissions data in their annual reports, on a voluntary basis.

Proposal 43: Performance League Table (PLT)- Stakeholders provided feedback relating to the PLT during the informal dialogue process. There is a large degree of consensus about the usefulness of having a reputational driver for energy efficiency. However, a number raised concerns that the Performance League Table was not fit for purpose in its current format, saying that it did not accurately reflect performance owing to its reliance on the early action metric in the first year, and that the way in which it was presented was not effective in engaging the media, investors and participants. Government is aware of participants' concerns around the league table and, consequently, has decided to remove the requirement to publish a league table, ranking participants on the basis of energy efficiency savings, from the legislation. The Environment Agency will, instead, publish participants' aggregated energy use and emissions data, in line with Government's transparency agenda.

Proposal 44: Fees and charges - for administering the scheme will be reviewed for future phases to ensure charges reflect future compliance activities

The scheme administrators intend to retain the same level of charges as currently exist. The type of charges will also remain the same, with the single exception of the proposed administrative charge in respect of purchases of allowances via the Safety Valve (as this is no longer required).

In future phases, as the scheme and its membership matures, the administrators will review the charge levels to ensure the charges reflect future compliance activities.

Proposal 45: Appeals - Under the current CRC Order the Secretary of State and his devolved administration equivalents are the appeal bodies when appeals are raised under the CRC Order. These appeal bodies may delegate the management of appeal hearings to an independent third party, whilst commissioning recommendations from such parties in respect of each appeal. The actual appeal determination may not however be delegated by the appeal bodies. Appeals by an Administrator are the exception to this provision, with the CRC Order stipulating the use of an independent third party to determine such appeals.

It is proposed that from phase two onwards the General Regulatory Chamber of the First Tier Tribunal is specified as the appeals body for all of the CRC appeals in England and Wales. Scottish ministers will be appointed in respect of appeals in Scotland. In all instances, the distinction between appeals by Government and non-

Government participants will be removed and these independent third parties will have the power to manage and determine the outcome of all CRC appeals.

Proposal 46: Scheme guidance – This will be reviewed and consolidated for both the introductory phase and future phases. The administrators are currently conducting a review of the guidance for the introductory phase and have recommended the existing guidance products (approximately 27 separate documents) should be reduced to three documents covering:

- Qualification
- Compliance
- Use of the Registry

The revised guidance for Compliance and Use of the Registry is anticipated to be published in 2012. For future phases the consolidated guidance will be updated to reflect the outcome of the simplification review.

ANNEX C – KPMG Survey of CRC participants

Consultants KPMG carried out an online survey over summer of 2011 which provided detailed information relating to the time and cost associated with CRC compliance. Splitting the time and cost incurred between the various activities required for CRC compliance allows the impacts of individual simplification measures to be estimated with greater accuracy.

The methodology was designed to avoid any exaggeration of the costs associated with the CRC by participants, but the difference between general carbon management costs and those that are 'additional' as a result of the introduction of the CRC are also recognised. These costs not only need to be segregated by activity, but also by frequency, as a small cost incurred on an annual basis may quickly outweigh a single cost incurred once per phase.

Chart C1: CRC administration (Source KPMG survey of CRC costs)

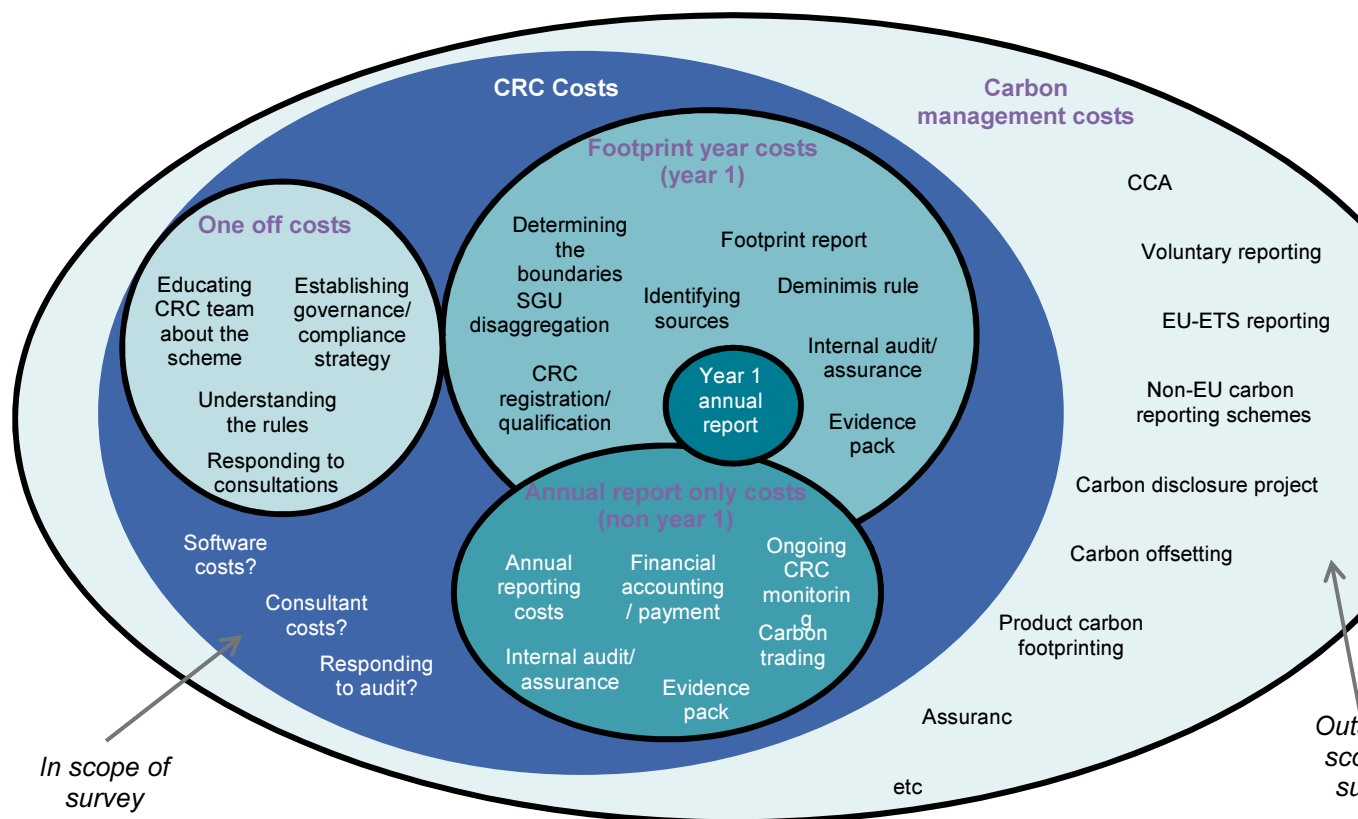


Chart C1 shows the administrative costs analysed by KPMG. These costs are grouped by major activities associated with the CRC Scheme and exclude administrative costs that occurred as a result of general energy management or other schemes. These costs fall mainly into four categories: one-off costs (which occur once per phase or once in a life-time), footprint costs, annual costs and external costs.

The survey questions were developed by KPMG in discussion with DECC. Prior to the survey, KPMG engaged with a stakeholder group to discuss and test the survey

approach. This allowed them to assess whether the proposed survey was appropriate and would work effectively whilst minimising the requirements on respondents. Subsequently, KPMG launched a large scale web-based survey of CRC participants to determine the administrative cost to these organisations of the implementation of the CRC requirements.

In addition to the survey, KPMG conducted more than 40 in-depth interviews with a number of CRC participants, to understand how they had calculated the administrative cost of the CRC and to seek their views on those aspects that give rise to the most significant burdens.

The survey was carried out in August 2011 and received 740 responses (representing 26.5% of all CRC participants), which was above the initial target level. Responses were weighted to the whole CRC population across six categories. The survey also obtained at least a 25% response rate for each of the six following categories:

- Public, private and third sector
- Emissions bandings
- By number of Significant Group Undertakings
- Number of Half Hourly Meters
- SIC (Standard Industrial Classification) code
- CCA exemption status

After estimating time spent in each activity by different types of participants, the associated costs have been calculated, consistent with the Standard Cost Model (SCM). KPMG reduced the number of possible staff grades and their descriptions from those presented in the SCM to better reflect job descriptions involved in CRC compliance within organisations. This is based on their experience advising more than 80 CRC participants on CRC compliance. This research used the following SCM codes and descriptions:

Table 21 Staff cost per hour

| Staff category per survey | SCM code and description |
|--------------------------------|--|
| Directors and Department Heads | 1112 – Directors and Chief Executives of major organisations (£61.04/hr) |
| Senior Management | 111 – Corporate Managers and Senior Officials (£44.7/hr) |
| Middle Management | 113 – Functional Managers (£26.05/hr) |
| Administrators | 41 – Administrative Occupations (£10.49/hr) |

EXPLANATORY MEMORANDUM TO THE CRC ENERGY EFFICIENCY SCHEME ORDER 2013

2013 No. Xxx

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes provision for the implementation of a simplified energy efficiency scheme called the CRC Energy Efficiency Scheme (the CRC Scheme). Since the CRC Scheme began in 2010, a number of aspects of the policy have been criticised by stakeholders as too complex, difficult to understand and costly to administer. In response, the Government committed to simplify the CRC Scheme to ensure that the policy was fit for purpose, and that any regulations retained were less burdensome and administratively costly for business, and more practicable.

2.2 The CRC Scheme has been designed to improve energy efficiency in public and private sector organisations that are consumers of large amounts of electricity, and by improving energy efficiency to also reduce carbon emissions. The CRC Scheme is necessary for the UK to meet its domestic and international greenhouse emission reduction targets (and any future such targets).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The CRC Scheme was introduced by the CRC Energy Efficiency Scheme Order 2010 (SI 2010/768) (the 2010 Order) under powers conferred by section 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008. The CRC Energy Efficiency Scheme (Amendment) Order 2011 (SI 2011/234) (the 2011 Order) postponed the second phase of the CRC Scheme by extending the introductory stage to March 2014 and introduced initial simplification measures.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The definition of the extent of the United Kingdom in regard to this instrument is set out in section 89 of the Climate Change Act 2008

6. European Convention on Human Rights

6.1 The Secretary of State of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the CRC Energy Efficiency Scheme Order 2013 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The CRC Scheme is a mandatory UK-wide trading reporting scheme introduced in April 2010. It was designed to improve energy efficiency and drive emission reductions in public and private sector organisations through the application of financial and reputational drivers. It is divided into phases. Phase 1 runs from April 2010 to March 2014 and each phase is divided into compliance years which run from 1st April to 31st March. The Environment Agency (in England Wales), the Scottish Environment Protection Agency and the Northern Ireland Chief Inspector administer the scheme. From 1st April 2013, the Natural Resources Body for Wales will be taking over of the role of the administrator in Wales.

7.2 Since the introduction of the CRC Scheme in April 2010, stakeholders have argued that it is overly complex and administratively burdensome, especially in relation to emissions regulated under the EU Emissions Trading Scheme or Climate Change Agreements (CCAs). They have also stated that the organisational focus of the CRC Scheme is misaligned with their operational management structures and business processes. Government announced its intention to simplify the scheme in the Annual Energy Statement in August 2010.

7.3 In November 2010, following up on the Annual Energy Statement, Government published initial simplification proposals to amend the legislation underpinning the CRC Scheme. This focused on extending the introductory phase (to March 2014), which provides participants with an additional year's experience managing compliance and performance within the introductory phase and delayed the requirement for phase two participants to register by two years until April 2013. It also provided a window to conduct a thorough and comprehensive simplification review. Other amendments included clarifying the participation of Northern Ireland Departments, updating references in the original 2010 Order, and removing any 'information disclosure' requirements on organisations for future phases of the scheme (thereby removing all future CRC obligations on at least 12,000 organisations). These proposals came into force in April 2011 by the 2011 Order.

7.4 Since the Annual Energy Statement and the consultation in November 2011, Government has engaged extensively with CRC Scheme participants and stakeholders on changes and simplifications to the scheme from phase two onwards.

7.5 In January 2011 Government published a set of discussion papers on a number of specific areas of possible simplification and invited views from stakeholders (on energy supply rules, organisational rules, qualification criteria and allowance sales, and reducing scheme overlap with other climate change/energy efficiency policies e.g. for example the EU ETS and CCAs). Subsequently, in June 2011 the Government published its vision for the way forward for a simplified scheme. This outlined a simplified organisation-based CRC Energy Efficiency Scheme from phase two onwards, which optimised the projected energy and carbon savings delivered by the scheme whilst at the same time reduced the complexity, so the energy efficiency and carbon savings were delivered at the minimum administrative cost.

7.6 In order to inform the simplification proposals, Government commissioned an administrative burden survey by KPMG. The purpose of this survey was to allow Government to capture and quantify the administrative time and costs which have been incurred by CRC Scheme participants.

Consolidation

7.7 The main climate change policy instruments affecting large private and public sector organisations are the Climate Change Levy (CCL), CCAs and the EU ETS. The CCL is a tax on energy use. CCAs are voluntary instruments allowing certain sectors a reduction on their CCL where agreed emission reduction targets are met. The EU ETS is a site-based trading scheme designed to drive emission reductions from upstream energy intensive facilities. The CRC Scheme has been designed to avoid overlap with these instruments and the simplified scheme clarifies this further by simplifying the process to avoid double regulation.

8. Consultation outcome

8.1 In March 2012, the UK Government and Devolved Administrations consulted on proposals to simplify the CRC Scheme. The consultation sought views on a suite of 46 different simplification measures that were grouped into three packages according to whether they influence qualification to the scheme, fuel supply rules or administrative costs only.

8.2 The majority of consultation respondents agreed with the measures proposed and welcomed the complete package of simplification proposals. In particular, the proposals focussed on simplifying the qualification criteria and threshold; simplifying the supply rules in defining energy supply in the scheme; a more coherent policy framework reducing policy overlaps with other climate

change/energy efficiency policies (e.g. EU ETS installations, CCA facilities); flexible organisational rules to accommodate the natural business/energy management structures and processes of organisations and the allowance sale process in the introductory phase and from phase 2 onwards.

8.3 Taking all responses into consideration, the Government believes that overall, the simplifications will deliver significant improvements to the CRC scheme and they reflect changes that the majority of stakeholders wished to see. However, changes have been made in response to concerns raised. The principal ones are:

- a) a reduction in fuels from 29 to 2. The scheme will now only cover emissions generated from the consumption of electricity and gas. In the consultation, it was proposed to reduce to four fuels (including gas oil and kerosene);
- b) that for gas, only when this fuel is used “for heating purposes” will this need to be reported and allowances purchased for. Participants will be able to assume that all gas consumed is for heating purposes;
- c) an organisation-wide 2% de minimis threshold for gas (for heating). So if a participant’s gas consumption is below 2% then that participant will not have to report on that fuel or purchase allowances; and
- d) to withdraw all state funded schools (i.e. maintained schools and Academies) in England from CRC Scheme participation and to implement alternative robust measures that will incentivise and support schools to obtain both energy cost and emission savings.

8.4 The combination of measures will reduce the CRC Scheme’s complexity and administrative burden.

8.5 Concerns were raised about the level of administrative costs savings that will be achieved through simplification as set out in the Impact Assessment. The Government acknowledges these concerns and has updated the evidence base on the current CRC Scheme in a number of areas where robust evidence has been provided. However, it has not been possible to reconsider the remodelling of administrative cost predictions in areas where the raised concerns have not been supported by any type of evidence.

8.6 A number of respondents have called for the CRC Scheme to be replaced with a more conventional environmental tax but such options were out of scope of the consultation as the purpose was to establish if proposals for simplification would result in a significant reduction in administrative burden for participants. Government has concluded that the simplified proposals will deliver significant

savings (a 55% reduction in overall administrative costs for CRC Scheme participants – saving £275m by 2030) and has therefore decided to retain the CRC Energy Efficiency Scheme in a simplified form.

9. Guidance

9.1 The Environment Agency has published detailed guidance on their website describing the obligations that organisations need to undertake to register and will be publishing further guidance and case studies over the coming year. They also operate a helpdesk for participants. Current guidance is available at <http://publications.environment-agency.gov.uk/PDF/GEHO0312BWGE-E-E.pdf>

10. Impact

10.1 An Impact Assessment (IA) is attached to this memorandum and will be published alongside the Explanatory Memorandum on the Department of Energy and Climate Change website at <https://www.gov.uk/government/consultations/simplifying-our-energy-efficiency-scheme-crc> and on www.legislation.gov.uk

10.2 When the IA was originally published in December 2012 a decision by the Devolved Administrations to retain their schools CRC Scheme participation was still pending

10.3 In February 2013 all Devolved Administrations confirmed their schools would continue to participate in the CRC Scheme. Only English schools would withdraw from the Scheme.

10.4 Consequently, a revised set of cover sheets including an explanatory note have been added to the IA to reflect these decisions.

10.5 The overall net benefit of the simplified CRC Scheme is estimated at £4096m (present value, based on 3.5% social discount rate) over the next 20 years.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The simplified CRC Scheme will start in May 2013. The scheme will be fully reviewed in 2016

13. Contact

13.1 Donald Sproson at the Department of Energy and Climate Change Tel: 0300 068 6301 or email: Donald.sproson@decc.gsi.gov.uk can answer any queries regarding the instrument.

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-09-13

Constitutional and Legislative Affairs Committee Draft Report

CLA225 – The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013

Procedure: Negative

These Regulations revoke and replace the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No.2) Regulations 2008 and the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008.

These regulations provide for the civil enforcement of road traffic contraventions in Wales and for the immobilisation of vehicles for parking contraventions, including details about the service of penalty charges. They also prescribe requirements in relation to use of income generated from penalty charge notices and deal with the appointment of adjudicators by enforcement authorities.

These Regulations should be read in conjunction with the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013.

It is unusual for the Lord Chancellor to be involved in Wales only legislation, but regulation making powers in relation to the notification of penalty charges, the appointment of adjudicators, and the enforcement of penalty charges remain with the holder of that office.

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

These Composite Regulations made by the Welsh Ministers and the Lord Chancellor have not been made bilingually, and have been made in English only. The Regulations are subject to the negative procedure in both the National Assembly for Wales and Parliament.

The Explanatory memorandum gives no explanation as to why these Regulations have not been made bilingually.

DRAFT SI REPORT

[Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh].

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument at the present time.

Legal Advisers
Constitutional and Legislative Affairs Committee
March 2013

2013 No. 362

ROAD TRAFFIC, WALES

The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013

| | |
|--|-------------------------|
| <i>Made</i> - - - - | <i>26 February 2013</i> |
| <i>Laid before Parliament</i> | <i>28 February 2013</i> |
| <i>Laid before the National Assembly for Wales</i> | <i>28 February 2013</i> |
| <i>Coming into force</i> - - | <i>25 March 2013</i> |

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SCHEDULE 2 — FORM OF PENALTY CHARGE NOTICES

These Regulations are made by the Lord Chancellor in exercise of the powers conferred on him by sections 78, 81, 82 and 89 of the Traffic Management Act 2004(a) and by section 26 of the Welsh Language Act 1993(b), and by the Welsh Ministers in exercise of the powers conferred upon the National Assembly for Wales and now vested in them(c) by sections 72, 73(3), 79, 88 and 89 of

(a) 2004 c.18. Section 81 was amended by the Tribunals, Courts and Enforcement Act 2007, section 50, Schedule 10 paragraph 39 and by S.I. 2006/1016. Section 82 was amended by the Tribunals, Courts and Enforcement Act 2007, sections 62(3) and 146, Schedule 13 paragraph 156(a) and Schedule 23, Part 3.

(b) 1993 c. 38.

(c) The functions of the National Assembly for Wales under the Traffic Management Act 2004 were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). By virtue of section 92 of the Traffic Management Act 2004, the National Assembly for Wales was designated as the “appropriate national authority” as regards Wales, for the purposes of regulations made under Part 6.

that Act and by paragraph 10(1) of Schedule 7 to that Act^(a), and after consultation with the bodies specified in paragraph 10(3) of Schedule 7 to that Act.

In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007^(b), the Lord Chancellor and the Welsh Ministers have consulted the Administrative Justice and Tribunals Council.

PART 1

PRELIMINARY

Title, commencement and application

1.—(1) These Regulations may be cited as the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 and they come into force on 25 March 2013.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the 2004 Act” means the Traffic Management Act 2004;

“the 28-day period” has the meaning given by regulation 10(4);

“adjudicator” means an adjudicator appointed under Part 4 of these Regulations;

“applicable discount” and “applicable surcharge” mean the amount of any discount or, as the case may be, surcharge set in accordance with Schedule 9 to the 2004 Act;

“approved device” has the meaning given by article 2 of the Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013^(c);

“charge certificate” has the meaning given in regulation 20(1);

“civil enforcement area” has the meaning given by paragraph 8 of Schedule 8 to the 2004 Act;

“civil enforcement officer” has the meaning given by section 76 of the 2004 Act;

“enforcement authority” in relation to a penalty charge or the immobilisation or removal of a vehicle means the enforcement authority in relation to the alleged contravention in consequence of which the charge was incurred or the vehicle was immobilised;

“notice to owner”, subject to regulations 20(4) and 22(9), has the meaning given by regulation 18;

“outstanding” in relation to a penalty charge is to be construed in accordance with paragraphs (2) to (4);

“owner” in relation to a vehicle includes any person who falls to be treated as the owner of the vehicle by virtue of regulation 5;

“pedestrian crossing contravention” means a parking contravention consisting of an offence referred to in paragraphs 4(2)(c) or 4(2)(i)(i) of Schedule 7 to the 2004 Act (prohibition on stopping of vehicles on or near pedestrian crossings);

“penalty charge” means a penalty charge relating to a road traffic contravention and payable in accordance with regulation 4;

(a) Section 79 was amended by the Disability Discrimination Act 2005 (c.13), section 19, Schedule 1, paragraph 48 and Schedule 2.

(b) 2007 c.15.

(c) S.I. 2013/360 (W.42).

“penalty charge notice” has the meaning given by regulation 8(1);

“regulation 10 penalty charge notice” has the meaning given by regulation 10;

“road traffic contravention” in relation to Wales, means any of the following:

- (a) a parking contravention as described in paragraph 4, Part 1 of Schedule 7 to the 2004 Act;
- (b) a bus lane contravention as described in Part 2 of Schedule 7 to the 2004 Act; or
- (c) a moving traffic contravention as described in Part 4 of Schedule 7 to the 2004 Act.

“the Welsh enforcement authorities” means those enforcement authorities which are local authorities in Wales; and

“the Representations and Appeals Regulations” means the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013(a).

(2) For the purposes of these Regulations a penalty charge is outstanding in relation to a vehicle if—

- (a) the charge has not been paid and the enforcement authority to which the charge is payable has not waived payment, whether by cancellation of the penalty charge notice or notice to owner or otherwise;
- (b) the owner of the vehicle when it was immobilised was also the owner of the vehicle when the penalty charge was imposed; and
- (c) either—
 - (i) a notice to owner or regulation 10 penalty charge notice has been served in respect of the charge and the conditions in paragraph (3) are satisfied; or
 - (ii) no notice to owner or regulation 10 penalty charge notice has been served in respect of the charge and the conditions in paragraph (4) are satisfied.

(3) The conditions referred to in paragraph (2)(c)(i) are that—

- (a) the penalty charge was imposed, in accordance with these Regulations, by an enforcement authority in respect of a road traffic contravention;
- (b) the penalty charge is the subject of a charge certificate served under regulation 20 which has not been set aside in accordance with regulation 22.

(4) The conditions referred to in paragraph (2)(c)(ii) are that—

- (a) the penalty charge related to a vehicle which, when the penalty charge became payable—
 - (i) was not registered under the Vehicle Excise and Registration Act 1994(b); or
 - (ii) was so registered, but without the inclusion in the registered particulars of the correct name and address of the keeper of the vehicle;
- (b) having taken all reasonable steps, the enforcement authority to which the penalty charge was payable was unable to ascertain the name and address of the keeper of the vehicle and was consequently unable to serve a notice to owner under regulation 18, or a regulation 10 penalty charge notice; and
- (c) the period of 42 days beginning with the date on which the penalty charge became payable has expired.

Service by post

3.—(1) Subject to paragraph (5), any notice (except a penalty charge notice served under regulation 9) or charge certificate under these Regulations—

- (a) may be served by first class (but not second class) post; and
- (b) where the person on whom it is to be served is a body corporate, is duly served if it is sent by first class post to the secretary or clerk of that body.

(a) S.I. 2013/359.

(b) 1994 c. 22.

(2) Unless the contrary is proved, service of a notice or charge certificate contained in a letter sent by first class post which has been properly addressed, pre-paid and posted is to be taken to have been effected on the second working day after the day of posting.

(3) In paragraph (2), “working day” means any day except-

- (a) a Saturday or a Sunday;
- (b) New Year’s Day;
- (c) Good Friday;
- (d) Christmas Day;
- (e) any other day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971^(a).

(4) A document may be transmitted to a vehicle hire firm (as defined in regulation 5(4)) by means of electronic data transmission where—

- (a) the vehicle hire firm has indicated in writing to the person sending the notice or document that it is willing to regard a document as having been duly sent to it if it is transmitted to a specified electronic address; and
- (b) the document is transmitted to that address.

(5) Nothing in this regulation applies to the service of any notice or order made by a county court.

PART 2

PENALTY CHARGES

Imposition of penalty charges

4. Subject to the provisions of these Regulations a penalty charge is payable with respect to a vehicle where there has been committed in relation to that vehicle a road traffic contravention in a civil enforcement area in Wales.

Person by whom a penalty charge is to be paid

5.—(1) Where a road traffic contravention occurs, the person by whom the penalty charge for the contravention is to be paid, is to be determined in accordance with the following provisions of this regulation.

(2) In a case not falling within paragraph (3), the penalty charge is payable by the person who was the owner of the vehicle involved in the contravention at the material time.

(3) Where—

- (a) the vehicle is a mechanically propelled vehicle which was, at the material time, hired from a vehicle-hire firm under a hiring agreement;
- (b) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice served in respect of any road traffic contravention involving the vehicle during the currency of the hiring agreement; and
- (c) in response to a notice to owner served on him, the owner of the vehicle made representations on the ground specified in regulation 4(4)(d) of the Representations and Appeals Regulations and the enforcement authority accepted those representations,

the penalty charge is payable by the person by whom the vehicle was hired and that person must be treated as if they were the owner of the vehicle at the material time for the purposes of these Regulations.

(a) 1971 c.80.

(4) In this regulation—

- (a) “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(a); and
- (b) “the material time” means the time when the contravention giving rise to the penalty charge is said to have occurred.

Evidence of contravention

6.—(1) In respect of a parking contravention, a penalty charge must not be imposed except on the basis of—

- (a) a record produced by an approved device; or
- (b) information given by a civil enforcement officer as to conduct observed by that officer.

(2) In respect of—

- (a) a bus lane contravention; or
- (b) a moving traffic contravention,

a penalty charge must not be imposed except on the basis of a record produced by an approved device.

Criminal proceedings for road traffic contraventions in civil enforcement areas

7.—(1) A penalty charge is not payable in relation to a road traffic contravention where—

- (a) the conduct constituting the contravention is the subject of criminal proceedings; or
- (b) a fixed penalty notice, as defined by section 52 of the Road Traffic Offenders Act 1988(b), has been given in respect of that conduct.

(2) Where, notwithstanding the provisions of paragraph (1)—

- (a) a penalty charge has been paid in respect of a road traffic contravention; and
- (b) the circumstances are as mentioned in paragraph (1)(a) or (b),

the enforcement authority must, as soon as reasonably practicable after those circumstances come to its notice, refund the amount of the penalty charge.

(3) No criminal proceedings may be instituted and no fixed penalty notice may be served in respect of any parking contravention occurring in a civil enforcement area, except a pedestrian crossing contravention.

Penalty charge notices

8.—(1) In these Regulations a “penalty charge notice” means a notice which—

- (a) was served in accordance with regulation 9 or 10 in relation to a road traffic contravention; and
- (b) complies with the requirements of—
 - (i) paragraph (2) below;
 - (ii) the Schedules to these Regulations; and
 - (iii) regulation 3 of the Representations and Appeals Regulations which so apply.

(2) A penalty charge notice must be in the form set out in Schedule 2 to these regulations or a form to the like effect, provided that it contains all of the prescribed particulars as set out in Schedule 1 to these regulations and regulation 3 of the Representations and Appeals Regulations.

(a) 1988 c.53. Section 66 was amended by the Road Safety Act 2006, section 5, Schedule 1 paragraphs 1,8 and 9 and section 59, Schedule 7.

(b) Section 52 was amended by the Statute Law (Repeals) Act 2004 (c.14), Schedule 1, Part 14 and by the Road Safety Act 2006 (c.49), Schedule 1, paragraphs 1 and 2.

(3) The Schedules have effect with regard to penalty charge notices.

Penalty charge notices – service by a civil enforcement officer

9. A civil enforcement officer who has reason to believe that a parking contravention is being committed by a stationary vehicle in a civil enforcement area, may serve a penalty charge notice—

- (a) by fixing it to the vehicle; or
- (b) by giving it to the person appearing to the civil enforcement officer to be in charge of the vehicle.

Penalty charge notices – service by post

10.—(1) An enforcement authority may serve a penalty charge notice by post where—

- (a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a road traffic contravention committed in relation to a vehicle in a civil enforcement area;
- (b) a civil enforcement officer attempted to serve a penalty charge notice in accordance with regulation 9 but was prevented from doing so by some person; or
- (c) a civil enforcement officer had begun to prepare a penalty charge notice for service in accordance with regulation 9, but the vehicle concerned was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing the penalty charge notice or had served it in accordance with regulation 9,

and references in these Regulations to a “regulation 10 penalty charge notice” are to a penalty charge notice served by virtue of this paragraph.

(2) For the purposes of paragraph 1(c), a civil enforcement officer who observes conduct which appears to constitute a parking contravention is not thereby to be taken to have begun to prepare a penalty charge notice.

(3) A regulation 10 penalty charge notice must be served on the person appearing to the enforcement authority to be the owner of the vehicle involved in the contravention in consequence of which the penalty charge is payable.

(4) Subject to paragraph (6), a regulation 10 penalty charge notice may not be served later than the expiration of the period of 28 days beginning with the date on which, according to a record produced by an approved device, or information given by a civil enforcement officer, the contravention to which the penalty charge notice relates occurred (in these Regulations called “the 28-day period”).

(5) Paragraph (6) applies where—

- (a) within 14 days of the appropriate date the enforcement authority has requested the Secretary of State to supply the relevant particulars in respect of the vehicle involved in the contravention and those particulars have not been supplied before the expiration of the 28-day period;
- (b) an earlier regulation 10 penalty charge notice relating to the same contravention has been cancelled under regulation 22(5)(c); or
- (c) an earlier regulation 10 penalty charge notice relating to the same contravention has been cancelled under regulation 5 of the Representations and Appeals Regulations.

(6) Where this paragraph applies, notwithstanding the expiration of the 28-day period, an enforcement authority continues to be entitled to serve a regulation 10 penalty charge notice—

- (a) in a case falling within paragraph (5)(a), for a period of six months beginning with the appropriate date; or
- (b) in a case falling within paragraph (5)(b) or (c), for a period of 4 weeks beginning with the appropriate date.

(7) In this regulation—

- (a) “the appropriate date” means-
 - (i) in a case falling within paragraph (5)(a), the date referred to in paragraph (4);
 - (ii) in a case falling within paragraph (5)(b), the date on which the district judge serves notice in accordance with regulation 22(5)(d); or
 - (iii) in a case falling within paragraph (5)(c) the date on which the previous regulation 10 penalty charge notice was cancelled; and
- (b) “relevant particulars” means particulars relating to the identity of the keeper of the vehicle contained in the register of mechanically propelled vehicles maintained by the Secretary of State under the Vehicle Excise and Registration Act 1994.

Removal of or interference with a penalty charge notice

11.—(1) A penalty charge fixed to a vehicle in accordance with regulation 9(a) must not be removed or interfered with except by or under the authority of—

- (a) the owner or person in charge of the vehicle; or
- (b) the enforcement authority.

(2) A person contravening paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

PART 3

IMMOBILISATION OF VEHICLES FOR PARKING CONTRAVENTIONS

Power to immobilise vehicles

12.—(1) Subject to regulation 13 (limitations on the power to immobilise vehicles), where a penalty charge notice has been served—

- (a) in respect of a parking contravention; and
- (b) in accordance with regulation 9,

a civil enforcement officer or a person acting under the direction of a civil enforcement officer may fix an immobilisation device to the vehicle while it remains in the place where it was found.

(2) On any occasion when an immobilisation device is fixed to a vehicle in accordance with this regulation, the person fixing the device must also fix to the vehicle a notice—

- (a) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from that device;
- (b) specifying the steps to be taken in order to secure its release; and
- (c) warning that unlawful removal of an immobilisation device is an offence.

(3) A notice fixed to a vehicle in accordance with this regulation must not be removed or interfered with except by or under the authority of—

- (a) the owner, or person in charge of the vehicle; or
- (b) the enforcement authority.

(4) A person contravening paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) Any person who, without being authorised to do so in accordance with these Regulations, removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with this regulation is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Limitations on the power to immobilise vehicles

13.—(1) An immobilisation device must not be fixed to a vehicle in accordance with regulation 12 if there is displayed on the vehicle—

- (a) a current disabled person's badge; or
- (b) a current recognised badge.

(2) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1)(a), the vehicle was not being used—

- (a) in accordance with regulations under section 21 of the Chronically Sick and Disabled Persons Act 1970(a);
- (b) in circumstances falling within section 117(1)(b) of the Road Traffic Regulation Act 1984(b) (use where a disabled persons' concession would be available),

the person in charge of the vehicle is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1)(b), the vehicle was not being used—

- (a) in accordance with regulations under section 21A of the Chronically Sick and Disabled Persons Act 1970(c);
- (b) in circumstances falling within section 117(1A)(b) of the Road Traffic Regulation Act 1984(d) (use where a disabled person's concession would be available by virtue of displaying a non-GB badge),

the person in charge of the vehicle is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) An immobilisation device must not be fixed to a vehicle which is in a parking place in respect of a contravention consisting of, or arising out of, a failure—

- (a) to pay a parking charge with respect to the vehicle;
- (b) properly to display a ticket or parking device; or
- (c) to remove the vehicle from a parking place by the end of the period for which the appropriate charge was paid,

until 15 minutes have elapsed since the service of a penalty charge notice under regulation 9 in respect of the contravention.

(5) In this Regulation—

- (a) "disabled person's badge" is a badge issued by local authorities for motor vehicles driven by or used for the carriage of disabled persons in accordance with section 21 of the Chronically Sick and Disabled Persons Act 1970 and regulations made thereunder; and
- (b) "recognised badge" has the same meaning as in section 21A(1) of the Chronically Sick and Disabled Persons Act 1970.

-
- (a) 1970 c.44. In relation to Wales, section 21 was amended by the Local Government Act 1972 (c.70), Schedule 30, by the Transport Act 1982 (c.49) section 68, by the Road Traffic Regulation Act 1984 (c.27), Schedule 13, by the Local Government Act 1985 (c.51), Schedule 5, paragraph 1, by the Road Traffic Act 1991 (c.40), section 35(2)-(5), Schedule 8, by the Local Government (Wales) Act 1994 (c.19), Schedule 10, paragraph 8 and Schedule 18, by the Traffic Management Act 2004 section 94(1)-(4), by the Disability Discrimination Act 2005 (c.13) Schedule 1, paragraph 41 and by the Tribunals, Courts and Enforcement Act 2007, Schedule 8.
 - (b) 1984 (c.27). In relation to Wales section 117(1) was amended by the Road Traffic Act 1991 section 35(6) and Schedule 8 and by the Disability Discrimination Act 2005, Schedule 1, paragraph 44(1), (2) and by the Traffic Management Act 2004, section 94(5).
 - (c) Section 21A was inserted by the Disability Discrimination Act 2005, section 9.
 - (d) Subsection (1A) was inserted by the Disability Discrimination Act 2005, Schedule 1, paragraphs 42 and 44.

Release of immobilised vehicles

14.—(1) A vehicle to which an immobilisation device has been fixed in accordance with regulation 12 may only be released from that device by or under the direction of a person authorised by the enforcement authority to give such a direction.

(2) Subject to paragraph (1), such a vehicle must be released from the device on payment in any manner specified in the notice fixed to the vehicle under regulation 12(2) of—

- (a) the penalty charge payable in respect of the parking contravention; and
- (b) such charge in respect of the release as may be required by the enforcement authority.

PART 4

ADJUDICATORS

Discharge of functions relating to adjudicators

15.—(1) The functions of the Welsh enforcement authorities relating to adjudicators under section 81 of the 2004 Act and under regulations 16 and 17 are to be discharged jointly, under arrangements made under section 101(5) of the Local Government Act 1972(a), by a joint committee or joint committees appointed under section 102(1)(b) of that Act.

(2) The constituent authorities of a joint committee may include county or county borough councils in England.

(3) Any arrangements for the discharge of functions by a joint committee under section 73 of the Road Traffic Act 1991(b), as that section was applied to local authorities, which subsisted immediately before the coming into force of these Regulations continue in force and have effect as if made under this regulation, until such time as those arrangements are varied or replaced.

Appointment of adjudicators

16.—(1) The relevant enforcement authorities must appoint such number of adjudicators for the purposes of Part 6 of the 2004 Act on such terms as they may decide.

(2) Any decision by those authorities to appoint a person as an adjudicator will not have effect without the consent of the Lord Chancellor.

(3) Any decision by those authorities—

- (a) not to re-appoint a person as an adjudicator; or
- (b) to remove a person from his office as an adjudicator,

will not have effect without the consent of the Lord Chancellor and the Lord Chief Justice.

(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005(c) to exercise his functions under paragraph (3).

(5) Adjudicators who—

- (a) were appointed under section 73 of the Road Traffic Act 1991; and
- (b) held office immediately before the coming into force of this regulation,

are to be treated as having been appointed under this regulation on the same terms as those on which they held office at that time.

(6) Each adjudicator must make an annual report to the relevant enforcement authorities in accordance with such requirements as may be imposed by those authorities.

(a) 1972 c.70.
(b) 1991 c.40.
(c) 2005 c.4.

(7) The relevant authorities must make and publish an annual report to the Welsh Ministers on the discharge by the adjudicators of their functions.

Expenses of the relevant authorities

17.—(1) In default of a decision by any of the enforcement authorities under section 81(9)(a) of the 2004 Act as to the proportions in which their expenses under section 81 of that Act are to be defrayed, the authorities concerned must refer the issue to be determined by an arbitrator nominated by the Chartered Institute of Arbitrators.

(2) Where the Welsh Ministers are satisfied that there has been a failure on the part of any of the relevant enforcement authorities to agree those proportions, they may give to the relevant joint committee such directions as are in their opinion necessary to secure that the issue is referred to arbitration in accordance with paragraph (1).

(3) In this regulation “the relevant joint committee” means the joint committee constituted under regulation 15 of which the enforcement authorities in default are constituent authorities.

PART 5

ENFORCEMENT OF PENALTY CHARGES

The notice to owner

18.—(1) Subject to regulation 19, where—

- (a) a penalty charge notice has been served with respect to a vehicle under regulation 9; and
- (b) the period of 28 days specified in the penalty charge notice as the period within which the penalty charge is to be paid has expired without that charge being paid,

the enforcement authority concerned may serve a notice (“a notice to owner”) on the person who appears to it to have been the owner of the vehicle when the alleged contravention occurred.

(2) A notice to owner served under paragraph (1) must, in addition to the matters required to be included in it under regulation 3(3) of the Representations and Appeals Regulations, state—

- (a) the date of the notice, which must be the date on which the notice is posted;
- (b) the name of the enforcement authority serving the notice;
- (c) the amount of the penalty charge payable;
- (d) the date on which the penalty charge notice was served;
- (e) the grounds on which the civil enforcement officer who served the penalty charge notice under regulation 9 believed that a penalty charge was payable with respect to the vehicle;
- (f) that the penalty charge, if not already paid, must be paid within “the payment period” as defined by regulation 3(3)(a) of the Representations and Appeals Regulations;
- (g) that if, after the payment period has expired, no representations have been made under regulation 4 of the Representations and Appeals Regulations and the penalty charge has not been paid, the enforcement authority may increase the penalty charge by the applicable surcharge; and
- (h) the amount of the increased penalty charge.

Time limit for service of a notice to owner

19.—(1) A notice to owner may not be served after the expiry of the period of 6 months beginning with the relevant date.

(2) The relevant date—

- (a) in a case where a notice to owner has been cancelled under regulation 22(5)(c) of these Regulations, is the date on which the district judge serves notice in accordance with regulation 22(5)(d);
- (b) in a case where a notice to owner has been cancelled under regulation 5 of the Representations and Appeals Regulations, is the date of such cancellation;
- (c) in a case where payment of the penalty charge was made, or had purportedly been made, before the expiry of the period mentioned in paragraph (1) but the payment or purported payment had been cancelled or withdrawn, is the date on which the enforcement authority is notified that the payment or purported payment has been cancelled or withdrawn;
- (d) in any other case, is the date on which the relevant penalty charge notice was served under regulation 9.

Charge certificates

20.—(1) Where a notice to owner is served on any person and the penalty charge to which it relates is not paid before the end of the relevant period, the authority serving the notice may serve on that person a statement (a “charge certificate”) to the effect that the penalty charge in question is increased by the amount of the applicable surcharge.

(2) The relevant period, in relation to a notice to owner, is the period of 28 days beginning—

- (a) where no representations are made under regulation 4 of the Representations and Appeals Regulations, with the date on which the notice to owner is served;
- (b) where—
 - (i) such representations are made;
 - (ii) a notice of rejection is served by the authority concerned; and
 - (iii) no appeal against the notice of rejection is made,
 with the date on which the notice of rejection is served;
- (c) where an adjudicator has, under regulation 7(4) of the Representations and Appeals Regulations, recommended the enforcement authority to cancel the notice to owner, with the date on which the enforcement authority notifies the appellant under regulation 7(5) of those Regulations that it does not accept the recommendation; or
- (d) in a case not falling within sub-paragraph (c) where there has been an unsuccessful appeal to an adjudicator under the Representations and Appeals Regulations against a notice of rejection, with the date on which the adjudicator’s decision is served on the appellant.

(3) Where an appeal against a notice of rejection is made but is withdrawn before the adjudicator serves notice of his decision, the relevant period in relation to a notice to owner is the period of 14 days beginning with the date on which the appeal is withdrawn.

(4) In this regulation—

- (a) references to a “notice to owner” include a regulation 10 penalty charge notice; and
- (b) “notice of rejection” has the meaning given by regulation 2 of the Representations and Appeals Regulations.

Enforcement of charge certificates

21. Where a charge certificate has been served on any person and the increased penalty charge provided for in the certificate is not paid within the period of 14 days beginning with the date on which the certificate is served, the enforcement authority may, if a county court so orders, recover the increased charge as if it were payable under a county court order.

Invalid notices

22.—(1) This regulation applies where—

- (a) a county court makes an order under regulation 21;

- (b) the person against whom it is made makes a witness statement complying with paragraph (2); and
 - (c) that statement is served on the county court which makes the order, before the end of—
 - (i) the period of 21 days, beginning with the date on which notice of the county court’s order is served on him; or
 - (ii) such longer period as may be allowed under paragraph (4).
- (2) The witness statement must state one and only one of the following—
- (a) that the person making it did not receive the notice to owner in question;
 - (b) that representations were made to the enforcement authority under regulation 4 of the Representations and Appeals Regulations but a notice of rejection was not received from that authority in accordance with regulation 6 of those Regulations;
 - (c) that an appeal was made to an adjudicator under regulation 7 of those Regulations against the rejection by the enforcement authority of representations made under regulation 4 of those Regulations but—
 - (i) no response to the appeal was received;
 - (ii) the appeal had not been determined by the time that the charge certificate had been served; or
 - (iii) the appeal was determined in the appellant’s favour; or
 - (d) that the penalty charge to which the charge certificate relates has been paid.
- (3) Paragraph (4) applies where it appears to a district judge, on the application of a person on whom a charge certificate has been served, that it would be unreasonable in the circumstances of the case to insist on serving his witness statement within the period of 21 days allowed for by paragraph (1).
- (4) Where this paragraph applies, the district judge may consider allowing a longer period for service of the witness statement.
- (5) Where a witness statement is served under paragraph (1)(c)—
- (a) the order of the court is deemed to have been revoked;
 - (b) the charge certificate is deemed to have been cancelled;
 - (c) in the case of a statement under paragraph (2)(a), the notice to owner to which the charge certificate relates is deemed to have been cancelled; and
 - (d) the district judge must serve written notice of the effect of service of the statement on the person making it and on the enforcement authority concerned.
- (6) Subject to regulation 19, service of a witness statement under paragraph (2)(a) must not prevent the enforcement authority from serving a fresh notice to owner.
- (7) Where a witness statement has been served under paragraph (2)(b), (c) or (d), the enforcement authority must refer the case to the adjudicator who may give such directions as are appropriate in the circumstances and the parties must comply with those directions.
- (8) A witness statement under this regulation may be served on the county court by email in accordance with Section 1 of Practice Direction 5B in Part 5 of the Civil Procedure Rules 1998(a).
- (9) In this regulation—
- (a) references to a “notice to owner” include a regulation 10 penalty charge notice; and
 - (b) “witness statement” means a statement which is a witness statement for the purposes of the Civil Procedure Rules 1998 and which is supported by a statement of truth in accordance with Part 22 of those Rules.

(a) S.I. 1998/3132. L17.

PART 6

FINANCIAL PROVISIONS

Modification of section 55 of the Road Traffic Regulation Act 1984

23.—(1) Section 55 of the Road Traffic Regulation Act 1984(a) applies in relation to the income and expenditure of enforcement authorities in connection with their functions under Part 6 of the 2004 Act in relation to parking contraventions, subject to the following modifications.

(2) For subsection (1) there is substituted—

“(1) A local authority in Wales which is an enforcement authority must keep an account—

- (a) of its income and expenditure in respect of any designated parking places in its area which are not in a civil enforcement area;
- (b) of its income and expenditure (otherwise than as an enforcement authority) in respect of designated parking places in its area which are in a civil enforcement area; and
- (c) of its income and expenditure in connection with its functions as an enforcement authority in relation to parking contraventions within Part 1, paragraph 4 of Schedule 7 to the 2004 Act.”.

(3) For subsection (3A) there is substituted—

“(3A) A local authority in Wales which is an enforcement authority must after the end of each financial year send a copy of the accounts kept under subsection (1) to the Welsh Ministers.”.

(4) In subsection (3B) for the words “the end of” there is substituted “the conclusion of the audit of the accounts of the body concerned for”.

(5) In subsection (10) after “in this section—” there is inserted—

““the 2004 Act” means the Traffic Management Act 2004;

“enforcement authority” means an authority which is an enforcement authority for the purposes of Part 6 of the 2004 Act (pursuant to paragraph 8(5) of Schedule 8) and references to the functions of an authority as an enforcement authority are to its functions under that Part of that Act.”.

Income and expenditure

24.—(1) In connection with its functions as an enforcement authority, a local authority in Wales must keep separate income and expenditure accounts in relation to each of the following types of contravention—

- (a) bus lane contraventions as described in Part 2 of Schedule 7 to the 2004 Act; and
- (b) moving traffic contraventions as described in Part 4 of Schedule 7 to the 2004 Act,

in addition to those accounts in relation to parking contraventions as described in regulation 23.

(2) A local authority in Wales which is an enforcement authority must, after the end of each financial year, send a copy of each of the accounts kept under subsection (1) to the Welsh Ministers.

(a) In relation to Wales, section 55 was amended by the Local Government Act 1985 (c.51), Schedule 17, by the Local Government (Wales) Act 1994 (c.19), Schedule 7, by the New Roads and Street Works Act 1991 (c. 22), Schedule 8, paragraph 46, by the Road Traffic Act 1991, Schedule 7, paragraph 5 and Schedule 8 and by the Traffic Management Act 2004, section 95.

Surpluses to be carried forward

25. Where, immediately before the coming into force of these Regulations there is a surplus in an account which is kept under section 55 of the Road Traffic Regulation Act 1984 as modified in relation to that authority by an Order made under Schedule 3 to the Road Traffic Act 1991 and kept by a local authority the surplus must be carried forward.

Application of sums paid by way of penalty charge

26.—(1) Any surplus in an account which is kept under section 55 of the Road Traffic Regulation Act 1984, must be treated as a surplus arising under that section as modified by regulation 23 and must be applied for all or any of the purposes specified in that section.

(2) Any surplus arising in an account kept by an enforcement authority in relation to bus lane or moving traffic contraventions must be applied for all or any of the purposes specified in paragraph (3) and, insofar as it is not applied, must be appropriated to the carrying out of some specific project falling within those purposes and carried forward until applied to that project.

(3) The purposes referred to in paragraph (2) are—

- (a) the making good to the enforcement authority's general fund of any amount charged to that fund in respect of any deficit in the four years preceding the financial year in question;
- (b) the purposes of environmental improvement in the enforcement authority's area;
- (c) meeting costs incurred, whether by the enforcement authority or by some other person, in the provision or operation of, or of facilities for public passenger transport services; or
- (d) the purposes of a highway or road improvement project in the enforcement authority's area.

(4) For the purposes of paragraph (3)(b), "environmental improvement" includes—

- (a) the reduction of environmental pollution (as defined in the Pollution Prevention and Control Act 1999^(a));
- (b) improving or maintaining the appearance or amenity of—
 - (i) a road or land in the vicinity of a road, or
 - (ii) open land or water to which the general public has access; and
- (c) the provision of outdoor recreational facilities available to the public without charge.

(5) For the purposes of paragraph (3)(d), "a highway improvement project" means a project connected with the carrying out by the appropriate highway authority of any operation which constitutes the improvement of a highway (within the meaning of the Highways Act 1980)^(b).

PART 7

AMENDMENT AND REVOCATION

Revocation

27.—(1) Upon the coming into force of these Regulations, the instruments set out in paragraph (2) are revoked.

(2) The instruments described in paragraph (1) are—

- (a) The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No.2) Regulations 2008 ^(c); and

(a) 1999 (c.24).

(b) 1980 (c.66).

(c) S.I. 2008/1214 (W.122). This revoked and replaced S.I. 2008/614 (W.66).

- (b) The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008^(a).

Amendment to paragraph 9(4) of Schedule 7 to the Traffic Management Act 2004

28. The table in paragraph 9(4) of Schedule 7 to the Traffic Management Act 2004 is amended as follows—

- (a) After diagram number 957, under the heading “Description” insert: “With flow bus lane which pedal cycles and taxis may also use ahead.”
- (b) After diagram number 957, under the heading “Diagram number” insert: “958”.
- (c) After diagram number 958, under the heading “Description”, insert: “With flow bus lane which pedal cycles may also use.”
- (d) After diagram number 958, under the heading “Diagram number” insert: “959.”
- (e) After diagram number 959.1, under the heading “Description” insert: “Contra flow bus lane.”
- (f) After diagram number 959.1, under the heading “Diagram number”, insert: “960.”

Signed by authority of the Lord Chancellor

Chris Grayling MP

Parliamentary Under Secretary of State
Ministry of Justice

26 February 2013

Carl Sargeant

Minister for Local Government and Communities, one of the Welsh Ministers

26 February 2013

(a) S.I. 2008/609, as amended by S.I. 2008/913.

SCHEDULES

SCHEDULE 1

Regulation 8

PENALTY CHARGE NOTICES

Contents of a penalty charge notice served under regulation 9

1. A penalty charge notice served under regulation 9 must, in addition to the matters required to be included in it by regulation 3(2) of the Representations and Appeals Regulations, state—

- (a) the date on which the notice is served;
- (b) the name of the enforcement authority;
- (c) the registration mark of the vehicle involved in the alleged contravention;
- (d) the date and the time at which the alleged contravention occurred;
- (e) the grounds on which the civil enforcement officer issuing the notice believes that a penalty charge is payable;
- (f) the amount of the penalty charge;
- (g) that the penalty charge must be paid within the period of 28 days beginning with the date on which the alleged contravention occurred;
- (h) that if the penalty charge is paid within the period of 14 days beginning with the date on which the notice is served, the penalty charge will be reduced by the amount of any applicable discount;
- (i) the manner in which the penalty charge must be paid; and
- (j) that if the penalty charge is not paid within the period of 28 days referred to in sub-paragraph (g), a notice to owner may be served by the enforcement authority on the owner of the vehicle.

Contents of a regulation 10 penalty charge notice

2. A regulation 10 penalty charge notice, in addition to the matters required to be included in it by regulation 3(4) of the Representations and Appeals Regulations, must state—

- (a) the date of the notice, which must be the date on which it is posted;
- (b) the matters specified in paragraphs 1(b), (c), (d), (f) and (i);
- (c) the grounds on which the enforcement authority believes that a penalty charge is payable;
- (d) that the penalty charge must be paid within the period of 28 days beginning with the date on which the penalty charge notice is served;
- (e) that if the penalty charge is paid not later than the applicable date, the penalty charge will be reduced by the amount of any applicable discount;
- (f) that if after the last day of the period referred to in sub-paragraph (d)—
 - (i) no representations have been made in accordance with regulation 4 of the Representations and Appeals Regulations; and
 - (ii) the penalty charge has not been paid,the enforcement authority may increase the penalty charge by the amount of any applicable surcharge and take steps to enforce payment of the charge as so increased;
- (g) the amount of the increased penalty charge; and
- (h) that the penalty charge notice is being served by post for whichever of the following reasons applies—

- (i) that the penalty charge notice is being served by post on the basis of a record produced by an approved device;
- (ii) that it is being so served, because a civil enforcement officer attempted to serve a penalty charge notice by affixing it to the vehicle or giving it to the person in charge of the vehicle but was prevented from doing so by some person; or
- (iii) that it is being so served because a civil enforcement officer had begun to prepare a penalty charge notice for service in accordance with regulation 9, but the vehicle was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing the penalty charge notice or had served it in accordance with regulation 9.

3. In paragraph 2 for the purposes of sub-paragraph (e), the “applicable date” is—

- (a) in the case of a penalty charge notice served by virtue of regulation 10(1)(a) (on the basis of a record produced by an approved device), the last day of the period of 21 days beginning with the date on which the notice was served; or
- (b) in any other case, the last day of the period of 14 days beginning with that date.

SCHEDULE 2

Regulation 8

FORM OF PENALTY CHARGE NOTICES PENALTY CHARGE NOTICE BY A CIVIL ENFORCEMENT OFFICER

NAME OF ENFORCEMENT AUTHORITY

PENALTY CHARGE NOTICE SERVED BY A CIVIL ENFORCEMENT OFFICER

(Section 78 of the Traffic Management Act 2004 and Regulation 9 of the Civil
Enforcement of Road Traffic Contraventions (General Provisions) (Wales)
Regulations 2013)

| | | | |
|---|---|---|----|
| Penalty Charge Notice Number | | Date of issue (dd/mm/yyyy) | // |
| The motor vehicle with Registration Number | | | |
| Tax disc Number | | Expiry date | // |
| Make | | Colour | |
| Was observed at | | | |
| On | | // | |
| From (time by 24-hour clock) | : | To (time by 24-hour clock) | : |
| By Civil Enforcement Officer | | | |
| Who had reasonable cause to believe that the following parking contravention had occurred and that a penalty Charge is to be paid | | | |
| Contravention Code | | | |
| A Penalty Charge of | £ | is payable within 28 days of the date of this Penalty Charge Notice | |
| The Penalty Charge will be reduced by 50% to | £ | if payment is received within 14 days of the date of this Penalty Charge Notice | |

Non-payment

If the Penalty Charge is not paid within 28 days of the date of this Notice the enforcement authority is entitled to serve a Notice to Owner (NtO) on the owner of the vehicle, which acts as a final reminder before an additional surcharge is added to the amount of the Penalty Charge.

Challenging the Penalty Charge

You are entitled to challenge this Penalty Charge Notice (PCN) within 28 days of the date of this Notice. Your challenge will be considered by the enforcement authority if it is received before a Notice to Owner (NtO) is served. The enforcement authority may accept the grounds for challenge and cancel the PCN or reject the challenge and issue a Notice to Owner (NtO).

Further representations may be made once the NtO has been served. The NtO will set out the grounds for making further representations and the way in which the representations **must** be made. If the enforcement authority rejects the representations there is a further right of appeal to an adjudicator. Any challenge must be sent to the postal address below and must be in writing.

Instructions for payment

Payment of this PCN must be received within 28 days of the date of this Notice. If payment is received within 14 days of the date of this Notice, the reduced charge shown overleaf will be accepted as payment. You may pay using any of the following methods:

| |
|--|
| 1. BY POST (to the following address) |
| |

| |
|---|
| 2. BY TELEPHONE (on the following number(s)) |
| |

| |
|--|
| 3. IN PERSON (at the following offices) |
| |

| |
|---|
| 4. ONLINE (at the following web address) |
| |

If paying by post, complete the details below, detach the slip and return it with your payment to the address shown above (Box 1, "BY POST").

 PAYMENT SLIP (Print details)

Name: Mr/Mrs/Miss/Dr.....

Address:.....

| | | | |
|--|--|-----------------------------|--|
| Full Penalty | | £ | |
| Reduced Penalty (if paid within 14 days) | | £ | |
| Penalty Charge Notice Number | | Vehicle Registration Number | |
| Date of contravention | | Time of contravention | |

ENW'R AWDURDOD GORFODI

HYSBYSIAD TÂL COSB A GYFLWYNWYD GAN SWYDDOG GORFODI SIFIL

(Adran 78 o Ddeddf Rheoli Traffig 2004 a Rheoliad 9 o Reoliadau Gorfodi Sifil ar
Dramgwyddau Traffig Ffyrdd (Darpariaethau Cyffredinol) (Cymru) 2013)

| | | | |
|--|---|-------------------------------|---|
| Rhif Hysbysiad Tâl Cosb | | Dyddiad dyroddi (dd/mm/bbbb) | // |
| Y cerbyd modur gyda'r Rhif Cofrestru | | | |
| Rhif Disg Treth | | Dyddiad dod i ben | // |
| Gwneuthuriad | | Lliw | |
| Gwelwyd yn | | | |
| Ar | | // | |
| Rhwng (amser yn ôl y cloc 24 awr) | : | A (amser yn ôl y cloc 24 awr) | : |
| Gan Swyddog Gorfodi Sifil | | | |
| A oedd ag achos rhesymol i gredu bod y tramgwydd parcio a ganlyn wedi digwydd a bod Tâl Cosb i'w dalu. | | | |
| Cod Tramgwydd | | | |
| Mae Tâl Cosb o | | £ | i'w dalu cyn pen cyfnod o 28 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad Tâl Cosb hwn |
| Caiff y Tâl Cosb ei ostwng o 50% i | | £ | os daw'r taliad i law cyn pen cyfnod o 14 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad Tâl Cosb |

Peidio â thalu

Os nad ydych wedi talu'r Tâl Cosb cyn pen cyfnod o 28 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad hwn, mae gan yr awdurdod gorfodi yr hawl i gyflwyno Hysbysiad i'r Perchennog i berchennog y cerbyd, sy'n gweithredu fel nodyn atgoffa terfynol cyn ychwanegu gordal ychwanegol at swm y Tâl Cosb.

Herio'r Tâl Cosb

Mae gennych hawl i herio'r Hysbysiad Tâl Cosb hwn cyn pen cyfnod o 28 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad hwn. Bydd yr awdurdod gorfodi yn ystyried eich her os daw i law cyn i Hysbysiad i'r Perchennog gael ei gyflwyno. Caiff yr awdurdod gorfodi dderbyn y seiliau dros yr her a diddymu'r Hysbysiad Tâl Cosb neu wrthod yr her a dyroddi Hysbysiad i'r Perchennog.

Cewch wneud sylwadau pellach ar ôl i'r Hysbysiad i'r Perchennog gael ei gyflwyno. Bydd yr Hysbysiad i'r Perchennog yn nodi'r seiliau dros gyflwyno sylwadau pellach a'r ffordd y mae'n **rhaid** cyflwyno'r sylwadau. Os yw'r awdurdod gorfodi yn gwrthod y sylwadau, mae gennych hawl bellach i apelio i ddyfarnydd. Rhaid anfon unrhyw her i'r cyfeiriad post isod a rhaid iddi fod yn ysgrifenedig.

Sut i dalu

Rhaid i'r taliad am yr Hysbysiad Tâl Cosb hwn ddod i law cyn pen cyfnod 28 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad hwn. Os daw'r taliad i law cyn pen cyfnod o 14 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad hwn, caiff y tâl llai a ddangosir drosodd ei dderbyn yn daliad. Cewch ddefnyddio unrhyw un o'r dulliau a ganlyn i dalu:

1. DRWY'R POST (i'r cyfeiriad a ganlyn)

| |
|--|
| |
|--|

2. DROS Y FFÔN (ar y rhif(au) a ganlyn)

| |
|--|
| |
|--|

3. YN BERSONOL (yn y swyddfeydd a ganlyn)

| |
|--|
| |
|--|

4. AR LEIN (drwy'r cyfeiriad gwefan a ganlyn)

| |
|--|
| |
|--|

Os ydych yn talu drwy'r post, rhowch y manylion isod ar y ddalen dalu, torrwech y ddalen honno oddi wrth weddill y ddogfen a'i rhoi ynghlwm â'ch taliad a'u hanfon i'r cyfeiriad uchod (Blwch 1, "DRWY'R POST").

DALEN DALU (Defnyddiwch lythrennau breision i roi'r manylion)

Enw: Mr/Mrs/Miss/Y Dr.....

Cyfeiriad:

| | | | |
|--|--|----------------------------|--|
| Cosb Lawn | | £ | |
| Cosb Lai (os ydych yn talu cyn pen cyfnod o 14 o ddiwrnodau) | | | |
| Rhif yr Hysbysiad Tâl Cosb | | Rhif Cofrestru'r Cerbyd | |
| Dyddiad y tramgwydd | | Amser y tramgwydd | |

PENALTY CHARGE NOTICE SERVED BY POST

NAME OF ENFORCEMENT AUTHORITY

PENALTY CHARGE NOTICE SERVED BY POST

(Section 78 of the Traffic Management Act 2004 and Regulation 10 of the Civil
Enforcement of Road Traffic Contraventions (General Provisions) (Wales)
Regulations 2013)

| | | | |
|--|---|-------------------------------|----|
| Penalty Charge Notice Number | | Date of issue (dd/mm/yyyy) | // |
| The motor vehicle with Registration Number | | | |
| Tax disc Number | | Expiry date | // |
| Make | | Colour | |
| Was observed at | | | |
| Date of Contravention | | // | |
| From (time by 24- hour clock) | : | To (time by 24-hour clock) | : |

EITHER

| | |
|---|--|
| By Civil Enforcement Officer | |
| Who had reasonable cause to believe that the following contravention has taken place and that a Penalty Charge is to be paid. | |
| Contravention Code | |

OR

| | |
|--|--|
| On the basis of evidence recorded by an approved device, the authority believes the following contravention has taken place and that a Penalty Charge is to be paid. | |
| Contravention Code | |

This Penalty Charge Notice (PCN) is being served by post because **EITHER**:

| | |
|---|--|
| The contravention was recorded by an approved device. | |
| A Civil Enforcement Officer (CEO) attempted to serve this PCN by affixing it to the vehicle or giving it to the person in charge of the vehicle but was prevented from doing so by some person. | |
| A Civil Enforcement Officer had begun to prepare this PCN but the vehicle was driven away before the CEO had finished preparing or had served it | |

| | | |
|---|---|--|
| A Penalty Charge of | £ | is payable within 28 days of the date of issue of this Notice |
| Where the PCN is served on the basis that a Civil Enforcement Officer was unable to serve it, the Penalty Charge will be reduced by 50% to | £ | if payment is received within 14 days of the date of issue of this Notice |
| Where the PCN is served on the basis of an approved device, the Penalty Charge will be reduced by 50% to | £ | if payment is received within 21 days of the date of issue of this Notice |
| The Penalty Charge will be increased by 50% to | | and steps will be taken to enforce payment if payment is not made within 28 days of the date of issue of this Notice and no challenge is made to the enforcement authority |

Challenging the Penalty Charge

You are entitled to challenge this PCN within 28 days of the date of this Notice. Any challenge made after this 28-day period may be disregarded. A challenge may be made on the following grounds:

| | |
|----|---|
| 1 | That the contravention did not occur. |
| 2 | That you were never the owner of the vehicle in question |
| 3 | That you were not the owner/keeper at the time of the contravention and you have supplied details of the person from whom you obtained the vehicle or the person to whom you disposed of the vehicle. |
| 4 | That the vehicle was taken without your consent. |
| 5 | That the vehicle was hired at the time of the contravention and you have supplied the hirer's details. |
| 6 | That the Penalty Charge exceeded the relevant amount. |
| 7 | That the enforcement authority did not follow correct procedure in issuing the PCN. |
| 8 | That the Traffic Regulation Order under which the PCN issued was invalid. |
| 9 | That the PCN has already been paid. |
| 10 | That a CEO was not prevented from serving the original PCN, or |
| 11 | That there are other compelling reasons why the PCN should be cancelled. |

Any challenge must be sent to the postal address below and must be in writing. If a challenge has been considered by the enforcement authority but not accepted, there is a further right of appeal to an adjudicator.

APPROVED DEVICES ONLY

Where the PCN has been issued as a result of a record produced by an approved device, you can write to the enforcement authority and either request that you or your representative attend at the enforcement authority's offices and inspect the record of the contravention free of charge or request images of the contravention be provided to you free of charge.

Instructions for payment

You may pay using any of the following methods:

| |
|--|
| 1. BY POST (to the following address) |
| (Insert postal address) |

| |
|---|
| 2. BY TELEPHONE (on the following number(s)) |
| (Insert telephone number) |

| |
|--|
| 3. IN PERSON (at the following offices) |
| (Insert address of office) |

| |
|--|
| 4. ONLINE (at the following we address) |
| (Insert web address) |

If paying by post, complete the details below, detach the slip and return it with your payment to the address shown above (Box 1, "BY POST").

PAYMENT SLIP (Print details)

Name: Mr/Mrs/Miss/Dr.....

Address:.....

| | | | |
|------------------------------|---|-----------------------------|--|
| Full Penalty | £ | | |
| Reduced Penalty | £ | | |
| Penalty Charge Notice Number | | Vehicle Registration Number | |
| Date of Contravention | | Time of contravention | |

ENW'R AWDURDOF GORFODI

HYSBYSIAD TÂL COSB A GYFLWYNWYD DRWY'R POST

(Adran 78 o Ddeddf Rheoli Traffig 2004 a Rheoliad 10 o Reoliadau Gorfodi Sifil ar
Dramgwyddau Traffig Ffyrdd (Darpariaethau Cyffredinol) (Cymru) 2013)

| | | | |
|--------------------------------------|---|----------------------------------|----|
| Rhif yr Hysbysiad Tâl Cosb | | Dyddiad dyroddi (dd/mm/bbbb) | // |
| Y cerbyd modur gyda'r Rhif Cofrestru | | | |
| Rhif Disg Treth | | Dyddiad dod i ben | // |
| Gwneuthuriad | | Lliw | |
| Gwelwyd yn | | | |
| Dyddiad y tramgwydd | | // | |
| Rhwng (amser yn ôl y cloc 24 awr) | : | a (amser yn ôl y cloc 24 awr) | |

NAILL AI

| | |
|---|--|
| Gan Swyddog Gorfodi Sifil | |
| A oedd ag achos rhesymol i gredu bod y tramgwydd a ganlyn wedi digwydd a bod Tâl Cosb i'w dalu. | |
| Cod Tramgwydd | |

NEU

| | |
|--|--|
| Ar sail tystiolaeth a gofnodwyd gan ddyfais a gymeradwyir, mae'r awdurdod yn credu bod y tramgwydd a ganlyn wedi digwydd a bod Tâl Cosb i'w dalu. | |
| Cod Tramgwydd | |

Mae'r Hysbysiad Tâl Cosb hwn yn cael ei gyflwyno drwy'r post achos **NAILL AI**:

| | |
|--|--|
| Cofnodwyd y tramgwydd gan ddyfais a gymeradwyir. | |
| Ceisiodd Swyddog Gorfodi Sifil gyflwyno'r Hysbysiad Tâl Cosb hwn drwy ei roi ar y cerbyd neu drwy ei roi i'r person a oedd â gofal am y cerbyd ond rhwystrodd y person hwnnw y Swyddog rhag gwneud hynny. | |

| | |
|--|--|
| Roedd Swyddog Gorfodi Sifil wedi dechrau llunio'r Hysbysiad Tâl Cosb hwn ond cafodd y cerbyd ei yrru i ffwrdd cyn i'r Swyddog orffen ei lunio neu ei gyflwyno. | |
|--|--|

| | | |
|---|---|---|
| Mae Tâl Cosb o | £ | i'w dalu cyn pen cyfnod o 28 o ddiwrnodau gan ddechrau ar ddyddiad dyroddi'r Hysbysiad hwn |
| Pan fydd yr Hysbysiad Tâl Cosb yn cael ei gyflwyno ar y sail nad oedd modd i Swyddog Gorfodi Sifil ei gyflwyno, caiff y Tâl Cosb ei ostwng o 50% i | £ | os daw'r tâl i law cyn pen cyfnod o 14 o ddiwrnodau gan ddechrau ar y dyddiad dyroddi'r Hysbysiad hwn |
| Pan fydd Hysbysiad Tâl Cosb yn cael ei gyflwyno ar sail dyfais a gymeradwyir, caiff y Tâl Cosb ei ostwng o 50% i | £ | os daw'r tâl i law cyn pen cyfnod o 21 o ddiwrnodau gan ddechrau ar y dyddiad dyroddi'r Hysbysiad hwn |
| Caiff y Tâl Cosb ei godi o 50% i | £ | a chaiff camau eu cymryd i'ch gorfodi i dalu os na thalwch y Tâl Cosb cyn pen cyfnod o 28 o ddiwrnodau gan ddechrau ar ddyddiad dyroddi'r Hysbysiad hwn ac os nad ydych yn herio'r awdurdod gorfodi am y Tâl Cosb |

Herio'r Tâl Cosh

Mae gennych hawl i herio'r Hysbysiad Tâl Cosb hwn cyn pen cyfnod o 28 o ddiwrnodau gan ddechrau ar ddyddiad yr Hysbysiad hwn. Mae'n bosibl y bydd unrhyw her a wneir ar ôl y cyfnod hwn o 28 o ddiwrnodau ei diystyried. Gallwch herio ar y seiliau a ganlyn:

| | |
|----|--|
| 1 | Ni ddigwyddodd y tramgwydd |
| 2 | Ni fuoch erioed yn berchennog ar y cerbyd dan sylw |
| 3 | Nid chi oedd y perchennog/ceidwad adeg y tramgwydd ac rydych wedi rhoi manylion y person y cawsoch y cerbyd oddi wrtho neu'r person y rhoddasoch neu y gwerthasoch y cerbyd iddo |
| 4 | Cymerwyd y cerbyd heb eich cydsyniad |
| 5 | Llogwyd y cerbyd adeg y tramgwydd ac rydych wedi rhoi manylion y llogwr |
| 6 | Mae'r Tâl Cosb yn uwch na'r swm perthnasol |
| 7 | Nid oedd yr awdurdod gorfodi wedi dilyn y weithdrefn gywir wrth ddyroddi'r Hysbysiad Tâl Cosb |
| 8 | Mae'r Gorchymyn Rheoli Traffig y gwnaed yr Hysbysiad Tâl Cosb odano yn annilys |
| 9 | Mae'r Hysbysiad Tâl Cosb eisoes wedi ei dalu |
| 10 | Ni rwystrwyd Swyddog Gorfodi Sifil rhag cyflwyno'r Hysbysiad Tâl Cosb gwreiddiol, neu |
| 11 | Mae rhesymau cadarn eraill pam y dylid diddymu'r Hysbysiad Tâl Cosb. |

Rhaid anfon unrhyw her i'r cyfeiriad post isod a rhaid iddi fod yn ysgrifenedig. Os yw'r awdurdod gorfodi yn ystyried yr her ond heb ei derbyn, mae gennych hawl bellach i apelio i ddyfarnydd.

DYFEISIAU A GYMERADWYIR YN UNIG

Pan fydd yr Hysbysiad Tâl Cosb wedi ei ddyroddi o ganlyniad i gofnod a gynhyrchwyd gan ddyfais a gymeradwyir, gallwch ysgrifennu i'r awdurdod gorfodi a gofyn naill ai i chi neu'ch cynrychiolydd gael mynd i swyddfeydd yr awdurdod gorfodi i edrych ar y cofnod o'r tramgwydd a hynny'n rhad ac am ddim, neu i'r awdurdod roi delweddau o'r tramgwydd i chi yn rhad ac am ddim.

Sut i dalu

Cewch ddefnyddio unrhyw un o'r dulliau a ganlyn i dalu:

| |
|--|
| 1. DRWY'R POST (i'r cyfeiriad a ganlyn) |
| |

| |
|--|
| 2. DROS Y FFÔN (ar y rhif(au) a ganlyn) |
| |

| |
|--|
| 3. YN BERSONOL (yn y swyddfeydd a ganlyn) |
| |

| |
|--|
| 4. AR LEIN (drwy'r cyfeiriad gwefan a ganlyn) |
| |

Os ydych yn talu drwy'r post, rhwch y manylion isod ar y ddalen dalu, torrwech y ddalen honno oddi wrth weddill y ddogfen a'i rhoi ynghlwm â'ch taliad a'u hanfon i'r cyfeiriad uchod" (Blwch 1, "DRWY'R POST").

DALEN DALU (Defnyddiwch lythrennau breision i roi'r manylion)

Enw: Mr/Mrs/Miss/Y Dr.....

Cyfeiriad:.....

.....

| | | | |
|-------------------------------|--|----------------------------|--|
| Cosb Lawn | | £ | |
| Cosb Lai | | £ | |
| Rhif yr Hysbysiad Tâl Cosb | | Rhif Cofrestru'r Cerbyd | |
| Dyddiad y tramgwydd | | Amser y tramgwydd | |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No.2) Regulations 2008 (S.I. 2008/1214 (W.122)) and the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008 (S.I. 2008/609).

These Regulations provide for the civil enforcement of road traffic contraventions in Wales in accordance with Part 6 of the Traffic Management Act 2004. Part 6 of the 2004 Act and statutory instruments made thereunder supersede the provisions of Part II of and Schedule 3 to the Road Traffic Act 1991. These Regulations should be read in conjunction with the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359) and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (S.I. 2013/361 (W.43)).

Regulation 3 makes provision for the service of a penalty charge notice by post. Regulation 4 enables a penalty charge to be imposed for specified types of road traffic contravention. A penalty charge is payable by the owner of the vehicle concerned (regulation 5(2)), except in the circumstances specified in regulation 5(3) (vehicle hired from a vehicle hiring firm under a vehicle hiring agreement). In accordance with regulation 6, a penalty charge is not to be imposed except on the basis of a record produced by an “approved device” (see section 92(1) of the Traffic Management Act 2004 and the Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (S.I. 2013/360 (W.42)) or information given by a civil enforcement officer as to conduct observed by that officer. Regulation 7 provides that a penalty charge is not to be payable for a road traffic contravention where the contravention is the subject of criminal proceedings or a fixed penalty notice has been given under the Road Traffic Offenders Act 1988, but, if a penalty charge is in fact paid in either of those circumstances, it must be refunded by the enforcement authority.

Regulation 8 defines a penalty charge notice and introduces the Schedules which make detailed provision as to the form and content of such notices. Regulation 9 enables a civil enforcement officer, where that officer has reason to believe that a penalty charge is payable for a stationary vehicle in a civil enforcement area, to fix a penalty charge notice to the vehicle or hand one to the person appearing to him to be in charge of it. Regulation 10 makes provision for the service of a penalty charge notice by post, on the basis of the evidence of an approved device or where a civil enforcement officer has been prevented by some person from serving one in accordance with regulation 9, or had begun to prepare a penalty charge notice in accordance with regulation 9, but the vehicle was driven away before it had been served, and for time limits applicable to notices served by post. Regulation 11 makes it an offence to interfere with a penalty charge notice served by its being fixed to a vehicle, except by or under the authority of the owner or person in charge of the vehicle or the enforcement authority.

Provision is made by Part 3 for the immobilisation of vehicles for parking contraventions. Regulation 12 defines when an immobilisation device may be fixed to a vehicle, requires a notice to be fixed to the vehicle at the time of immobilisation and creates the offences of interfering with the notice or the immobilisation device. Regulation 13 specifies exceptions to the general power to immobilise and regulation 14 specifies the pre-requisites for the release of a vehicle from an immobilisation device.

Part 4 provides for the appointment of adjudicators by enforcement authorities and for the functions of those authorities relating to adjudicators to be discharged through joint committees. Regulation 15 requires the Welsh enforcement authorities to act through one or more joint committees and also provides for arrangements under the 1991 Act to be continued as between Welsh and (where required) English enforcement authorities until superseded. Enforcement authorities are required by regulation 16 to appoint a sufficient number of adjudicators and provision is made for parking adjudicators holding office under the 1991 Act immediately before the coming into force of these Regulations to continue in office. Regulation 17 deals with the expenses of the relevant authorities, providing for the Welsh enforcement authorities to refer

decisions concerning the apportionment of expenses to an independent arbitrator and gives the Welsh Ministers power to give directions to the joint committee to refer such matters for arbitration.

Part 5 is concerned with the enforcement of penalty charges. Regulations 18 and 19 provide for the service of a notice to owner by an enforcement authority in respect of an unpaid penalty charge and specify the contents of a notice to owner and the time limit for service. Provision is made by regulations 20, 21 and 22 for the service of charge certificates in respect of unpaid penalty charges (where a notice to owner or penalty charge notice under regulation 10 has been served and the avenues of appeal have not been pursued or have been pursued unsuccessfully), for charge certificates to be enforced through a county court and for county court orders to be set aside where the respondent serves a witness statement stating one of the matters mentioned in regulation 22(2).

In Part 6, regulation 23 applies section 55 of the Road Traffic Regulation Act 1984 (“the 1984 Act”), with modifications, to the income and expenditure of enforcement authorities from parking places under Part 6 of the Traffic Management Act 2004. Regulation 24 makes provision for separate accounts to be kept in respect of the income and expenditure from bus lane and moving traffic contraventions respectively. Regulation 25 provides that a surplus in an account kept under section 55 of the 1984 Act must be carried forward and regulation 26 specifies the purposes for which those funds, and any surplus resulting from bus lane and moving traffic contraventions, must be applied.

Part 7 deals with revocation of previous legislation and amendment to Schedule 7 to the Traffic Management Act 2004 to allow further traffic signs to be included for moving traffic contravention purposes.

A full Regulatory Impact Assessment and Explanatory Memorandum can be obtained from the Public Transport Division, Transport, Local Government and Communities, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

**EXPLANATORY MEMORANDUM TO THE CIVIL ENFORCEMENT OF
ROAD TRAFFIC CONTRAVENTIONS (GENERAL PROVISIONS) (WALES)
REGULATIONS 2013 (2013 No. 362)**

This Explanatory Memorandum has been prepared by the Local Government and Communities Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Ministers' Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government & Communities

26 February 2013

1. Description

1.1 These draft regulations form part of a package of statutory instruments which will enable local authorities in Wales to assume responsibility for enforcement of bus lane and some moving traffic offences. The package will enable enforcement to be carried out by civil enforcement officers acting on behalf of local authorities, in addition to police officers and traffic wardens.

1.2 These specific regulations which are made by both the Lord Chancellor and Welsh Ministers are subject to the negative procedure in both Parliament and the National Assembly for Wales. These regulations provide for the civil enforcement of road traffic contraventions in Wales and for the immobilisation of vehicles for parking contraventions, including details about the service of penalty charges. They also prescribe requirements in relation to use of income generated from penalty charge notices and deal with the appointment of adjudicators by enforcement authorities.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 There are three additional statutory instruments which complete the package of legislation on civil enforcement. These are listed below.

The Civil Enforcement of Road Traffic Contraventions

(Representations and Appeals) (Wales) Regulations 2013 (2013 No.

359) – These regulations have been made by the Lord Chancellor following a resolution of both Houses of Parliament. They set out procedures whereby persons upon whom civil penalties have been imposed for parking, bus lane or certain moving traffic contraventions in areas where civil enforcement applies, or whose vehicle has been immobilised on account of such contraventions, can make representations to the relevant enforcement authority against the imposition of the penalties in particular cases and can appeal to an independent adjudicator if their representations are rejected. The regulations set out the grounds for making representations and for appealing and the Schedule contains rules for the conduct of proceedings before adjudicators.

The Civil Enforcement of Road Traffic Contraventions

(Representations and Appeals) Removed Vehicles (Wales)

Regulations 2013 (2013 No. 361 (W.43)) – These regulations were laid before the Assembly subject to approval by resolution and have been made by Welsh Ministers. They deal with the appeal process where a vehicle owner does not agree that a vehicle should have been removed and/or disposed of by the local authority.

The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (2013 No. 360 (W.42)) – This Order has been made by Welsh Ministers and is subject to the negative procedure in the Assembly. The Order deals with the technical specifications for devices used by local authorities to capture road traffic contraventions (e.g. camera enforcement).

3. Legislative Background

3.1 Part 6 of the Traffic Management Act 2004 provides power to the “appropriate national authority” to make regulations for the civil enforcement by local authorities of parking and waiting restrictions, bus lanes and some moving traffic offences. In Wales the appropriate national authority is the Welsh Ministers.

3.2 Under the Traffic Management Act the decision to increase the range of offences for which civil enforcement may be used in Wales is for Welsh Ministers.

3.3 The Act also confers powers on the Lord Chancellor to make regulations dealing with the notification and enforcement of penalty charges, representations to the enforcement authority, appeals to an adjudicator by those on whom penalties are imposed and the appointment of adjudicators. Section 89 of the Act 2004 provides the Lord Chancellor with express powers to make different provisions for Wales.

4 Purpose and intended effect of the legislation

4.1 The package of legislation on civil enforcement has been introduced because the Welsh Government has decided to widen the scope of powers available to local authorities in Wales to enforce road traffic contraventions that would otherwise fall to the police.

4.2 The Welsh Government has assessed that the heavy workload of the police in Wales limits their ability to prioritise enforcement of bus lane and other moving traffic offences. Its view is that a practical alternative is to use its powers to provide Welsh local authorities with the necessary powers to tackle these contraventions. The police retain the ability to issue fixed penalty notices in relation to bus lane and moving traffic offences and the offence of stopping of vehicles on or near pedestrian crossings, though the regulations prohibit a motorist being penalised twice (civilly and criminally) for the same offence. The police retain powers to tackle other motoring offences.

4.3 The Welsh Government is concerned that the extent of indiscriminate parking can seriously reduce the capacity of the road network. It has assessed that effective control of on-street parking and loading and unloading is essential to keep buses moving. In addition, its view is that additional traffic management measures, for example, permitting buses to use lanes or make

movements which are denied to other traffic, will assist the movement of buses.

4.4 Overall the Welsh Government's assessment is that in combination, these measures can improve the image and public perception of local bus services in a way that encourages higher patronage and a move away from single occupancy car journeys. The Welsh Government's view is that bus passengers – and, to some extent, other motorists - will benefit from the better enforcement of traffic contraventions. The Welsh Ministers also conclude that indirectly, Welsh local authorities will benefit because they have assessed that bus companies' costs will be lower than otherwise, leading to less demand for subsidy. It has also been concluded that bus passengers will benefit because of less expected upward pressure on fares as a result, and because of expected faster, more reliable and more punctual journeys.

4.5 The intention, through the package of regulations, is to allow Welsh local authorities to put in place effective traffic management and enforcement measures. This, they believe, will help to help tackle congestion and provide priority through traffic for local bus services in Wales making them more attractive to passengers.

4.6 In the interests of simplifying this area the opportunity has been taken to consolidate the law. Provisions relating to civil enforcement of parking, bus lanes, and moving traffic offences have been consolidated throughout the package of statutory instruments.

5. Consultation

5.1 A public consultation was carried out on the proposals for civil enforcement between 26 November 2009 and 5 February 2010. The organisations consulted were each of the 22 local authorities in Wales, the four police constabularies, the Traffic Penalty Tribunal, bodies representing taxi and private hire operators, and other stakeholders. Ten responses were received, most of those from local authorities.

5.2 A summary of the comments received and the Welsh Government's response was published on the website in April 2010:

<http://wales.gov.uk/consultations/transport/civilenforcement/?lang=en&status=closed>

5.3 The Welsh Government concluded that there is a broad and strong consensus in favour of the proposals and that no material changes were required to the proposals as a result of the consultation exercise.

5.4 In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 the Administrative Justice and Tribunals Council has also been consulted on these specific regulations.

6. Guidance

6.1 Section 87 of the Traffic Management Act 2004 allows Welsh Ministers to publish statutory guidance to local authorities on the exercise of their civil enforcement powers. The Welsh Government intends to work closely with local authorities to prepare statutory and operational guidance in due course.

7. Regulatory Impact Assessment

7.1 No separate regulatory impact assessment has been prepared in relation to these specific regulations as no impact on business, charities or voluntary bodies is anticipated.

7.2 Civil enforcement is intended to be self financing. Enforcement authorities will have responsibility for funding any additional appeals dealt with by the Traffic Penalty Tribunal resulting from greater enforcement of traffic contraventions. They will also be responsible for providing accommodation and administrative support for adjudicators, and setting their terms of work and for their remuneration.

7.3 The Welsh Government has produced a regulatory impact assessment on its overall policy on civil enforcement in Wales. This meets the Welsh Government's requirement for impact assessments in Wales. It is attached for information at **Annex A**.

7.4 An impact Assessment was also previously prepared for the Traffic Management Bill as a whole. For information this is available at the link.

<http://webarchive.nationalarchives.gov.uk/20070305174115/http://www.dft.gov.uk/consultations/aboutria/ria/thetrafficmanagementbillregu5592?version=1>

8. Monitoring & review

8.1 Each Welsh local authority that has adopted civil enforcement powers or will adopt such powers in the future is required to send copies of their income and expenditure accounts relating to civil enforcement to Welsh Ministers.

8.2 Statutory guidance, published by the Welsh Government in April 2008, states that enforcement authorities should produce and publish an annual report about their enforcement activities within six months of the end of each financial year. The reports aim to detail the effectiveness of civil enforcement in terms of traffic journey times on key routes targeted by the authority for improvement, as well as identifying the income and expenditure resulting from the scheme. Details of expenditure must identify the transport schemes on which any surplus income has been spent. Finally, such reports must be made available to members of the public.

8.3 Enforcement authorities in Wales should also monitor their enforcement policies and the associated regulatory framework (including penalty charge levels). They should appraise them when reviewing the Regional Transport Plans and make recommendations for improvements.

8.4 Appraisals should take account of any relevant information that has been collected as part of the civil enforcement process, in particular about the practical effectiveness of the scheme. The Welsh Government intends that enforcement authorities will benefit from interviews with Civil Enforcement Officers, who it is assessed are in a unique position to identify changes to parking patterns, as well benefitting from interviews with office staff, who see challenges and representations and the reasons for them.

ANNEX A

REGULATORY IMPACT ASSESSMENT

Options

1. Do Nothing

All four police forces in Wales were consulted on the proposals for the civil enforcement of bus lane and moving traffic contraventions. The evidence from the consultation exercise, suggested that the police would not be able to make the enforcement of bus lane and moving traffic contraventions a priority for action at all times.

This would mean that it would not be possible to effectively enforce the traffic management measures that have been put in place by local authorities to give buses priority through traffic congestion. Doing nothing would maintain the current situation whereby resources are not prioritised to deal with these types of contraventions.

In the absence of effective enforcement, local authorities would not be able to realise the benefits that would be gained through traffic management measures to improve the punctuality and reliability of local bus services.

2. Make the Regulations

In the absence of action by the police, the only practical alternative is to give local authorities the necessary powers to tackle bus lane and certain moving traffic contraventions. The police retain the ability to issue fixed penalty notices in relation to bus lane and moving traffic offences and the offence of stopping of vehicles on or near pedestrian crossings, though the regulations prohibit a motorist being penalised twice (civilly and criminally) for the same offence. The police retain powers to tackle other motoring offences.

Local authorities are keen to consolidate and strengthen the basket of measures that are available to them under the 2004 Act to meet their traffic management duties and to put in place the measures that are needed to make bus services more attractive.

Under Part 6 of the 2004 Act, Welsh Ministers have powers to make regulations that govern the way bus lane and certain moving traffic contraventions are to be enforced by local authorities. All of the responses to the public consultation exercise welcomed the introduction of these regulations that would form part of a broader approach for improving bus services in Wales.

Costs and benefits

Part 6 of the 2004 Act requires local authorities to apply to the Welsh Ministers for consent to adopt the civil enforcement powers to tackle bus lane and certain moving traffic contraventions. The enforcement of bus lane and moving traffic contraventions must be done on the basis of a record produced by an approved device. The approved device must include a camera and a recording system that meets the requirements set out in the nationally agreed technical standards. Such devices may currently be used to enforce parking contraventions.

The costs of putting in place the approved devices and any back office systems must be met by the income generated from Penalty Charge Notices issued by the enforcing local authority and the local authorities own resources. To prevent a situation arising where the issue of Penalty Charge Notices could be used to raise money, any surplus remaining after meeting the costs of administration must be used only to support transport measures specified in the Regulations.

As part of their submissions to the Welsh Ministers to be granted civil enforcement powers, local authorities are required to explain how all associated costs will be met on the introduction of civil enforcement powers. The Regulations allow local authorities to work together in partnership, in order to reduce costs and maximise efficiency and effectiveness.

Ultimately, bus passengers – and, to some extent, other motorists - will benefit from the better enforcement of traffic contraventions. Indirectly, local authorities will benefit because bus companies' costs will be lower, leading to less demand for subsidy. Bus passengers will benefit because there will be less upward pressure on fares as a result, because of faster, more reliable and more punctual journeys.

Improved and more attractive bus services will help to attract motorists out of their cars, leading to less direct congestion and improved air quality. This outcome should also assist in the improvement of bus patronage and, as a consequence, safeguard services for those members of the community without access to an alternative. Any increased patronage of local buses will generate additional income for bus companies, safeguarding jobs and allowing them to invest in improved services.

Empowering local authorities to tackle traffic congestion is pivotal to achieving the Welsh Government's economic, social and environmental objectives, and is consistent with the Welsh Government's prioritised National Transport Plan, published in December 2011.

Consultation

A consultation on these proposals was undertaken between 26 November 2009 and 5 February 2010. The organisations consulted were each of the 22 local authorities in Wales, the four police constabularies, the Traffic Penalty

Tribunal, bodies representing taxi and private hire operators, and other stakeholders.

A summary of the responses to the consultation and the Welsh Government's responses to those has been published, and is provided as an annex. There was a broad and strong consensus in favour of the proposals.

Competition Assessment

Nothing in these proposals or the regulations will impact adversely on business, charities or the third sector.

Post implementation review

Each local authority that has adopted civil enforcement powers (i.e. for parking) or will adopt such powers (i.e. for bus lane or moving traffic contraventions) in the future is required to publish an annual report. The reports will detail the effectiveness of civil enforcement in terms of traffic journey times on key routes targeted by the authority for improvement, as well as identifying the income and expenditure resulting from the scheme. Details of expenditure must identify the transport schemes on which any surplus income has been spent. Such reports must also be made available to members of the public.

Annex

Analysis of responses to the consultation on the proposed civil enforcement of bus lane and moving traffic contraventions

Ten responses to the consultation document have been received and the main points raised are outlined below. Some respondents submitted a 'free standing' response and did not specifically answer the questions set out in the consultation document. In these circumstances every effort was made to link responses to specific questions where appropriate. Where this was not possible the essence of such responses was fully considered.

1. MOVING TRAFFIC CONTRAVENTIONS

Q1a Should the proposed Regulations provide for the civil enforcement of all the prohibitions and signs listed in the table at Regulation 9(4) of the Traffic Management Act 2004?

Nine responses (90%) agreed that the Regulations should continue to cover the prohibitions and signs listed in the table at Regulation 9(4) of Schedule 7 to the Traffic Management Act 2004. One expressed no opinion.

Response

The Welsh Assembly Government's Regulations will retain the existing provision that civil enforcement applies to all of the prohibitions and signs listed at regulation 9(4) of Schedule 7 to the Traffic Management Act 2004.

Q1b Are there other traffic prohibitions and signs that should be added to the list to provide for the ease of buses through traffic flows?

Five responses (50%) agreed that there is no need for further traffic prohibitions and signs to be added to the list. Two respondents (20%) thought that more should be included, specifically diagrams 958 (with-flow bus lane that pedal cycles and taxis may also use), 959 (with-flow bus lane that pedal cycles may also use) and 960 (contra-flow bus lane). These signs meet the criteria listed in paragraph 10(2) of Schedule 7. One other argued for the addition of signs to give buses right of way where two lanes merge to one.

Paragraph 10(1) of Schedule 7 to the TMA 2004 allows Welsh Ministers to make Regulations adding additional signs to the list in paragraph 9(4). For a traffic sign to be added to the list, in accordance with paragraph 10(2) of Schedule 7, it must:

- Regulate the movement of vehicles, not stationary vehicles;
- Be a sign to which section 36 of the Road Traffic Act 2988 applies; and

- Be a sign to which a failure to comply must not involve obligatory endorsement.

Response

Subject to the required consultation with appropriate Chiefs of Police and local authorities, the Welsh Assembly Government's Regulations will ensure that diagrams 958, 959 and 960 will be added to the list of traffic prohibitions and signs to ease the flow of buses. Local authorities may continue to apply to the Welsh Assembly Government for priority to be given to buses at specific locations (e.g. at traffic lights where two lanes merge into one).

2. SETTING CHARGES

Q2 Should the charge level applicable to bus lane and moving traffic contraventions be set at the higher penalty charge level in each band?

Nine respondents (90%) agreed that the charge level applicable to bus lane and moving traffic contraventions should be set at the higher penalty charge level.

Paragraph 8 of Schedule 9 to the TMA 2004 allows Welsh Ministers to set guidelines for the level of charges, and allows different guidelines to be given for different classes of contravention. The Order itself provides an annex containing a list of higher level contraventions, and that will need to be amended to include all the bus lane and moving traffic contraventions.

Response

The Welsh Assembly Government's Regulations will set the charge level applicable to bus lane and moving traffic contraventions at the higher penalty charge level in each band.

Q3 Should the charge level applicable to bus lane and moving traffic contraventions be the same as that for CPE contraventions?

Eight respondents (80%) agreed that the charge level applicable to bus lane and moving traffic contraventions should be the same as that for civil parking enforcement contraventions, thereby providing clarity and consistency.

Paragraph 8 of Schedule 9 to the TMA 2004 allows Welsh Ministers to set guidelines for the level of charges, and allows different guidelines to be given for different classes of contravention. The Order itself provides an annex containing a list of higher level contraventions, and that will need to be amended to include all the bus lane and moving traffic contraventions.

Response

The Welsh Assembly Government's Regulations will require that the charge level applicable to bus lane and moving traffic contraventions will be the same as that for Civil parking Enforcement contraventions.

3. ENFORCEMENT ACTIVITIES

Q4 Do you agree that Penalty Charge Notices for bus lane and moving traffic contraventions should only be issued on the basis of evidence from a camera and associated recording equipment?

Eight respondents (80%) agreed that Penalty Charge Notices for bus lane and moving traffic contraventions should only be issued on the basis of evidence from a camera and associated recording equipment. This would ensure that motorists are presented with clear evidence and help minimise unfounded challenges and appeals. One respondent (10%) argued that action against alleged contraventions should also be permitted on the basis of witness statements.

Response

In accordance with section 72(4)(a) of the TMA 2004, the Welsh Assembly Government's regulations will stipulate that PCNs for bus lane and moving traffic contraventions can only be issued on the basis of evidence from a camera and associated recording equipment.

Q5 Provided that cameras on board buses meet the requirements of Welsh Ministers, and are "approved devices", should they be used to obtain evidence of bus lane contraventions and support the issue of PCNs?

Eight respondents (80%) agreed that cameras on board buses that meet the requirements of Welsh Ministers and are "approved devices" should be used to obtain evidence of contraventions.

Response

The Approved Devices Order contains technical specifications for approved devices. This includes cameras that are not mounted in one place but are fixed to vehicles. Where the device does not occupy a fixed location, it must record the location from which it is being operated.

The Welsh Assembly Government's Regulations will stipulate that cameras on board buses that are "approved devices" may be used to obtain evidence of bus lane contraventions in support of the issue of PCNs.

Q6 Do you agree that where a bus lane and moving traffic contravention happen at the same time, they should be treated

separately and two PCNs issued? If not, which do you believe should take precedence?

Five respondents (50%) agreed that where a bus lane and moving traffic contravention happen at the same time, they should be treated separately and two Penalty Charge Notices issued. Four (40%) did not agree.

Response

There is nothing in the TMA 2004 that prevents the issuing of two separate PCNs where two contraventions have been committed, even if during the same incident. The Welsh Assembly Government's Regulations will therefore recommend that, where bus lane and moving traffic contraventions happen at the same time, they are treated separately and two PCNs are issued.

4. COLLECTING PENALTY CHARGES

Q7 Where vehicle owners persistently fail to pay PCNs for bus lane or moving traffic conventions, what action by local authorities do you think would be most effective to deter evasion?

Respondents suggested variously that vehicles should be seized (to prevent a recurrence of the contravention until the payment has been made); that drivers should have penalty points put on their licences; or that certificated bailiffs should be employed.

Response

There are already mechanisms in place within the existing Enforcement and Adjudication Regulations that allow the enforcement of unpaid PCNs under a county court order. The Lord Chancellor also has power to create criminal offences where PCNs are not paid. Section 19 of the TMA 2004 also provides Welsh Ministers with power to immobilise vehicles where there are outstanding unpaid charges. In addition, the Welsh Assembly Government's Regulations will encourage local authorities to consider a wide range of mechanisms to deter motorists from evading paying PCN penalties.

5. ISSUING THE PENALTY CHARGE NOTICE

Q8 Do you agree that all Penalty Charge Notices must be served by first class post within 14 days of the contravention?

Six respondents (60%) agreed that Penalty Charge Notices should be served by first class post within 14 days of the contravention to ensure that any necessary action is prompt. This may be especially important if the PCN is sent to a hiring or leasing company that must then contact the driver. One respondent argued that the Penalty Charge Notice should be served by first class post within 21 days of the contravention to accommodate absences such as holiday periods.

Response

The existing Enforcement and Adjudication Regulations already specify a period of 28 days for the issue of a PCN. The Welsh Assembly Government's Regulations will stipulate that in future all PCNs must be served by first class post within 14 days of a contravention.

6. CHARGE CERTIFICATE

Q9 Should the date that the Penalty Charge Notice was "served" be the date on which it was issued or the date on which it was received by the motorist deemed to have committed the contravention?

Seven respondents (70%) argued that the date that a Penalty Charge is served should be the date on which it was issued. Two respondents (20%) suggested that the date should be two days after it was sent by first class post, to allow for it to be delivered.

Response

The existing Enforcement and Adjudication Regulations already specify that service of a notice or charge certificate contained in a letter sent by first class post which has been properly addressed, pre-paid and posted will be taken to have been effected on the second day after the day of posting. The Welsh Assembly Government's Regulations will retain this criterion.

7. REPRESENTATIONS

Q10 Should local authorities retain responsibility for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention, or would it be acceptable for such responsibility to be contracted-out?

Three respondents (30%) agreed that local authorities should retain responsibility for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention. Apart from consistency, it was made clear that handling representations is a quasi-judicial function. Also, an authority is able to undertake the handling of representations on behalf of other authorities, thereby offering efficiencies of scale. Five respondents (50%) thought that this should be a matter for individual local authorities to determine.

Response

The Welsh Assembly Government's Regulations will stipulate that local authorities must be responsible for handling representations from motorists who are deemed to have committed a bus lane or moving

traffic contravention, and not contracted-out. This will ensure the retention of a direct, transparent link between enforcement and handling of representations.

Q11 Should all decision notices following consideration of representations be issued within 21 days of receipt of the contraventions?

Six respondents (60%) agreed that all decision notices following the consideration of representations should be issued within 21 days of receipt of the contravention. One respondent argued that while 21 days should be the target, a period of 56 days should be permitted.

Response

The existing Representations and Appeals Regulations stipulate a period of 56 days beginning with the date on which representations were served on the local authority, for it to serve notice of its decision. The Welsh Assembly Government's new Regulations will nevertheless stipulate that all future decision notices must be issued within 21 days of receipt of a representation.

Respondents to the consultation:

South East Wales Transport Alliance (SEWTA)
Association of Transport Co-ordinating Officers
City and County of Cardiff Council
Bridgend County Borough Council
Neath Port Talbot County Borough Council
The Traffic Penalty Tribunal Adjudicators
Confederation of Passenger Transport
Flintshire County Council
Carmarthenshire County Council
One Voice Wales

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-08-13

CLA239 – The Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013

Procedure: Negative

The Council Tax (Administration and Enforcement) Regulations 1992 (“the 1992 Regulations”) make provision about the billing, collection and enforcement of council tax. These Regulations amend the 1992 Regulations in relation to Wales to make provision about the circumstances in which a Revenue and Customs official may supply information to qualifying persons, and for what purposes. These Regulations also extend the application of the provisions within the 1992 Regulations relating to the collection of penalties, and amend the 1992 Regulations to account for the introduction of universal credit by the Welfare Reform Act 2012.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. There is an incorrect cross-reference in regulation 1(1). Reference is made to paragraph (3), but it is obvious that the reference should be to paragraph (2). This is an appropriate error for correction on publication of the Regulations.
{Standing Order 21.2(vi) – defective drafting.]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument .

Legal Advisers
Constitutional and Legislative Affairs Committee

March 2013

2013 No. 570 (W.66)

COUNCIL TAX, WALES

**The Council Tax (Administration
and Enforcement) (Amendment No.
2) (Wales) Regulations 2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Council Tax (Administration and Enforcement) Regulations 1992 (“the 1992 Regulations”) make provision about the billing, collection and enforcement of council tax. These Regulations amend the 1992 Regulations in relation to Wales to make provision about the circumstances in which a Revenue and Customs official may supply information to qualifying persons, and for what purposes. These Regulations also extend the application of the provisions within the 1992 Regulations relating to the collection of penalties, and amend the 1992 Regulations to account for the introduction of universal credit by the Welfare Reform Act 2012.

Regulation 3 amends the 1992 Regulations to insert definitions for “council tax offences”, “detection of fraud regulations” and “universal credit”.

Regulation 4 sets out the purposes for which a Revenue and Customs official may supply information relating to council tax to a qualifying person; other purposes this information may be used for; and the purposes for which this information can be supplied to another qualifying person.

Regulations 5 and 6 amend regulations 27 and 29 of the 1992 Regulations, which deal with the collection of penalties, to provide for the collection of penalties imposed in accordance with regulations 13, 14, 16 and 17 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 (“the detection of fraud Regulations”).

Regulations 7 to 9 and 11 make consequential amendments to account for the introduction of universal credit.

Regulation 10 amends regulation 58 of the 1992 Regulations to permit the collection of penalties imposed in accordance with regulations 13, 14, 16 and 17 of the detection of fraud Regulations as outstanding liabilities on death.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at Local Government Finance and Public Service Performance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

2013 No. 570 (W.66)

COUNCIL TAX, WALES

**The Council Tax (Administration
and Enforcement) (Amendment No.
2) (Wales) Regulations 2013**

Made 12 March 2013

Laid before the National Assembly for Wales
12 March 2013

*Coming into force in accordance with
regulation 1*

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 113(2) of, and paragraph 15B of Schedule 2 to the Local Government Finance Act 1992⁽¹⁾, and conferred upon the Secretary of State by section 113(2) of, paragraph 6 of Schedule 3 to, and paragraphs 1 and 12 of Schedule 4 to that Act⁽²⁾ and now vested in them⁽³⁾.

In accordance with paragraph 15B(6) of Schedule 2 to that Act the Commissioners for Her Majesty's Revenue

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- (1) 1992 c.14. Section 113(2) was amended by section 80 of the Localism Act 2011 and paragraph 15B of Schedule 2 to the Local Government Finance Act 1992 was inserted by section 17(1) and (2) of the Local Government Finance Act 2012 (c.17).
- (2) Paragraph 6 of Schedule 3 to the Local Government Finance Act 1992 (c.14) was amended by section 14 of the Local Government Finance Act 2012 (c.17). Paragraph 12 of Schedule 4 to the Local Government Finance Act 1992 was amended by section 14 of and Schedule 2 to, the State Pension Credit Act 2002 (c.16), section 28 of and Schedule 3 to, the Welfare Reform Act 2007 (c.5) and sections 9 and 61 of, and Schedule 2 to, the Welfare Reform Act 2009 (c.24). Paragraph 12 is further amended by sections 31 and 37 of, and Schedules 2 and 14 to, the Welfare Reform Act 2012 (c.24), but at the time of making these Regulations the amendments are not yet in force.
- (3) Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

and Customs have consented to the making of these Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013. Subject to paragraph (3), these Regulations come into force on 1 April 2013.

(2) Regulations 3(c) to (e), 7 to 9 and 11 come into force on 29 April 2013.

(3) These Regulations apply in relation to Wales.

Amendment of the Council Tax (Administration and Enforcement) Regulations 1992

2. The Council Tax (Administration and Enforcement) Regulations 1992(1) are amended in accordance with regulations 3 to 11.

3. In regulation 1 (citation, commencement and interpretation)—

(a) after the definition of “business day” insert—

““council tax offence” has the same meaning as in the detection of fraud regulations;”;

(b) after the definition of “demand notice regulations” insert—

““detection of fraud regulations” means the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013(2);”;

(c) at the end of the definition of “exempt dwelling” omit “and”;

(d) at the end of the definition of “managing agent” omit “.” and insert “; and”;

(e) after the definition of “managing agent” insert—

““universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012(3).”

4. After regulation 5 (information as to deaths) insert—

(1) S.I. 1992/613. Relevant amendments were made by S.I. 1992/3008, S.I. 1995/22, S.I. 2004/785, S.I. 2009/2709 and S.I. 2013/62 (W.13).
(2) S.I. 2013/***(W.***)
(3) 2012 (c.5).

“Purposes for which a Revenue and Customs official may supply information

5A. The purposes prescribed under paragraph 15B(1) of Schedule 2 to the Act are—

- (a) making a council tax reduction scheme;
- (b) determining a person’s entitlement or continued entitlement to a reduction under a council tax reduction scheme;
- (c) preventing, detecting, securing evidence of or prosecuting the commission of a council tax offence.

Purposes for which information supplied under paragraph 15B may be used

5B. The purposes prescribed under paragraph 15B(3) of Schedule 2 to the Act are any purposes connected with—

- (a) making a council tax reduction scheme;
- (b) determining a person’s entitlement or continued entitlement to a reduction under a council tax reduction scheme;
- (c) preventing, detecting, securing evidence of or prosecuting the commission of a council tax offence;
- (d) any proceedings before the Valuation Tribunal for Wales⁽¹⁾ in connection with a reduction under a council tax reduction scheme.

Purposes for which information supplied under paragraph 15B may be supplied

5C. The purposes prescribed under paragraph 15B(4) of Schedule 2 to the Act are—

- (a) making a council tax reduction scheme;
- (b) determining a person’s entitlement or continued entitlement to a reduction under a council tax reduction scheme;
- (c) preventing, detecting, securing evidence of or prosecuting the commission of a council tax offence.”

5. In paragraph (2)(e)(i) of regulation 27 (joint taxpayers) after “Schedule 3 to the Act” insert “or any of regulations 13, 14, 16 or 17 of the detection of fraud regulations”.

6. In regulation 29 (collection of penalties)—

(1) The Valuation Tribunal for Wales was established by the Valuation Tribunal for Wales Regulations 2010 (S.I. 2010/713 (W.69)). Relevant amendments were made by S.I. 2013/547 (W.59).

- (a) in paragraph (1), after “Schedule 3 to the Act” insert “or any of regulations 13, 14, 16 or 17 of the detection of fraud regulations,”;
- (b) in paragraph (5), after “Schedule 3 to the Act” insert “, regulations 16(4) or 17(6) of the detection of fraud regulations”.

7. In regulation 32 (interpretation and application of Part VI), in sub-paragraph (iii) of the definition of “earnings” in paragraph (1), after “Social Security Acts” insert “or universal credit”.

8. In paragraph (2)(b) of regulation 52 (relationship between remedies), after “income support” insert “, universal credit”.

9. In regulation 54 (joint and several liability: enforcement)—

- (a) in paragraph (5)(d), after “income support” insert “or universal credit”;
- (b) in paragraph (6A), after “income support” insert “or universal credit”.

10. In paragraph (1)(c) of regulation 58 (outstanding liabilities on death) after “Schedule 3 to the Act” insert “or any of regulations 13, 14, 16 or 17 of the detection of fraud regulations”.

11. In the form specified in Schedule 3 (form of attachments of earnings order) in sub-paragraph (iii) of the definition of “earnings” in paragraph (1), after “Social Security Acts” insert “or universal credit”.

Carl Sargeant

Minister for Local Government and Communities, one of the Welsh Ministers

12 March 2013

Explanatory Memorandum to the Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013.

This Explanatory Memorandum has been prepared by the Local Government Finance & Performance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government & Communities

12 March 2013

Description

1. This statutory instrument introduces data-sharing provisions to the Council Tax (Administration and Enforcement) Regulations 1992 (“the 1992 Regulations”) to ensure local authorities are able to access HMRC data for their council tax reduction schemes.
2. The statutory instrument also amends existing provisions within the 1992 Regulations about the billing, collection and enforcement of council tax to make provision for the collection of penalties which may be imposed under regulations 13, 14, 16 and 17 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013.
3. Minor amendments are also made to reflect the introduction of Universal Credit.

Matters of special interest to the Constitutional and Legislative Affairs Committee

4. Regulations relating to powers for HMRC to supply information for purposes relating to council tax cannot be made by Welsh Ministers except with the consent of the Commissioners for Her Majesty’s Revenue and Customs.
5. This instrument also cross refers to the provisions of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 (The Detection of Fraud Regulations) and cannot therefore be made before these Regulations are in force.
6. A plenary debate is being held on the Detection of Fraud Regulations on 12 March and therefore the earliest the Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013 can be laid is the 12 March.
7. However in order for this instrument to come into force by 1 April in compliance with the 21 day rule, the latest it could be laid is 11 March. The Presiding Officer’s consent to breach the 21 day rule has therefore been sought.

Legislative background

8. This statutory instrument makes amendments to the 1992 Regulations which make provision for the administration and enforcement of council tax including giving and obtaining information relevant to council tax.
9. The Local Government Finance Act 2012 inserted new paragraphs 15A, 15B, 15C and 15D into Schedule 2 to the Local Government Finance Act 1992 (“the 1992 Act”). Paragraph 15B provides Welsh Ministers with executive powers to make provision via regulations about the circumstances in which Revenue and Customs officials may supply information to qualifying persons, and for what purposes.

10. The Local Government Finance Act 2012 also inserted new sections 14A, 14B and 14C into the 1992 Act. These sections provide Welsh Ministers with executive powers to make provision via regulations for powers to require information, for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes in Wales.
11. The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26th June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.
12. Paragraph 6 of Schedule 3 to the 1992 Act provides for regulations to be made for the collection of penalties, including penalties imposed via regulations made in accordance with section 14C of the 1992 Act.
13. The Welfare Reform Act 2012 makes provisions for the introduction of Universal Credit. The amendments made to the 1992 Regulations to account for the introduction of Universal Credit relate to provisions about the relationship between remedies available to a billing authority for the collection and enforcement of council tax. Paragraphs 1 and 12 of Schedule 4 to the 1992 Act provide power to make regulations about the relationship between remedies.
14. The Regulations follow the negative resolution procedure.

Purpose and intended effect of the legislation

15. The main purpose of this statutory instrument is to amend the 1992 regulations to make provisions for the sharing of HMRC data for purposes related to council tax.
16. These regulations provide the following:
 - The purposes for which a Revenue and Customs official may supply information relating to council tax to a qualifying person;
 - The purposes for which this information can be used, namely any purpose connected with:
 - Making a council tax reduction scheme;
 - Determining a person's entitlement or continued entitlement to a reduction under a council tax reduction scheme;
 - Preventing, detecting, securing evidence of or prosecuting the commission of a council tax offence; and
 - Any proceedings before the Valuation Tribunal for Wales in connection with a reduction under a council tax reduction scheme.
 - The purposes for which this information can be supplied to another qualifying person;

- Provisions to allow for the collection of penalties imposed in accordance with regulations 13,14, 16 and 17 of the Council Tax Reduction Schemes (Detection of fraud and Enforcement) (Wales) Regulations 2013; and
- Consequential amendments to account for the introduction of Universal Credit.

Consultation

17.No consultation has been undertaken in respect of this statutory instrument

Regulatory Impact Assessment (RIA)

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do nothing

The Social Security (Information sharing in relation to welfare services etc) (Amendment) Regulations 2013 allow for the sharing of relevant information for prescribed purposes relating to council tax. However these regulations only provide a legal gateway for social security data held by DWP it does not extend to the data provided by HMRC. Without the ability to access HMRC data for council tax purposes local authorities would have to collect information from claimants that they have already provided and they could also have to undertake a separate means testing calculation.

Option 2 - Draft regulations to provide for access to HMRC data for council tax reduction schemes

18.Drafting regulations to allow local authorities to access HMRC data for council tax purposes will ensure that local authorities can make use of data that has already been collected from claimants and that a separate means test will not be necessary.

Costs

Option 1 – Do nothing

19.If no action was taken to allow local authorities to access HMRC data for purposes relating to council tax then local authorities would have to request data from claimants that they have already provided to DWP. It is also likely that local authorities would have to undertake a separate means test to determine a claimant's eligibility for a reduction. Both of these processes would have significant resource implications for local authorities as well as being confusing and time-consuming for claimants.

20.As such this is not considered a viable option.

Option 2 - Draft regulations to provide for access to HMRC data for council tax reduction schemes

21. Local Authorities already have staff and IT systems in place that allow them to access and utilise HMRC data for council tax benefit purposes as such there is not expected to be any additional costs for local authorities as a result of this statutory instrument.

Benefits

22. By drafting regulations to allow local authorities to access HMRC data for purposes relating to council tax, local authorities will be able to utilise their existing staff and software to determine a person's entitlement to a reduction under a council tax reduction scheme. They will not have to recollect data that a claimant has already provided to DWP or to undertake a separate means test.

23. The provisions to allow for the collection of penalties imposed under the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 will allow local authorities to add penalties imposed in accordance with those Regulations to a claimant's council tax account and collect the penalty as part of council tax.

Sectors

24. Local Government and the Voluntary Sector have been consulted during the development of proposals to introduce council tax reduction schemes in Wales. This is detailed in the Consultation section.

25. There will be no impact on the Business Sector as a result of this statutory instrument.

Duties

26. In drafting these regulations consideration has been given to Welsh Minister's duty to promote equality and eliminate discrimination. A detailed Equality Impact Assessment was undertaken in relation to the introduction of council tax reduction schemes.

27. The council tax reduction schemes will be implemented and operated by local authorities who are under general duties to comply with Welsh Language and Sustainable Development duties.

Consultation

28. A consultation on the policy and delivery options for the development of a new scheme to provide council tax support, which included questions in relation to data requirements, was sent to:

- Chief Executives, Leaders and Finance Directors of County and County Borough Councils in Wales
- Welsh Local Government Association
- Welsh Police Forces

- Local Taxation Working Group Members
- Institute of Revenues, Rating and Valuation
- Society of Welsh Treasures
- Children's Commissioner
- Older Person's Commissioner
- End Child Poverty Network
- Citizen's Advice Bureau and other Advisory Services
- Community Housing Groups, Tenants Associations & Housing Providers
- Members of the Welsh Government's Welfare Reform Officials Group who circulated the consultation to stakeholders likely to have an interest in the consultation

29. The consultation was also published on the Welsh Government's website.

Competition Assessment

30. This has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Post implementation review

31. As a result of the impact of wider welfare reform changes and the current uncertainty around the level of funding that will be provided by the UK Government to operate council tax reductions schemes in Wales, this legislation will have to be reviewed in 2013-14 to consider any amendments required for 2014-15.

Jane Hutt AC / AM
Y Gweinidog dros Cyllid ac Arweinydd y Tŷ
Minister for Finance and Leader of the House



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref : SF/CS/0874/13

Rosemary Butler AM
Presiding Officer and Chair of
Business Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

4 March 2013

Dear Rosemary,

The Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013

I am writing to inform you that, for reasons beyond our control, in order to bring the Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013 into force in Wales by 1 April 2013, it will be necessary to breach the 21-day rule by one day.

These Regulations make provisions to ensure that local authorities continue to have access to information from HMRC for their council tax reduction schemes. They were previously referred to as the Council Tax Reduction Schemes (Information Sharing) (Wales) Regulations 2013 but these provisions have now been drafted via amendments to the Council Tax (Administration and Enforcement) Regulations 2013 ("the administration and enforcement regulations") rather than as a standalone set of regulations. The title of these amending regulations is the Council Tax (Administration and Enforcement) (Amendment No. 2) (Wales) Regulations 2013 ("the amending regulations"). While this decision not to proceed via standalone regulations has no legal effect, it is less complex operationally for local government practitioners as the existing administration and enforcement regulations already set out data-sharing provisions for other aspects of council tax.

The amending Regulations will also be utilised to broaden the penalty provisions within the administration and enforcement regulations to allow for the collection of penalties issued in accordance with the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (Wales) Regulations 2013 ("the detection of fraud regulations").

On 15 February, the Minister for Local Government and Communities wrote to leaders of the opposition parties informing them of potential issues that could impede the laying of these regulations. This included the requirement for consent to be formally provided by HMRC Commissioners before the regulations could be laid. Although formal consent has not yet been received it is on course to be secured by 11 March: this is the latest date on which the amending regulations could be laid and come into force by 1 April in compliance with the 21-day rule for the negative procedure.

However in drafting the amending regulations, an interdependency has been identified. One of the prescribed purposes for which HMRC information can be provided is the detection and prevention of council tax offences. Therefore it is necessary to include a reference to the detection of fraud regulations on the face of the amending regulations. In addition, in order to extend the existing provisions dealing with the collection of penalties to include penalties introduced by the detection of fraud regulations, further cross-references are necessary. As such the amending regulations cannot be laid until the detection of fraud regulations have been made on 12 March, following the plenary debate on them (subject to the approval of the Assembly).

As a result, in order to bring the amending regulations into effect by 1 April, it will be necessary to breach the 21-day rule by one day. Although 1 April is a public holiday, it is considered necessary to have the amending regulations in place on this day because council tax benefit and its related legislation will be abolished on 31 March. The existing legal gateway that allows local authorities to access HMRC data for social security benefit purposes will not allow local authorities to utilise this data for council tax related purposes including the determining of a person's entitlement to a reduction under a council tax reduction scheme.

These Regulations have been subject to a Regulatory Impact Assessment. An Explanatory Memorandum has also been prepared which includes the Regulatory Impact Assessment and will be laid, together with the Regulations, in Table Office.

A copy of this letter will be issued to David Melding, Chair of the Constitutional and Legislative Affairs Committee and to members of the Business Committee.

Yours sincerely,
Jane

Jane Hutt AC / AM

Y Gweinidog dros Cyllid ac Arweinydd y Tŷ
Minister for Finance and Leader of the House

By virtue of paragraph(s) vi of Standing Order 17.42

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THE CHURCH IN WALES
Briefing Note
National Assembly for Wales
Constitutional and Legislative Affairs Committee

Background

The Church in Wales came into being on 31 March 1920 with the separation of the then four Welsh dioceses from the Church of England. From that point the Church in Wales has been an independent province of the Anglican Communion. The four original dioceses were St Asaph, Bangor, St David's and Llandaff. Subsequently the dioceses of Swansea and Brecon and of Monmouth were created comprising parts of the dioceses of St David's and Llandaff respectively.

At the time of its creation the Church in Wales was disestablished and, to a substantial measure, disendowed. The Welsh Church Act 1914 and the Welsh Church (Temporalities) Act 1919 gave it freedom to govern its own affairs. No changes made to the Canon Law of England since disestablishment apply to it. The Church in Wales has its own Canon Law based on pre-disestablishment English Canon Law as subsequently amended in accordance with its own procedures.

The Church in Wales and Marriage

The 1919 Act mentioned above includes a provision that "Nothing in this Act or in the Welsh Church Act 1914 shall affect the law with respect to marriages in Wales or Monmouthshire." Consequently the law regarding marriage in the Church in Wales is virtually identical to that in the Church of England. The Church in Wales has the right to register marriages and parishioners and those who can demonstrate a qualifying connection have a legal right to be married in their parish church. Marriage is not a devolved matter and accordingly any change to the law in respect of it is a matter for Parliament.

The Marriage (Same Sex Couples) Bill

The Statement made in the House of Commons by the Minister for Women and Equalities on 11 December about Same Sex Marriage was a cause of concern for the Church in Wales because at the time there appeared to be a misunderstanding about the wishes of the Church in Wales and possibly also about the legal position regarding marriages in the Church in Wales. However, since the Statement, the Government has worked with the Church in Wales to understand and accommodate its position in the Bill.

The principal concerns of the Church in Wales were twofold. The first was that the Bill should provide protection for the Church and its clergy until such time as the Church might change its Canon Law to permit the marriage of same sex couples. Clause 1 of the Bill provides that the duty of Church in Wales ministers to marry will not be extended to same sex couples. Protections for individual clergy are provided in the Bill although there are different legal opinions about their effectiveness.

The second concern was that the Church in Wales should be enabled to make its own decision as to whether to conduct same sex marriages. Provision is made in clause 8 for such a procedure which would be initiated by a resolution of the Church's Governing Body (its Synod).

The Church in Wales welcomes these provisions in the Bill. The second provision is necessary because of the unique position in which the Church finds itself regarding the marriage law. As indicated above, the law as it applies within the Church in Wales is virtually identical to that which applies in the Church of England. However, while the Church of England has the power to make legislation initiated by its General Synod, the Church in Wales, as a disestablished Church, has no such power. When the Church of England Marriage Measure 2008 changed the law on "qualifying connections" for marriage the change only applied to the Church of England. To make a similar change, the Church in Wales had to rely on a Private Member's Bill introduced in the House of Lords which subsequently became the Marriage (Wales) Act 2010. The Church in Wales welcomes the procedure set out in clause 8 of the Bill because it is anxious to avoid finding itself again dependent on Parliament for primary legislation should it wish to conduct same sex marriages at some point in the future.

The Church in Wales and Burial Grounds

The disestablishment of the Church in 1920 created many challenges, in particular, how burial grounds should be treated. Some ancient churchyards were transferred to the Representative Body at disestablishment but a large number were not. Within the Welsh Church Act 1914 there was provision, at the time of disestablishment, for burial grounds to be transferred to Local Authorities. In many cases Local Authorities did not accept them and most burial grounds continued to be cared for by the Church in Wales' parishes although still as a matter of law vested following disestablishment in the Welsh Church Commissioners.

The years between disestablishment and 1945 had proved that the Parishes were willing to care for the churchyards and rights of burial had been respected regardless of denomination. The mood before the Second World War became increasingly positive towards the Church in Wales retaining these burial grounds because of both the experience of the intervening years and the desire to wind up the Welsh Church Commissioners.

In 1944 the Representative Body communicated to the Government its willingness to accept the transfer of churchyards, including those which had become vested under the Welsh Church Act in local authorities. It being wartime, it was essential that the proposed legislation to enact any transfer was non contentious as parliamentary time could not be wasted.

The 1945 Act was passed unopposed and transferred responsibility for all remaining churchyards that had not passed to Local Authorities (700 of them) to the Church in Wales. There was no undertaking from the State or Local Authorities to contribute to costs.

The 1945 Act obliged the Representative Body to:

- 'maintain in decent order any burial ground' and to 'preserve for the enjoyment of the public the amenities of the locality in which the burial ground is situated' *Section 3.3*
- ensure 'no discrimination shall be made between the burial of members of the Church in Wales and of any other persons in any burial ground' *Section 4.1*

The Act also required that Burial Fees are approved by the Secretary of State (now, the Welsh Ministers). The Church in Wales is the only burial authority in Wales to have Government controlled burial fees.

The Act only applies to burial grounds as they existed in 1945 and placed no obligation on the Representative Body to provide for the extension of burial grounds or for new burials grounds when the existing grounds became full.

Under the Local Government Act 1972, Local Authorities in Wales have the power but not the duty to take over the maintenance of churchyards that are closed for burial (there being no more space). In England, Local Authorities have a duty to do so.

Under the Constitution of the Church in Wales, Parochial Church Councils are responsible for the maintenance and management of each church and churchyard albeit that ownership of the property rests with the Representative Body. Since 1945, parishes have tried to maintain churchyards as community assets. With falling congregations, fewer people able to undertake physical work, and little external financial support the burdens placed on Parishes by the 1945 Act have become very onerous. This is particularly true for churchyards that are closed (where there is no further income) or churchyards which surround redundant churches where the focus of the congregation is elsewhere.

It is interesting to note that:

- the Welsh Church (Burial Grounds) Act 1945 places a statutory duty on a disestablished church regarding burials without any financial compensation or support.
- the fees that can be charged for burials and related services by the disestablished church are controlled by the Welsh Government.
- When burial grounds are full, the obligation to maintain continues and there is no right to transfer responsibilities to the Local Authorities.

The Church in Wales and Ecclesiastical Exemption

The Church in Wales is a disestablished church but enjoys certain legal rights in relation to Listed Buildings and Conservation Areas.

Under the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, certain denominations are exempt from listed building and conservation area consent procedures. This exemption is granted because the various denominations have established 'acceptable internal procedures for dealing with proposed works to listed buildings and to unlisted buildings in conservation areas' (*The Ecclesiastical Exemption - What it is and how it works 1994 Dept. of National Heritage*).

The Church in Wales' internal procedure is called Faculty and consists of all such works being approved by a Diocesan Chancellor (a senior judge or barrister), who receives advice from a Diocesan Advisory Committee (DAC) in making a decision. The faculty system is operated as an internal judicial court process with rights of appeal etc. Consultations with Cadw and other amenity societies on proposed works are carried out regularly.

Each DAC employs a Secretary and consists of volunteer members offering expert advice from inside and outside the Church in Wales. There are usually around 12 members on each DAC, and thus it will be seen that this represents a significant body of expert opinion and help for the system. All costs of this system are met by the Church in Wales and this represents a significant saving to the taxpayer.

The Church in Wales and Statutory Education

There are 172 Church in Wales primary and secondary schools across Wales, serving 25,000 children and young people. The Church's education advisers, working alongside their Roman Catholic counterparts, enjoy a good working relationship with the Minister for Education and Skills and his team. However, this work (both in terms of education itself and in the use and sale of school sites) is made more difficult by the lack of a single reference point for Welsh law. A significant body of pre-devolution legislation in this area still applies to Wales, and any new proposals from the Welsh Government require careful drafting and consultation to ensure clarity of intention and that previous legislation is taken into account.

At the moment, we do have some concerns about the implications for Church schools of the Schools Standards and Organisation (Wales) Bill, and in particular the potential threat to the nature and status of Voluntary Aided schools posed by the proposed new power for local authorities to appoint additional Governors in certain circumstances. The Archbishop has been in correspondence with the Minister on this matter.

CA/AG/JL
11/03/12

Constitutional and Legislative Affairs Committee

Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure
COM(2013)0018

Briefing

Date of paper:

11 March 2013

This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

Research
Service

1. Introduction

The proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure ('the proposed directive') was issued by the European Commission on **25 January 2013**.¹ The Assembly subsequently received a copy of the Department for Transport's Explanatory Memorandum, which set out the UK Government's views of the proposal, on **15 February 2013**.

2. The proposed directive

The proposed directive sets out mandatory requirements for the build-up and coverage of alternative fuels infrastructure for transport, and common technical standards for their construction and interoperability. The proposal has primarily come about as a result of European Commission concerns relating to the slow realisation of alternative fuels infrastructure across the EU and aims to facilitate a quicker transition to cleaner transport.

To this end, four alternative fuels have been identified as having the potential to replace oil as the primary fuel resource for transport and to substantially reduce greenhouse gas emissions (for both road and maritime) and oil consumption. The four fuels that could replace oil as the primary fuel source for transport are:

- Electricity;
- Hydrogen;
- Biofuels; and
- Natural gas.

The proposal in particular would require Member States to adopt and publish national policy frameworks, which the Commission intends to review for coherence at an EU level and report its findings to the European Parliament. The Commission is also seeking the power to set targets on the number of alternative fuels infrastructure sites in each Member State, determine their geographical coverage and define minimum technical standards through a series of delegated acts.

3. Subsidiarity

The eight week deadline for reasoned opinions from national parliaments in relation to the proposed Directive is **28 March 2013**. As of 12 March 2013, no reasoned opinions have been expressed on the proposal.²

Subsidiarity concerns have been raised however by the Bavarian State Parliament in relation to the matter.³ Their **observation**, which sets out their concerns in detail, is only currently available in German.

3.1. Views within the UK

The Department for Transport's EM states the following in relation to subsidiarity:

¹ EUROPA News, [*Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure*](#), 25 January 2013 [accessed 6 March 2013]

² IPEX, [*Document: COM/2013/0018*](#), 24 January 2013 [accessed 7 March 2013]

³ REGPEX, [*Document: COM/2013/0018*](#), 24 January 2013 [accessed 7 March 2013]

The Government accepts that in matters such as common standards for alternative fuels infrastructure, action at an EU level will be required to ensure market harmonisation and acceptance of refuelling equipments by road users across the EU.

However the Government does not agree that the principle of subsidiarity is being respected in all areas of this proposal. We are of the view that the setting of targets within individual Member States is a matter for national policymakers to decide. They know best the market situation within their territory and should be free to implement those measures necessary to deliver the desired outcomes in the most cost-effective manner without the need to set mandatory targets.⁴

These views were echoed by the Secretary of State for Transport, the Rt. Hon Patrick McLoughlin MP, in a written statement to the House of Commons issued ahead of the EU Transport Council on **7 March 2013**:

There will be an exchange of views on a Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure and on a Communication from the Commission on 'Clean power for transport: a European alternative fuels strategy' (making up the clean power for transport package). The UK strongly supports the transition to cleaner transport and has the ambitious vision of almost every car and van reaching zero CO2 emission levels at the tailpipe by 2050.

While I recognise that alternative fuels infrastructure is an area that can benefit from support, I am not convinced that setting rigid, mandatory targets for the deployment of technology specific infrastructure is an effective way of building consumer confidence in new technology.⁵

No reasoned opinion has been issued by either house of the UK Parliament to date. The House of Commons' **European Scrutiny Committee** however has considered the proposed directive on 6 March and is awaiting a reply from the Department for Transport in relation to the issues raised.⁶ The proposed directive will be considered by **Sub-Committee B on Internal Market, Infrastructure and Employment** of the EU Select Committee in the House of Lords on 18 March 2013.

The proposed directive was also considered in private by the Scottish Parliament's **Infrastructure and Capital Investments Committee** on 6 March 2013. The Committee agreed at the meeting to ask the Presiding Officer of the Scottish Parliament to write to the Speaker of the House of Commons outlining the Committee's concerns.⁷ The letter states that:

On the question of subsidiarity, the EM provided by the UK Government states that subsidiarity is not being respected in all areas of the proposal. The UK Government, the

⁴ Department for Transport, *Explanatory Memorandum: Proposal for a Directive of the European Parliament and of the Council on the Deployment of Alternative Fuels Infrastructure* (COM(2013)0018), 15 February 2013, Paragraphs 21 and 22

⁵ Gov.uk, [Written Statement to Parliament: EU Transport Council](#), 7 March 2013 [accessed 7 March 2013]

⁶ See House of Commons, [European Scrutiny Committee: Remaining Business Session 2012-13](#), last updated 6 March 2013 [accessed 7 March 2013]

⁷ Scottish Parliament, Infrastructure and Capital Investments Committee, [Minutes: 6th Meeting 2013](#), 6 March [accessed 7 March 2013]

Scottish Government and the ICI Committee agree that the setting of targets within the individual member states is a matter for national policy makers to decide.⁸

Similar concerns to that of the UK Government on the proposal have also been raised in a letter by the **Committee on the Office of the First Minister and Deputy First Minister** of the Northern Ireland Assembly.

3.2. *The role of the Assembly*

The content of the proposed Directive is of relevance to the Assembly as it relates to 'transport facilities and services' which are listed under Subject 10 (Highways and Transport) of Schedule 7 to the *Government of Wales Act 2006*.⁹ The EM also states that the Welsh Government was consulted by the Department for Transport prior to the EM's publication.

Under the Subsidiarity Protocol, the Committee may therefore raise formal subsidiarity concerns in relation to the proposal on behalf of the Assembly by issuing a written representation to the Commons' European Scrutiny Committee and the Lords' EU Select Committee. Those committees may then take account of such views in reaching their own conclusions on the proposal and in considering whether or not to issue a written representation.

Members may wish to note however that the Committee's ability to raise formal concerns in this instance will be severely constrained by the eight week deadline, which expires on **28 March 2013**.

4. **Next steps**

On the basis that no further objections on the grounds of subsidiarity will be made by other member states before 28 March 2013, it is expected that the Irish Presidency will schedule a policy debate on the proposed directive at the Transport Council on 7 June 2013. According to the EM, the timetable for consideration by the European Parliament is currently unknown.

⁸ Scottish Parliament, *Correspondence from the Presiding Officer of the Scottish Parliament, Tricia Marwick MSP, to William Cash MP*, 7 March 2013

⁹ [*Government of Wales Act 2006*](#) (Chapter 32) [accessed 7 March 2013]



The Scottish Parliament
Pàrlamaid na h-Alba

The Presiding Officer
Rt Hon Tricia Marwick MSP

William Cash MP, Chair
European Scrutiny Committee
7 Millbank
House of Commons
London SW1P 3JA

7 March 2013

Dear Mr Cash

The Scottish Parliament has agreed that where the UK Government, the UK Parliament or the Scottish Government brings any EU proposal to the attention of the Parliament as raising a concern in relation to compliance with the principle of subsidiarity the relevant Parliamentary committee will consider that proposal. Where a committee has a concern in relation to the proposal but there is an insufficient period remaining for a chamber debate, parliamentary procedure enables the views of that committee to be transmitted directly to you from the Presiding Officer.

Explanatory Memorandum in respect of EU Proposal 5899/13

I understand that the House of Lords EU sub-Committee B – Internal Market, Infrastructure and Employment has recently considered EU Proposal 5899/13 for a Directive of the European Parliament and of the Council on the Deployment of Alternative Fuels Infrastructure.

I am writing to you following the Scottish Parliament Infrastructure and Capital Investment (ICI) Committee's consideration of the Proposal at its meeting of 6 March 2013. The ICI Committee expressed concerns in relation to the Proposal. These concerns are set out below.

Policy implications

We understand that the UK Government's EM was drafted in full discussion with Scottish Government officials and note that the Scottish Government shares the concerns of the UK Government. The UK Government's EM highlights concerns in relation to the proposals, such as the setting of rigid interim targets for the uptake of ULEV technology and the targets for the installation of alternative fuels infrastructure.

The Scottish Government shares this concern and is of the view that Member states have a better knowledge of their own market requirements, and are therefore in a better position to set targets. The ICI Committee supports this view.

In principle, the Scottish Government and the ICI Committee are supportive of the Commission's view that common technical specifications for alternative fuel infrastructure would be a sensible measure.

Concerns in relation to subsidiarity

On the question of subsidiarity, the EM provided by the UK Government states that subsidiarity is not being respected in all areas of the proposal. The UK Government, the Scottish Government and the ICI Committee agree that the setting of targets within the individual member states is a matter for national policy makers to decide.

Yours sincerely



TRICIA MARWICK