

## STATUTORY INSTRUMENTS

# 2013 No. 1119

## The CRC Energy Efficiency Scheme Order 2013

### [<sup>F1</sup>PART 1

#### Introduction

##### Textual Amendments

- F1** Order revoked (with savings) (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), [art. 3\(1\)-\(3\)](#)

#### 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 <sup>M1</sup>.

##### Marginal Citations

- M1** 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 \(c. 2\)](#).

##### Interpretation

3. In this Order—

“the 2000 Act” means the Freedom of Information Act 2000 <sup>M2</sup>;

“the 2010 Order” means the CRC Energy Efficiency Scheme Order 2010 <sup>M3</sup>;

- “the 2011 Order” means the CRC Energy Efficiency Scheme (Amendment) Order 2011 <sup>M4</sup>;
- “the 2012 Regulations” means the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2012 <sup>M5</sup>;
- “Academy” has the same meaning it has in section 579 of the Education Act 1996 <sup>M6</sup>;
- “account holder” means the public body, undertaking or other person in whose name an account in the Registry is held [<sup>F2</sup>or, after the end of 31st March 2022, the public body, undertaking or other person in whose name an account in the Registry was held at the end of 31st March 2022];
- “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,
- 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 <sup>M7</sup> 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 <sup>M8</sup>; or
    - (ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 <sup>M9</sup>;
  - (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 <sup>M10</sup>; or
    - (ii) Article 6(1)(c) of the Gas (Northern Ireland) Order 1996 <sup>M11</sup>;
- “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 <sup>M12</sup>;
- “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 <sup>M13</sup> in relation to England and Wales;

- (b) section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 <sup>M14</sup> in relation to Scotland;
- (c) section 2 of the Charities Act (Northern Ireland) 2008 <sup>M15</sup> 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 <sup>M16</sup>;
- “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;
- “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](#) <sup>M17</sup>;
- “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 7 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 <sup>M18</sup>;

“maintained school” has the same meaning it has in paragraph 52 of Schedule 1 to the 2000 Act <sup>M19</sup>;

[<sup>F3</sup>“metallurgical process” and “mineralogical process” have the meanings given by paragraph 29A of Schedule 1;]

“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 <sup>M20</sup>—
  - (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) 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 4A of the Financial Services and Markets Act 2000 <sup>M21</sup> 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) 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**

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	<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

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“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 [F<sup>4</sup>51ZA, 51ZC or 51ZE] of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 <sup>M22</sup>;

“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 <sup>M23</sup>; or
- (b) Articles 52 to 55F of the Energy (Northern Ireland) Order 2003 <sup>M24</sup>;

“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 <sup>M25</sup>;
  - (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 <sup>M26</sup>;

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

“tCO<sub>2</sub>” 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 [<sup>F5</sup>before the end of 31st March 2022];

“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 <sup>M27</sup> 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 <sup>M28</sup>, 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.

### Textual Amendments

- F2** Words in art. 3 inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 2(a)**
- F3** Words in art. 3 inserted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), **2**
- F4** Words in art. 3 substituted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 24**

- F5** Words in art. 3 inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 2(b)**

#### Marginal Citations

- M2** 2000 c. 36.
- M3** [S.I. 2010/768](#), amended by [S.I. 2011/234](#).
- M4** [S.I. 2011/234](#).
- M5** [S.I. 2012/1386](#).
- M6** 1996 c. 56. Section 579 was amended by section 14 and paragraphs 1 and 6 of Schedule 2 to the [Academies Act 2010 \(c. 32\)](#).
- M7** 1986 c. 45.
- M8** 1989 c. 29. Section 64(1) is subject to various amendments.
- M9** [S.I. 1992/231 \(N.I. 1\)](#), amended by [S.R. \(NI\) 2007 No 321](#); there are other amending instruments which are not relevant.
- M10** 1986 c. 44. Section 48(1) is subject to various amendments.
- M11** [S.I. 1996/275 \(N.I. 2\)](#).
- M12** 2000 c. 17.
- M13** 2011 c. 25.
- M14** 2005 asp 10.
- M15** 2008 c. 12.
- M16** [S.R. \(NI\) 2003 No 46](#), amended by [S.I. 2003/496](#) and [2003/3311](#); there is another amending instrument which is not relevant.
- M17** 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).
- M18** The definition of “maintained nursery school” in the [Freedom of Information Act 2000 \(c. 36\)](#) derives from the [School Standards and Framework Act 1998 \(c. 31\)](#).
- M19** The definition of “maintained school” in the [Freedom of Information Act 2000 \(c. 36\)](#) derives from the [School Standards and Framework Act 1998 \(c. 31\)](#).
- M20** 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.
- M21** 2000 c. 17.
- M22** [S.I. 2001/514](#).
- M23** 1989 c. 29. Section 32 was substituted by, and sections 32A to 32M added by, section 37 of the [Energy Act 2008 \(c. 32\)](#).
- M24** [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\)](#).
- M25** 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 \(c. 20\)](#).
- M26** Paragraph 44(1)(a) was substituted by section 207(a) and paragraphs 1 and 2 of Schedule 31 to the [Finance Act 2012 \(c. 14\)](#).
- M27** 2006 c. 46.
- M28** 1971 c. 80.

#### Supplies and emissions

4. As provided under this Order, Schedule 1 (supplies and emissions) has effect concerning—
- whether a supply is made of electricity or gas;
  - the amount of such a supply; and
  - 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.

### **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 [<sup>F6</sup>articles 26(2)(b) and 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.

#### Textual Amendments

- F6** Words in art. 12 substituted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), **3(1)**

#### 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) [<sup>F7</sup>Until the end of 31st March 2025,] the administrator must maintain an up to date list of participants.

### **Textual Amendments**

- F7** Words in art. 13(3) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 3**

## **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 <sup>M29</sup> 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.

#### Marginal Citations

**M29** Such a determination must be made in accordance with article 57(2).

## 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;
  - (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 [F8 on or before the last date for making an application for registration provided by 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 M30.

#### Textual Amendments

**F8** Words in art. 24(4) substituted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), **4(1)**

### Marginal Citations

**M30** 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 [<sup>F9</sup>on or before the last date for making an application for registration provided by 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.

### Textual Amendments

**F9** Words in art. 25(3) substituted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), **4(2)**

### 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; <sup>F10</sup>...
- (b) B applies for registration as a participant separate from A by the last working day of April in [<sup>F11</sup>any year of a phase; and]

[<sup>F12</sup>(c) A notifies the administrator that A agrees that B may apply for registration as a separate participant.]

(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.

### Textual Amendments

**F10** Word in art. 26(2)(a) revoked (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), **3(2)(a)**

**F11** Words in art. 26(2)(b) substituted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), **3(2)(b)**

**F12** Art. 26(2)(c) inserted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014](#) (S.I. 2014/502), arts. 1(1), **3(2)(c)**

### 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 <sup>M31</sup> whether or not—

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

#### Marginal Citations

**M31** 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 subparagraph (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 <sup>M32</sup> the report.

#### Marginal Citations

**M32** Such a determination must be made in accordance with article 57(2).

#### 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.

## **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 tCO<sub>2</sub>.

(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 [<sup>F13</sup>before the end of 31st March 2025] to the Secretary of State for the repayment of the balance,

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

[<sup>F14</sup>(4A) Where the account holder makes a request to the Secretary of State for repayment during the period beginning with 1st April 2022 and ending with 31st March 2025 with respect to any allowances held in the compliance account at the end of 31st March 2022, the Secretary of State may make a repayment to the account holder.]

(5) Any repayment made by the Secretary of State under paragraph (4) [<sup>F15</sup>or paragraph (4A)] may be subject to a deduction of any banking charges incurred during that transaction.

#### Textual Amendments

- F13** Words in art. 37(4)(b) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\), art. 1, Sch. 1 para. 4\(a\)](#)
- F14** Art. 37(4A) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\), art. 1, Sch. 1 para. 4\(b\)](#)
- F15** Words in art. 37(5) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\), art. 1, Sch. 1 para. 4\(c\)](#)

#### Allowances and trading

**38.**—(1) [<sup>F16</sup>Until the end of 31st March 2025,] 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) [<sup>F17</sup>Before 1st April 2022,] trading in allowances is permitted by participants and third parties.

#### Textual Amendments

- F16** Words in art. 38(1) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\), art. 1, Sch. 1 para. 5\(a\)](#)
- F17** Words in art. 38(2) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\), art. 1, Sch. 1 para. 5\(b\)](#)

## 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) <sup>[F18]</sup>Until the end of 31st March 2022] 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.

#### **Textual Amendments**

**F18** Words in art. 50(1) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 6**

#### **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 <sup>M33</sup>—
  - (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.

#### **Marginal Citations**

**M33** Such a determination must be made in accordance with article 57(2).

### **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 [<sup>F19</sup>before the end of 31st March 2022], 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).

[<sup>F20</sup>(8) Nothing in this Order requires the administrator to cancel the registration of a participant after the end of 31st March 2025.]

#### Textual Amendments

**F19** Words in art. 54(5) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 7(a)**

**F20** Art. 54(8) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 7(b)**

#### 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.

#### **[<sup>F21</sup>Accounts on or after 1st April 2022**

**55A.** On 1st April 2022, the administrator must close the compliance accounts, the cancellation accounts and any other accounts set up under this Order.

##### **Textual Amendments**

**F21** Arts. 55A-55C inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, [Sch. 1 para. 8](#)

#### **Communications on or after 1st April 2022**

**55B.**—(1) Communications occurring on or after 1st April 2022 between the administrator and—

(a) a participant; or

(b) a third party,

must take place in writing.

(2) Communications referred to in paragraph (1) may take place by post or by electronic means.

##### **Textual Amendments**

**F21** Arts. 55A-55C inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, [Sch. 1 para. 8](#)

#### **Records and information on or after 1st April 2022**

**55C.**—(1) During the period beginning with 1st April 2022 and ending with 31st March 2025 ('the relevant period'), the administrator must maintain a record of the information held in the Registry at the end of 31st March 2022.

(2) The record referred to in paragraph (1) may be stored electronically.

(3) The record referred to in paragraph (1) must include a record of the information referred to in paragraph 2 of Schedule 6 as at the end of 31st March 2022.

(4) If—

(a) a participant; or

(b) an account holder,

makes a request in writing during the relevant period to the administrator to provide the information referred to in paragraph (5), the administrator must provide that information as soon as reasonably practicable.

(5) The information referred to in this paragraph is the information that would have been provided by the Registry on 31st March 2022 in accordance with paragraph 2 of Schedule 6 to that participant or account holder.

(6) The request and information may be made and provided electronically.]

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**Textual Amendments**

**F21** Arts. 55A-55C inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 8**

**Notification**

**56.** A participant must notify any change in its proper address [<sup>F22</sup>occurring before 1st April 2025] to the administrator within 10 days of the change.

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**Textual Amendments**

**F22** Words in art. 56 inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 9**

**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”<sup>M34</sup> 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).

#### **Marginal Citations**

**M34** 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](http://www.environment-agency.gov.uk/business/regulation/31857.aspx).

#### **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.

## 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 <sup>M35</sup> the information requested.

#### Marginal Citations

**M35** Such a determination must be made in accordance with article 57(2).

#### 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 <sup>M36</sup>; 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.

#### Marginal Citations

**M36** 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 [<sup>F23</sup>after the last working day of October after the end of the annual reporting year] 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 tCO<sub>2</sub> 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.

[<sup>F24</sup>(6) After the end of 28th February 2022, the administrator must not impose a penalty requiring a participant to acquire and surrender additional allowances under paragraph (4)(b).]

#### **Textual Amendments**

- F23** Words in art. 74(3) substituted (1.4.2014) by [The CRC Energy Efficiency Scheme \(Amendment\) Order 2014 \(S.I. 2014/502\)](#), arts. 1(1), 5
- F24** Art. 74(6) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, **Sch. 1 para. 10**

#### **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 tCO<sub>2</sub> 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 tCO<sub>2</sub> 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.

[<sup>F25</sup>(4) After the end of 28th February 2022, the administrator must not impose a penalty requiring a participant to acquire and surrender additional allowances under paragraph (2)(a).]

#### Textual Amendments

**F25** Art. 77(4) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, [Sch. 1 para. 11](#)

#### 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 tCO<sub>2</sub> 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.

[<sup>F26</sup>(1A) The penalty of blocking must not be—

- (a) imposed; or
- (b) if already imposed, continued,

after the end of 31st March 2022.]

(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.

[<sup>F27</sup>(2A) The penalty of publication must not—

- (a) be imposed; or  
(b) if already imposed, be continued,

after the end of 31st March 2022.]

(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.

#### Textual Amendments

**F26** Art. 81(1A) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, [Sch. 1 para. 12\(a\)](#)

**F27** Art. 81(2A) inserted (1.10.2018) by [The CRC Energy Efficiency Scheme \(Revocation and Savings\) Order 2018 \(S.I. 2018/841\)](#), art. 1, [Sch. 1 para. 12\(b\)](#)

## 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 [<sup>F28</sup>a fine not exceeding £50,000][<sup>F28</sup>a fine] 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.

#### **Textual Amendments**

**F28** Words in art. 83(1)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 84](#) (with reg. 5(1))

#### **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]



**Changes to legislation:**

There are currently no known outstanding effects for the The CRC Energy Efficiency Scheme Order 2013.