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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The CRC Energy Efficiency Scheme Order 2010**

**PART 14**

**Civil penalties**

**Civil penalties**

- 92.**—(1) The administrator—
- (a) may impose a civil penalty as set out in this Part; and
  - (b) where it does so, it must give written notice of such penalty to the persons affected.
- (2) In respect of a financial penalty, a notice of such penalty must state—
- (a) the amount due;
  - (b) where the amount due includes a daily penalty, what that daily penalty is; and
  - (c) to whom the penalty must be paid.
- (3) The administrator must remit a financial penalty received to the Secretary of State.

**Recovery of civil penalties**

- 93.**—(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.

**Waiver and modification of civil penalties**

- 94.**—(1) Paragraph (2) applies in respect of a person (“A”) on whom a civil penalty may be or has been imposed and where the administrator is satisfied that A has provided evidence to the administrator within a reasonable time that—
- (a) A took all reasonable steps—
    - (i) to comply with the relevant provision of this Order; or
    - (ii) to rectify any failure in compliance as soon as it came to A’s notice;
- and
- (b) in all the other circumstances it is reasonable to exercise the powers in paragraph (2) in relation to A.
- (2) Where this paragraph applies, the administrator may—
- (a) waive a 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.

#### **Failures in respect of registration**

- 95.**—(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 6, 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 6, 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 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 public body or undertaking fails to report details of each settled half hourly meter under—
- (a) paragraph 6 of Schedule 5 where an application for registration is required under Part 2 or Schedule 6; or
  - (b) paragraph 3(4) of Part 3 of Schedule 6.
- (4) The penalties are—
- (a) the financial penalty of £500 for each meter not reported; and
  - (b) publication.

#### **Failures in respect of footprint reports**

- 96.**—(1) The penalties in paragraph (2) apply where a participant—
- (a) fails to provide a footprint report contrary to article 39(1); or
  - (b) provides late a footprint report contrary to article 39(2).
- (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 provided after the due date; or
    - (ii) more than 40 days after the due date or not at all, a financial penalty of £40,000.

### **Failures in respect of annual reports**

- 97.**—(1) The penalties in the following paragraphs apply where a participant—
- (a) fails to provide an annual report contrary to article 47(1); or
  - (b) provides late an annual report contrary to article 47(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 provided after the due date; or
    - (ii) more than 40 days after the due date or not at all, a financial penalty of £40,000..
- (3) Paragraphs (4) and (5) apply where the annual report is provided more than 40 days after the due date or not at all.
- (4) Where this paragraph applies, the following additional penalties apply to the participant—
- (a) the CRC emissions of the participant for the year to which the annual report relates are—
    - (i) double the CRC emissions reported in the annual report of the previous year; or
    - (ii) where no such report exists, double the CRC emissions which the administrator calculates the participant made in the year for which the annual report is not provided;
  - (b) the participant must immediately acquire allowances and surrender them in accordance with Part 6 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) for the annual reporting year, the participant achieves the lowest ranking in the achievement and performance tables; and
  - (e) 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 6 is required.

### **Failures to provide information or notifications**

- 98.**—(1) The penalties in paragraph (2) apply where a participant—
- (a) fails to provide the information in section 1 of Schedule 5 where required under Part 2 or Schedule 6;

- (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—
  - (i) article 38(5); or
  - (ii) Part 1, 2 or 3 of Schedule 6.
- (2) The penalties are—
  - (a) the financial penalty of £5000 and publication; and
  - (b) where the participant provides inaccurate information and—
    - (i) achieves a higher position in the performance table than it would have done had it provided the information accurately; and
    - (ii) in consequence the participant received a grant under section 53(1)(b) of the Act from the Secretary of State which is greater than it would otherwise have done, a penalty of double the amount of the grant which the participant should not have received.

#### **Inaccurate footprint reports and annual reports**

- 99.**—(1) The penalties in paragraph (3) apply where a participant provides an inaccurate—
- (a) footprint report contrary to article 39; or
  - (b) annual report contrary to article 47.
- (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 26 or 27 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.
- (4) Where the provision of an inaccurate footprint report causes a participant to provide an inaccurate annual report, a penalty must be imposed only in respect of the former.

#### **Failures to surrender allowances contrary to Part 6**

- 100.**—(1) The penalties in paragraphs (2) and (3) apply where—
- (a) a participant fails to surrender sufficient allowances contrary to Part 6; 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 97(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 6;
  - (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 6 is required.

### **Later discovered failures to surrender allowances contrary to Part 6**

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

- (a) by reference to its annual report, a participant complied with Part 6;
- (b) the administrator finds, within five years of the date on which compliance with Part 6 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 6 (“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 auction or sale of allowances by the Environment Agency immediately before the shortfall was found.

### **Failures to maintain records**

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

- (a) the administrator has given notice under article 90 in respect of a failure to comply with article 58; 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 59, the penalties are a financial penalty of £5000 and publication.

### **Failures to provide information on half hourly meters under article 62**

**103.** Where a public body or undertaking fails to comply with article 62(4)(b), a financial penalty of £500 applies for each settled half hourly meter which measures electricity supplies to it which is not listed as required.

#### **Failures to provide information under article 64**

- 104.**—(1) The penalties in paragraph (2) apply where—
- (a) the administrator has served a notice as provided under article 64 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**

- 105.**—(1) The administrator may impose the penalty of blocking until—
- (a) the failure is remedied; and
  - (b) any financial penalty imposed in respect of the same failure is paid.
- (2) Publication—
- (a) must not take place until the time to appeal against the penalty under Part 16 has expired and—
    - (i) no appeal against the penalty has been made; or
    - (ii) where an appeal against the penalty has been made and the participant is unsuccessful in that appeal, until after the disposal of that appeal;
  - (b) lasts for one year but the administrator may impose the penalty for a longer period, if it believes the seriousness of the failure justifies such longer period.
- (3) In this Part—
- “blocking” means to prevent or restrict the operation of an account of a participant;
- “publication” means to publish on a part of the Registry which is accessible to the public—
- (a) the name of the participant; and
  - (b) details of the failure in respect of which a civil penalty has been imposed.