
EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes in the United Kingdom an emissions trading scheme in respect of greenhouse gases under sections 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008 (c. 27). It applies to direct and indirect emissions from supplies of electricity and gas by public bodies and undertakings.

PART 1

By article 2, the trading scheme is established for six phases, comprising five consecutive phases, each of five years, where the initial phase commences on 1st April 2014, and a final phase of four years, commencing on 1st April 2039.

Article 3 lists definitions used in the Order, including that participants required to comply with this Order means public bodies defined in Schedule 2 and undertakings defined in Schedule 3, where such bodies or undertakings carry on a business, a charitable activity or a public function (“a scheme activity”).

Articles 4 to 7 set out obligations on participants and powers and duties of the administrator under this Order and provide that supplies of electricity and gas are defined under Schedule 1. Article 8 provides for liability to comply with this Order for groups of public bodies and undertakings.

Article 9 sets out in respect of the provisions of this Order when the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency and the chief inspector are the administrator. Article 10 provides for co-operation between those bodies and national authorities.

PART 2

Article 11 provides how an application for registration as a participant must be made and article 12 by when that application must be made. Under article 13, a certificate of registration is provided to a participant whose application for registration is duly made and a list of participants must be maintained by the administrator.

Article 14 provides for applications for registration to be made by government departments, the devolved administrations and certain local authorities and groups including those bodies. Article 15 sets out when a group of other public bodies exists for the purposes of articles 16 and 17 and those articles provide for registration by public bodies and groups of those bodies not subject to article 14. Under article 18, the administrator may determine whether or not a public body is a member of a group.

Under articles 19 to 22, separate provision is made for the registration of colleges of a university and universities in England.

Article 23 sets out when a group of undertakings exists for the purposes of articles 24 to 25. Articles 24 and 25 provide for applications for registration by groups of undertakings and undertakings not part of a group.

Article 26 provides for applications for registration by undertakings or groups of undertakings that are part of a group where that group disaggregates.

Article 27 provides for different provisions for applications for registration by undertakings where the organisational changes described in section 1 of Part 3 of Schedule 5 take place. Under article 28,

the administrator may determine whether or not an undertaking is a member of a group and whether or not article 27 applies.

Article 29 provides for applications for registration by public bodies or undertakings that are trustees of a relevant trust.

Article 30 provides for applications for registration by undertakings that are operators who have permission carry on a regulated activity.

PART 3

Article 31 requires a participant to provide an annual report concerning supplies during an annual reporting year and provides for the administrator to determine such a report if the participant fails to do so. Article 32 provides for the content of an annual report. The administrator must calculate CRC emissions using the information on supplies in the annual report or as it determines. Article 33 defines CRC supplies. Under article 34, where organisational changes described in Part 1 or 2 or section 2 of Part 3 of Schedule 5 occur, the requirements in that Schedule must be complied with.

PART 4

Article 35 provides for the validity of allowances for the purposes of compliance with the provisions of article 36 which require allowances to be surrendered by a participant equal to its CRC emissions in an annual reporting year. Article 37 provides for the cancellation of allowances surrendered and for surplus surrendered allowances. Under article 38 the administrator must maintain records in relation to allowances.

PART 5

Articles 39 to 42 provide for the maintenance and audit of records.

PART 6

Article 43 defines supplies in relation to Part 6. Under article 44, a participant may request information on electricity supplied to it. The administrator may require information from electricity suppliers under article 45. Occupiers of premises must give assistance to participants under article 46 and franchisees must give information and assistance to franchisors under article 47. Members of public bodies must give information and assistance to participants under article 48. Article 49 provides that where a group member is subject to an insolvency procedure, appointed practitioners must give information and assistance to that group member.

PART 7

Article 50 provides for the Registry to be established, article 51 provides for security of the Registry, article 52 contains provisions about access to the Registry and article 53 provides for preventing or suspending a person using the Registry.

Article 54 sets out how a registration as a participant may be cancelled where the participant ceases to carry on a scheme activity. Article 55 defines account holders. Article 56 requires participants to notify the administrator of any change in its proper address. Article 57 provides how a determination by the administrator under the provisions listed in that article must be carried out.

PART 8

Article 58 provides for the administrator to publish information on a participant's performance in relation to its energy efficiency achievements. Article 59 provides for the administrator to publish a

list of participants that have appealed against a determination of a penalty, or where an appeal results in information published under article 58 being changed, publication of the amended information.

PART 9

Article 60 allows the administrator to charge for certain activities set out in article 61 and sets out when a charge must be paid and how it must be calculated. Articles 62 and 63 provide for the amounts of charges and revisions to those amounts. Article 64 provides for the collection and remittance of charges.

PART 10

The administrator may request information concerning compliance with this Order under article 65 and may do so by way of a compliance notice set out in that article. The administrator may inspect premises in relation to monitoring compliance under article 66.

PART 11

Articles 67 to 69 provide powers to the administrator to enforce this Order where a failure of compliance arises.

PART 12

By articles 70 to 81, the administrator may impose civil penalties for failures to comply with provisions of this Order. A penalty may be financial, require additional allowances to be acquired and surrendered or increase what must be regarded as the amount of a participant's emissions. Use of accounts in the Registry may be blocked and failure of compliance may be publicised. Under article 72, the administrator has discretion to waive penalties.

PART 13

Criminal offences are imposed under article 82 and penalties for those offences are set out in article 83. Article 84 deals with offences by corporate bodies and article 85 with offences by Scottish partnerships. Article 86 provides for application of this Order to the Crown.

PART 14

Article 87 sets out where an appeal arises. Article 88 sets out the grounds on which an appeal under article 87 may be made.

Under article 89 sets out the appeal body where appeals are made against determinations, notices or penalties made or given by the Secretary of State, the Environment Agency or the Natural Resources Body for Wales. Such appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chamber) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to these appeals.

Article 90 sets out the effect of an appeal.

Article 91 sets out the standard of proof to be applied when an appeal is made to the Scottish Ministers, the Planning Appeals Commission or an independent person appointed under article 89. Article 92 sets out what the appeal body may decide in respect an appeal.

Article 93 sets out the appeal procedure to be followed in relation to the making and determination of appeals by the Scottish Ministers, the Planning Appeals Commission and an independent person appointed under article 89.

Article 94 provides for service of documents and article 95 for national security.

PART 15

Article 96 provides for revocations, continuing effect and amendments to the CRC Energy Efficiency Scheme Order 2010 and the CRC Energy Efficiency Scheme (Amendment) Order 2011.

SCHEDULES

Schedule 1 defines supplies and emissions.

Schedule 2 defines public bodies and Schedule 3 undertakings and significant group undertakings.

Schedule 4 provides for information required on an application for registration as a participant.

Schedule 5 sets out organisational changes before and after a phase of the scheme and requirements in relation to those changes.

Schedule 6 provides for requirements of the Registry in relation to Part 7 of this Order.

Schedule 7 sets out appeal bodies and procedures and Schedule 8 provides for the service of documents under Part 16 of this Order.

Schedule 9 provides for amendments to the CRC Energy Efficiency Scheme Order 2010.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Climate Change Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2HH and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.