
DRAFT STATUTORY INSTRUMENTS

2013 No.

The CRC Energy Efficiency Scheme Order 2013

PART 12

Civil penalties

Civil penalties

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

(2) A penalty notice must specify—

- (a) the article of and, where applicable, the provision of the Schedule to this Order that is breached; and
- (b) to whom the penalty must be paid.

(3) A penalty notice in respect of a financial penalty must specify—

- (a) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of service of the notice—
 - (i) the total amount due;
 - (ii) where applicable, how it has been calculated; and
 - (iii) the date by which it must be paid;
- (b) where a daily penalty rate applies and the total amount of the daily penalty cannot be determined at the date of service of the notice—
 - (i) the amount of the initial penalty; and
 - (ii) details of the applicable daily rate.

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

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

Effect and recovery of civil penalties

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

(2) A financial penalty—

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

Discretion in waiving, imposition and modification of civil penalties

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

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

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

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

Failures in respect of registration

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

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

(2) The penalties are—

- (a) the financial penalties of—
 - (i) £5000; and
 - (ii) £500 for each day starting on the day after an application under article 11 must be made until the application for registration is made, subject to a maximum of 80 days;and
- (b) publication.

(3) The penalties in paragraph (4) apply where—

- (a) a public body or undertaking fails to report details of each settled half hourly meter under paragraph 6 of Schedule 4 where an application for registration is required under Part 2 or Schedule 5; or
- (b) an undertaking fails to provide the information required under paragraph 4(2)(d) of Part 3 of Schedule 5.

(4) The penalties are—

- (a) the financial penalty of £500 for each meter not reported; and
- (b) publication.

Failures in respect of annual reports

74.—(1) The penalties in the following paragraphs apply where a participant—

- (a) fails to provide an annual report contrary to article 31(1); or

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

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

Failures to provide information or notifications

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

Inaccurate annual reports

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

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

(3) The penalties are—

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

Failures to surrender allowances contrary to Part 4

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

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

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

(2) The penalties are—

- (a) the participant must—
 - (i) immediately acquire such additional allowances as are equal to the amount which should have been surrendered (“the shortfall allowances”); and
 - (ii) surrender the shortfall allowances in accordance with Part 4;
- (b) a financial penalty of £40 per tCO₂ of so much of the emissions represented by the shortfall allowances;
- (c) publication; and
- (d) blocking.

(3) Where a participant—

- (a) fails to comply with paragraph (2)(a) by the 31st March after the surrender should have been made; and
- (b) continues in the scheme,

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

Later discovered failures to surrender allowances contrary to Part 4

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

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

(2) The penalties are—

- (a) where the participant is a participant at the time paragraph (1)(b) applies—

- (i) the shortfall allowances are added to the quantity of allowances required to be surrendered in the next annual reporting year that the shortfall is found; and
 - (ii) publication;
- or
- (b) where the participant is not a participant at the time paragraph (1)(b) applies, a financial penalty which represents the value of the shortfall allowances.
- (3) The value under paragraph (2)(b) means the value of allowances in the sale of allowances by the Environment Agency immediately before the shortfall was found.

Failures to maintain records

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

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

(2) The penalties are—

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

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

Failures to provide information under article 44

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

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

(2) The penalties are—

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

Blocking and publication

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

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

(2) Publication—

- (a) must not take place until the time to appeal against the penalty under Part 14 has expired and—
 - (i) no appeal against the penalty has been made; or
 - (ii) where an appeal against the penalty has been made and the participant is unsuccessful in that appeal, until after the disposal of that appeal;
- (b) lasts for one year but the administrator may impose the penalty for a longer period, if it believes the seriousness of the failure justifies such longer period.

(3) In this Part—

“blocking” means to prevent or restrict the operation of an account of a participant;

“publication” means to publish on a part of the Registry which is accessible to the public—

- (a) the name of the participant;
- (b) details of the failure in respect of which a civil penalty has been imposed; and
- (c) the penalty amount.