

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Part IV. (See end of Document for details)

SCHEDULES

SCHEDULE 6

CLIMATE CHANGE LEVY

PART IV

PAYMENT AND RATE OF LEVY

Persons liable to account for levy

- 40 (1) The person liable to account for the levy charged on a taxable supply is, except in a case where sub-paragraph (2) [^{F1}or (3)] applies, the person making the supply.
- (2) In the case of a taxable supply made by a person who—
- (a) is not resident in the United Kingdom, and
 - (b) is not a utility,
- the person liable to account for the levy charged on the supply is the person to whom the supply is made.
- [^{F2}(3) In the case of levy charged on a taxable supply under paragraph 45B, the person liable to account for the levy is the operator of the facility to which the supply was made.]

Textual Amendments

- F1** Words in Sch. 6 para. 40(1) inserted (with effect in accordance with s. 118(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 59 para. 3\(2\)](#)
- F2** Sch. 6 para. 40(3) inserted (with effect in accordance with s. 118(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 59 para. 3\(3\)](#)

Returns and payment of levy

- 41 (1) The Commissioners may by regulations make provision—
- [^{F3}(a) for persons liable to account for levy to do so—
 - (i) by reference to such periods (“accounting periods”) as may be determined by or under the regulations, or
 - (ii) in such other way as may be so determined;]
 - (b) for persons who are or are required to be registered for the purposes of the levy to be subject to such obligations to make returns for those purposes for such periods, at such times and in such form as may be so determined; and
 - (c) for persons who are required to account for levy ^{F4}... to become liable to pay the amounts due from them at such times and in such manner as may be so determined.

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- (2) Without prejudice to the generality of the powers conferred by sub-paragraph (1), regulations under this paragraph may contain provision—
- (a) for levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed circumstances, and for prescribed purposes, as levy due for a different period;
 - (b) for the correction of errors made when accounting for levy by reference to any period;
 - (c) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection;
 - (d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates;
 - (e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d);
 - (f) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest at the rate applicable under section 197 of the Finance Act 1996 for such period as may be determined in accordance with the regulations.
- [^{F5}(2A) Paragraph 91(5) provides for the application of Part 7 of this Schedule (recovery and interest) in relation to cases where, by virtue of regulations under sub-paragraph (1) (a)(ii) above [^{F6}or by virtue of paragraph 45B(8)], a person is liable to account for levy otherwise than by reference to accounting periods.
- (2B) Regulations under this paragraph may provide for the application of any provision of this Schedule in relation to such cases.]
- (3) Subject to the following provisions of this paragraph, if any person (“the taxpayer”) fails—
- (a) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to make a return for any accounting period, or
 - (b) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to pay an amount of levy due from him,
- he shall be liable to a penalty of £250.
- (4) Liability to a penalty under sub-paragraph (3) shall not arise if the taxpayer satisfies the Commissioners or, on appeal, an appeal tribunal—
- (a) that there is a reasonable excuse for the failure to make the return or to pay the levy in accordance with the regulations; and
 - (b) that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without a reasonable excuse to make it.
- (5) Where, by reason of any failure falling within paragraph (a) or (b) of sub-paragraph (3)—
- (a) a person is convicted of an offence (whether under this Schedule or otherwise), or

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- (b) a person is assessed to a penalty under paragraph 98 (penalty for evasion) [^{F7}or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)],
that person shall not, by reason of that failure, be liable also to a penalty under that sub-paragraph (3).

Textual Amendments

- F3** Sch. 6 para. 41(1)(a) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 192\(2\)\(a\)](#)
F4 Words in Sch. 6 para. 41(1)(c) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 192\(2\)\(b\)](#), [Sch. 43 Pt. 4\(2\)](#)
F5 Sch. 6 para. 41(2A), (2B) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 192\(2\)\(c\)](#)
F6 Words in Sch. 6 para. 41(2A) inserted (with effect in accordance with s. 118(2) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 59 para. 4](#)
F7 Words in Sch. 6 para. 41(5)(b) inserted (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\), art. 1\(1\), Sch. 1 para. 20\(2\)](#)

Amount payable by way of levy

- 42 (1) The amount payable by way of levy on a taxable supply is—
- (a) if the supply is [^{F8}not] a reduced-rate supply, the amount ascertained from the Table in accordance with sub-paragraph (2);
- ^{F9}(b)
- (c) if the supply is a reduced-rate supply, 20 per cent. of the amount that would be payable if the supply were [^{F10}not] a reduced-rate supply.

[^{F11} TABLE

<i>Taxable commodity supplied</i>	<i>Rate at which levy payable if supply is not a reduced-rate supply</i>
Electricity	£0.00470 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00164 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.01050 per kilogram
Any other taxable commodity	£0.01281 per kilogram]

[^{F12}(1A) Sub-paragraph (1) is subject to paragraph 45B.]

- (2) The levy payable on a fraction of a quantity of a commodity is that fraction of the levy payable on that quantity of the commodity.

Textual Amendments

- F8** Word in Sch. 6 para. 42(1)(a) substituted (1.11.2007) by [Finance Act 2006 \(c. 25\), s. 172\(11\)\(a\)\(16\)](#); [S.I. 2007/2901, art. 2\(1\)](#) (with [art. 2\(2\)-\(4\)](#))

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- F9** Sch. 6 para. 42(1)(b) repealed (1.11.2007) by [Finance Act 2006 \(c. 25\), s. 172\(11\)\(b\)\(16\), Sch. 26 Pt. 8\(1\)](#); [S.I. 2007/2901, art. 2\(1\)](#) (with [art. 2\(2\)-\(4\)](#))
- F10** Word in Sch. 6 para. 42(1)(c) substituted (1.11.2007) by [Finance Act 2006 \(c. 25\), s. 172\(11\)\(c\)\(16\)](#); [S.I. 2007/2901, art. 2\(1\)](#) (with [art. 2\(2\)-\(4\)](#))
- F11** Sch. 6 para. 42(1) Table substituted (with effect in relation to supplies treated as taking place on or after 1.4.2009) by [Finance Act 2008 \(c. 9\), s. 19](#)
- F12** Sch. 6 para. 42(1A) inserted (with effect where the certification period begins on or after 1.4.2009) by [Finance Act 2009 \(c. 10\), s. 118\(2\), Sch. 59 para. 5](#)

Half-rate for supplies to horticultural producers

^{F13}43

Textual Amendments

- F13** Sch. 6 para. 43 repealed (1.11.2007) by [Finance Act 2006 \(c. 25\), s. 172\(12\)\(16\), Sch. 26 Pt. 8\(1\)](#); [S.I. 2007/2901, art. 2\(1\)](#) (with [art. 2\(2\)-\(4\)](#))

Reduced-rate for supplies covered by climate change agreement

- ^{F14}44 (1) For the purposes of this Schedule, a taxable supply is a reduced-rate supply if—
- (a) the taxable commodity is supplied to a facility specified in a certificate given by the Secretary of State to the Commissioners as a facility which is to be taken as being covered by a climate change agreement for a period specified in the certificate, and
 - (b) the supply is made at a time falling in that period.
- (2) Sub-paragraph (1) has effect subject to ^{F15}sub-paragraphs (2A) to (2D) and ^{F16}paragraphs 45 and 45B].
- ^{F17}(2A) The Secretary of State may—
- (a) give a certificate that includes provision specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply,
 - (b) vary a certificate so that it includes provision (or further provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply, or
 - (c) vary a certificate so that it ceases to include the provision (or some of the provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply.
- (2B) A taxable supply of a taxable commodity to a facility is not a reduced-rate supply if, at the time of the supply, the commodity falls within a description that is specified (by virtue of sub-paragraph (2A)(a) or (b)) in the certificate relating to the facility.
- (2C) The Secretary of State may only include provision in a certificate by virtue of sub-paragraph (2A)(a) or (b)—
- (a) if the Treasury consents in writing to the specification before the specification is made, and
 - (b) if, and for as long as, the result is compatible with the common market by virtue of Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in

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application of Articles 87 and 88 of the Treaty establishing the European Community (General block exemption Regulation) (O.J. 2008 No. L214/3).

- (2D) In sub-paragraphs (2A) to (2C) “certificate” means such a certificate as is mentioned in sub-paragraph (1)(a).]
- (3) The Commissioners may by regulations make provision for giving effect to sub-paragraph (1).
- (4) Regulations under this paragraph may, in particular, include provision for determining whether any taxable commodity is supplied to a facility.
- (5) The provision that may be made by virtue of sub-paragraph (4) includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility.]

Textual Amendments

- F14** Sch. 6 para. 44 substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 7, 13\(1\)](#); [S.I. 2007/2902, art. 2\(1\)](#) (with [art. 2\(2\)\(4\)](#))
- F15** Words in Sch. 6 para. 44(2) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [s. 117\(3\)\(a\)](#)
- F16** Words in Sch. 6 para. 44(2) substituted (with effect in accordance with s. 118(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 59 para. 6](#)
- F17** Sch. 6 para. 44(2A)-(2D) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [s. 117\(2\)](#)

[^{F18}Reduced-rate supplies: variation of certificates under paragraph 44]

Textual Amendments

- F18** Sch. 6 para. 45 cross-heading substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(6\), 13\(1\)](#); [S.I. 2007/2902, art. 2\(1\)](#)

- 45 (1) This paragraph applies where the Secretary of State, after having given in respect of a facility such a certificate as is mentioned in paragraph 44(1) (“the original certificate”), gives a certificate (a “variation certificate”) to the Commissioners stating—
- (a) that, throughout the period (“the original period”) specified for the facility in the original certificate, the facility is to be taken as not being covered by a climate change agreement; or
- (b) that, for so much of the original period as falls on or after a day specified in the variation certificate (being a day falling within the original period), the facility is to be taken as no longer being covered by a climate change agreement.

^{F19}(2)

^{F19}(3)

^{F19}(4)

(5) If—

- (a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and

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- (b) the day on which [^{F20}the variation certificate is given] falls before the beginning of the original period,
 [^{F21}the original certificate has effect as if the facility had never been specified in it].
- (6) If—
- (a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and
- (b) the day on which [^{F22}the variation certificate is given] falls during the original period,
 [^{F23}the original certificate has effect as if the last day of the period specified for the facility in the original certificate were the day on which the variation certificate is given].
- (7) If the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(b), [^{F24}the original certificate has effect as if the last day of the period specified for the facility in the original certificate were the later of—
- (a) the day on which the variation certificate is given, and
- (b) the day specified in the variation certificate.]

Textual Amendments

- F19** Sch. 6 para. 45(2)-(4) repealed (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(2\), 13\(1\)](#), [Sch. 27 Pt. 1\(2\)](#); [S.I. 2007/2902](#), art. 2(1)
- F20** Words in Sch. 6 para. 45(5)(b) substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(3\)\(a\), 13\(1\)](#); [S.I. 2007/2902](#), art. 2(1)
- F21** Words in Sch. 6 para. 45(5) substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(3\)\(b\), 13\(1\)](#); [S.I. 2007/2902](#), art. 2(1)
- F22** Words in Sch. 6 para. 45(6)(b) substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(4\)\(a\), 13\(1\)](#); [S.I. 2007/2902](#), art. 2(1)
- F23** Words in Sch. 6 para. 45(6) substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(4\)\(b\), 13\(1\)](#); [S.I. 2007/2902](#), art. 2(1)
- F24** Words in Sch. 6 para. 45(7) substituted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 8\(5\), 13\(1\)](#); [S.I. 2007/2902](#), art. 2(1)

[^{F25}Reduced-rate supplies: deemed supply

Textual Amendments

- F25** Sch. 6 para. 45A and cross-heading inserted (1.11.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 2 paras. 9, 13\(1\)](#); [S.I. 2007/2902](#), art. 2(1) (with art. 2(3)(4))

- 45A (1) This paragraph applies where—
- (a) a taxable supply has been made to any person (“the recipient”),
- (b) the supply was made on the basis that it was a reduced-rate supply, and
- (c) it is later determined that the supply was not a reduced-rate supply.
- (2) For the purposes of this Schedule—
- (a) the recipient is deemed to make a taxable supply to itself of the taxable commodity, and

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- (b) the amount payable by way of levy on that deemed supply is 80 per cent. of the amount that would be payable if the supply were not a reduced-rate supply.

[This paragraph does not apply where a supply is treated as not being a reduced-rate supply by virtue of paragraph 45B.]

Textual Amendments

F26 Sch. 6 para. 45A(3) inserted (with effect in accordance with s. 118(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 59 para. 7](#)

[F27 Removal of reduced rate where targets set by climate change agreement not met

Textual Amendments

F27 Sch. 6 para. 45B inserted (with effect in accordance with s. 118(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 59 para. 1](#)

- 45B (1) This paragraph applies where, by virtue of such a certificate as is mentioned in paragraph 44(1), a facility is to be taken as being covered by a climate change agreement for a period specified in that certificate (“the certification period”).
- (2) If it appears to the Secretary of State that the progress made in the certification period towards meeting targets set for the facility by the agreement has been such as under the provisions of the agreement is unsatisfactory, the Secretary of State may issue a certificate under this paragraph.
- (3) The certificate must (in addition to specifying the facility, agreement and certification period to which it applies) specify—
- (a) T, that is, the value (expressed in terms of a reduction in tonnes of carbon dioxide equivalent) of achieving the targets set for the facility by the agreement, and
- (b) P, that is, the value (expressed in the same terms) of the progress made by the facility, during the certification period, towards meeting those targets.
- (4) Where a certificate has been issued under this paragraph—
- (a) each taxable supply made to the facility at any time falling within the certification period is to be treated as not being a reduced-rate supply, and
- (b) accordingly, an amount (determined in accordance with sub-paragraph (5)) is payable by way of levy on that taxable supply.
- (5) The amount payable under this paragraph on a taxable supply is—

$$TPT \times 0.8R$$

where—

T and P have the values mentioned in sub-paragraph (3), and
R is the amount which would have been payable by way of levy on the supply (had it not been a reduced-rate supply) at the time that it was made, in accordance with paragraph 42(1)(a).

- (6) The Secretary of State must send the certificate to—

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- (a) the Commissioners, and
 - (b) the person who is the operator of the facility.
- (7) A certificate under this paragraph may be issued after the certification period ends.
- (8) A person liable to account for levy under this paragraph—
- (a) is liable to account for it otherwise than by reference to an accounting period, and
 - (b) must not (by virtue of regulations under paragraph 41) become liable to pay it as from a date before the date on which the certificate under this paragraph is issued.
- (9) Levy due under this paragraph is payable in addition to any levy already payable on any supply made in the certification period.
- (10) In this paragraph—
- “certification period”, in a case where the certificate referred to in subparagraph (1) has been varied under paragraph 45, means the period for which that certificate has effect as varied;
 - “tonne of carbon dioxide equivalent” has the meaning given in the Climate Change Act 2008.]

Climate change agreements

- 46 In this Schedule “climate change agreement” means—
- (a) an agreement that falls within paragraph 47, or
 - (b) a combination of agreements that falls within paragraph 48.

Climate change agreements: direct agreement with Secretary of State

- 47 (1) An agreement (including one entered into before the passing of this Act) falls within this paragraph if it is an agreement—
- (a) entered into with the Secretary of State,
 - (b) expressed to be entered into for the purposes of the reduced rate of climate change levy,
 - (c) identifying the facilities to which it applies,
 - (d) to which a representative of each facility to which it applies is a party,
 - (e) setting, or providing for the setting of, targets for the facilities to which it applies,
 - (f) specifying certification periods (as to which see paragraph 49(1)) for the facilities to which it applies, and
 - (g) providing for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreement for those facilities and for giving effect to outcomes of such reviews.
- (2) In this paragraph and paragraph 48 “representative”, in relation to a facility to which an agreement applies, means—
- (a) the person who is the operator of the facility at—
 - (i) the time the agreement is entered into, or
 - (ii) if later, the time the facility last became a facility to which the agreement applies,

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or

- (b) a person authorised by that operator to agree to the facility being a facility to which the agreement applies.

Climate change agreement: combination of umbrella and underlying agreements

- 48 (1) A combination of agreements falls within this paragraph if the following conditions are satisfied.
- (2) The first condition is that the combination is a combination of—
- (a) an umbrella agreement (including one entered into before the passing of this Act), and
 - (b) an agreement (including one entered into before the passing of this Act) that, in relation to the umbrella agreement, is an underlying agreement.
- (3) The second condition is that between them the two agreements—
- (a) set, or provide for the setting of, targets for the facilities to which the underlying agreement applies,
 - (b) specify certification periods (as to which see paragraph 49(1)) for the facilities to which the underlying agreement applies, and
 - (c) provide for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreements for those facilities and for giving effect to outcomes of such reviews.
- (4) For the purposes of this paragraph an “umbrella agreement” is an agreement—
- (a) entered into with the Secretary of State,
 - (b) expressed to be entered into for the purposes of the reduced rate of climate change levy,
 - (c) identifying the facilities to which it applies, and
 - (d) to which a representative of each facility to which it applies is a party.
- (5) For the purposes of this paragraph an agreement is an “underlying agreement” in relation to an umbrella agreement if it is an agreement—
- (a) expressed to be entered into for the purposes of the umbrella agreement,
 - (b) entered into—
 - (i) with the Secretary of State, or
 - (ii) with a party to the umbrella agreement other than the Secretary of State,
 - (c) approved by the Secretary of State if he is not a party to it,
 - (d) identifying which of the facilities to which the umbrella agreement applies are the facilities to which it applies, and
 - (e) to which a representative of each facility to which it applies is a party.
- (6) In the case of a climate change agreement that is a combination of agreements that falls within this paragraph, references to the facilities to which the climate change agreement applies are references to the facilities to which the underlying agreement applies.

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Climate change agreement: supplemental provisions

- 49 (1) The first certification period specified by a climate change agreement for a facility to which it applies shall begin with the later of—
- (a) the date on which the agreement, so far as relating to the facility, is expressed to take effect, and
 - (b) 1st April 2001;
- and each subsequent certification period so specified shall begin immediately after the end of a previous certification period.
- (2) Where a climate change agreement (the “new agreement”) applies to a facility to which another climate change agreement previously applied, the first certification period specified by the new agreement for the facility shall be—
- (a) a period beginning as provided by sub-paragraph (1), or
 - (b) a period that—
 - (i) begins earlier than that, and
 - (ii) is a period that was a certification period specified for the facility by any climate change agreement that previously applied to the facility.

A period such as is mentioned in paragraph (b) includes a period beginning, or beginning and ending, before the date on which the new agreement, so far as relating to the facility, is expressed to take effect.
- (3) For the purposes of giving certificates such as are mentioned in paragraphs 44(1) and 45(1), the Secretary of State may take a facility as being covered by a climate change agreement for a period if the facility is one to which the agreement applies and either—
- (a) that period is the first certification period specified by the agreement for the facility, or
 - (b) that period is a subsequent certification period for the facility and it appears to the Secretary of State that progress made in the immediately preceding certification period towards meeting targets set for the facility by the agreement or by a climate change agreement that previously applied to the facility is, or is likely to be, such as under the provisions of the agreement in question is to be taken as being satisfactory.
- (4) For the purposes of sub-paragraph (3)(b) a climate change agreement may (in particular) provide that progress towards meeting any targets for a facility is to be taken as being satisfactory if, in the absence (or partial absence) of any such progress required under the agreement, alternative requirements provided for by the agreement are satisfied.
- (5) For the purposes of sub-paragraphs (2) and (3), the circumstances in which a facility to which a climate change agreement applies is one to which another such agreement previously applied include those where the facility is—
- (a) a part, or a combination of parts, of a facility to which another such agreement previously applied,
 - (b) a combination of two or more such facilities,
 - (c) any combination of parts of such facilities, or
 - (d) any combination of such facilities and parts of such facilities.

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- (6) Paragraphs 47 and 48 and sub-paragraph (4) above are not to be taken as meaning that an agreement, or combination of agreements, containing provision in addition to any mentioned in those paragraphs and that sub-paragraph is not a climate change agreement.
- (7) For the purposes of paragraphs 47 and 48 and this paragraph “target”, in relation to a facility to which a climate change agreement applies, means a target relating to—
- (a) energy, or energy derived from a source of any description, used in the facility or an identifiable group of facilities within which the facility falls, or
 - (b) emissions, or emissions of any description, from the facility or such a group of facilities;
- and for this purpose “identifiable group” means a group that is identified in the agreement or that at any relevant time can be identified under the agreement.
- (8) Nothing in this Schedule is to be taken as requiring the Secretary of State to—
- (a) enter into any climate change agreement,
 - (b) enter into a climate change agreement with any particular person or persons, in respect of any particular facility or facilities or on any particular terms, or
 - (c) approve any, or any particular, proposed climate change agreement.

Facilities to which climate change agreements can apply

- 50 (1) This paragraph applies where, in connection with concluding or varying a climate change agreement, it falls to be determined whether a facility is to be, or is to continue to be, identified in the agreement as a facility to which the agreement applies.
- (2) For the purposes of such a determination “facility” is (subject to any regulations under sub-paragraph (3) or (4)) to be taken as meaning—
- (a) an installation covered by paragraph 51; or
 - (b) a site on which there is or are—
 - (i) such an installation or two or more such installations,
 - (ii) a part, or parts, of such an installation,
 - (iii) a part, or parts, of each of two or more such installations, or
 - (iv) any combination of such installations and parts of such installations.
- (3) The Secretary of State may by regulations make provision for an installation covered by paragraph 51 to be taken to be a facility for those purposes only if—
- (a) the taxable commodities supplied to the installation by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—
 - (i) in the installation, or
 - (ii) on the site where the installation is situated but not in the installation,and
 - (b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.
- (4) The Secretary of State may by regulations make provision for a site to be taken to be a facility for those purposes only if—
- (a) the taxable commodities supplied to the site by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—

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- (i) in installations on the site that are covered by paragraph 51 (or in parts of such installations), or
 - (ii) on the site but not in any such installation (or part of such an installation),
 - and
 - (b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.
- (5) Regulations under sub-paragraph (3) or (4) may make provision for deeming, for the purposes of the regulations, commodities to be intended to be burned (or, in the case of electricity, consumed) in circumstances specified in the regulations.
- (6) In this paragraph and paragraph 51 “installation” means a stationary technical unit.

Energy-intensive installations

- 51 (1) An installation is covered by this paragraph if it falls within any one or more of the descriptions of installation set out in the Table.
- [^{F28}(2) Sub-paragraph (2A) applies where—
- (a) an installation falls within any one or more of those descriptions, and
 - (b) there is, on the same site as the installation, a location at which ancillary activities are carried out.
- (2A) The installation (taken alone) is not covered by this paragraph, but the combination—
- (a) of the installation and that location, or
 - (b) where there is more than one such location, of the installation and all of those locations,
- is to be taken as being an installation covered by this paragraph.
- (2B) In sub-paragraph (2) “ancillary activities” means activities that—
- (a) are directly associated with any of the primary activities carried out in the installation,
 - (b) have a technical connection with those primary activities, and
 - (c) could have an effect on environmental pollution.]
- (3) [^{F29}sub-paragraphs (1) to (2B)] are subject to any regulations under paragraph 52.
- ^{F30}(4)
- ^{F30}(5)
- (6) [^{F31}sub-paragraph (2B)]—
- “environmental pollution” has the same meaning as in the ^{M1}Pollution Prevention and Control Act 1999;
- “primary activity”, in relation to an installation falling within any one or more of the descriptions of installation set out in the Table, means an activity the carrying out of which at the installation results in the installation falling within one or more of those descriptions.

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TABLE

[^{F32}Installations regulated under the Environmental Permitting (England and Wales) Regulations 2007]

^{F33}[1 1. Part A installations.

Installations that would be so regulated but for a threshold or exception

2 Installations that would be Part A installations but for—
(a) a relevant numeric threshold, or
(b) a relevant exception.

Installations that would be so regulated if certain modifications were made to the Regulations

3 Installations that would be Part A installations if the relevant modifications were made.

Corresponding installations in Scotland and Northern Ireland

4 Installations that are situated in Scotland or Northern Ireland, but if situated in England and Wales—
(a) would be Part A installations,
(b) would be Part A installations but for—
(i) a relevant numeric threshold, or
(ii) a relevant exception, or
(c) would be Part A installations if the relevant modifications were made.

Interpretation of entries 1 to 4

5 [^{F34}(1) In this entry “the Schedule” means Schedule 1 to the Environmental Permitting (England and Wales) Regulations 2007.]

(2) In entries 1 to 4—

[^{F35}(a) “Part A installation” has the meaning given in regulation 3(2) of the Environmental Permitting (England and Wales) Regulations 2007;]

(b) “relevant exception” means—
(i) the exception in paragraph (b)(i) [^{F36}or (ii)] of Part A(1) of Section 2.1 of [^{F37}Part 2 of the Schedule],

^{F38}(ii)

^{F38}(iii)

(c) “the relevant modifications” means the omission of the following provisions of [^{F37}Part 2 of the Schedule]:
(i) the final twelve words of paragraph (b) of Part A(1) of Section 4.4;
(ii) the final twelve words of paragraph (b) of Part A(1) of Section 4.5;
[in the interpretation of Section 5.1, in relation
^{F39}(iia) to the definitions of “co-incineration plant” and

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- “incineration plant”, the final nine words in the sentence beginning “This definition covers;]
- [^{F40}(iii) paragraph 1 of the Interpretation and application of Part A(1) of Section 5.4;]
- (iv) the final fourteen words of paragraph (c) of Part A(1) of Section 6.1;
- (v) the final fourteen words of paragraph (c) of Part A(1) of Section 6.4; and
- (vi) the final fourteen words of paragraph (f)(ii) of Part A(1) of Section 6.8; and
- (d) “relevant numeric threshold” means a numeric threshold specified in any of the following provisions of [^{F37}Part 2 of the Schedule]:
- (i) paragraphs (c) and (d) of Part A(1) of Section 2.1;
- (ii) Part A(2) of Section 2.1;
- (iii) paragraph (b) of Part A(1) of Section 2.2;
- (iv) Part A(1) of Section 2.3;
- (v) paragraph (b) of Part A(1) of Section 3.1;
- (vi) paragraph (b) of Part A(2) of Section 3.1;
- (vii) paragraph (b) of Part A(1) of Section 3.3;
- (viii) Part A(2) of Section 3.3;
- (ix) paragraph (a) of Part A(1) of Section 3.4;
- [Part A(1) of Section 3.6;]
- ^{F41}(ixa)
- (x) Part A(2) of Section 3.6;
- (xi) paragraphs (c) and (d) of Part A(1) of Section 4.1;
- (xii) paragraphs [^{F42}(c)] and (e) of Part A(1) of Section 5.1;
- [paragraphs (a) and (c) of Part A(2) of Section 5.1;]
- ^{F43}(xiai)
- (xiii) Part A(1) of Section 5.2;
- (xiv) Part A(1) of Section 5.3;
- (xv) paragraph (c) of Part A(1) of Section 5.4;
- (xvi) paragraph (b) of Part A(1) of Section 6.1;
- (xvii) Part A(1) of Section 6.3;
- (xviii) paragraphs (a) and (b) of Part A(1) of Section 6.4;
- (xix) Part A(2) of Section 6.4;
- (xx) Part A(2) of Section 6.7;
- (xxi) paragraphs (a) to (e) of Part A(1) of Section 6.8;
- (xxii) Part A(2) of Section 6.8; and
- (xxiii) Part A(1) of Section 6.9; and
- (e) any reference to a part of the United Kingdom includes the territorial waters adjacent to that part.]

Textual Amendments

F28 Sch. 6 para. 51(2)(2A)(2B) substituted for Sch. 6 para. 51(2) (23.3.2001) by [S.I. 2001/1139](#), [reg. 2\(2\)](#)

F29 Words in Sch. 6 para. 51(3) substituted (23.3.2001) by [S.I. 2001/1139](#), [reg. 2\(3\)](#)

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- F30** Sch. 6 para. 51(4)(5) omitted (23.3.2001) by S.I. 2001/1139, **reg. 2(4)**
- F31** Words in Sch. 6 para. 51(6) substituted (23.3.2001) by S.I. 2001/1139, **reg. 2(5)**
- F32** Words in Sch. 6 para. 51 Table cross-heading substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(a)** (with reg. 72, Sch. 4)
- F33** Sch. 6 para. 51: Table entries 1-5 substituted for entries 1-33 (23.3.2001) by S.I. 2001/1139, **reg. 2(6)**
- F34** Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(b)** (with reg. 72, Sch. 4)
- F35** Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(c)** (with reg. 72, Sch. 4)
- F36** Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(2)**
- F37** Words in Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(d)** (with reg. 72, Sch. 4)
- F38** Sch. 6 para. 51 Table entry 5 omitted (12.7.2006) by virtue of The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(3)**
- F39** Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(4)**
- F40** Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(e)** (with reg. 72, Sch. 4)
- F41** Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(5)**
- F42** Word in Sch. 6 para. 51 Table entry 5 substituted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(6)**
- F43** Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(7)**

Marginal Citations

M1 1999 c. 24.

Power to vary the installations covered by paragraph 51

- 52 (1) The Treasury may make provision by regulations for varying the installations covered by paragraph 51.
- (2) The provision that may be made by regulations under this paragraph includes, in particular, provision—
- for the installations covered by paragraph 51 to include, or not to include, any installation of a description specified in the regulations;
 - amending the Table in paragraph 51 by adding a description of installation to the Table, removing a description of installation from the Table or altering a description of installation set out in the Table;
 - amending paragraph 51.

Status:

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Changes to legislation:

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