

## 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.]

**Changes to legislation:**

There are currently no known outstanding effects for the The CRC Energy Efficiency Scheme Order 2013, PART 1.