

Climate Change Agreements: Consultation on Draft Revised Agreements and Scheme Rules



Consultation on Climate Change Agreements

Draft Agreements (Umbrella and Underlying) and Rules

Climate Change Agreements were introduced in 2001 in response to the Marshall Report on “Economic Instruments and the Business Use of Energy”. Under Climate Change Agreements, eligible energy intensive industry benefit from an 80%¹ reduction in the Climate Change Levy if they meet challenging energy efficiency targets. Climate Change Agreements were introduced in recognition that the Climate Change Levy could affect the competitive position of energy intensive industry. The aims of the Agreements are to offset competitive disadvantage and to reduce energy demand, thereby reducing emissions of greenhouse gasses. Current Climate Change Agreements expire in March 2013². However, the Government announced in the Pre Budget Report in 2007 that **“the scheme will continue until 2017, subject to State aid approval, and [it] will discuss with business the most effective way of taking this forward”**.

The Government has published its final response to two policy consultations (in March and December 2009) on changes to simplify the operation of the agreements. One element of simplification is much shorter form of Agreements and the creation of a separate document containing Rules for the operation of the Agreements, supported by guidance on technical matters which are currently contained in the agreements. This consultation sets out proposals for the new Agreements and the Rules and seeks views and comment on the Agreements and Rules and whether they correctly reflect the Government’s policy decisions contained in the Government response.

Guidance on CCAs is on the DECC website. This will be updated to support the Rules in due course, but this document highlights where Government considers technical aspects of the current agreements are best covered in guidance.

Issued 23 March 2010

Respond by 1 June 2010

¹ The discount will change to 65% from 1 April 2011, to help secure State aid approval.

² Subject to obtaining State aid approval

Section 1: Introduction

This Consultation

1. This consultation sets out the draft Agreements and Rules to implement the changes set out in the Government's response to the two policy consultations held in March and December 2009. It seeks views on the way we have set out the Agreements and Rules, in particular whether they accurately reflect the Government's policy decisions and whether there are any unintended consequences arising from the drafting.
2. This document is structured as follows:

Section 1: Introduction

Section 2: Policy Context: Aims of Climate Change Agreements

Section 3: Revised form of Agreement and Rules

Section 4: Umbrella (Sector) Agreement

Section 5: Underlying (Operator) Agreements

Section 6: The Rules

Annex I: Draft Umbrella Agreement

Annex II: Draft Underlying Agreement

Annex III: Draft Rules

Annex IV: Table of Equivalence (How Clauses and Schedules in the Current Agreements are Taken up in the Draft Agreements, Rules and Guidance)

Background

3. The existing Climate Change Agreements scheme ends on 31 March 2013, the final date on which the reduced rates of Climate Change Levy (often referred to as Levy discount) may be claimed. The Government announced in the Pre Budget Report in 2007³ that **“the scheme will continue until 2017, subject to State aid approval, and [it] will discuss with business the most effective way of taking this forward”**.
4. On 12 March 2009 a consultation entitled “Consultation on the Form and Content of New Climate Change Agreements” was published (the first consultation document) seeking views on options and proposals for change to the existing Climate Change Agreements. On 21 December 2009 a second consultation document was published on firm proposals for the changes to be made. The deadline for responses to the December 2009 consultation was 15 February 2010.
5. In conjunction with the current consultation, you are advised to read the previous consultation documents and the Government's response, which set out the background that led to these proposed Agreements and Rules⁴.

³ See paragraph 7.31 of PBR 2009: www.hm-treasury.gov.uk/d/pbr09_chapter7.pdf

⁴ www.decc.gov.uk/en/content/cms/consultations/climate_change_agree/climate_change_agree.aspx

Rate of Levy discount

6. The Government announced in PBR 2009 its intention to reduce the rate of Climate Change Levy discount applicable to Climate Change Agreements from 80% to 65% with effect from 1 April 2011. This ensures that the amount of Levy payable by companies in the CCAs on all reduced rate supplies will be above the minimum rates set out in the Energy Taxation Directive⁵ for all fuels and will facilitate State aid approval both for the final two years of the existing agreements, and for the new Climate Change Agreement scheme, from April 2011.

Consultation process

7. Prior to and during the previous consultations DECC explored issues with sector associations at a Plenary Meeting in March 2008. During the first consultation four Focus Groups were established by DECC to provide sector associations and other interested parties with a forum to exchange views and further develop ideas on the main issues covered by the consultation. DECC also participated in further meetings with individual sector associations and groups of sector associations. Subsequent to the consultation period, DECC has discussed the results and further developed ideas with sector associations at Plenary Meetings held in September 2009 and January 2010. In parallel with this final consultation, and subsequent to it, DECC will continue to hold meetings with sector associations and other interested parties. When this process is completed the final form of the Agreements and Rules will be published, in summer 2010.
8. **In responding to the questions raised in this consultation you are requested to provide as much evidence as possible in support of your views and opinions.** There are 56 questions in all to ensure there is an opportunity to comment on all clauses and rules. However, you may wish to comment on only some of these.
9. This written consultation will run between 23 March and 1 June 2010.
10. Please refer to the final Impact Assessment that accompanies this consultation document for information on the costs and benefits of the proposals made. The final Impact Assessment can be found at: <http://www.decc.gov.uk/en/content/cms/consultations/>.
11. Please note it will facilitate prompt analysis of the responses if you use the electronic version of the consultation response form, which can be found at the web address given in paragraph 10 above, and to forward your reply in Excel format (not PDF) to: ccaconsultation@decc.gsi.gov.uk. Responses in letter form make it much more difficult to draw conclusions on the balance of opinions.
12. If you cannot use the electronic version, please complete a paper copy of the consultation response form and forward it by post to:

Sam Lutterodt
Climate Change Agreements Team
Department of Energy and Climate Change
Area 1A
3 Whitehall Place
London, SW1A 2AW

⁵ Directive 2003/96/EC.

Section 2: Policy context: Aims of the Climate Change Agreements

13. Climate Change Agreements are aimed at energy intensive industry. Climate Change Agreements allow operators of facilities to pay a reduced rate of the Climate Change Levy in return for meeting realistic but challenging targets to improve energy efficiency and reduce emissions. This scheme recognises that UK manufacturing industry faces international competition. As the world economies sign up to measures to combat climate change, the competitive impact of energy taxes will reduce. Nevertheless, CCAs have also played their part in improving the competitiveness of UK industry by encouraging the take up of cost effective energy saving measures. Agreement holders are saving in excess of £1.7b annually in energy costs, compared to their energy efficiency levels at their baselines.
14. Since CCAs were first introduced in 2001, the climate change landscape has changed. We now have more detailed knowledge of the impact of climate change and there is more global commitment to the measures needed to mitigate the build up of emissions. In the UK, carbon budgets were established in 2009. All sectors of the UK's economy must make their contribution to reducing emissions.
15. In the consultations 2009-2010, the Secretary of State considered whether to require CCA operators to commit to absolute emission reductions. He concluded that because of the structure of carbon budgets, most emissions from the CCAs' energy intensive industrial composition would be covered directly or indirectly by the EU ETS and would be accounted for in the carbon budget through that system. CCA operators will therefore continue to be able to choose between relative and absolute, and energy and carbon targets. However, the aim must continue to be to achieve an absolute reduction in emissions from CCA sectors. Where operators choose energy efficiency (ie relative) targets, the aim must be to set those targets at a level which compensates for growth in output as well as achieving cost effective energy savings, so that CCA sectors make their contribution to meeting the UK's carbon budgets. Until de-carbonisation of electricity supply is more advanced, this will require stringent energy efficiency targets.
16. Government will pursue these aims in setting up the new Agreements. These aims are reflected in the recitals to the Agreements.

Section 3: Revised form of Agreements and Rules

17. Current umbrella and underlying agreements contain substantial detail on the mechanics of the agreements. It has been necessary over the years to supplement the provisions contained in the agreements with guidance, which is published on the DECC website. Other requirements concerning the CCAs' use of the UK Emissions Trading Scheme (UKETS) are contained in the UKETS Rules, also published on the DECC website at http://www.decc.gov.uk/en/content/cms/what_we_do/change_energy/tackling_clima/ccas/uk_ets/uk_ets.aspx.
18. Most variations required to the agreements therefore need to be reflected in each agreement, thereby requiring the signatures of all 5000 or so operators of target units. Consequently, making any improvements to operation of the agreements is administratively burdensome and can be difficult if a minority of parties disagree with a change desired by the majority. This makes the agreements inflexible and potential improvements, to the benefit of industry and government, are not pursued. The result has been that, in the lifetime of the current agreements, only one change has been made.
19. In the consultations held between March 2009 and February 2010, there was unanimous support for removing this inflexibility by establishing scheme Rules to accompany the agreements which would contain a provision that the Rules can be varied. This allows changes to be made without the need to have every sector association and operator agree and sign new agreements.
20. The Government has therefore decided to simplify the form of the agreements and to establish standard rules to apply to every umbrella and underlying agreement. This consultation concerns the draft agreements and Rules and the detailed terms contained therein.
21. The new structure is as follows:
 - a. **Short Agreements** between the relevant parties: Secretary of State and the sector association (umbrella agreement); and Secretary of State and the operator of the target unit (underlying agreement). These deal with specific sector/operator details purely relevant to the relationship between the sector or operator and the Secretary of State. As now, any amendment to an agreement would need to be agreed between each of the parties to the agreement.
 - b. **Rules** dealing with wider provisions of general relevance to the operation of Climate Change Agreements, which need to be consistent (and, where amended, amended consistently) across all the agreements. These will be given force in relation to each participant through the terms of their agreement. Any amendment would be made by the Secretary of State, normally following an opportunity for sector associations to make representations.
 - c. **Guidance** will cover some technical matters that are currently set out in the Agreements but which may need amendment at more frequent intervals. For example, "Calculation of energy used by a facility" and emission factors currently contained in Schedule 2 to the underlying agreements. Changes to such guidance will, as at present, normally be made in consultation with sector associations.
22. The Rules contain provisions for the operation of the agreements and therefore apply to the agreements only once they are signed. The Rules therefore do not cover the setting up of the agreements between the Secretary of State and other parties, which it is proposed should be

set out in guidance. It is proposed that the new umbrella and underlying agreements will be exactly the same for all sectors/operators, save for some technical matters that may be relevant to specific sectors, which will be contained within the schedules.

23. The draft Umbrella Agreement is at Annex I, the draft Underlying Agreement is at Annex II and the draft Rules are at Annex III. To help understand how issues dealt with in the existing agreements are handled in the draft new Agreements, Rules and Guidance, a Table of Equivalence is given at Annex IV. References to the current umbrella and underlying agreements refer to the drafting of Option 2 agreements and the underlying agreement is the template agreement on the website at - http://www.decc.gov.uk/en/content/cms/what_we_do/change_energy/tackling_clima/ccas/ccas_guidance/ccas_guidance.aspx

24.

Question 1

Do you agree with the broad division of issues between Agreements, Rules and Guidance as described above?

If No please give your reasons and say what different division you propose.

Change of Agreement name descriptions

25. “Umbrella” and “underlying” agreements are non-intuitive descriptions for the two types of agreement. The new agreements present an opportunity to change the names to more intuitive (user friendly) names such as sector agreements and operator agreements. On the other hand, after ten years of operation, it may be thought that sectors and operators are familiar with the terms umbrella and underlying and may be confused by a change.

Question 2

Do you agree to change the name of the agreements to Sector and Operator Agreements?

Question 2a

If you do not agree with Question 2, do you prefer to keep the existing descriptions?

If No, do you have alternative suggestions?

Section 4: Umbrella (Sector) Agreement

25. This Section continues to use existing nomenclature (i.e. umbrella agreement) although it is proposed to rename it as “Sector Agreement” (see paragraph 24).
26. The drive to simplify administration of Climate Change Agreements has resulted in parts of the agreements relating to obligations and administration being moved to Rules or guidance. The body of the draft agreements are in standard format, the details specific to particular sectors or target units appear in the Schedules. The draft umbrella agreement is now just 3 pages long, with four short Schedules setting out details relevant to the particular sector, in comparison with current agreement which is approximately 30 pages long. Guidance will deal with many of the technical requirements currently in the body of the agreements. In addition, guidance will be published on the procedures for setting up agreements initially. Such procedures cannot appear in the Rules because the Rules only apply when an Agreement takes effect (i.e. when it is signed).
27. The draft Umbrella Agreement sets out the basic agreement between the Secretary of State and the sector association and includes:
- Determination of the facilities covered by the Agreement (Clause 3)
 - The targets agreed at sector level and provision for their review (Clause 4)
 - Commitment to observe the Rules and procedures for varying the Rules (Clause 5)
 - Provisions on the duration and termination of the Agreement (Clause 6)
 - Provisions on the variation of the Agreement (Clause 7)
28. There are 4 Schedules to the draft Umbrella Agreement containing
- The details of the sector association (Schedule 1)
 - The definition of the eligible activities carried out under the Umbrella Agreement (Schedule 2)
 - The facilities covered by the Agreement (Schedule 3)
 - The sector targets (Schedule 4)

Question 3

Do you agree with the division of the agreements into a standard basic agreement across all sectors and operators, with details specific to sectors and operators contained in Schedules?

If No please give your reasons and state what alternative division you propose?

The new Umbrella Agreement

Clause 1 (Clause 1 of the existing agreement): Recitals

29. Recitals set the aims of the Agreement and their legal underpinning. These do not form part of the Agreement. The recitals differ from the current agreement in that:
- The revised umbrella agreement specifies the basis of CCAs and that holders of CCAs can expect to receive a discount of 65% from the Climate Change Levy; and

- b) Clause 1.7 states that sector targets are expected to encourage the implementation of cost effective energy efficiency measures, leading to an overall reduction in energy use.

Question 4

Does the wording in Clause 1 of the Umbrella agreement (Recitals) accurately reflect the Government's policy decisions?

If No please explain your reasoning.

Question 5

Are there are unintended consequences from the wording of Clause 1?

If Yes, please explain your reasoning.

Clause 2 (Clause 2 of the existing agreement): Interpretation

30. Clause 2 of the existing agreement deals with interpretation and notices. Matters related to the service of notices are now dealt with in Schedule 1 to the draft umbrella agreement and in Rule 17.
31. Clause 2 of the draft umbrella agreement sets out the definition of terms used in the agreement. In the current agreement, the list of terms was extensive, but in the draft agreement the list is smaller because much of the original text has moved to the Rules.

Question 6

Are there are unintended consequences from the wording of Clause 2?

If Yes, please explain your reasoning.

Clause 3 (Clause 3 of the existing agreement): Facilities to which this agreement applies

32. In the current umbrella agreement, clause 3 includes the following:
- Clause 3.1 - A reference to the facilities covered by the agreement which are listed in Part 1 of Schedule 2
 - Clause 3.2 - A facility is specified as being eligible for inclusion in the agreement if it meets criteria specified in Schedule 6 of the Finance Act (2000) ie it belongs to the sector, and it is not included in another agreement (now moved to Rule 9.1).
 - Clause 3.3 - A facility must carry out specific processes outlined in this clause.

- Clause 3.4 – Specifies a facility may be added or removed from Schedule 1 (now moved to Rules 9 and 10).

33. In order to simplify this clause, Clause 3 in the draft agreement includes the following:

- The processes relevant to that sector listed in Schedule 2
- Facilities included under the umbrella agreement listed in Schedule 3. The list of facilities will also be displayed on the DECC website at http://www.decc.gov.uk/en/content/cms/what_we_do/change_energy/tackling_clima/ccas/umbrella_ccas/reduced_rate/reduced_rate.aspx.

Question 7

Are there are unintended consequences from the wording of Clause 3?

If Yes, please explain your reasoning.

Clause 4 (Clause 5 of the existing agreement): Sector Target

34. Clause 4 of the existing agreement (Certification Periods) is now dealt with in Rule 1.

35. Clause 5 of the current umbrella agreement (Targets and Currencies) sets out how targets for facilities are constructed, refers to the sector targets set out in Schedule 2, provides for target reviews and refers to target currencies.

36. Clause 4 of the draft umbrella agreement refers to the sector targets as set out in new Schedule 4 and provides for a review of the targets for 2014 and 2015 in 2012.

37. The definition of how targets for facilities are constructed is now in Rule 4 (Certification of a Facility). The definition of target currencies is now contained in Rule 1 (Interpretation). The terms of the target review are set out in Rule 7.

Question 8

Are there are unintended consequences from the wording of Clause 4 and Schedule 4?

If Yes, please explain your reasoning.

Clause 5 (new clause): The Rules

38. This is a new clause to incorporate the Rules into the umbrella agreement, requires the sector association to agree to comply with the Rules and for the Rules to be varied in accordance with Rule 18. Refer to Section 6 below for detailed explanation of the Rules.
39. The Rules cover all aspects of the agreements, but please see in particular Clauses 6 (Obligations of the Sector Association), 7 (Certification of Facilities by the Secretary of State) and 8 (Confidentiality) of the current agreements.
40. As discussed in Section 3, paragraphs 21 and 22, operational procedures and technical matters will be removed from umbrella and underlying agreements and placed in Rules or guidance. The procedures included in the Rules will include variations to agreements, and the circumstances for issuing notices. The Rules will also contain details of the obligations of sector associations and operators.

Question 9

Are there are unintended consequences from the wording of Clause 5?

If Yes, please explain your reasoning.

Clause 6 (Clause 9 of the existing agreement): Duration and Termination of this Agreement

41. Clause 9 of the current agreements refers to their expiry date, grounds for termination before this date and the information to be included in a termination notice.
42. Draft Clause 6 retains these in a shortened form. The grounds for termination and the procedures to be followed are now contained in Rule 8, which is discussed in paragraphs 43-47 of section 6 below.

Question 10

Are there are unintended consequences from the wording of Clause 6?

If Yes, please explain your reasoning.

Clause 7 (Clause 10 of the existing agreement): Variation of the Agreement

43. Clause 10 of the current umbrella agreements prevents targets being varied except in the limited circumstances set out in Part 1 of Schedule 6. It allows other terms of the agreements to be varied in accordance with Part 2 of Schedule 6.
44. Draft Clause 7 of the umbrella agreement refers to the Rules. Rules 9 and 10 relate to variation of facilities in an agreement. Rule 11 relates to variations arising from a change to targets following a review. See paragraphs 48-54 of section 6 below.

Question 11

Are there are unintended consequences from the wording of Clause 7?

If Yes, please explain your reasoning.

Schedules 1 to 4

45. There are 4 schedules to the draft Umbrella Agreement containing
- The details of the sector association
 - The definition of the eligible activities carried out under the umbrella agreement
 - The facilities covered by the agreement
 - The sector targets
46. These are all matters specifically relevant to the relationship between the Secretary of State and the individual Sector Association. All other matters contained in the schedules of the existing agreements are either dealt with in the Rules or in Guidance (see Annex XXX).

Question 12

Are there are unintended consequences from the wording of the Schedules?

If Yes, please explain your reasoning.

Section 5: Underlying (Operator) Agreements

47. This Section continues to use existing nomenclature (i.e. Underlying Agreement) although it is proposed to rename it as “Operator Agreement” (see paragraph 24 of section 3).
48. The draft Underlying Agreement is now four pages long with five short Schedules setting out details relevant to the facilities it covers, in comparison with current agreements around 30 pages in length.
49. The draft Underlying Agreement sets out the basic agreement between the Secretary of State and the operator, and includes:
- The determination of facilities covered by the agreement (Clause 3)
 - Reference to Schedule 5 containing the targets set for the target units (Clause 4)
 - Commitment to observe the Rules and procedures for varying the Rules (Clause 5)
 - Provisions on the duration, termination and variation of the agreement (Clauses 6 and 7)
50. There are four Schedules to the underlying agreement containing
- Details of the operator (Schedule 1)
 - Details of the sector to which the underlying agreement refers and the definition of the eligible activities carried out under the umbrella agreement (Schedules 2 and 3)
 - The facilities covered by the agreement (Schedule 4)
 - The facility targets (Schedule 5)

The new Underlying Agreements

Clauses 1 and 2 (Clauses 1 and 2 of the existing agreement): Recitals and Interpretation

51. The changes are analogous to those made for the draft Umbrella Agreement – see section 4 paragraphs 29-31 above.

Question 13

Are there any unintended consequences from the wording of Clauses 1 and 2?

If Yes, please explain your reasoning.

Clause 3 (Clause 3 of the existing agreements): Facilities to which this agreement applies

52. Clause 3 of the draft Underlying Agreement simply identifies the facilities covered by the agreement to be those that are set out in Schedule 4.

53. Issues on eligibility in Clause 3.2 of the existing agreements are now dealt with in the Rules (see Rule 9).

Question 14

Are there are unintended consequences from the wording of Clauses 3 and Schedule 4?

If Yes, please explain your reasoning.

Clause 4 (Clause 4 of the existing agreements): Target

54. Clause 4 of the draft Underlying Agreement refers to the target set for each facility in the target unit set out in Schedule 4, the definition of throughput also contained in Schedule 5, the provisions for determining whether the target has been met as set out in Rule 5 and provides for a review of targets.

55. Provisions contained in Clause 5 of the existing agreements on tolerance bands, product mix and throughput, and on a review of targets in relation to the potential to use Combined Heat and Power have been deleted as they are no longer applicable.

Question 15

Are there are unintended consequences from the wording of Clauses 3 and 4 and Schedule 5

If Yes, please explain your reasoning.

Clause 5 (new Clause): The Rules

56. This is a new clause to incorporate the Rules into the agreements, require the operator to agree to comply with the Rules and for the Rules to be varied in accordance with Rule 18. Refer to Section 6 below for detailed explanation of the Rules.

57. The Rules cover all aspects of the agreements, but please see in particular Clauses 6 (Obligations of the Operator) and 8 (Confidentiality) of the existing agreement.

58. As discussed in Section 3, paragraphs 21 and 22, operational procedures and technical matters will be removed from umbrella and underlying agreements and placed in Rules or guidance. The procedures included in the Rules will include variations to agreements, and the circumstances for issuing notices. The Rules will also contain details of the obligations of sector associations and operators.

59. The Rules do not come into force until agreements are signed. Therefore as discussed in paragraph 22 in Section 3 above, guidance notes will provide information on eligibility and the requirements for entering into agreements, as well as administrative and technical guidance.

Question 16

Are there are unintended consequences from the wording of Clause 5?

If Yes, please explain your reasoning.

Clauses 6 and 7 (Clauses 9 and 10 of the existing agreements): Duration and Termination of This Agreement and Variation of Agreement

60. These changes are analogous to those made for the umbrella agreement – see paragraphs 41-44 in section 4 above

Question 17

Are there are unintended consequences from the wording of Clauses 6 and 7?

If Yes, please explain your reasoning.

Schedules 1 to 5

61. There are 5 schedules to the draft Underlying Agreement containing

- The details of the operator
- The details of the sector association
- The definition of the eligible activities carried out under the umbrella agreement
- The facilities covered by the agreement
- The facility targets, units of throughput and reference throughput.

62. These are all matters specifically relevant to the relationship between the Secretary of State and the operator. All other matters contained in the schedules of the existing agreements are either dealt with in the Rules or in Guidance (see Annex IV).

Question 18

Are there are unintended consequences from the wording of the Schedules?

If Yes, please explain your reasoning.

Section 6: The Rules

63. As set out in paragraph 22 above, the Rules apply once the agreements have been signed by both parties. They do not cover the initial set up of the agreements between the parties. This will be covered in separate guidance.
64. The Rules contain most of the detail previously contained in the Umbrella and Underlying Agreements. However, it is proposed that the following provisions should go into Guidance.
- a. Umbrella Agreement – Schedule 2 Paras 2-4 (calculation of energy used by the sector, calculation of throughput of sector and calculation of carbon emissions from the sector) and Paras 6 and 7 (conversion between currencies and co-ordination of currencies).
 - b. Underlying Agreements – Schedule 2 para 2 (calculation of units of energy used by a facility) and para 3 (emissions factors)
65. To give greater certainty to operators, certain aspects of the operation of the Agreements currently contained in Guidance are now incorporated into these Rules, for example the requirement for sub-metering around the eligible energy use.

Question 19

Are there are unintended consequences from this proposed change?

If Yes, please explain your reasoning.

Rule 1: Interpretation

66. This Rule defines the terms used in the Rules. It sets out the certification periods for the agreements. These have been transferred from the agreements because they are now standardized for all operators. It also sets out the acceptable currencies for use in the agreements, i.e. relative/ absolute and energy/carbon. There is no change from current provisions on currencies.

Question 20

Are there are unintended consequences from the wording of Rule 1?

If Yes, please explain your reasoning.

Rule 2: Obligations of a Sector Association

Please note that Rules 2 to 5 contain deadline dates for reconciliation. These are brought together at paragraph 37 for your comments on the whole timeline.

67. The following provisions of Clause 6 of the existing Umbrella Agreements, which set out the obligations of sector associations, are continued in more or less the same form
- To encourage their members to enter into underlying agreements
 - a. Not to impose unreasonable requirements on non-members
 - b. Not to impose unreasonable charges on operators or potential operators
 - c. To supply information to the Secretary of State by the reconciliation date (end of March) in each year. (see also Rule 15)
 - d. To inform the Secretary of State of non-respondents by the 7 March in each year
 - e. To supply such information as the Secretary of State may require in connection with the operation of the umbrella agreement or any underlying agreement.
 - f. To cooperate with auditors.
 - g. To keep records and make them available for inspection and copying
 - h. To meet their share of costs arising from any adjudication
68. New obligations are
- a. In respect of g. above, to comply with any actions required by the agent of the Secretary of State within the time period set out.
 - b. To distribute sector targets between target units having regard to the potential in each target unit for cost effective energy efficiency savings.
69. The clause also contains a wider provision for the Secretary of State to serve notice on the sector association, if he considers that the sector association has failed to comply with any obligation, setting out the obligation that has not been complied with, the steps necessary to comply and the timescale for compliance. See Rule 8 on termination provisions if the sector association fails to comply within the time specified.

Rationale for Changes

70. **Requirement to comply with actions set out by auditors.** Actions required by auditors fall into two categories – actions and recommendations. Actions are those considered by the auditors to be necessary to comply with the requirement to keep proper records as set in Rule 15. These are generally such records as are necessary to enable the auditor to assess the validity of data submitted to the sector association to demonstrate compliance with the target. Recommendations are about good practice, usually general energy management.

71. There is currently no requirement to take action required by auditors or sanction against sector associations or operators that fail to take action required by auditors. This provision will make it possible for the Secretary of State to serve notice to comply and in the event of failure to comply, to terminate an Umbrella Agreement where a sector association has not complied with a requirement for action. DECC will consider any representations by sectors that such audit actions are unreasonable, though this is not made explicit in the Rules.

Question 21

Do you agree with the proposal to require sectors to comply with actions set out by auditors as described above?

If No, please explain your reasoning.

Question 22

Are there are unintended consequences from the wording of clause 2.8 of Rule 2?

If Yes, please explain your reasoning.

72. ***Distribution of sector targets to target units.*** Under the current agreements sector associations are responsible for allocating the sector targets between the target units. Many sectors make this allocation on a “bottom up” basis, collecting evidence on the energy saving potential of individual target units. Others allocate targets on a “top down” basis (i.e. requiring all target units to make the same percentage savings). Allocating targets on a top down basis means it is likely that there remains considerable potential so far unrealised from poorer performing facilities within the sector, while the better performing facilities are making the contribution on behalf of the whole sector.
73. This Rule requires sector associations to have regard to the distribution of potential for cost effective energy saving across their target units. Government believes that this will enable sector associations to distribute targets where the best potential remains. The extent of analysis necessary to implement it will vary between sectors according to the size and complexity of the sector. However, at a minimum, Government will expect sector associations to take into account the distribution of Specific Energy Consumption (SECs) for similar production processes and past evidence of energy saving action.

Question 23

Do you agree with the proposal to require sectors to distribute targets to target units having regard to the potential for energy savings as described above?

If No, please explain your reasoning.

Question 24

Are there are unintended consequences from the wording of clause 2.12 of Rule 2?

If Yes, please explain your reasoning.

Rule 3: Obligations of an Operator

74. The following provisions of Clause 6 of the existing Underlying Agreement, which set out the obligations of operators, are continued in more or less the same form:-
- a. To serve notice on the Secretary of State if it has reason to believe the facility is not eligible for inclusion in an agreement
 - b. To supply contact details
 - c. To supply details of changes to contact details within 5 working days of that change
 - d. To supply information to the sector association by the last working day before 1 March in each year. (See also Rule 15)
 - e. To supply to the sector association such other information as the sector association may be required to provide to the Secretary of State
 - f. To supply to the Secretary of State such information as he may require in connection with the operation of the underlying agreement.
 - g. To cooperate with auditors.
 - h. To keep records and make them available for inspection and copying
 - i. To meet their share of costs arising from any adjudication.
75. New obligations are
- a. In respect of g. above, to comply with any actions required by the agent of the Secretary of State within the time period set out.
 - b. To keep records of actions taken for energy efficiency.
 - c. To install metering sufficient to accurately measure energy use within the facility, within six months of entering into an Underlying Agreement.
 - d. If the site is a greenfield site, to supply data and a consultant's report to enable targets to be set within a period specified by the Secretary of State.
 - e. To serve notice on the Secretary of State following a change of currency.
 - f. To comply with the terms of any management agreement between the operator and the sector association.
76. The provision remains for the Secretary of State to serve notice on the operator if he considers that the operator has failed to comply with any obligation setting out the obligation that has not been complied with, the steps necessary to comply and the timescale for compliance. See Rule 8 for termination provisions if the operator still fails to comply within the time specified.

Rationale for Changes

77. In respect of a in para 13. above, to comply with any actions required by the agent of the Secretary of State within the time period set out. This is analogous to the provision in respect of sector associations. See paragraphs 8-9 above for an explanation of this new provision.

Question 25

Do you agree with the proposal to require sectors to comply with actions set out by auditors as described above?

If No, please explain your reasoning.

Question 26

Are there are unintended consequences from the wording of Rule 3.7?

If Yes, please explain your reasoning.

78. **To keep records of actions taken for energy efficiency.** This provision would require operators to keep records of any energy efficiency measures they have taken on an annual basis. It is apparent that many sector associations do not have access to such information that enables suitable targets to be set. This provision is intended to make such information available to them and to government. Views are particularly sought on the usefulness of this proposal.

Question 27

Do you agree with the proposal to require operators to keep records of energy efficiency measures undertaken?

If No, please explain your reasoning.

Question 28

Are there are unintended consequences from the wording of Rule 3.9?

If Yes, please explain your reasoning.

79. **Install metering sufficient to measure accurately energy use within the facility, within six months of entering into an underlying agreement.** This formalises in the Rules the established practice that the boundaries of facilities must be metered, as set out in CCA paper CCA-C02.

Question 29

Are there are unintended consequences from the wording of Rule 3.10?

If Yes, please explain your reasoning.

If the site is a Greenfield site, to supply data and a consultant's report to enable targets to be set within a period specified by the Secretary of State. This formalises provisions that have been incorporated into any new agreements covering sites with no baseline data (either because they are Greenfield or because they have never collected data) to require such data to be supplied within a set period.

Question 30

Are there are unintended consequences from the wording of Rule 3.11?

If Yes, please explain your reasoning.

80. **To serve a notice on the Secretary of State following a change of currency.** This simply requires the operator to formally record the change with the Secretary of State.

Question 31

Are there are unintended consequences from the wording of Rule 3.12?

If Yes, please explain your reasoning.

81. **To comply with the terms of any management agreement between the operator and the sector association.** On a number of occasions, sector associations have approached DECC because an operator has not complied with the terms of the agreement between the sector association and the operator. Usually this has been an issue about the payment of sector charges. In the past these situations have been satisfactorily resolved. For administrative reasons, DECC would not wish to deal directly with any operator that had not

met its obligations to the sector association. We have therefore included an obligation so that if operators do not comply, DECC can terminate the underlying agreement. Views are particularly sought on the usefulness of this proposal.

Question 32

Do you agree with the proposal to require operators to comply with terms of a management agreement between the operator and the sector association?

If No, please explain your reasoning.

Question 33

Are there are unintended consequences from the wording of Rule 3.13?

If Yes, please explain your reasoning.

Rule 4: Certification of a Facility

82. Rule 4 covers the circumstances under which the Secretary of State will certify that a facility is covered by a Climate Change Agreement. It accommodates those provisions of Clause 7 of the current Umbrella and Underlying Agreements that will be relevant under the new agreements and adds further provisions resulting from the consultation on the form and content of Climate Change Agreements.

83. Provisions of Clause 7 that are no longer relevant are:

- a. The sector target for the immediately preceding certification period has been met (because all target units must meet their own targets and therefore the sector target does not need to be met for the purposes of certification of facilities).
- b. Tolerance bands.
- c. Relevant constraints or requirements.

84. **Certification for the first certification period.** Rule 4.1 provides for the certification of a facility for the first certification period save where there has been a previous climate change agreement. This will ensure that no facility can be certified for the period April 2011 to May 2013 under the new agreements if they have failed to meet the target for the immediately preceding certification period under the old agreements. Rule 4 also provides for the publication of a list of certified facilities.

Question 34

Are there are unintended consequences from the wording of Rule 4.1?

If Yes, please explain your reasoning.

85. **Certification for subsequent certification periods.** Rules 4.2 and 4.3. provide for certification in subsequent certification periods where a target unit has met its target in accordance with Rule 5 and, where the target unit includes an installation covered by EU ETS, has met its obligation under EU ETS to surrender sufficient allowances to cover its emissions under that trading scheme.
86. Most CCA facilities do not include any EU ETS installation. Those target units will be certified if they meet the target in the immediately preceding target period in accordance with Rule 5.
87. For the 500 or so facilities that do include an EU ETS installation, the requirement also to meet its obligation under EU ETS to surrender sufficient allowances to cover its emissions in that system follows the decision in the consultation on the form and content of Climate Change Agreements to introduce split targets⁶

Question 35

Are there are unintended consequences from the wording of Rule 4.2 and 4.3?

If Yes, please explain your reasoning.

88. **Circumstances where the Secretary of State shall not certify, or will decertify, a facility.** Rule 4.4 continues the provision in the current agreements that the Secretary of State will not certify, or will de-certify a facility if any of the following apply:
- a target unit has failed to meet its target,
 - insufficient allowances have been surrendered to meet any compliance obligations under EU ETS
 - it ceases to be eligible for the agreements,
 - a facility is excluded from the agreement under Rule 10
 - the underlying agreement is terminated in accordance with Rule 8

Question 36

Are there are unintended consequences from the wording of Rule 4.4?

If Yes, please explain your reasoning.

⁶ Under current agreements a single target is set but a complex “double counting” mechanism is applied to avoid double benefit for any over achievement, or double jeopardy for any underachievement in the overlap between Climate Change Agreements and EU ETS. x% of respondents to the consultation on the form and content of Climate Change Agreements supported the move to split targets and the Government has decided to implement this proposal.

89. **Circumstances where the Secretary of State has discretion whether to certify.** Rule 4.5 continues the provision in the current agreements that the Secretary of State may decide not to certify if the information supplied by the sector association is insufficient to determine whether the target has been met, or, for those facilities that include an EU ETS installation, whether sufficient allowances have been surrendered to meet its EU ETS obligations.
90. Rule 4.6 continues the provisions in the current agreements for the Secretary of State to serve Decision Notices on the sector association and the operator setting out his decision not to certify, or to decertify, facilities. Rule 13 continues the provisions for dispute resolution. Rule 4.9 provides that the Secretary of State shall certify to HMRC that a facility is covered by an agreement.
91. Rule 4.7 incorporates into the Rules the provisions introduced in 2004 to deal with errors found after reconciliation and set out in the letter dated 6 February 2004. This provides that where the error originated with an operator and the correction of the error results in the relevant target unit having failed to meet its target the operator shall be offered the opportunity to surrender sufficient Certified Emissions Reductions to rectify the problem.
92. Rule 4.8 provides for a dispute on the facts to be referred to Adjudication (Rule 13).

Question 37

Are there are unintended consequences from the wording of Rules 4.5 - 4.7?

If Yes, please explain your reasoning.

Rule 5: Meeting the Target Unit Target

93. This Rule sets out provisions for determining whether a target unit has met its target, including new policy decisions as set out in the Government's response. These were:
- The replacement of UK ETS by a compliance mechanism based on the transfer to DECC of CERs
 - De-minimis and materiality provisions.
94. **Compliance through transfer of CERs.** Rule 5.2 provides that a target unit is deemed to have met its target if the target unit has not exceeded the target for the target period, or if it has exceeded the target, has transferred sufficient CERs into a DECC holding account by the Reconciliation Date to offset the excess, calculated in units of CO₂.
95. Further details of the mechanics of transfer of CERs and reconciliation of the amounts held in the holding account to amounts required to meet the target will be published in due course.

Question 38

Are there are unintended consequences from the wording of Rule 5.2?

If Yes, please explain your reasoning.

96. **De minimis and Materiality.** Under the current agreements, an operator is liable to be decertified if, for example, he has made a rounding error in his calculations. The provision for operators to transfer to DECC within a specified period sufficient CERs to make up small shortfalls identified after reconciliation was supported by 100% of respondents to the consultation on the form and content of Climate Change Agreements. Rule 5.3 allows for two types of action

- a. If the error is 1% or less than the target, the operator will be afforded the opportunity to transfer to DECC the correct number of CERs by a set date.
- b. If the error is slightly larger, i.e, between 1 and 2% of the target, and so is less likely to be due to simple arithmetical errors, he will be afforded the opportunity to transfer to DECC the correct number of CERs by a set date, but will also be required to pay £40 per tonne of shortfall that lies between 1 and 2% of the target.

97. The Rule also sets out how the units used in the calculations shall be measured.

Question 39

Are there are unintended consequences from the wording of Rule 5.3?

If Yes, please explain your reasoning.

98. Rule 5.4 provides that unexpected disruption of energy supplies may be disregarded in certain circumstances. This continues the provision in part 2 of Schedule 2 to the underlying agreements.

Question 40

Are there are unintended consequences from the wording of Rule 5.4?

If Yes, please explain your reasoning.

Deadline dates

99. There are several deadlines for reconciliation contained in the Rules.

The relevant dates are as follows:

- | | |
|--|----------------------|
| • Operator to supply information to sector association | End February |
| • Sector association to notify Secretary of State of non-respondents | 7 March |
| • Sector Association to supply data to Secretary of State | end March |
| • Operator to transfer CERs to DECC holding account | end March |
| • Operator to transfer any additional CERs to DECC holding account under de-minimis or materiality provisions and make any payments. | 10 days after notice |
| • Secretary of State to certify | 1 June |

Question 41

Are these deadline dates reasonable?

If no please set out your reasons and alternative proposals.

Question 42

Is it necessary to provide a deadline in the underlying agreements by which operators must report their data to the sector association or can this be left to the agreements between sectors and operators?:

- **Yes, it is necessary**
- **No, it can be left to agreements between sector associations and operators**

Please state your reasons for either Yes or No.

Rule 6: Banking Overachievement

100. Rule 6 sets out the provision for banking over-achievement for future own use as described in the Government's response. That response indicated that verification of over-achievement would no longer be required.

101. Rule 6.2 provides that where a target unit is below its target for a target period, that over-achievement, measured in units of CO₂, will be carried forward and may be used by the same target unit to meet its target in a subsequent target period.
102. Rule 6.3, 6.4 and 6.5 also make supplementary provisions relating to how the over-achievement may be allocated between facilities if a target unit is split or a facility joins a target unit. The operator may determine how to distribute the over-achievement between the facilities leaving and those remaining in the target unit, provided he notifies the Secretary of State. If there is no such notification, the over-achievement will remain with the target unit.
103. Any over-achievement allocated to a facility leaving a target unit shall be added to any target unit that it joins.

Question 43

Are there are unintended consequences from the wording of Rule 6.3 - 6.5?

If Yes, please explain your reasoning.

104. Rule 6.6 provides that over-achievement will be cancelled if a target unit is de-certified following failure to take advantage of Rule 5.2, which provides for materiality and de-minimis. This is because the Government believes that, in these circumstances, operators would have been afforded a window of opportunity to correct small errors, and could have used banked over-achievement for this purpose. However, where Rule 5.2 does not apply (i.e the target has been failed by a margin greater than 2%) no such window of opportunity would be available and the operator will be decertified. Under these circumstances, the Government believes that it is reasonable to allow over-achievement from previous years to carry forward, and be available for use once the target unit is re-certified.

Question 44

Do you agree with the proposal to cancel over achievement if de-minimis and materiality provisions have applied?

If No, please explain your reasoning.

Question 45

Are there are unintended consequences from the wording of Rule 6.6?

If Yes, please explain your reasoning.

Rule 7: Review of sector targets

105. Sector targets will be set by negotiation prior to the signing of the Umbrella Agreement. It is the responsibility of the sector association to distribute the sector target between its operators, including any changes resulting from a target review. Under the new Agreements, there is no requirement for the sector target to be met in order for the facilities covered by that Agreement to be recertified. However, the Government intends to continue to calculate the sector performance for the purposes of reporting outcomes and of reviewing targets.
106. Clause 4.2 of the Umbrella Agreement provides for the targets for 2014 and 2015 to be reviewed in 2012. DECC intends to carry out a paper review in the first instance, but will carry out a full review with sectors where this appears to DECC to be appropriate.
107. Rule 7.2 sets the context in which this review should be undertaken. Specifically it sets out that the review shall take account of
- a. The actual and potential technical changes for the sector
 - b. Market circumstances, including issues of carbon leakage
 - c. The performance of the sector in the final target period of the current agreements
 - d. UK Carbon Budgets
 - e. Representations of the sector association
 - f. Any other matters that the Secretary of State considers relevant
108. The context of the target review is determined by the aims of Climate Change Agreements as set out in Section 2 above.

Question 46

Are there are unintended consequences from the wording of Rule 7?

If Yes, please explain your reasoning.

Rule 8: Termination of Umbrella or Underlying Agreements

109. The Agreements provide for their termination, at any time before the 31 May 2017, by the sector association (umbrella agreement) or the operator (underlying agreement). Rule 8 provides the Secretary of State with powers of termination of umbrella and underlying agreements.
110. Rule 8.1 provides for the termination of the umbrella agreement where
- a. State aid approval is varied or ceases to apply
 - b. The sector association has failed to meet any of its obligations under Rule 2, and
 - c. Where there is no agreement on the variation of sector or target unit targets
111. This continues the provisions of clauses 9.3 and 6.13 and parts 2, 4 and 5 of Schedule 6 (respectively) to the umbrella agreements. Para 6 above sets out where the obligations of sector associations are slightly wider than those contained in the current umbrella agreements.

112. Rule 8.2 provides for termination of an underlying agreement where an operator has failed to meet any of its obligations under Rule 3. However, this differs from the provisions in Clause 6 of the current underlying agreements, which provide the Secretary of State with powers to terminate the agreement where:
- a. the umbrella agreement had been terminated,
 - b. the operator had failed to supply information under clause 6.5 (ie for reconciliation), or
 - c. where, under paragraphs 3.13, and 4.13⁷, there had been failure to agree on targets following exclusion of a facility or adjustment of absolute targets for fall in throughput.
113. There are several new obligations on operators under Rule 3. The termination provisions provide the Secretary of State with discretion to terminate if any of these obligations are not met.

Question 47

Are there are unintended consequences from the wording of Rule 8?

If Yes, please explain your reasoning.

Rule 9: Variation by inclusion of Facilities

Rules 9, 10 and 11 replace Clause 3.4 and 3.5 and paragraphs 2 and 3 of Part 2 of Schedule 6 to the umbrella agreements, and Clause 3 and paragraphs 2, 3 and 6 of Schedule 5 to the underlying agreements.

114. Rule 9.1 provides that a facility may be added to the agreements if it meets the eligibility criteria (IPPC and Energy Intensity) provided for in Schedule 6 to the Finance Act 2000 and it carries out the processes set out in the umbrella agreement for the sector.
115. Rule 9.1 also sets out that
- a. a facility cannot belong to more than one sector,
 - b. a facility cannot join an agreement in the final target period for the agreement, and
 - c. that if a facility carries out processes that are set out in more than one agreement, it shall join the sector covering processes for which it uses the majority of its energy.
116. Rule 9.2 and 9.3 set out procedures to be followed to add a facility. Note that a facility can be considered for inclusion only where notice is served on the Secretary of State not less than two months before the next target period.

⁷ 5.11 in underlying agreements with CHP clauses

Question 48

Are there are unintended consequences from the wording of Rule 9?

If Yes, please explain your reasoning.

Rule 10: Variation by exclusion of facilities

117. Rule 10 sets out the procedures to be followed to exclude a facility. This carries forward existing provisions of the current agreements.

Question 49

Are there are unintended consequences from the wording of Rule 10?

If Yes, please explain your reasoning.

Rule 11: Variation of Sector Target following a Review

118. Rule 11 provides for the Secretary of State to serve a Variation Notice following a target review to vary the sector target.

119. Where the sector association agrees with the Variation Notice, Rule 11 requires the sector association to serve notice on the Secretary of State within 20 working days setting out the distribution of the revised sector target between each target unit.

120. As in Rule 2 (obligations on sector associations), Rule 11.5 requires the sector association to have regard to potential in each target unit for cost effective energy efficiency measures and any other factors set out in guidance.

Question 50

Are there are unintended consequences from the wording of Rule 11.1 – 11.4?

If Yes, please explain your reasoning.

Question 51

Is there a need for time limit for the sector association to serve notice on the Secretary of State on the distribution of targets between target units?

Question 51a

If you agree with Question 51, is 20 days appropriate?

Question 51b

If 20 days is not appropriate, what time limit do you propose? Please give your reasons.

121. ***Sector associations to be responsible for issuing notices to their operators setting out the targets agreed with the Secretary of State.*** The obligation to issue notices containing this information currently lies with the Secretary of State. However, the information necessary to compile and serve the notices is held by the sector association, including up-to-date contact details for each target unit. Due to resource constraints, it has not been possible for DECC to liaise with sectors and issue notices with over 50 sectors and 5000 target units in the time scales that we would have liked.
122. We therefore propose that the obligation to issue notices should rest with the sector association. We believe that this will reduce burdens on both the sector association and DECC. At present the Secretary of State is required to issue two notices to the operator of each target unit – one to inform him of the proposed target and one to confirm it. To reduce burdens further we propose that only one notice needs to be issued. If an operator does not object to the proposed target, no further notice will be necessary.
123. Current provisions for the operator to make representations to the Secretary of State will be continued. Because sector targets have already been agreed at the point when the sector association allocates them to target units, any change to one target unit's targets will usually require consequent changes to targets of one or more other targets units in the sector so that the sector target remains unchanged. This is a decision for the sector association. Views are therefore particularly sought on how the provisions for representations might best be handled, for example whether representations should be channelled through the sector association in the first instance.

Question 52

Do you agree with the proposal that sector associations should be responsible for issuing notices to operators on their revised targets?

If No, please explain your reasoning.

Question 53

Are there are unintended consequences from the wording of Rule 11.5?

If Yes, please explain your reasoning.

Rule 12: Variation of Underlying Agreement following a change in currency

124. Rule 12 makes provision for changes to currency at target unit level no earlier than four months and no less than two months prior to the start of a target period. This is aimed at discouraging frequent requests for changes and to provide sufficient time to process a variation. The Rule also sets out the procedures to be followed.

Question 54

Are there are unintended consequences from the wording of Rule 12?

If Yes, please explain your reasoning.

Rule 13 Dispute Resolution Procedures

125. Rule 13 continues the provisions of Schedule 4 to the umbrella agreement in relation to Decision Notices, Termination Notices and Variation Notices.

Rule 14: Adjudication

126. Rule 14 continues the provisions of Schedule 5 to the umbrella agreement.

Question 55

Although these rules transfer unamended the provisions of the current agreements, you may wish to comment.

Are there any unintended consequences from wording of Rules 13 or 14?

If Yes, please explain your reasoning.

Rule 15 Records and Information

127. Rule 15 continues the provisions of the current agreements for the supply of information to determine whether targets have been met. Operators are required under Rule 3.7 to provide the sector association with such information and Rule 2.4 requires the sector to supply it to the Secretary of State. Unlike in the current agreements, the information to be supplied is the same whether the sector target has been met or not. The information to be supplied includes the relevant information required to populate the reporting excel spreadsheet (currently known as the CCA10 spreadsheet). The Rule provides that the information to be supplied in units of energy, carbon and throughput shall be calculated as set out in accordance with Guidance. It also provides that the information shall be retained for at least one year after the termination of the Agreement.

Question 56

Are there any unintended consequences from wording of Rules 15?

If Yes, please explain your reasoning.

Rule 16: Confidentiality

128. Rule 16 continues the provisions of the current agreements relating to disclosure of information, but makes explicit reference to the overriding obligations on Government arising from the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. It also extends the range of bodies to whom information may be disclosed to any person or body appointed to administer the agreements on behalf of the Secretary of State.

Question 57

Are there any unintended consequences from wording of Rules 16?

If Yes, please explain your reasoning.

Rule 17 Service of Notices

129. Rule 17 continues the provisions of Clause 2.2 to 2.5 of the umbrella agreements and Clause 2.2 to 2.5 of the underlying agreements regarding the processes for serving notices.

Question 58

Are there any unintended consequences from wording of Rules 17?

If Yes, please explain your reasoning.

Rule 18: Amendment to these Rules

130. Rule 18 provides for the amendment of the Rules themselves for the purposes of improving the administration or the functioning of the agreements. Such amendments will usually be communicated to sector associations by means of a notice served on them by the Secretary of State inviting representations on the proposals.

Question 59

Are there any unintended consequences from wording of Rules 18?

If Yes, please explain your reasoning.

Annex I: Draft Umbrella Agreement

UMBRELLA CLIMATE CHANGE AGREEMENT FOR THE [insert] SECTOR Agreement dated [insert date]

THIS AGREEMENT is made the day of

BETWEEN :

- (1) the Secretary of State for Energy & Climate Change (“the Secretary of State”); and
- (2) The sector association set out in Schedule 1 (“the Sector Association”)

1. RECITALS

1.1 Section 30 of and Schedule 6 to the Finance Act 2000 make provision for a tax known as the climate change levy (“the Levy”). The Levy is charged on the supply of taxable commodities as defined in paragraph 3 of Schedule 6 to the Finance Act 2000 (“Schedule 6 to the Act”).

1.2 Paragraph 42(1)(c) of Schedule 6 to the Act provides that the amount payable by way of the Levy shall be 35 per cent of the full rate where the supply is a reduced-rate supply. A reduced-rate supply is a taxable supply supplied to a facility specified in a certificate given by the Secretary of State to the Commissioners for Her Majesty’s Revenue and Customs as a facility which is covered by a climate change agreement for a period specified in the certificate in accordance with paragraphs 42 to 52 of Schedule 6 to the Act.

1.3 A climate change agreement is defined in paragraph 46 of Schedule 6 to the Act. It may consist of a combination of agreements that falls within paragraph 48. A combination of agreements falls with paragraph 48 if a number of conditions are satisfied. The first condition is that the combination of agreements is a combination of an umbrella agreement and an agreement that, in relation to the umbrella agreement, is an underlying agreement.

1.4 This agreement is an umbrella agreement entered into for the purposes of the reduced rate of the Levy. It is not intended to give rise to contractual obligations between the parties.

1.5 The sector association is a representative as defined in paragraph 47(2) of Schedule 6 to the Act of each facility to which this agreement applies.

1.6 The provision for a reduction in the Levy in respect of taxable commodities supplied to facilities covered by a climate change agreement is subject to approval by the European Commission under State aid rules.

1.7. The sector target under this agreement has been set with the aim of securing cost effective energy efficiency measures and an overall reduction in energy used by the Sector, taking into account likely growth projections and the decarbonisation of electricity and any review of the sector target will also aim to ensure the target remains challenging and reflects the full potential for cost effective energy measures.

1.8 The Rules for the operation of Climate Change Agreements as varied from time to time are incorporated into this agreement via the DECC website.

IT IS AGREED as follows:

2. INTERPRETATION

In this agreement unless the context otherwise requires:

“facility” means a facility or facility to which an underlying agreement applies;

“Rules” means the Rules for the Operation of Climate Change Agreements made by the Secretary of State as amended from time to time in accordance with the Rules;

“sector” means the sector consisting of facilities which belong to the same sector and are subject to this agreement;

“sector target” means the target agreed between the Secretary of State and the Sector Association as set out in Schedule 4 to this agreement, as varied from time to time in accordance with the Rules;

“umbrella agreement” means the umbrella agreement within the meaning of paragraph 48 of Schedule 6 to the Act;

“underlying agreement” means an underlying agreement within the meaning of paragraph 48 of Schedule 6 to the Act.

3. FACILITIES TO WHICH THIS AGREEMENT APPLIES

3.1 This agreement applies to the facilities set out in Schedule 3 to this agreement .

3.2 A facility belongs to the sector if it is a facility which undertakes one or more of the activities set out in Schedule 2 to this agreement.

4. SECTOR TARGET

4.1 The sector target for the sector to which this agreement applies is set out in Schedule 4 to this agreement.

4.2 The Secretary of State shall carry out a review of the sector target for 2014 and 2015 in accordance with Rule 7 of the Rules during 2012.

5. THE RULES

The Rules are incorporated into this agreement and the Sector Association agrees to comply with the Rules.

6. DURATION AND TERMINATION OF THIS AGREEMENT

6.1 Subject to clause 6.2, this agreement shall continue in force from the date on which it is made until 31 May 2017.

6.2 This agreement may be terminated before 31 May 2017:

6.2.1 By a notice served by the Sector Association on the Secretary of State; or

6.2.2 In the circumstances set out in Rule 8 by a notice served by the Secretary of State on the Sector Association.

7. VARIATION OF AGREEMENT

7.1 The facilities to which this agreement applies may be varied in the circumstances set out in the Rules and in accordance with the Rules.

7.2 The sector target may be varied in the circumstances set out in Rule 11 and in accordance with the Rules.

Signed by authority of
the Secretary of State

Signed on behalf of the
Sector Association

.....

.....
(Name and position)

SCHEDULE 1
THE SECTOR ASSOCIATION

[insert name]

Which represents facilities that belong to the [insert name] sector.

Whose address for service of all notices under this agreement is

By post:

[insert postal address]

Electronically:

[insert electronic address]

SCHEDULE 2
THE SECTOR

ACTIVITIES UNDERTAKEN BY A FACILITY FALLING WITHIN THE SECTOR

SCHEDULE 3
LIST OF FACILITIES

Facility number	Operator of facility	Address of facility	Description of facility

SCHEDULE 4
THE SECTOR TARGET

Target Period	Sector Target
1 January 2012 to 31 December 2012	
1 January 2013 to 31 December 2013	
1 January 2014 to 31 December 2014	
1 January 2015 to 31 December 2015	

Annex II: Draft Underlying Agreement

UNDERLYING CLIMATE CHANGE AGREEMENT FOR THE [insert name] SECTOR **Agreement dated [insert date]** **TU Number [insert]**

THIS AGREEMENT is made the day of

BETWEEN :

- (1) the Secretary of State for Energy & Climate Change (“the Secretary of State”); and
- (2) the operator set out in Schedule 1 (“the Operator”)

1. RECITALS

1.1 Section 30 of and Schedule 6 to the Finance Act 2000 (“the Act”) make provision for a tax known as the climate change levy (“the Levy”). The Levy is charged on the supply of taxable commodities as defined in paragraph 3 of Schedule 6 to the Finance Act 2000 (“Schedule 6 to the Act”).

1.2 Paragraph 42(1)(c) of Schedule 6 to the Act provides that the amount payable by way of the Levy shall be 35 per cent of the full rate where the supply is a reduced-rate supply. A reduced-rate supply is a taxable supply supplied to a facility specified in a certificate given by the Secretary of State to the Commissioners for Her Majesty’s Revenue and Customs as a facility which is covered by a climate change agreement for a period specified in the certificate in accordance with paragraphs 42 to 52 of Schedule 6 to the Act.

1.3 A climate change agreement is defined in paragraph 46 of Schedule 6 to the Act. It may consist of a combination of agreements that falls within paragraph 48. A combination of agreements falls with paragraph 48 if a number of conditions are satisfied. The first condition is that the combination of agreements is a combination of an umbrella agreement and an agreement that, in relation to the umbrella agreement, is an underlying agreement.

1.4 This agreement is an underlying agreement entered into for the purposes of an umbrella agreement. It is not intended to give rise to contractual obligations between the parties.

1.5 The facility or facilities set out in Schedule 4 to this agreement are a facility or facilities to which an umbrella agreement applies.

1.6 The Operator is a representative as defined in paragraph 47(2) of Schedule 6 to the Act of each facility to which this agreement applies.

1.7 The sector target under this agreement has been set with the aim of securing cost effective energy efficiency measures and an overall reduction in energy used by the Sector, taking into account likely growth projections and the decarbonisation of electricity and any review of the sector target will also aim to ensure the target remains challenging and reflects the full potential for cost effective energy measures.

1.8 The Rules for the operation of Climate Change Agreements as varied from time to time are incorporated into this agreement and are available via the DECC website.

IT IS AGREED as follows:

2. INTERPRETATION

In this Agreement, unless the context otherwise requires-:

“facility” means a facility or facility to which this agreement applies;

“Rules” means the Rules for the Operation of Climate Change Agreements made by the Secretary of State as amended from time to time in accordance with the Rules;

“target unit” means a facility or a group of facilities with a target set under this agreement which only applies to that facility or group of facilities and references to target unit includes more than one target unit;

“sector” means the sector consisting of facilities which belong to the same sector and are subject to the same umbrella agreement;

“sector association” means the sector association set out in Schedule 2 to this agreement;

“sector target” means the target agreed between the Secretary of State and a sector association as set out in Schedule 4 to the umbrella agreement, as varied from time to time in accordance with the Rules;

“umbrella agreement” means an umbrella agreement set out in Schedule 2 to this agreement;

“underlying agreement” means an underlying agreement within the meaning of paragraph 48 of Schedule 6 to the Act.

3. FACILITIES TO WHICH THIS AGREEMENT APPLIES

This agreement applies to the facility or facilities set out in Schedule 4 to this agreement that carry out some or all of the activities set out in Schedule 3 to this agreement.

4. TARGET

4.1 The target for the target unit to which this agreement applies is set out in Schedule 5 to this agreement.

4.2 The throughput of a facility during a target period shall be calculated by applying the accounting conventions set out in Schedule 5.

- 4.3 Whether the target has been met shall be determined in accordance with Rule 5 of the Rules.
- 4.4 The Secretary of State shall carry out a review of the sector target for 2014 and 2015 in accordance with Rule 7 during 2012. Following the review, the target for the target unit shall be varied in accordance with Rule 11.

5. THE RULES

The Rules are incorporated into this agreement and the Operator agrees to comply with the Rules.

6. DURATION AND TERMINATION OF THIS AGREEMENT

- 6.1 Subject to clause 6.2 below this agreement shall continue in force from the date on which it is made until 31 May 2017.
- 6.2 This agreement may be terminated before 31 May 2017:
 - 6.2.1 By a notice served by the Operator on the Secretary of State; or
 - 6.2.3 In the circumstances set out in Rule 8 by a notice served by the Secretary of State on the Operator or served on the sector association.

7. VARIATION OF AGREEMENT

- 7.1 The facilities to which this agreement applies may be varied in the circumstances set out in the Rules and in accordance with the Rules.
- 7.2 The targets for the facility may be varied in the circumstances set out in Rule 11 and in accordance with the Rules.

Signed by authority of
the Secretary of State

Signed on behalf of the
Operator

.....

.....

.....
(Name and position)

SCHEDULE 4
FACILITIES TO WHICH THIS AGREEMENT APPLIES

TUID	Unique Facility Number	Site Name & Address	Post Code	EU ETS identification (NAP number)

SCHEDULE 5
TARGET UNIT TARGET AND THROUGHPUT

The throughput of a facility shall be given in the following units:

The reference throughput for the targets is

--

Facility number	Target period	Target
	1 January 2012 to 31 December 2012	
	1 January 2013 to 31 December 2013	
	1 January 2014 to 31 December 2014	
	1 January 2015 to 31 December 2015	

Annex III: Draft Rules

RULES FOR THE OPERATION OF CLIMATE CHANGE AGREEMENTS

TABLE OF CONTENTS

1. Interpretation
2. Obligations of a Sector Association
3. Obligations of an Operator
4. Certification of a Facility
5. Meeting the Target Unit Target
6. Banking Overachievement
7. Review of Sector Target
8. Termination
9. Variation by Inclusion of Additional Facilities
10. Variation by Exclusion of Facilities
11. Variation of Sector Target Following a Review
12. Variation of Underlying Agreement Following a Change in Currency
13. Dispute Resolution Procedure
14. Adjudication
15. Records and Information
16. Confidentiality
17. Service of Notices
18. Amendment to these Rules

1 INTERPRETATION

In these Rules, unless the context otherwise requires:

“allowance” means an allowance purchased in the EU ETS to emit one tonne of carbon dioxide equivalent during a specified period;

“banked overachievement” means the amount, measured in tonnes CO₂, by which a target unit is below its target that is carried forward to be used to meet its target in a subsequent period in accordance with Rule 6.1;

“certification period” means, any of the following periods:

- (a) 1st April 2011 to 31st May 2013
- (b) 1st June 2013 to 31st May 2014
- (c) 1st June 2014 to 31st May 2015
- (d) 1st June 2015 to 31st May 2016
- (e) 1st June 2016 to 31st May 2017;

“decision notice” means a notice served by the Secretary of State under Rule 4;

“CERs” means certified emission reductions issued pursuant to Article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, signed at Kyoto on 11th December 1997;

“climate change agreement” has the same meaning as in paragraphs 47 and 48 of Schedule 6;

“DECC holding account” means [to follow]

“EU ETS” means the European Union Emissions Trading Scheme established under the Emissions Trading Directive as implemented by the Greenhouse Gas Emissions Trading Scheme Regulations 2005 S.I.2005/925;

“facility” means a facility or facilities to which an underlying agreement applies;

“facility number” means the unique identification number of a facility set out in an umbrella agreement;

“fuel” means one or more sources of energy;

“guidance” means guidance published from time to time by the Secretary of State available via the DECC website;

“operator” means a person who is a party to an underlying agreement other than the Secretary of State or a person who enters into such an agreement on the operator’s behalf;

“reconciliation date” means the last working day before 1st April in each year commencing 1st April 2013;

“Rules” means the Rules for the Operation of Climate Change Agreements made by the Secretary of State as amended from time to time in accordance with the Rules;

“Schedule 6” means Schedule 6 to the Finance Act 2000;

“sector” means the sector consisting of facilities which belong to the same sector and subject to the same Umbrella agreement;

“sector association” means a party to an umbrella agreement other than the Secretary of State;

“sector target” means the target agreed between the Secretary of State and the sector association as set out in Schedule 4 of an umbrella agreement, as varied from time to time in accordance with the Rules;

“target period”, means any of the following periods:

- (a) 1st January 2012 to 31st December 2012
- (b) 1st January 2013 to 31st December 2013
- (c) 1st January 2014 to 31st December 2014
- (d) 1st January 2015 to 31st December 2015;

“target unit” means a facility or a group of facilities with a target set under an underlying agreement which applies to that facility or group of facilities under common ownership;

“target unit target” means the target set out in Schedule 5 to an underlying agreement”;

“target unit target currency” means one of the following:

- (a) for an absolute carbon target, carbon emitted during the target period;
- (b) for an absolute energy target, energy used during the target period;
- (c) for a relative carbon target, carbon emitted during the target period per unit of throughput during that period or ratio thereof according to the Rules; or
- (d) for a relative energy target, energy used during the target period or ratio thereof according to the Rules;

“termination notice” means a notice served by the Secretary of State under Rule 8;

“throughput” means the measure of production, or factor related to the production, that has been selected and agreed with the Secretary of State used to determine the relationship between the amount of energy used by the target unit and the quantity of final products leaving the facility;

“umbrella agreement” means an umbrella agreement within the meaning of paragraph 48 of Schedule 6;

“underlying agreement” means an underlying agreement within the meaning of paragraph 48 of Schedule 6 or where there is no umbrella agreement, an agreement within the meaning of paragraph 47 of Schedule 6;

“variation certificate” means a variation certificate within the meaning of paragraph 45 of Schedule 6;

“Variation Notice” means a notice served by the Secretary of State under Rule 11; and

“working day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day falling on a bank holiday in any part of the United Kingdom.

2 OBLIGATIONS OF A SECTOR ASSOCIATION

- 2.1 A sector association shall encourage its members who operate facilities within its sector to enter into underlying agreements with the Secretary of State.
- 2.2 A sector association shall not impose unreasonable requirements on non-members who operate facilities within its sector who wish to enter into underlying agreements with the Secretary of State.
- 2.3 A sector association shall not impose unreasonable charges on operators or potential operators (whether members or non-members of the sector association) in respect of the negotiation of an umbrella agreement, underlying agreement or the carrying out of any of the sector association’s obligations under these Rules.
- 2.4 A sector association shall supply to the Secretary of State the information specified in Rule 15.2 and 15.3 by the reconciliation date in the year immediately following the target period until and including the reconciliation date in 2016.
- 2.5 Where an operator has failed to supply the information to a sector association in accordance with Rule 3.4, a sector association shall inform the Secretary of State setting out the name of the facility and its facility number by the last working day before 7th March 2013 and in each following year of an umbrella agreement until and including 7th March 2016.
- 2.6 If a sector association is unable to comply with Rule 2.4 because of the failure of any operator to comply with Rule 3.4, the sector association shall supply the Secretary of State with the information which would have been required if the facility had not been a facility to which an umbrella agreement applies.
- 2.7 Within the period specified in a notice a sector association shall supply such information as the Secretary of State may at any time request, in connection with the operation of an umbrella agreement or any underlying agreement.
- 2.8 A sector association shall co-operate with any person appointed by the Secretary of State to undertake an independent audit of information provided by the sector association or provided by an operator and the sector association shall comply with any action plan prepared by the person so appointed within the period specified in the action plan.
- 2.9 A sector association shall keep the records specified in Rule 15 for the periods specified in Rule 15 and make such records available for inspection and shall provide copies for the Secretary of State or any person authorised by the Secretary of State.
- 2.10 Following agreement between the Secretary of State and a sector association to a variation in the sector target under Rule 11 the sector association shall distribute the sector target in accordance with Rule 11.4 and Rule 11.5.

- 2.11 A sector association shall serve notice on the Secretary of State following the variation of an umbrella agreement in accordance with Rules 9, 10 or 11.
- 2.12 In proposing the distribution of the sector target or any revised sector target between each target unit within the sector a sector association shall have regard to the potential in each target unit for cost effective energy or carbon savings and any other factors set out in the guidance.
- 2.13 A sector association shall meet its share of the costs of any adjudication under these Rules within 10 working days of the determination of that adjudication.
- 2.14 Where the Secretary of State considers that a sector association has failed to comply with any obligation under this Rule, the Secretary of State may serve a notice on the sector association:
- 2.14.1 Identifying the obligation that has not been complied with;
- 2.14.2 Setting out the steps that the sector association must take to comply with the obligation; and
- 2.14.3 Specifying the period in which the sector association must comply with the obligation.

3 OBLIGATIONS OF AN OPERATOR

- 3.1 An operator shall serve a notice on the Secretary of State, copied to the sector association within 5 working days if it has reason to believe that a facility to an underlying agreement may not be eligible for inclusion in the underlying agreement.
- 3.2 An operator shall supply to the Secretary of State, the name and contact details of a person who can be contacted in respect of each of the facilities to an underlying agreement within 5 working days of the signing of the underlying agreement.
- 3.3 Where there is any change in any of the information supplied under Rule 3.2, an operator shall serve a notice on the Secretary of State specifying the change within 5 working days of that change.
- 3.4 An operator shall supply to the sector association the information specified in Rule 15.2 by the last working day before 1st March in the year immediately following the target period until and including 1st March 2016.
- 3.5 An operator shall comply with any notice served on it by the sector association requesting information in order for the sector association to comply with any of its obligations under Rule 2, such information to be supplied not more than 10 working days after receipt of the notice.
- 3.6 An operator shall supply within the period specified in a notice, such information as the Secretary of State may at any time request, in connection with the operation of an umbrella agreement or the underlying agreement.

- 3.7 An operator shall co-operate with any person appointed by the Secretary of State to undertake an independent audit of information provided by a sector association or provided by the operator and the operator shall comply with any action plan prepared by the person so appointed within the period specified in the action plan.
- 3.8 An operator shall keep the records specified in Rule 15 for the period specified in Rule 15 and make such records available for inspection and shall provide copies for the Secretary of State or any person authorised by the Secretary of State.
- 3.9 An operator shall keep a record of energy saving actions and measures that it implements during each target period of the underlying agreement and shall comply with any notice served on it by the Secretary of State or the sector association requesting such information.
- 3.10 Unless already installed and approved by the Secretary of State prior to entering into an underlying agreement, an operator shall install metering for each facility sufficient to accurately measure energy use within the facility within six months of entering into an underlying agreement.
- 3.11 Where the Secretary of State enters into an underlying agreement before a target unit target has been agreed, conditional upon the operator providing sufficient information within a specified period in order to set the target for the facility, the operator shall supply data to the Secretary of State within the period specified by the Secretary of State on energy use and throughput of the facility in accordance with the guidance.
- 3.12 An operator shall be required to serve notice on the Secretary of State following a variation of an underlying agreement following a change in currency in accordance with Rule 12.
- 3.13 An operator shall meet its share of the costs of any adjudication under these Rules within 10 working days of the determination of that adjudication.
- 3.14 Where a sector association requires a management agreement for a facility to be covered by an umbrella agreement an operator shall comply with the terms of that management agreement with the sector association.
- 3.15 Where the Secretary of State considers that an operator has failed to comply with any of its obligations under this Rule the Secretary of State may serve a notice on the operator:
- 3.15.1 Identifying the obligation which has not been complied with;
- 3.15.2 Setting out the steps that the operator must take to comply with the obligation; and
- 3.15.3 Specifying the period in which the operator must comply with the obligation.

4. CERTIFICATION OF A FACILITY

- 4.1 Save where a facility has previously been covered by a climate change agreement, the Secretary of State shall certify that a facility is covered by a climate change agreement from the signing of an underlying agreement to the end of the certification period in which the underlying agreement is signed.

- 4.2 Subject to Rule 4.1, the Secretary of State shall certify that a facility is covered by a climate change agreement where it appears to the Secretary of State that progress made in the immediately preceding certification period, whether under the underlying agreement or under any previous climate change agreement, towards meeting targets set for the facility is, or is likely to be, satisfactory.
- 4.3 For the purposes of this Rule, progress made in the immediately preceding certification period towards meeting targets set for the facility is, or is likely to be satisfactory where:
- 4.3.1 The target set for the target unit in the underlying agreement for the relevant target period is met in accordance with Rule 5; and
- 4.3.2 Sufficient allowances have been surrendered by the target unit to meet its compliance obligations under the EU ETS.
- 4.4 Where:
- 4.4.1 A target unit has failed to meet its target in accordance with Rule 5;
- 4.4.2 Insufficient allowances have been surrendered by the target unit to its compliance obligations under the EU ETS;
- 4.4.3 A facility is not or ceases to be eligible for inclusion in an underlying agreement under Rule 9.1;
- 4.4.4 A facility is excluded from an underlying agreement under these Rules; or
- 4.4.5 The underlying agreement is terminated in accordance with these Rules
- the Secretary of State shall not certify that the facility is covered by a climate change agreement or, where a certificate has been issued, the Secretary of State shall vary that certificate in accordance with paragraph 45 of Schedule 6.
- 4.5 Where the information supplied to the Secretary of State is insufficient to determine whether:
- 4.5.1 The target unit target for the target period has been met; or
- 4.5.2 Sufficient allowances have been surrendered to meet the target unit's obligations under the EU ETS
- the Secretary of State may refuse to certify that the facility is covered by a climate change agreement or, where a certificate has been issued, the Secretary of State may vary that certificate in accordance with paragraph 45 of Schedule 6.
- 4.6 Where the Secretary of State does not certify a facility or varies a certificate that has been issued, the Secretary of State shall serve a decision notice on the sector association and the operator of the facility setting out the reasons for the decision unless a termination notice has already been served.

- 4.7 The Secretary of State is not required to issue a variation notice where a facility has been certified under this Rule and it is subsequently discovered that the target unit target for the relevant target period had not been met because of an error in the information originally supplied to the Secretary of State provided that:
- 4.7.1 The sector association and the operator have satisfied the Secretary of State that the error was unintentional; and
- 4.7.2 The operator has surrendered sufficient allowances to rectify the error within the period specified by notice by the Secretary of State.
- 4.8 Where the sector association or the operator disagree with the decision of the Secretary of State and there is a dispute on the facts, the dispute resolution procedure set out in Rule 13 shall apply.
- 4.9 Where the Secretary of State certifies that a facility is covered by a climate change agreement, the Secretary of State shall issue a certificate to the Commissioners of Her Majesty's Revenue and Customs.
- 4.10 The Secretary of State shall publish and maintain a list of certified facilities on the DECC website.
- 4.11 Where a facility ceases to be certified the Secretary of State shall issue a variation certificate to the Commissioners of Her Majesty's Revenue and Customs and shall remove the facility from the list of certified facilities.

5. MEETING THE TARGET UNIT TARGET

- 5.1 A target unit meets its target for a target period for the purpose of Rule 4.3.1 where:
- 5.1.1 The target unit has not exceeded the target for the target period; or
- 5.1.2 The target unit has exceeded the target for the target period but the operator has transferred sufficient CERs to the DECC holding account by the reconciliation date in the year immediately following the target period to fully offset the amount by which the target unit has exceeded the target.
- 5.2 Where a target unit exceeds its target and has not transferred sufficient CERs in accordance with Rule 5.1.2 a target unit shall be deemed to have met its target for a target period where it has exceeded its target for the target period by no more than 2% of the target for the target period and the operator has:
- 5.2.1 Transferred sufficient CERs to the DECC holding account to offset fully the amount by which the target unit has exceeded the target; and
- 5.2.2 Where the target unit has exceeded the target by more than 1%, the operator has made a payment to the Secretary of State of £40 for each allowance in respect of the excess of more than 1% of the target transferred to the DECC holding account.

Such transfer and, where applicable, payment to be made within 10 working days of being notified to do so by the Secretary of State.

5.3 Where there is an unexpected:

5.3.1 Disruption in the supply of energy to a facility; or

5.3.2 Total failure in excess of 240 hours of a dedicated electricity generation plant located within a facility; and

5.3.3 The operator submits such evidence as requested by the Secretary of State to demonstrate that the dedicated electricity generation plant was properly maintained and was being correctly operated at the time of the total failure

Any increase in the number of units or carbon emitted from a facility during the target period, compared with the number of units which would otherwise have been emitted in that period, may, with the consent of the Secretary of State, be disregarded in calculating whether the target unit has met its target for the target period.

5.4 For the purposes of Rule 5.3 disruption in the supply or total failure of the dedicated electricity generation plant is only unexpected if the disruption or total failure was not anticipated when setting the target unit target. Routine down time or interruptions within the terms of an interruptible supply contract are not unexpected for the purpose of Rule 5.3.

5.4 For the purpose of determining whether a target unit target meets its target:

5.5.1 The units of energy used by the target unit shall be measured in kilowatt hours or an equivalent unit agreed with the Secretary of State;

5.5.2 The units of carbon associated with the energy used in the target unit applies shall be expressed as tonnes of carbon dioxide; and

5.5.3. The throughput of the target unit shall be as set out in Schedule 3 to the underlying agreement.

And shall be calculated in accordance with the guidance.

6 **BANKING OVERACHIEVEMENT**

6.1 Where a target unit is below its target at the end of a target period, the amount measured in tonnes CO₂ by which it is below its target will be carried forward and may be used to meet its target in a subsequent target period.

6.2 Any banked overachievement may be used in a subsequent target period by the target unit to reduce the amount by which the target unit has exceeded its target.

6.3 Where facilities leave a target unit, the operator of the target unit shall determine how any banked overachievement should be distributed between the facilities that have left the target unit and the target unit and shall serve notice of that redistribution on the Secretary of State.

- 6.4 Where an operator fails to serve notice of the redistribution in accordance with Rule 6.3 any banked overachievement will remain with the target unit.
- 6.5 Where facilities join a target unit, any banked target attributable to those joining facilities may be used by the target unit as a whole.
- 6.6 On the de-certification of a facility following a failure to purchase CERs under Rule 5.2 or the termination of an underlying agreement for whatever reason, any banked overachievement will be cancelled. On the de-certification of a facility for any other reason, any banked overachievement may be retained by the target unit.

7 REVIEW OF SECTOR TARGET

- 7.1 The review shall be to ensure that the sector target being reviewed remains challenging and reflects the full potential for cost effective energy measures.
- 7.2 In carrying out the review the Secretary of State shall take account of:
- 7.2.1 Actual and potential technical changes for the sector;
 - 7.2.2 Market circumstances in the sector including issues of carbon leakage;
 - 7.2.3 The performance of the sector under any previous climate change agreement;
 - 7.2.4 Any representations made by the sector association; and
 - 7.2.5 Any other matters that the Secretary of State considers are relevant.
- 7.3 The sector target shall be varied, where appropriate, to take account of the review in accordance with the procedure set out in these Rules.

8 TERMINATION

- 8.1 The Secretary of State may terminate an umbrella agreement where:
- 8.1.1 State aid approval is varied or ceases to apply to the umbrella agreement;
 - 8.1.2 The sector association fails to comply with any of its obligations under Rule 2 following a notice served on it under Rule 2.14; or
 - 8.1.3 The Secretary of State and the sector association fail to agree a variation of sector targets or the targets in the underlying agreements.
- 8.2 The Secretary of State may terminate an underlying agreement where:
- 8.2.1 The umbrella agreement is terminated;
 - 8.2.2 The operator fails to comply with any of its obligations under Rule 3 following a notice served under Rule 3.15 ;

- 8.2.3 The Secretary of State and the operator fail to agree a variation of the target in the underlying agreement;
 - 8.2.4 The Secretary of State enters into an underlying agreement before a target unit target has been agreed, conditional upon the operator providing sufficient information within a specified period in order to set targets and the operator fails to supply that information in whole or in part within the specified period; or
 - 8.2.5 In any other circumstances where a facility ceases to be eligible for inclusion in an umbrella agreement.
- 8.3 A termination notice served under this Rule shall specify the date on which the umbrella agreement or the underlying agreement is terminated which shall be at least 10 working days after the date on which the notice is served and should be accompanied by a statement setting out the Secretary of State's reasons for terminating the agreement.
- 8.4 A notice served under this Rule may be withdrawn at the discretion of the Secretary of State before the date of termination specified in the notice.

9 VARIATION BY INCLUSION OF ADDITIONAL FACILITIES

- 9.1. A facility is eligible at any time to be considered for inclusion in an umbrella agreement or an underlying agreement where:
- 9.1.1 It is a facility within the meaning of paragraph 50 of Schedule 6;
 - 9.1.2 It is a facility that belongs to a sector which has entered into an umbrella agreement with the Secretary of State;
 - 9.1.3 It is a facility undertaking the activities set out in Schedule 2 to an umbrella agreement ;
 - 9.1.4 It is not already included in an umbrella agreement or an underlying agreement;
 - 9.1.5 Where the facility forms part of a target unit carrying on activities covered by more than one Umbrella agreement it shall be eligible to enter into an underlying agreement under the Umbrella agreement for the sector for which it uses the majority of its energy.
- 9.2 An additional facility cannot be added to an umbrella agreement or an underlying agreement during the final target period under an umbrella agreement or an underlying agreement.
- 9.3 Where a sector association wishes to add an additional facility to an umbrella agreement or an operator wishes to add an additional facility to an underlying Agreement the sector association shall serve a notice on the Secretary of State not less than two months before the commencement of the next target period setting out:
- 9.3.1 The name of the operator of the facility;
 - 9.3.2 The address of the facility;

- 9.3.3 A description of the facility; and
 - 9.3.4 Such information as will enable the Secretary of State to reach a decision on establishing eligibility of the facility or varying the target unit and sector.
- 9.4 Following receipt of the notice, the Secretary of State shall:
- 9.4.1 Consent to include facility in an umbrella agreement or an underlying agreement; or
 - 9.4.2 Refuse consent to include the facility in an umbrella agreement or an underlying agreement, giving reasons for the decision; or
 - 9.4.3 Shall request such further information as is required in order to establish eligibility of the facility or reach a decision on varying the sector target.
- 9.5 Within 5 working days of an umbrella agreement or an underlying agreement being varied, a sector association shall serve notice of the variation and the revised sector target on the Secretary of State, copied to the operator of the facility or facilities affected by the variation, specifying the date on which the variation shall take effect.

10 VARIATION BY EXCLUSION OF FACILITIES

- 10.1 Where the Secretary of State or the sector association wish to exclude a facility, or part of it, from an umbrella agreement or an underlying Agreement, either shall serve a notice on the other, copied to the operator of the facility, setting out:
- 10.1.1 The name of the operator of the facility;
 - 10.1.2 The facility number, or a description of the part that is to be excluded;
 - 10.1.3 The reason for the exclusion; and
 - 10.1.4 Where the sector association serves notice on the Secretary of State, such information as will enable the Secretary of State to reach a decision on a varying the sector target; or
 - 10.1.5 Where the Secretary of State serves notice on the sector association, the Secretary of State shall request such information as is required in order to reach a decision on varying the sector target, such information to be supplied to the Secretary of State within the period specified in the notice.
- 10.2 Within 5 working days of an umbrella agreement or an underlying agreement being varied, a sector association shall serve notice of the variation and the revised sector target on the Secretary of State, copied to the operator of the facility or facilities affected by the variation, specifying the date on which the variation shall take effect.

11 VARIATION OF SECTOR TARGET FOLLOWING A REVIEW

- 11.1 The sector target may be varied following a review of the sector target by the Secretary of State under Rule 7 where the Secretary of State serves a variation notice on the sector association.
- 11.2 The variation notice must state:
- 11.2.1 The date from which the proposed variation will take effect; and
 - 11.2.2 The proposed variation; or
 - 11.2.3 Where the Secretary of State requires further information in order to determine the proposed variation, the variation notice shall specify the further information that the sector association is required to supply within the period specified in the variation notice to the Secretary of State.
- 11.3 After receiving the information requested under Rule 11.2.3 the Secretary of State shall serve a revised variation notice in accordance with Rule 11.2.
- 11.4 Where the sector association agrees with the variation notice and the variation in the sector target requires redistribution between the target units, the sector association shall, within 20 working days of receipt of the variation notice, serve notice on the Secretary of State setting out the proposed distribution of the revised sector target between each target unit under the umbrella agreement.
- 11.5 Within 5 working days of the Secretary of State agreeing to the proposed distribution, the sector association shall serve notice of the variation on the Secretary of State, copied to the operator of the facility or facilities affected by the variation, specifying the date on which the variation shall take effect.
- 11.6 Any variation of a sector target required by the inclusion or exclusion of a facility or facilities shall be effected at the end of the target period which ends after the inclusion or exclusion of that facility.
- 11.7 Where the sector association or an operator disagrees with the proposed variation set out in the variation notice the dispute resolution procedure set out in Rule 13 shall apply.

12 VARIATION OF AN UNDERLYING AGREEMENT FOLLOWING A CHANGE IN CURRENCY

- 12.1 Where an operator wishes to change its target currency under an underlying agreement it may serve a notice on the Secretary of State copied to the sector association not more than four months and not less than two months before the commencement of the next target period setting out:
- 12.1.1 The name of the operator of the facility;
 - 12.1.2 The address of the facility;
 - 12.1.3 A description of the facility;

- 12.1.4 The revised target;
 - 12.1.5 The calculations showing the conversion between targets according to the conventions set out in the guidance;
 - 12.1.6 The justification for the change in currency; and
 - 12.1.7 Such information as will enable the Secretary of State to reach a decision on establishing eligibility of the facility or a varying the sector target.
- 12.2 Following receipt of the notice, the Secretary of State shall:
- 12.2.1 Consent to the change in currency; or
 - 12.2.2 Refuse consent to the change in currency, giving reasons for the decision; or
 - 12.2.3 Shall request such further information as is required in order to establish whether consent to the change in currency can be given.
- 12.3 Where a variation in an underlying agreement is agreed the operator shall serve notice of the variation on the Secretary of State copied to the sector association and the underlying agreement shall be varied accordingly.
- 12.4 Within 5 working days of an underlying agreement being varied under this Rule an operator shall serve notice of the variation on the Secretary of State, copied to the sector association, specifying the date on which the variation shall take effect.

13 DISPUTE RESOLUTION PROCEDURE

- 13.1 Within 10 working days following receipt of a decision notice, termination notice or variation notice under these Rules the sector association or the operator may serve notice on the Secretary of State (copied to the sector association or the operator, as the case may be) setting out the reasons why they disagree with the notice.
- 13.2 Within 10 working days after receiving a notice under Rule 13.1 from the sector association or the operator the Secretary of State shall:
- 13.2.1 Certify the facility;
 - 13.2.2 Inform the sector association and the operator that the decision notice shall be varied setting out the reasons for the variation;
 - 13.2.3 Inform the sector association and the operator that the decision notice shall not be varied setting out the reasons that it will not be varied;
 - 13.2.4 Agree to withdraw the termination notice;
 - 13.2.5 Inform the sector association and the operator that the termination notice shall not be withdrawn setting out the reasons that it will not be withdrawn;

13.2.6 Agree to the variation of the sector targets requested by the sector association or the operator; or

13.2.7 Inform the sector association and the operator that the variation notice shall not be withdrawn setting out the reasons that it will not be withdrawn.

13.3 Where the sector association or the operator disagrees with the facts set out in the reasons given under Rule 13.2 either may refer the dispute for adjudication to an adjudicator appointed by the Chartered Institute of Arbitrators, such referral to take place within 10 working days of receipt of those reasons from the Secretary of State. A copy of the referral shall be served by the party making the referral on the other parties to the dispute.

13.4 Within 20 working days from the date on which they receive notice from the adjudicator of the address to which representations should be sent, each party shall make representations to the adjudicator, copied to the other parties to the dispute.

13.5 The adjudicator may request in writing further information from any of the parties to the dispute. Any such request shall specify the date by which the information is required and shall be copied to the other parties to the dispute. Any information provided in response to such a request shall be copied by the party providing the information to the other parties to the dispute.

13.6 The adjudicator shall, on the basis of the representations and any additional information provided, make a finding on the disputed questions of fact and notify the parties of that finding. The adjudicator's finding on the disputed questions of fact shall be binding on the parties.

13.7 Where the dispute arises out of a decision notice, within 5 working days after the receipt of the adjudicator's finding, the Secretary of State shall:

13.7.1 Certify the facility;

13.7.2 Inform the sector association and the operator that the facility will not be certified setting out the reasons for the decision; or

13.7.3 Where a certificate has already been issued, inform the sector association and the operator that the certificate will be varied setting out the reasons for the decision.

13.8 Where the dispute arises out of a variation notice, it shall be for the parties to agree, in the light of the adjudicator's findings, on the variation required to the sector targets and in the event of the parties failing to agree to a variation of the sector targets, the Secretary of State may terminate the umbrella agreement of any underlying agreement in accordance with Rule 8.

14 ADJUDICATION

14.1 The Chartered Institute of Arbitrators shall nominate a person to act as an adjudicator to determine any dispute on the facts as provided for in these Rules.

- 14.2 The adjudicator shall notify the parties of the appointment and shall inform them of the address to which representations are to be sent.
- 14.3 Save as provided for in Rule 13, it shall be for the adjudicator to determine the procedure which is to be followed in relation to the adjudication but in doing so the adjudicator:
- 14.3.1 May take expert advice, after consulting the parties, to assist with the adjudication;
 - 14.3.2 Shall ensure that each party has an adequate opportunity to respond to any representations made or information provided by the other party;
 - 14.3.3 Shall ensure that each party has an adequate opportunity to respond to any other evidence that the adjudicator proposes to take into account;
 - 14.3.4 May impose or extend any time limit for any action to be taken by any party; and
 - 14.3.5 May proceed with the adjudication in such manner as the adjudicator considers appropriate if a time limit is not complied with.
- 14.4 The parties to the adjudication shall bear their own costs.
- 14.5 The cost of the adjudication shall be shared equally between the parties.

15 RECORDS AND INFORMATION

- 15.1 The records required to be kept under Rule 2.9 and Rule 3.8 include the information required to be supplied to the Secretary of State under these Rules. Records must be sufficient to allow the accurate verification of throughput and annual consumption of energy of each target unit in order to enable the verification of the accuracy of any energy data provided to the Secretary of State under these Rules.
- 15.2 The information required to be supplied under Rule 2.4 and Rule 3.6 for each target unit is:
- 15.3.1 The total number of units of primary energy used during the relevant target period by the target unit and total energy used by each type of fuel;
 - 15.3.2 The total number of units of carbon emitted from the target unit during that period;
 - 15.3.3 The total throughput;
 - 15.3.4 Where a target unit target is to be adjusted under these Rules, the information needed to calculate the adjustment.
- 15.3 The additional information required to be supplied by the sector association to the Secretary of State under Rule 2.4 is:
- 15.3.1 The total number of units of energy used during the relevant target period by the sector in relation to each type of fuel;
 - 15.3.2 The total number of units of carbon emitted from the sector during that period;

15.3.3 The total throughput for the sector;

15.3.4 Allowances transferred under Rule 5.

15.4 Units of energy, units of carbon and throughput shall be calculated in accordance with the guidance.

15.5 Records required to be kept and information required to be supplied must be retained by the sector association and the operator throughout the duration of the Umbrella agreement and the underlying agreement and for the period of one year after their termination.

16 CONFIDENTIALITY

16.1 The Secretary of State shall be entitled to publish:

16.1.1 An umbrella agreement;

16.1.2 A list of facilities to which an underlying agreement applies;

16.1.3 A list of facilities that are certified as being covered by a climate change agreement;

16.1.4 A list of facilities that cease to be certified;

16.1.5 A list of facilities where certificates have been varied; and

16.1.6 A list of underlying agreements that have been terminated.

16.2 Information and records supplied by a sector association or an operator to the Secretary of State or to any person appointed by the Secretary of State to carry out an independent audit or to administer these Rules, umbrella agreements and underlying agreements on behalf of the Secretary of State may be disclosed by the Secretary of State or the person so appointed without the consent of the person who supplied that information or those records:

16.2.1 To a relevant authority for any purposes relating to any of the functions of: the Secretary of State under Schedule 6 or the relevant authority;

16.2.2 Where disclosure is necessary for the purpose of or in connection with any legal proceedings, including the obtaining of legal advice;

16.2.3 Where disclosure is required to comply with any Act of Parliament or subordinate legislation made under an Act of Parliament, including requests made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;

16.2.4 Where disclosure is required to meet any obligation to the European Union; or

16.2.5 To any person appointed by the Secretary of State to administer these Rules, umbrella agreements and underlying agreements, to carry out an independent audit or authorised by the Secretary of State to inspect such information or records.

16.3 The relevant authority referred to in this Rule means:

16.3.1 Either House of Parliament including any committee of either or both Houses;

16.3.2 The European Commission;

16.3.3 The Commissioners of Her Majesty's Revenue and Customs;

16.3.4 A person or body prescribed by or appointed under Part I of the Environmental Protection Act 1990 or regulations made under section 2 of the Pollution Prevention and Control Act 1999 or any corresponding legislation for Northern Ireland;

16.3.5 Any regulator appointed under section 54 of the Competition Act 1998; or

16.3.6 An adjudicator appointed under these Rules.

17 SERVICE OF NOTICES

17.1 Any notice served under these Rules shall be in writing and may be served by sending it by 1st class post to or electronically.

17.2 The address for the service of all notices on the Secretary of State is:

Postal: The Climate Change Agreements Team,
DECC
Area 1B
Whitehall Place
London SW1A 2AW

Electronic: levy.agreements@decc.gsi.gov.uk

17.3 A notice served on the Sector association may be served by sending it by post or electronically to the address set out in Schedule 1 to the umbrella agreement.

17.4 A notice served on an operator may be served by sending it by post or electronically to the address set out in Schedule 1 to the underlying agreement.

18 AMENDMENT TO THESE RULES

18.1 These Rules may be amended by the Secretary of State at any time for the purpose of improving the administration or the functioning of umbrella agreements or underlying agreements.

18.2 Save where the Secretary of State considers the amendment is of a minor nature or is so urgent that it is inappropriate to consider representations, the Secretary of State will serve notice on sector associations who have umbrella agreements specifying:

18.2.1 The proposed amendments to these Rules;

18.2.2 The reason for the proposed amendments; and

18.2.3 The time period and the manner in which representations may be made to the Secretary of State.

18.3 After considering any representations made by sector associations these Rules shall be amended by the Secretary of State serving notice on all the sector associations who have umbrella agreements setting out the date on which the amendments will have effect.

18.4 Within five working days of receiving notification of the amendments sector associations shall notify the operators holding underlying agreements under the umbrella agreement.

.....
Signed on behalf of the Secretary of State

.....
Date

Annex IV: Table of Equivalence (How Clauses and Schedules in the Current Agreements are Taken up in the Draft Agreements, Rules and Guidance)

Current Climate Change Agreements	New Climate Change Agreements
<u>Umbrella Agreement</u>	
<u>Clauses</u>	
1. Recitals	Clause 1 and Rule 1
2. Interpretation and Notices 2.1 2.2 – 2.5	Clause 2 and Rule 1 Schedule 1 and Rule 17
3. Facilities to which this agreement applies 3.1- 3.3 3.4 3.5	Clause 3 and Schedule 2 Rule 9 Rule 10
4. Certification Periods	Rule 1 Interpretation
5. Targets and Currencies 5.1 - 5.3 5.4 -5.5 5.6 5.7 5.8	Clause 4 and Schedule 4 Rule 7 Rule 11 No equivalent Rule 1
6. Obligations of the Sector Association	Rules 2 and 15
7. Certification of Facilities by the Secretary of State 7.1 7.2 7.3 7.4 7.5 7.6 7.7	Rule 4.1 Rule 4.2 Rule 4.3 Not relevant Not relevant Not relevant Rule 4.9

7.8 7.9 7.10 7.11 7.12	Rule 4.4 Rule 4.5 Rule 4.6 Rule 4.8 Rule 4.6
8. Confidentiality	Rule 16
9. Duration of this Agreement	Clause 6 and Rule 8
10. Variation of Agreement	Clause 7 and Rules 9, 10 and 11
<u>Schedules to the Umbrella Agreement</u>	
Schedules	
1 Facilities Covered by Agreement and Certification Periods Part 1 Part 2	Schedule 3 Rule 1
2 Sector Targets and Currencies Part 1 Para 1 Para 2 Para 3 Para4 Part 2 Para 5 Para 6 Para 7	Schedule 4 and Guidance Guidance Guidance Guidance Rule 1 Guidance Guidance
3 Information to be supplied to the Secretary of State	Rules 2 and 15.2, 15.3 and 15.4
4 Certification Dispute Resolution	Rule 13
5 Adjudicators	Rule 14
6 Variations Part1 Part 2 Para 2 Para 3 Para 4 Para 5	Clause 7 and Rule 18 Rules 9 and 10 Rule 10 Not relevant Rule 11

Para 6	Not relevant
Para 7	Not relevant
Para 8	Not relevant
<u>Underlying Agreement</u>	
<u>Clauses</u>	
1. Recitals	Clause 1 and Rule 1
2. Interpretation and Notices 2.1 2.2 – 2.5	Clause 2 and Rule 1 Rule 17
3. Facilities to which this agreement applies 3.1 3.2 3.3	Clause 3 and Schedule 4 Rule 9 Schedule 3
4. Targets	Clause 4, Schedule 5 and Rule 2.12
5. Qualitative Requirements	Not required
6. Obligations of Operator	Rule 3
7. Certification of Facilities by the Secretary of State	As for the Umbrella Agreement
8. Confidentiality	Rule 16
9. Duration of this Agreement	Clause 6
10. Variation of Agreement	Clause 7
<u>Schedules to the Underlying Agreement</u>	
<u>Schedules</u>	
1 Facilities to which this Agreement applies	Clause 3 and Schedule 4
2 Targets Para 1 Para 2	Clause 4, Schedule 4 and Rule 5 Guidance, except for para 2.18 which is Rule 5.3 and 5.4

Para 3 Para 4	Guidance Schedule 5
3 Qualitative Requirements	No longer relevant
4 Information to be supplied to the Sector Association	Rule 15
5 Variations Part 1 Para 1 Part 2 Para 2 and 3 Para 4 Para 5 Para 6 Para 7 Para 8	Clause 7 and Rule 18 Clause 7 and in Rules 3, 9 and 10 No longer relevant No longer relevant Clause 4.4 and Rule 7 No longer relevant Rules 3.12 and 12

© Crown copyright 2010

Department of Energy & Climate Change
3 Whitehall Place
London SW1A 2HD
www.decc.gov.uk

Product code: 10D / 666