

2012 No. 0000

CLIMATE CHANGE LEVY

The Climate Change Agreements Regulations 2012

Made - - - - ***

Laid before Parliament ***

Coming into force - - *1st October 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by paragraphs 52A(1), 52D to 52F and 146(7) of Schedule 6 to the Finance Act 2000(a).

Citation and commencement

1. These Regulations may be cited as the Climate Change Agreements Regulations 2012 and come into force on 1st October 2012.

Interpretation

2. In these Regulations—

“account” means the account of an account holder set up in accordance with regulation 4;

“account holder” means a party other than the administrator to an agreement and includes a person nominated on behalf of that party to operate the account;

“administrator” means the Environment Agency;

“agreement” means an umbrella agreement or an underlying agreement;

“emissions” means the total emissions in tCO₂ for a facility calculated by the administrator from data supplied to the administrator—

(a) on or before the signing of the agreement and recorded on an account; or

(b) the most recent emissions for a facility subsequently calculated from target period information and recorded on an account;

“facility” means a facility or facilities to which a climate change agreement applies;

“personal information” means—

(a) the registered office address of the account holder; and

(b) the name and contact details of—

(i) a person who can be contacted in respect of the facility or, if more than one, in respect of each facility covered by the agreement; and

(ii) any person nominated by the account holder to operate the account on its behalf;

“publish” means to publish on any part of a website maintained by the administrator which is accessible to the public;

(a) 2000 c. 17 as amended by section [] of the Finance Act 2012 c. [].

“the Register” has the meaning given by regulation 3;

“Schedule 6” means Schedule 6 to the Finance Act 2000(a);

“surplus” means the amount by which the emissions fall below the target in any target period as recorded on an account;

“target” means the target or targets for a facility agreed between the parties to an agreement;

“target period” means any of the following periods—

- (a) 1st January 2013 to 31st December 2014;
- (b) 1st January 2015 to 31st December 2016;
- (c) 1st January 2017 to 31st December 2018; or
- (d) 1st January 2019 to 31st December 2020;

“target period information” means the information required to be supplied to the administrator following the end of a target period in order for the administrator to calculate progress towards the target;

“tCO₂” means tonne or tonnes of carbon dioxide;

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

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

“working day” means 9 am to 5 pm on Mondays to Fridays excluding—

- (a) bank holidays within the meaning of section 1 of the Banking and Financial Dealings Act 1971(b), including those bank holidays in part only of the United Kingdom;
- (b) Good Friday; and
- (c) when it falls on a day that would otherwise be a working day, Christmas Day.

The Register

3.—(1) On or before 1st January 2013, the administrator must establish and operate an electronic system for the administration of climate change agreements (“the Register”).

(2) The administrator—

- (a) must take reasonable steps to ensure that the Register is available to those entitled to use it during each working day; and
- (b) may make it available at such other times as the administrator believes reasonable.

(3) The administrator may establish administrative rules in relation to the operation of the Register.

Setting up and operating an account

4.—(1) The administrator must—

- (a) make the Register accessible to prospective account holders to apply to enter into an agreement using the Register;
- (b) set up an account for an account holder on the account holder entering into an agreement; and
- (c) ensure that each account—
 - (i) contains the agreement to which the account relates;

(a) 2000 c. 17.
(b) 1971 c. 80.

- (ii) subject to the account holder supplying sufficient data to the administrator using the Register, holds sufficient information to demonstrate whether the account holder has met its target; and
 - (iii) records any surplus.
- (2) The administrator must take reasonable steps to ensure that—
 - (a) so far as reasonably practicable, communications between the administrator and the account holder take place using the Register; and
 - (b) an account holder may access its account to update its personal information and input any information to meet its obligations under its agreement using the Register.

Security of the Register

- 5.—(1) The administrator—
- (a) must take reasonable steps to ensure that the operation of the Register is secure from misuse, including use by those not entitled to use it;
 - (b) may suspend the operation of the Register or any account where it believes security of the Register may be at risk by not doing so.
- (2) Subject to paragraph (3) the administrator must ensure that information which relates to an account holder is not accessible by another account holder.
- (3) Information that relates to an account holder that is a party to an underlying agreement shall be accessible to view by an account holder that is a party to the umbrella agreement under which the underlying agreement is entered into.

Preventing or suspending use of the Register

6. The administrator may suspend or restrict an account holder's use of the Register where—
- (a) the account holder is in breach of any administrative rules concerning the operation of the Register; or
 - (b) the administrator believes that an account holder has been, is using or intends to use the Register for or in connection with a criminal offence.

Closing an account

- 7.—(1) The administrator must close an account where an agreement has been terminated in accordance with that agreement.
- (2) As soon as reasonably practicable following closure of an account, notice must be given in writing to the former account holder.
- (3) Where an account is closed, any surplus recorded in the account immediately prior to its closure must be cancelled by the administrator.

Publication

- 8.—(1) By the last working day in June in a year following the end of a target period the administrator must publish a list giving details of each facility for which a certificate has been given by the administrator to the Commissioners in accordance with paragraph 44 of Schedule 6.
- (2) Where—
- (a) a certificate has been given by the administrator to the Commissioners in accordance with paragraph 44 of Schedule 6 at any time after the last working day in June in a year following the end of a target period; or
 - (b) a variation certificate has been given by the administrator to the Commissioners in accordance with paragraph 45 of Schedule 6 at any time,

the administrator must publish a revised list giving details of each facility for which a certificate has been given by the administrator to the Commissioners in accordance with paragraph 44 of Schedule 6, such publication to be within ten working days of giving that certificate or variation certificate.

(3) The administrator must publish the emissions recorded in the Register for each account holder as soon as possible after the last working day in June in the year following the end of a target period.

(4) The administrator must compile a report setting out energy efficiency improvements and emission reductions achieved under climate change agreements and, in particular, details of how each account holder that is a party to an umbrella agreement has achieved against its target, such report to be published as soon as reasonably practicable following the end of a target period.

Requirements to satisfy prior to entering into a climate change agreement

9.—(1) The administrator may only enter into an umbrella agreement after it has taken reasonable steps to satisfy itself that the facility is a facility within the meaning of paragraph 50 of Schedule 6.

(2) The administrator may only enter into an underlying agreement after it is has taken reasonable steps to satisfy itself—

- (a) of the identity of the person that it is proposing to enter into the underlying agreement with;
- (b) that the facility is a facility within the meaning of paragraph 50 of Schedule 6;
- (c) the activities undertaken by the facility fall within the umbrella agreement; and
- (d) the target under the underlying agreement, taken together with the targets for the other facilities falling within the umbrella agreement, does not exceed the target under the umbrella agreement.

Requirements on entering into a climate change agreement

10.—(1) A climate change agreement entered into by the administrator must be in a form approved by the Secretary of State.

(2) An umbrella agreement must contain the target notified to the administrator by the Secretary of State.

Terms to be included in an underlying agreement relating to meeting targets

11.—(1) The underlying agreement must contain the terms set out in paragraph (2).

(2) The terms referred to in paragraph (1) are—

- (a) (i) at the end of a target period where an account holder fails to meet its target for a target period; or
- (ii) at any other time where an account holder is found to have failed to meet a target, the administrator shall serve a notice on the account holder informing the account holder that progress towards meeting its target may be achieved by the payment of a fee in accordance with subparagraph (b);
- (b) a notice served under subparagraph (a) must contain the following information—
 - (i) that the account holder has failed to meet its target;
 - (ii) the fee to be paid, calculated in accordance with subparagraph (c) or (d);
 - (iii) the date by which the fee must be paid, such date to be no more than 15 working days from the date of the notice;
 - (iv) to whom the fee must be paid;
 - (v) how the fee is to be paid; and

- (vi) that failure to pay the fee in accordance with the notice will result in the issue of a variation certificate in accordance with paragraph 45 of Schedule 6;
- (c) where the account holder has failed to meet its target under paragraph (2)(a)(i), the amount of the fee under subparagraph (b)(ii) shall be—
 - $\text{£}12 \times \text{tCO}_2 \times (\text{W} - \text{S})$
 - where W represents the amount by which the emissions exceed the target and S represents any surplus;
- (d) where the account holder has failed to meet its target under paragraph (2)(a)(ii), the amount of the fee under subparagraph (b)(ii) shall be—
 - $\text{£}12 \times \text{tCO}_2 \times \text{W}$
 - where W represents the amount by which the emissions exceed the target; and
- (e) that payment is deemed to have been made when the administrator receives full cleared funds.

Cancelling a surplus used to meet targets

12. On issuing a notice under regulation 11(2)(a) the administrator must immediately cancel any surplus used in a calculation made under regulation 11(2)(c).

Obligation to terminate a climate change agreement

13.—(1) The administrator shall terminate an agreement within 5 working days of being notified by the Secretary of State that State aid approval is varied or ceases to apply to the agreement.

- (2) The administrator shall terminate an underlying agreement—
 - (a) within 5 working days of becoming aware that the facility ceases to be eligible for inclusion in an umbrella agreement; or
 - (b) immediately on the umbrella agreement being terminated.

Power to terminate an agreement

14.—(1) The administrator may terminate an agreement on the date specified in a notice served on the account holder on the occurrence of any of the events specified in paragraph (2).

- (2) The events referred to in paragraph (1) are that the account holder fails to—
 - (a) comply with any obligations imposed on it under its agreement;
 - (b) agree a variation in a target; or
 - (c) pay any financial penalty imposed on it by the administrator.

Terms to be included in an underlying agreement relating to and penalties for a breach of those terms

15.—(1) The underlying agreement must contain the terms set out in paragraph (2).

- (2) The terms referred to in paragraph (1) are that the account holder must—
 - (a) provide the target period information to the administrator using the Register by the last working day in April following the end of a target period;
 - (b) provide any other information requested at any time by the administrator by the date specified in the request to enable the administrator to determine that the account holder—
 - (i) has met its target; or
 - (ii) is complying with the terms of its underlying agreement; and
 - (c) notify the administrator within 20 working days of any changes that would result in a variation of the underlying agreement.

- (3) A financial penalty under paragraph (5) applies where an account holder—
- (a) fails to provide the information in accordance with paragraph 2(a) or (b);
 - (b) in purported compliance with the requirement to provide any other information under paragraph (2)(b) provides inaccurate information; or
 - (c) fails to notify the administrator in accordance with paragraph 2(c).
- (4) A financial penalty under paragraph (6) applies where an account holder in purported compliance with the requirement to provide the target period information to the administrator using the Register, provides inaccurate target period information.
- (5) The amount of the financial penalty under paragraph (3) shall be the greater of—
- (a) £500; or
 - (b) $0.1 \times (\text{levy} - X) \times Y$

where X represent the rate of the levy paid on a reduced-rate supply under paragraph 42(1) of the Schedule and Y represents the sum calculated in accordance with the Table set out in paragraph 42(1) of the Schedule on taxable supplies to the facility calculated from data supplied to the administrator by the account holder on entering into an agreement.
- (6) The amount of the financial penalty under paragraph (4) shall be the greater of—
- (a) £500; or
 - (b) £12 per tCO₂e of so much of the emissions which were inaccurately reported.

Notice of a financial penalties

16. Where the administrator is satisfied that an account holder is liable to a financial penalty under regulation 15 the administrator may serve a notice on the account holder setting out—

- (a) the contravention that has led to the imposition of a penalty;
- (b) the amount due;
- (c) the date by which the penalty must be paid;
- (d) to whom the penalty must be paid; and
- (e) that failure to pay the penalty in accordance with the notice will result in termination of the underlying agreement on the date specified in the notice.

Right of appeal

17.—(1) Where a financial penalty is imposed under regulation 16, an account holder may appeal to the First-tier Tribunal^(a) (“the Tribunal”) against that financial penalty.

(2) Where a notice is served under regulation 14, an account holder may appeal to the Tribunal against that notice.

(3) The appeal must be received by the Tribunal no later than ten working days after the service of a notice under regulation 14 or the service of a notice under regulation 16.

Provisions relating to appeals

18. The bringing of an appeal suspends the financial penalty or termination taking effect.

Determining an appeal

19.—(1) On deciding an appeal under regulation 17 against the imposition of a financial penalty the Tribunal must either—

(a) Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to such appeals.

- (a) confirm the penalty;
- (b) reduce the penalty; or
- (c) quash the penalty.

(2) On deciding an appeal under regulation 17 against the termination of the agreement the Tribunal must either—

- (a) confirm the termination;
- (b) permit an extension of time for the account holder to comply with the event that led to the service of the notice under regulation 14; or
- (c) quash the termination.

Date _____
Name _____
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations appoint the Environment Agency to administer climate change agreements entered into under Part IV of Schedule 6 to the Finance Act 2000 and sets out procedures for the administration of climate change agreements. It comes into force on 1st October 2012.

Regulation 2 lists definitions used in the Regulations.

Regulations 3 and 4 establish an electronic register for administering climate change agreements.

Regulations 5 provides for security and access to the Register.

Regulation 6 provides for preventing or suspending a person using the Register.

Regulation 7 sets out when an account must be closed and that any emissions recorded in the account at its closure shall be cancelled.

Regulation 8 sets out what information the administrator is required to publish and by what dates.

Regulation 9 provides that prior to entering into a climate change agreement the administrator must check the identity of an individual with whom it proposes to enter into a climate change agreement and must ensure that the facilities and the activities to be carried out are eligible to be included in a climate change agreement. The administrator is also required to check that the targets for an underlying agreement, taken together with all the other underlying agreements do not exceed the sector target.

Regulation 10 provides that the administrator must obtain the approval of the Secretary of State to the form of a climate change agreement before entering into it.

Regulation 11 sets out the terms to be included in an underlying agreement relating to failure to meet a target. These provisions enable an account holder whose facility has failed to meet its target for a target period to pay a sum of money, calculated by reference to the difference between its emissions and its target, in order to retain its Climate Change Levy discount.

Regulation 12 provides that a surplus used in a calculation under regulation 11 to reduce the amount by which an account holder has exceeded its target must be cancelled by the administrator.

Regulation 13 sets out the terms to be included in a climate change agreement relating to the circumstances in which a climate change agreement can be terminated.

Regulation 14 sets out the circumstances where the administrator may terminate a climate change agreement and makes provision for waiving termination in certain circumstances.

Regulation 15 sets out the terms to be included in an underlying agreement that may lead to the imposition of a financial penalty and the formula to calculate the amount of that penalty.

Regulations 16 sets out the information to be included in a notice imposing a financial penalty.

Regulation 17 appoints the First-tier Tribunal to hear appeals and sets out the right of appeal against the imposition of a financial penalty and in respect of certain notices of termination.

Regulation 18 deals with various provisions relating to an appeal including an appeal received out of time, withdrawing an appeal and the suspension of a penalty or termination pending the outcome of the appeal.

Regulation 19 sets out what decision the Tribunal may make following the appeal.

An Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.