S T A T U T O R Y I N S T R U M E N T S

2012 No. 0000

CLIMATE CHANGE LEVY

The Climate Change Agreements (Eligible Facilities) Regulations 2012

Made - - - -	***
Laid before House of Commons	***
Coming into force - -	*1st October 2012*

The Secretary of State makes the following Regulations, in exercise of the powers conferred by paragraphs 50(3) to (5) and 146 of Schedule 6 to the Finance Act 2000(**a**):

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the Climate Change Agreements (Eligible Facilities) Regulations 2012.

(2) They come into force on 1st October 2012.

(3) Regulations 3 to 7 cease to have effect on 30th April 2023.

Interpretation

2. In these Regulations—

"the Act" means the Finance Act 2000;

"eligible process" means a relevant process or activity or a combination of relevant processes or activities listed in the Schedule to these Regulations carried out at an installation or site;

"installation" means—

(a) an installation falling within any one or more of the descriptions of installations set out in the Table to paragraph 51 of Schedule 6 to the Act; or

(b) an installation covered by paragraph 51 of Schedule 6 to the Act by virtue of the Climate Change Agreements (Energy-intensive) Regulations 2006(**b**) carrying out an eligible process;

"reckonable energy" has the meaning given by regulation 4;

"relevant commodities" means—

(a) taxable commodities;

(b) hydrocarbon oil within the meaning of the Hydrocarbon Oil Duties Act 1979(**c**);

(c) any mixture of gases which originates from an oil refinery;

(d) biomass;

(**a**) 2000. c.17.
(**b**) S.I. 2006/59; amended by S.I. 2006/1848.
(**c**) 1979 c.5.

(e) non-renewable waste.

Eligible Facilities

3.—(1) An installation or a site is to be taken to be a facility for the purposes mentioned in paragraph 50(1) of Schedule 6 to the Act only if—

(a) in or on which at least 70% of the reckonable energy supplied to the installation or to the site is intended to be used in the installation, installations or parts of installations on the site; and

(b) the taxable commodities supplied to the installation or to the site by taxable supplies in the following 12 month period are intended to be burned (or, in the case of electricity, consumed)—

(i) in the installation;

(ii) on the site where the installation is situated but not in the installation;

(iii) in installations or parts of installations on the site; or

(iv) on the site but not in any installation or parts of installations on the site.

(2) For the purposes of paragraph (1)(a), supply or use of reckonable energy during the previous 12 month period must be used to determine likely supply or use of reckonable energy in the following 12 month period.

Reckonable energy

4.—(1) Reckonable energy is—

(a) energy obtained from the burning of relevant commodities;

(b) electrical energy consumed;

(c) energy in cooling supplies or supplies of steam.

(2) Paragraph (1) applies to—

(a) relevant commodities burned or used in the installations or parts of installations on the site; and

(b) electricity supplied to the installations or parts of installations on the site.

(3) Reckonable energy from relevant commodities, other than electricity, must be calculated by reference to the gross calorific value of the commodity burned to produce it.

(4) Subject to regulations 5 and 6, the quantity of electricity must be multiplied by a factor of 2.6 to convert it into reckonable energy.

Dedicated electricity generation plant

5. Except where regulation 6 applies, for electricity generated in plant which is located in, and intended for supplying electricity for use by a facility—

(a) reckonable energy must be calculated by reference to the gross calorific value of the commodity burned to produce the electricity; and

(b) where the electricity is used on other parts of a site, the electricity generated must be attributed to the facility and the rest of the site on a pro rata basis.

Combined heat and power stations

6.—(1) Reckonable energy from a combined heat and power station must be calculated by reference to the gross calorific value of the commodity burned to produce it.

(2) Where part of the energy from a combined heat and power station is used in a place, the formulae set out in paragraphs (3) to (5) must apply for calculating the reckonable energy from the station in relation to that place.

(3) The following formula applies in respect of electricity from the combined heat and power station which is used in that place—

$$\mathrm{RE} = \frac{2\mathrm{EC} \times \mathrm{EP}}{2\mathrm{ET} + \mathrm{HT}}$$

where—

RE is the reckonable energy in respect of electricity from the combined heat and power station which is used in that place;

EC is the total energy content of the relevant commodities burned in the combined heat and power station calculated by reference to the gross calorific value of each commodity;

EP is the quantity of electricity produced by the combined heat and power station which is used in that place;

ET is the total quantity of electricity produced by the combined heat and power station which is used in that place and elsewhere; and

HT is the total quantity of heat produced by the combined heat and power station which is used in that place and elsewhere.

(4) If no electricity from the combined heat and power station is put into public supply, the following formula applies in respect of heat which is used in that place—

$$\mathrm{RHN} = \frac{\mathrm{EC} \times \mathrm{HP}}{2\mathrm{ET} + \mathrm{HT}}$$

where—

RHN is the reckonable energy in respect of heat from the combined heat and power station which is used in that place;

EC is the total energy content of the relevant commodities burned in the combined heat and power station calculated by reference to the gross calorific value of each commodity;

HP is the quantity of heat produced by the combined heat and power station which is used in that place;

ET is the total quantity of electricity produced by the combined heat and power station which is used in that place and elsewhere; and

HT is the total quantity of heat produced by the combined heat and power station which is used in that place and elsewhere.

(5) If electricity from the combined heat and power station is put into public supply, the following formula applies in respect of heat which is used in that place—

$$\mathrm{RHS} = \left[\frac{\mathrm{EC} \times \mathrm{HP}}{(2\mathrm{ET} + \mathrm{HT})}\right] - \left[\frac{\mathrm{HP} \times \mathrm{ES}}{\mathrm{HT}}\left(2.6 - \frac{2\mathrm{EC}}{2\mathrm{ET} + \mathrm{HT}}\right)\right]$$

where—

RHS is the reckonable energy in respect of heat from the combined heat and power station which is used in that place;

EC is the total energy content of the relevant commodities burned in the combined heat and power station calculated by reference to the gross calorific value of each commodity;

HP is the quantity of heat produced by the combined heat and power station which is used in that place;

ES is the quantity of electricity produced by the combined heat and power station and put into public supply;

ET is the total quantity of electricity produced by the combined heat and power station which is used in that place and elsewhere; and

HT is the total quantity of heat produced by the combined heat and power station which is used in that place and elsewhere.

(6) For the purposes of paragraphs (4) and (5), electricity is put into public supply when it is supplied to an electricity utility.

(7) Where absorption cooling is used to produce a cooling supply for use in installation, installations or parts of installations on a site and the heat for the absorption cooling is from a combined heat and power station—

(a) the heat used to provide the cooling supply must be treated for the purposes of paragraphs (1) to (6) as used in the place where the cooling supply is used; and

(b) the quantity of that heat must be estimated by dividing the output of the cooling supply by the coefficient of performance of the cooling system.

Steam

7. The reckonable energy in respect of steam supplied to the installation, installations or parts of installations on a site must be calculated by taking the enthalpy of the steam and by dividing it by the efficiency of the system which generates the steam and supplies it to that installation, those installations or parts of those installations where it is used.

Revocations and transitional provision

8.—(1) The following Regulations are revoked—

(a) the Climate Change Agreements (Eligible Facilities) Regulations 2001(**a**);

(b) the Climate Change Agreements (Eligible Facilities) Regulations 2006(**b**);

(c) the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2006(**c**);

(d) the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2009(**d**).

(2) The regulations listed in paragraph (1) continue to have effect in relation to climate change agreements entered into with the Secretary of State before the coming into force of these Regulations.

Review

9.—(1) Before the end of the review period, the Secretary of State must—

(a) carry out a review of regulations 3 to 7,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by regulations 3 to 7,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) "Review period" means the period of five years beginning with the day on which these Regulations came into force.

Name
Minister of State
Department of Energy and Climate Change

Date

(**a**) S.I. 2001/662.
(**b**) S.I. 2006/60.
(**c**) S.I. 2006/1931.
(**d**) S.I. 2009/2458.

SCHEDULE

Regulation 2

List of relevant processes and activities

1. At an installation or site where—

(a) nitrogen, oxygen or argon is separated from air, and then compressed or liquefied; or

(b) nitrogen, oxygen and argon are separated from air, and then made into a compressed or liquefied mixture of at least two of the former,

separating the above substances from air using one or more of the following air separation technologies: cryogenic distillation, pressure swing adsorption, vacuum swing absorption or membrane separation, compressing and liquefying the separated substances, pumping them (in a compressed or liquefied form) from within the installation for further use within or outside the installation.

2. At an installation or site where kaolinitic clay in combination with any of its accessory minerals is extracted and processed: blasting and crushing, dry mining or hydraulic mining, refining, blending, drying and packaging, classifying, hydrocloning, pumping, centrifuging, grinding, shredding, magnetic separating, bleaching, pressing, pugging, milling, micro- separating.

3. At an installation or site where calcium carbonate based minerals are processed for use as filler or whitener for paper, plastics, pharmaceuticals, ceramics, food, paint or other products: crushing, drying, milling, classifying, screening, packaging.

4. At an installation or site where pre-formed or manufactured metal components are heat–treated to facilitate their efficient formability or to enhance their service performance: all processes and activities involved in the heat treatment of pre-formed or manufactured metal components to facilitate their efficient formability or to enhance their service performance.

5. At an installation or site where (in controlled, environment–protected structures) horticultural crops are grown, harvested and receive primary preparation for market: planting, seeding, heating, lighting, ventilating, irrigating, fertilising, cooling, preparing and sterilising growing media, grading and conveying.

6. At an installation or site where textiles are manufactured: spinning, weaving, knitting, finishing but not printing or dyeing.

7. At an installation or site where plastic film is produced using extrusion to convert melted polymer into blown or cast film: all processes and activities involved in the production of plastic film using extrusion to convert melted polymer into blown or cast film.

8. At an installation or site where geosynthetic materials comprising at least one component made from a synthetic or natural polymer in the form of a sheet, strip or other three-dimensional structure are manufactured for use in geotechnical or civil engineering applications: all processes and activities involved in the manufacture of such materials.

9. At an installation or site where silica sand in combination with any associated minerals is extracted, processed and packaged: blasting, quarrying, crushing, classifying, milling, pumping, grinding, acid leaching, drying and packaging.

10. At an installation or site where potassium chloride is extracted, separated, and purified to produce potash and high-grade soluble potassium chloride: sub-surface mining of sylvinite and other halite minerals, separating potassium chloride from those minerals and purifying it including crushing, grinding, froth flotation, drying, compacting, grading and, where relevant, recrystallising it from supersaturated brine.

11. At an installation or site where glass products or chemicals using glass as a base material are produced from raw materials, pre-formed glass or cullet for use as reflective additives in road markings or as toughened glass for the automotive market: partial melting, fusing, bending,

toughening, cutting, grinding, etching, polishing (both mechanical and chemical), surface treating and drying.

12. At an installation (which must be a building where the predominant business activity is commercial temperature controlled storage or product freezing) or site upon which there is such an installation where—

(a) products are cooled or frozen for the purposes of—

(i) storing them under controlled temperatures below ambient levels; or

(ii) producing ice; or

(b) products are stored under controlled temperatures below ambient levels,

cooling and freezing products and all processes and activities involved in controlling temperatures below ambient levels.

13. At an installation or site where plastic materials, or plastic products (whether or not these are finished products), are produced by—

(a) the application of heat and pressure to; or

(b) a chemical reaction involving

plastics powder, granules, shredded waste or liquid: injection moulding, reaction injection moulding, compression moulding (including hot and cold press moulding), transfer moulding, structural foam moulding, direct screw transfer moulding, rotational moulding (including slush moulding), flexible foam moulding (including dual component processing), blow moulding, casting, expanded polystyrene moulding, expandable materials processing, mixing and compounding, calendering, powder coating (including dip moulding), sintering, thermoforming (including vacuum forming), pultrusion, filament winding, spread coating, hand lay-up and resin transfer moulding.

14. At an installation or site where refined salt for use in food products or supplements is prepared or processed from minerals.

15. At an installation or site, not being a launderette predominately offering self-service washes or predominately serving the domestic market, where textiles are laundered by washing with water, drying and smoothing except where such laundering is carried out in support of other activities carried out by the business (not being textile rental activities), whether or not such activities are carried out at the installation or site.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the Climate Change Agreements (Eligible Facilities) Regulations 2001 ("the 2001 Regulations"), the Climate Change Agreements (Eligible Facilities) Regulations 2006 ("the 2006 Regulations"), the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2006 and the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2009 and replaces them with a consolidated and amended set of Regulations. The two significant amendments are the 90% rule which changes to 70% and the removal of the energy intensive criteria.

The Regulations apply to installations set out in Table A to paragraph 51 of Schedule 6 and other installations carrying out an eligible process as defined by the Schedule to the Regulations. The Schedule incorporates the eligible processes set out in the Schedule to the 2006 Regulations (as amended).

Regulation 1(3) provides that regulations 3 to 7 are to cease to have effect on 30th April 2023.

Regulation 3(1) defines what is an eligible facility for the purposes of entering into a climate change agreement. During a 12 month period at least 70% of the reckonable energy supplied to the

facility will be used within an installation. Regulation 3(2) sets out how to calculate the estimated supply or use of reckonable energy by reference to the previous 12 month period.

Regulation 4 sets out how to calculate reckonable energy.

Regulation 5 sets out how reckonable energy is calculated in respect of a dedicated electricity generation plant.

Regulation 6 sets out how reckonable energy is calculated in respect of a combined heat and power station.

Regulation 7 sets out how reckonable energy is calculated in respect of steam.

Regulation 8 provides that the 2001 Regulations and the 2006 Regulations (as amended) remain in force in respect of climate change agreements entered into by the Secretary of State before these Regulations come into force.

Regulation 9 requires the Secretary of State to review the operation and effect of regulations 3 to 7 and publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation 1(3) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.